



the Board's necropsy program, noting that the program is one of the most progressive in horse racing. Dr. Jack reported that 747 horses have been submitted to the program to date, and that the scientific community had been able to make some substantial conclusions in the thoroughbred industry because of the number of horses submitted.

■ FUTURE MEETINGS

August 27 in Del Mar.
 September 24 in San Mateo.
 October 29 in Monrovia.
 November 19 in Los Angeles.
 December 17 in Los Angeles.

NEW MOTOR VEHICLE BOARD

Executive Officer:
Sam W. Jennings
 (916) 445-1888

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.

Governor Wilson recently appointed Marie Brooks, president of Ellis Brooks Chevrolet/Pontiac/Nissan, and Michael Padilla, president of Gateway Chevrolet, to the Board.

■ MAJOR PROJECTS

Board Overrules Protest Regarding Franchise Termination. On January 11, NMVB overruled the protest filed by

Toyota of Visalia (TOV) against Toyota Motor Distributors, Inc. (Toyota) concerning Toyota's proposed termination of TOV's franchise. Toyota's request for termination of the franchise was based on its belief that TOV had deceived clients and Toyota, breached Toyota's dealer agreement, mistreated and abused employees, and committed over 150 counts of consumer fraud. Additionally, Toyota contended that its dealership agreement with TOV states that Toyota may terminate the franchise if NMVB suspends TOV for seven days or longer; Toyota argued that because NMVB has suspended TOV for thirty days, Toyota is authorized under the agreement to terminate TOV's franchise. TOV denied Toyota's claims and requested that NMVB reexamine the evidence before allowing Toyota to terminate the franchise. [13:1 CRLR 132]

In overruling TOV's protest, the Board found that Toyota was permitted to terminate the franchise for the following reasons:

—evidence of adverse publicity carried by newspapers, television, and word of mouth established that the behavior of certain TOV personnel had an adverse effect on TOV's reputation and harmed the reputation of Toyota;

—Toyota proved that TOV had not transacted an adequate amount of business as compared to the business available to it;

—Toyota proved that it would be beneficial and not injurious to the public welfare for TOV's franchise to be modified or replaced or the business franchise disrupted;

—Toyota proved that TOV did not have adequate motor vehicle sales, service facilities, and qualified service personnel to reasonably provide for the needs of consumers of the motor vehicles handled by TOV, and has not been rendering adequate services to the public; and

—Toyota proved that TOV materially breached the terms of the franchise agreement in that TOV was closed for a period of seven consecutive days, TOV was adjudicated by a government agency as having engaged in misrepresentation or unfair trade practices, TOV's license to sell new motor vehicles was suspended, TOV refused to permit Toyota to inspect TOV's books and records pursuant to a written request, and TOV effectively destroyed the business relationship which existed between the parties.

■ LEGISLATION

AB 699 (Bowen), as amended April 28, would abolish NMVB and transfer specified powers and duties to the Department of Consumer Affairs; the bill would

delete references to the Board in other provisions of existing law. [A. W&M]

AB 431 (Moore). Existing law requires specified disclosures to be contained in conditional sales contracts, which are defined to include certain contracts for the sale or bailment of a motor vehicle. As amended May 5, this bill would require every conditional sales contract to contain a notice in bold type stating that after the buyer signs the contract, California law does not allow the buyer to cancel the contract because he/she changes his/her mind or later believes he/she cannot afford the vehicle.

Existing law, with certain exceptions, requires every motor vehicle dealer licensed by the Department of Motor Vehicles (DMV) to conspicuously display his/her license at his/her place of business, and also requires every such dealer who displays or offers one or more used vehicles for sale at retail to post a notice in a conspicuous place regarding the prospective purchaser's right to have the vehicle inspected at his/her own expense. This bill would require every such dealer to conspicuously display a notice in each sales office or cubicle of the place of business where sales or lease transactions are discussed with prospective purchasers or lessees, as specified, to the effect that after a buyer or lessee signs the contract, California law does not allow the buyer or lessee to cancel the contract because he/she changes his/her mind or later believes he/she cannot afford the vehicle. [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 introduced March 5, this bill would establish a seller's right of rescission based on the seller's inability to assign the contract, and would require notice of 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. 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 DMV. 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. [S. *Appr*]

LITIGATION

In *Chrysler Corporation v. NMVB, La Mesa Dodge, Inc., et al., Real Parties in Interest*, No. D016270 (Jan. 15, 1993), the Fourth District Court of Appeal considered the meaning of Vehicle Code section 3067, which provides that if NMVB "fails to act" within thirty days after conducting a hearing on a protest, within thirty days after it receives a proposed decision where the case is heard before a hearing officer alone, or within such period as may be necessitated by Government Code section 11517 or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved.

In this proceeding, NMVB began to process an administrative law judge's (ALJ) proposed decision conditionally approving a Dodge dealership's move to a different location by setting the matter for review and consideration at a date within thirty days of its receipt of the ALJ's proposed decision. On the 31st day after it received the proposed decision, the Board issued a notice of Board action stating that five days earlier it had "considered the proposed decision as well as the administrative record....After such consideration, the Board continued this matter to be again

considered at the next meeting of the Board in order to allow further review of the evidence submitted at the evidentiary [sic] hearing on these protests." Although the Board held additional meetings, received information from Chrysler nearly two months later, caused the ALJ to take additional evidence on certain matters, and issued its decision denying the dealership move within thirty days after the ALJ submitted supplemental findings of fact to the Board, the trial court held that section 3067 required the "proposed action"—meaning the ALJ's decision—to be deemed approved. The trial court construed the term "act" in the phrase "fails to act" as referring to the Board's decision; the trial court concluded that since NMVB had not made its decision within thirty days of its receipt of the ALJ's proposed decision, the Board had "failed to act" within the time required; accordingly, the trial court ordered a peremptory writ of mandate commanding the Board to set aside its decision and instead enter the proposed decision of the ALJ.

In reversing the trial court's decision, the Fourth District stated that when considering the statutory scheme as a whole, "it is reasonable to construe section 3067's distinctive reference to 'act' within 30 days after the Board receives a proposed decision where the case is heard before a hearing officer alone, as beginning the initial processing of the case within the 30-day time limit, rather than actually rendering one of the decisions the section specifies within that time." The court noted that "[w]here, as here, by reviewing, discussing, and (according to the Board) rejecting the proposed decision, hearing statements from counsel and setting the matter for further hearing, the Board promptly begins processing the matter within the 30-day limit, it is appropriate under section 3067 to consider that the Board did 'act' in a timely fashion....Thus, the 'deemed approved' provision was not correctly applied in the first instance."

On April 15, the California Supreme Court denied Chrysler's petition for review and its request for an order directing depublication of the Fourth District's opinion.

FUTURE MEETINGS

To be announced.

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

Executive Director:

Linda Bergmann

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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.

Richard A. Bond, DO, of Santa Ana, was recently appointed to OMBC by Governor Wilson; OMBC is currently awaiting the appointment of one more DO to make its membership complete.

MAJOR PROJECTS

OMBC Seeks Solutions to Its Budget Woes. OMBC President Richard Pitts, DO, recently sent a letter to the Department of Finance asking for a reconsideration of the 10% budget cut that OMBC suffered in fiscal year 1992-93. [13:1 CRLR 134; 12:4 CRLR 1] In his letter, Dr. Pitts expressed OMBC's concerns that without reinstatement of the expropriated money, the Board will not be able to meet its enforcement costs; OMBC has also consulted Department of Consumer Affairs (DCA) officials for guidance on how to proceed. The 10% cut imposed on the Board by the legislature amounted to an approximate \$53,000 reduction in OMBC's 1992-93 budget and has curtailed OMBC's enforcement and disciplinary ability. OMBC is pursuing a fee increase as a way to recover some of its actual administrative expenses (*see below*); however, the Board is aware that any reserves that are accumulated by the fee increase could again be taken by the legislature.

OMBC is also discussing the feasibility of recouping its administrative costs