



REGULATORY AGENCY ACTION

NEW MOTOR VEHICLE BOARD

*Executive Officer: 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:

Proposed Regulatory Action. At a public hearing on October 17, the Board approved proposed amendments to sections 550 and 553, the adoption of sections 550.10, 553.10, and 553.20, and the renumbering of section 553.1, Title 13 of the CCR, which restructure the manner in which fees are charged of manufacturers, distributors, and representatives subject to the jurisdiction of the Board. These rules implement AB 1104 (Torres) (Chapter 193, Statutes of 1989), which requires that NMVB licensees be charged fees sufficient to fully fund the Board's activities. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 176 for background information.) This rule-making package was submitted to the Office of Administrative Law in November, and was approved on December 21.

LEGISLATION:

AB 126 (Moore), as introduced December 6, would provide that, in addition to any other right to revoke an offer or rescind a contract, the buyer of a motor vehicle has the right to cancel a motor vehicle contract or offer which complies with specified requirements

until the close of business of the first business day after the day on which the buyer signed the contract or offer. This bill is pending in the Assembly Committee on Governmental Efficiency, Consumer Protection and New Technologies.

AB 39 (Tanner), which requires a specific disclosure to the buyer of a new motor vehicle by both the manufacturer and the dealer regarding the ability of the vehicle to be operated with tire chains, was signed by the Governor on December 13 (Chapter 6, Statutes of 1991).

FUTURE MEETINGS:

To be announced.

BOARD OF OSTEOPATHIC EXAMINERS

*Executive Director: Linda Bergmann
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In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners (BOE). Today, pursuant to Business and Professions Code section 3600 *et seq.*, BOE 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; BOE'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.

MAJOR PROJECTS:

Budget Surplus. At BOE's October 20 meeting, Board members discussed BOE's budget surplus of \$609,000. Because the Board is financed solely by licensing, application, and examination fees, this surplus consists of excess, unspent fees. Normally, the Board maintains surplus funds equal to one year's total operating budget, which is approximately \$400,000. This surplus is kept for emergency situations. However, if the surplus fund becomes too large, the excess may be turned over to the general fund and the Board loses access to it.

Most agencies are subject to audits by the Auditor General. One purpose of an audit, which is performed at the expense of the Board, is to determine the status of any current surplus. The Auditor Gener-

al may make recommendations for changes to the Board's fee or cost structure to reduce the surplus. BOE conducted the October review of its current surplus in order to avoid such an audit.

BOE discussed possible ways to lower its surplus funds to a more acceptable level. One proposed method was a decrease in licensing fees for currently practicing osteopaths. This method was justified by BOE President Bryn Henderson, who said, "In terms of operations, the people who are making it costly are those who are coming in and out, not those of us who are staying." He stated that BOE should "tie costs to where it...inherently costs us." He also pointed out the problems with this proposal, suggesting that "a resident can't afford it [fees] as much as the one who's been practicing." The Board requested that Executive Director Linda Bergmann present a more detailed report at its next meeting on how to change the BOE's "fiscal behavior." BOE is interested in a long-term plan for achieving and maintaining an appropriate level of surplus funds.

LEGISLATION:

Anticipated Legislation. At its October meeting, BOE discussed the fine points of AB 4361 (Leslie), which was signed by the Governor on September 12 (Chapter 873, Statutes of 1990). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 177 for background information.) This new law allows osteopathic physicians and surgeons to employ aides to assist in the rendering of osteopathic manipulative treatment. BOE members expressed confusion over the term "osteopathic aide" in the law. This is a new term which was not defined in the bill. Medical students are not included under this definition; they are considered to be in training and are usually covered under the medical school's insurance policy. It is clear that the law does not include physical therapists in the "osteopathic aide" category, but there is no language to indicate what criteria are necessary for one to qualify as an osteopathic aide. BOE is concerned that the new law could cause confusion for the individual osteopath who is trying to comply with a law that is quite vague. BOE decided to inquire into the intent of the legislator responsible for the bill, and determine whether more legislation or rulemaking is necessary to clarify the new law.

BOE also suggested that the name of the Board be changed by way of legislation in 1991. The Board agreed to "Osteopathic Medical Board of California" as an appropriate new title.