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.

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 rulemaking 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
(916) 322-4306

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 General 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.

FUTURE MEETINGS:
June 14 (location undecided).

PUBLIC UTILITIES COMMISSION

Executive Director: Neal J. Shulman
President: Patricia M. Eckert
(415) 557-1487

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 Division 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 new Safety Division is concerned with the safety of the utilities, railway transports, and intrastate railway systems.

The PUC is available to answer consumer questions about the regulation of public utilities and transportation companies. However, it urges consumers to seek information on rules, service, rates, or fares directly from the utility. If satisfaction is not received, the Commission's Consumer Affairs Branch (CAB) is available to investigate the matter. The CAB will take up the matter with the company and attempt to reach a reasonable settlement. If a customer is not satisfied by the informal action of the CAB staff, the customer may file a formal complaint.

MAJOR PROJECTS:

FERC Judge Rejects Merger; PUC Judges Delay Recommendation. On November 27, Federal Energy Regulatory Commission (FERC) Administrative Law Judge George Lewnes issued a proposed decision categorically rejecting the proposed takeover of San Diego Gas & Electric Company (SDG&E) by Southern California Edison (SCE or Edison). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 178; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 207-08; and Vol. 10, No. 1 (Winter 1990) pp. 151-52 for extensive background information on the merger.) Both FERC and the PUC must approve the proposed merger.

In reaching his conclusion, Judge Lewnes noted that the merger applicants must demonstrate that the merger will be consistent with the public interest, under the Federal Power Act of 1935 and numerous judicial decisions. He discussed the evidence in three areas of inquiry mandated by FERC: (1) the effect of the proposed merger on the existing competition situation; (2) the effect of the proposed merger on the applicants' operating costs and rate levels; and (3) the environmental assessment. Judge Lewnes also listed other areas of concern, which he itemized as follows: (1) the reasonableness of the stock purchase price per se or the effect of the purchase price on shareholders; (2) the applicants' methods of accounting for the proposed merger; (3) any impairment of effective regulation by FERC or the State of California due to the proposed merger; (4) whether the proposed merger was the result of coercion and/or whether Edison's Board of Directors is unlawfully constituted; (5) the effect of the proposed merger on employment- related matters; and (6) non-cost impacts of the proposed merger on the environment.

In his recommended decision, Judge Lewnes compared the proposed merger of SDG&E and SCE to a marriage "to wed, or not to wed," and found that the "proposed nuptials" will "not take place on a reasonable and supportable bed of facts." In the conclusion of his ruling, Judge Lewnes noted: "The sole conceivable beneficiaries in the long term will be SCE Corporation and its shareholders. Meanwhile, the market loses an efficient and vigorous competitions, SDG&E, while the surviving corporation gains greater market power and acquires all of the monopolistic anticompetitive advantages attendant thereto. During that process, the pollutants in the South Coast, San Diego and Ventura areas will increase under the merger to levels beyond those absent the merger, levels found to be unacceptable by the Environmental Protection Agency and other State agencies. Greater societal costs will be incurred in seeking to mitigate these needless and debilitating intrusions on the environment."

Meanwhile, the recommended decisions of PUC ALJs Lynn Carew and Brian Cragg were scheduled for release in November, but have been delayed due to the ALJs' request for additional briefing on the effect of takeover on $550 million in tax-exempt bonds issued by the City of San Diego for SDG&E projects. The tax-exempt bonds are for use only by utilities operating in one or two counties. The tax-exempt status of the bonds could be withdrawn if SCE is successful in taking over SDG&E.

The PUC had hoped to receive a recommended decision before December 31, because the terms of two commissioners (Stanley Hulett and Frederick Duda) expire on that date. However, the Commission has now dropped its plans to release a decision before the end of 1990.

Caller ID. On November 9, Pacific Bell filed a request with the PUC for approval of COMMSTAR Custom Calling Services, including Caller ID. This feature displays the phone number of the calling party on a specially designed phone or device that attaches to the customer's phone. The proposed cost is $6.50 per month, plus $60-$80 for the unit which displays the number. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 209 for background information.) In its request, Pacific Bell, acknowledged the concerns of some members of the public regarding their right to privacy and the effect of Caller ID on that right. In response to those concerns, Pacific Bell has proposed per call blocking without a separate charge. This feature requires callers to dial a special multi-number code before making each individual call, in order to block disclosure of their phone number to call recipients. Further, another COMMSTAR feature—Call Block (at an extra $4 per month)—allows the customer to