new motor vehicle and if the dealer pays the motor club any compensation.

Existing law defines the term "dealer" for purposes of the Vehicle Code as, among other things, a person who is engaged in the business of selling vehicles. This bill defines the term "brokering" for purposes of the Vehicle Code as an arrangement under which a dealer, for consideration, provides the service of arranging, negotiating, assisting, or effectuating the purchase of a motor vehicle, not owned by the dealer, for another or others. The bill defines the terms "autobroker" or "auto buying service" as a dealer who engages in the business of brokering.

Existing law specifies exemptions from the definition of the term "dealer" for purposes of provisions of the Vehicle Code. This bill adds to the exemptions a motor club, as defined, that does not arrange or negotiate specified purchase transactions but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

Existing law prescribes the fee for the issuance of a license to dealers. This bill prescribes the fees for the registration of a dealer as an autobroker.

Existing law defines a "new vehicle" for purposes of the Vehicle Code as, among other things, a vehicle constructed entirely of new parts that has never been sold and exempts specified transactions involving dealer-to-dealer sales from the definition of the term "sold." This bill instead defines a new vehicle as, among other things, a vehicle constructed entirely of new parts that has never been the subject of a retail sale.

Existing law makes it a misdemeanor for a dealer to advertise or offer for sale or exchange any vehicle not actually for sale at the premises of the dealer or available to the dealer from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. Existing law makes an exception to that provision by authorizing a dealer to advertise that it has the ability to purchase for resale vehicles available from franchised dealers, if the advertisement or offer states, among other things, that the dealer is not franchised to sell new vehicles and that the vehicles must be purchased as used. This bill deletes the exception specified above and, except as provided, authorizes an autobroker to advertise its service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer. The bill limits the content of the advertisements, requires a specified advertising statement, and specifies the type, size, and placement of that statement. The bill requires that a certain statement be included with certain smaller advertisements.

Existing law makes it a misdemeanor for a dealer to advertise for sale as new any new vehicle of a line-make for which the dealer does not hold a franchise. This bill also makes it a misdemeanor for a dealer to sell the specified vehicle.

Existing law makes it a misdemeanor for a dealer to do specified acts relating to the selling of motor vehicles. This bill makes it a misdemeanor for a dealer to do specified acts when brokering, as defined above. The bill also prescribes a specified form to be used by the dealer as a brokering agreement.

Existing law makes it a misdemeanor for any motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch to do specified acts relating to motor vehicle dealers. This bill makes it a misdemeanor for any motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch to dishonor a warranty, rebate, or other incentive offered to the public or a dealer in connection with the retail sale of a new motor vehicle, based solely upon the fact that an autobroker arranged or negotiated the sale. This bill also imposes specified duties pertaining to title registration, warranties, rebates, and incentives on a selling, franchised new car dealer involved in a brokered retail motor vehicle sale. This bill was signed by the Governor on September 30 (Chapter 1253, Statutes of 1994).

The following bills died in committee: **AB 3333 (Speier)**, which would have amended the Tanner Consumer Protection Act by repealing the third-party dispute resolution provisions, substantially revising related provisions, and establishing a comprehensive "lemon law arbitration program" in the Department of Consumer Affairs (DCA); and **SB 1081 (Calderon)**, which would have—among other things—established a seller's right of rescission based on the seller's inability to assign the contract, and required the right of rescission to be included in conditional sales contracts.

## LITIGATION

In ***University Chrysler-Plymouth, Inc., v. Chrysler Corporation***, 28 Cal. App. 4th 386 (Aug. 19, 1994, as modified on Sept. 16, 1994), plaintiff University Chrysler-Plymouth (University) challenged Chrysler's opening of a competing Chrysler-Plymouth dealership in the Kearny Mesa area of San Diego; University also contended that Chrysler should have permitted it to act as a dealer for a line of cars built for Chrysler by the Italian manufacturer, Maserati. At trial, a jury agreed with University and awarded it $600,480 in damages caused by the opening of the Kearny Mesa dealership; the jury also awarded University $50,700 in damages caused by Chrysler's refusal to provide University with the Maserati line of cars.

On appeal, the Fourth District Court of Appeal reversed, stating that it found "no legal theory which supports the damage awards. Nothing in the Vehicle Code or the parties' dealership agreement impaired Chrysler's right to open the competing dealership. With respect to the Maserati line of cars, we find University failed to exhaust its available administrative remedies." The court explained that the regulation of a manufacturer's ability to establish new and competing dealerships is governed by the provisions of Business and Professions Code sections 3062 and 3063; in an earlier proceeding involving the same parties, the Fourth District had expressly found that plaintiff was not entitled to relief under sections 3062 and 3063. Further, the Fourth District found that University's dealership agreement did not provide it with any protection against the establishment of competing Chrysler dealerships, and that its dealership agreement with Chrysler expressly granted it only a nonexclusive right to purchase products from Chrysler.

Regarding University's contention that Chrysler should have provided it with the Maserati line of cars for sale, the Fourth District found that the matter is "clearly cognizable" by NMVB under Business and Professions Code section 3050, which gives the Board the power to consider "any matter concerning the activities or practices of any...manufacturer." The Fourth District noted that University never attempted to bring its Maserati claim before NMVB, and that its failure to exhaust an available administrative remedy barred any proceeding on the Maserati claim in superior court.

## 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 July 23, OMBC President Robert David resigned, leaving three vacancies on the Board—one public member position and two professional positions.

## MAJOR PROJECTS

**OMBC Budget Update.** OMBC's budget problems continue, and the January 1994 shutdown of its enforcement and discipline program has led to a complete suspension of the Board's ability to investigate new and pending complaints against DOs. *[14:2&3 CRLR 213; 14:1 CRLR 164–65]* OMBC's chances of resuming normal program functions will be aided by AB 3732 (Takasugi), which was signed by the Governor on September 26 (Chapter 895, Statutes of 1994); this bill authorizes OMBC to increase its tax and registration fee for DOs by $100, prevents legislative appropriation of these funds, and requires that 80% of the funds from this fee increase be used solely for the Board's enforcement activities (*see* LEGISLATION). AB 3732 also contains an urgency clause such that OMBC is immediately authorized to seek the fee increase through the rulemaking process; at this writing, however, OMBC has yet to publish notice of its intent to pursue the much-needed fee increases.

**Public Disclosure Policy.** It has long been OMBC's policy to release only that information about a licensee which is already a matter of public record. Recent reforms to the public disclosure policies of both the Medical Board of California (MBC) and the Board of Dental Examiners *[13:4 CRLR 44; 13:2&3 CRLR 80]* have prompted OMBC to consider broadening its public disclosure policy. At its July 23 meeting, OMBC heard a presentation by Doug Laue of MBC regarding MBC's new disclosure policy and the possibility of OMBC's incorporation of such a policy into its enforcement program.

The Office of the Attorney General has recommended, and OMBC is currently considering, the amendment of its disclosure policy to include the disclosure of malpractice judgments of $30,000 or more against licensees, discipline taken by other states against licensees, and felony convictions of licensees that are substantially related to the practice of osteopathic medicine. However, no formal action has been taken by the Board at this writing.

## LEGISLATION

**AB 3497 (B. Friedman)**, as amended August 17, adds four additional weeks of clinical instruction in family medicine to the instruction required to be completed by applicants for licensure, and specifies that this added requirement applies only to applicants for licensure who graduate from medical school or a school of osteopathic medicine after May 1, 1998. This bill was signed by the Governor on September 19 (Chapter 657, Statutes of 1994).

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 213–14:

**AB 3732 (Takasugi).** Existing law requires OMBC to require each licensed osteopathic physician to demonstrate satisfaction of continuing education (CE) requirements as a condition for renewal of a license. As amended July 1, this bill provides that, commencing January 1, 1995, OMBC instead require each licensed osteopathic physician to complete a minimum of 150 American Osteopathic Association CE hours, as defined, during each three-year cycle as a condition for renewal of a license.

Existing law provides that an osteopathic physician's certificate expires at midnight on the last day of the birth month of the licensee. This bill instead provides that the certificate expires at midnight on the last day of the birth month of the licensee during the second year of a two-year term, if not renewed on or before that date.

Existing law establishes fees for examinations, taxes, and registration as licensed osteopathic physicians and requires these fees to be deposited in the Osteopathic Medical Board of California Contingent Fund. Under existing law, the annual tax and registration fee to be set by OMBC may not exceed $200, and the fee for failure to timely pay the annual tax and registration fee is 50% of the renewal fee but not more than $100. This bill changes the maximum amount for the tax and registration fee to $300, and changes the penalty fee to provide that it may not exceed $150. It also provides that any and all fees received by OMBC shall be for the sole purpose of the operation of the Board, and requires that 80% of the funds received from the increase in tax and registration fees and penalty fees be used solely for the Board's enforcement activities.

Existing law requires OMBC to issue an osteopathic physician's certificate on reciprocity to an applicant if he/she meets certain requirements, including, that the applicant holds an unlimited license to engage in the practice of osteopathic medicine in another state whose written licensing examination is recognized and approved by OMBC to be equivalent in content to that administered in California. Existing law authorizes the Board, for these purposes, to recognize as equivalent an examination prepared by the Federation of State Medical Boards provided the applicant has met certain other criteria. This bill clarifies that the examination prepared by the Federation of State Medical Boards is one examination, along with others, that the Board may recognize and approve as equivalent to the California exam.

This bill provides that, operative July 1, 1999, the provisions providing the increase in fees would be repealed and would reestablish the fee requirements under existing law. This bill, which declares that it is to take effect immediately as an urgency statute, was signed by the Governor on September 26 (Chapter 895, Statutes of 1994).

The following bills died in committee: **AB 3125 (Aguiar)**, which would have—among other things—recognized the need to emphasize the practice of primary care medicine and established a pilot project at the College of Osteopathic Medicine of the Pacific that would combine medical school education and residency training in a seven-year program; and **AB 2156 (Polanco)**, which would have required reports filed with OMBC by professional liability insurers to state whether the settlement or arbitration award has been reported to the federal National Practitioner Data Bank.

## RECENT MEETINGS

At its July 23 meeting, OMBC discussed the feasibility of affiliating with the Department of Consumer Affairs (DCA). While it was recognized that DCA affiliation would afford OMBC greater investigatory and administrative support—thereby facilitating the functioning of OMBC's ailing enforcement program, the Board rejected such an affiliation as too costly to negotiate.

Also at its July 23 meeting, OMBC addressed the required adoption of the infection control guidelines promulgated by the California Department of Health Services (DHS). *[14:1 CRLR 165]* OMBC is required to adopt the DHS guidelines and ensure that its licensees are notified that knowing failure to follow them constitutes grounds for disciplinary action. Although OMBC had previously approved a motion directing the preparation of infection control guidelines, the Board's fiscal crisis has prevented action.

Also at the July meeting, OMBC 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.

## FUTURE MEETINGS

December 3 in Sacramento.

# PUBLIC UTILITIES COMMISSION

*Executive Director:*
*Neal J. Shulman*
*President: Daniel Wm. Fessler*
*(415) 703-1487*

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, water, steam heat utilities and sewer companies; railroads, buses, trucks, and vessels transporting freight or passengers; and wharfingers, carloaders, and pipeline operators. The Commission does not regulate city- or district-owned utilities or mutual water companies.

It is the duty of the Commission to see that the public receives adequate service at rates which are fair and reasonable, both to customers and the utilities. Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms. The PUC's regulations are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR).

The PUC consists of several organizational units with specialized roles and responsibilities. A few of the central divisions are: the Advisory and Compliance Division, which implements the Commission's decisions, monitors compliance with the Commission's orders, and advises the PUC on utility matters; the Division of Ratepayer Advocates (DRA), charged with representing the long-term interests of all utility ratepayers; and the Division of Strategic Planning, which examines changes in the regulatory environment and helps the Commission plan future policy. In February 1989, the Commission created a new unified Safety Division. This division consolidated all of the safety functions previously handled in other divisions and put them under one umbrella. The Safety Division is concerned with the safety of the utilities, railway transports, and intrastate railway systems.

Members of the Commission include Daniel Wm. Fessler, President, Patricia M. Eckert, Norman D. Shumway, P. Gregory Conlon, and Jessie J. Knight, Jr.

## MAJOR PROJECTS

**Public Comment on the PUC's Proposed Restructuring of California's Electric Services Industry.** In April 1994, the PUC outlined a major proposal to alter its method of regulating electric utilities. *[14:2&3 CRLR 215; 14:1 CRLR 170]* The proposed new approach isolates for close regulation the necessarily monopolistic *transmission* of electricity (*e.g.*, through power lines and transformers), and deregulates power *generation*. The proposal is based on the theory that, with the advent of smaller and varied types of generators able to produce competitively priced electricity and the transferability of electricity over greater distances, *generation* is not necessarily a "natural monopoly," but can be separated out for competition—which could enhance efficiency and lower costs. The PUC has argued that cheaper power going to other states is one reason California consumers pay rates which are 50% higher than the United States average.

Two elements of the proposed plan involve, respectively, "retail wheeling" and "performance-based ratesetting." Retail wheeling allows the consumer to buy power from alternative power generators—the local utility, an out-of-town utility, a power broker, or an independent producer. The selected supplier would deliver the electricity to the local utility, and the local utility would distribute or "wheel" it to the customer or business through the existing network of power lines. The local utility would receive a fee for delivering the power, while the supplier would receive a larger fee for generation costs. Local utilities which do not offer a competitive price for power generation would become little more than the transportation link in the power chain. This option, dubbed by the PUC "direct access," would be available to consumers according to the following timetable:

–Large industrial consumers could become direct access consumers on January 1, 1996.

–Commercial consumers receiving service at the primary level could become direct access consumers on January 1, 1997.

–Commercial consumers receiving service at the secondary level could become direct access consumers on January 1, 1998.

–All commercial consumers could become direct access consumers after January 1, 1999.

–All remaining consumers could become direct access consumers after January 1, 2002. Alternatively, consumers may continue to receive electricity service from their local utility in the traditional manner, with prices regulated by the PUC.

The second part of the Commission's plan would implement performance-based ratesetting (PBR). PBR allows the utilities' rates to be set according to an average market price for electricity. If the utility is able to generate or purchase electricity for less than the benchmark price, the savings are split between the ratepayers and the utility's stockholders. This approach eliminates the current ratesetting system which examines the utility's costs item by item and sets rates to allow the utility a reasonable profit. Under PBR, if the utility does not become more efficient, the losses are split between ratepayers and stockholders as well. The system is intended to provide an incentive for the utilities to streamline their operations and increase their efficiency. Under the Commission's proposal, utilities would be allowed to collect the costs of past uneconomic generating assets developed under the old regulatory framework from both direct access and traditional consumers. Currently, three of the major electricity utilities in California have submitted proposals for PBR, and the Commission recently approved an extension of the two-year trial PBR program for San Diego Gas & Electric Company (*see below*).

Since its April 20 introduction of the proposal, the Commission has been holding public hearings and inviting comment on the precedent-setting plan. The state's two major utility consumer groups—San Diego-based Utility Consumers' Action Network (UCAN) and San Francisco-based Toward Utility Rate Normalization (TURN)—submitted comments or testified at the hearings. Both organizations predicted discrimination against residential ratepayers who have the fewest alternative options. UCAN and TURN contend