



vehicle required to be identified pursuant to a specified provision of the Vehicle Code does not come within the meaning of "goods" for purposes of the Unruh Act, but comes within the meaning of "motor vehicle" for purposes of the Rees-Levering Act. On September 30, this bill was vetoed by the Governor.

RECENT MEETINGS:

In *Pittsburg Ford, Inc. v. Department of Motor Vehicles of the State of California*, No. A-98-86 (May 12, 1988), a bare majority of the NMVB reversed its earlier decision to revoke Pittsburg Ford, Inc.'s (PFI) occupational license, and instead placed its license on probation for a term of five years, subject to a seven-day actual suspension and the standard terms and conditions of probation which are normally imposed by the Department of Motor Vehicles (DMV).

The case began on April 10, 1986, when the DMV filed a formal accusation against PFI for alleged violations of the California Vehicle Code and Title 13 of the California Code of Regulations. An administrative law judge reviewed the matter and submitted a proposed decision to the Director of the DMV. PFI filed an appeal with the NMVB pursuant to section 3052 of the California Vehicle Code.

On February 23, 1987, and following an evidentiary hearing and oral argument, the NMVB issued a Final Order which contained findings of fact. Specifically, the Board determined that the president of PFI had actual knowledge of the fraudulent practice of altering invoices which had been going on for a two-year period at the dealership. The NMVB also found that it was common knowledge among the employees of PFI that invoices were being systematically altered and fraudulently used to consummate sales. The Board's Final Order also contained a finding that PFI had used the altered invoices in connection with the sale of fifteen vehicles to U.S. Fleet Leasing, Inc. As a result of its findings, the NMVB decided to revoke PFI's occupational license and special plates, and gave the owners of PFI one year to dispose of their interests in the dealership.

After issuance of the Board's final order, PFI filed a petition for writ of administrative mandamus in Sacramento County Superior Court. On October 27, 1987, the court issued its decision and held that the NMVB's findings on PFI's intentional fraud and its assessment of the revocation penalty were supported

by the record. The court did, however, hold that the NMVB erred in including in its Final Order the finding with respect to the sales to U.S. Fleet Leasing, Inc., which were not originally charged by the DMV in its accusation. Accordingly, the court remanded the matter to the NMVB for the purpose of reconsidering the penalty to be imposed without considering the uncharged violations.

On April 14, 1988, in a 5-4 decision, the Board decided not to revoke PFI's license. The majority suspended PFI's license for seven days, placed it on probation for five years, and imposed as one term of probation that PFI retain an automotive advisory service to conduct a regular review of the transactions, advertising, and personnel conduct of the dealership.

In a harshly-worded concurring and dissenting opinion issued May 12, the four-member minority (consisting of Board members Post, Ricchiazzi, Mazeika, and Vandenberg) chastised the majority for unjustifiably reversing the revocation decision. The minority pointed out that the full Board had, based upon an evidentiary hearing, previously made specific findings that PFI engaged in "intentional fraud, which continued over a long period of time as a part of a deliberate premeditated scheme, done with full knowledge of the dealer principal, condoned by the dealer principal, participated in by the dealer principal, and resulting in loss to members of the public." After remand by the superior court, the Board did not change these findings, which were not disturbed and were in fact expressly upheld by the court. According to the minority, "[t]he penalty imposed by the Board is nothing more than slap on the hand.... The Majority decision communicates the message to the industry and the public that the Board protects its own, not the taxpayers. It creates a tarnished precedent for future cases before the Board."

In addition to its criticism that the reduction in penalty was unjustified, the minority expressed "concerns as to the propriety of the conduct of certain of our colleagues in the decision of this case." The minority complained that an unidentified Board member who participated in the case had refused to recuse himself following a DMV motion for recusal, on grounds that the Board member was biased against the Department because it had filed accusations against his occupational license. The minority stated that "the issue is not whether the Board member was in fact

capable of rendering an impartial decision, but whether his decision will be perceived to have been impartial and unbiased."

The minority also lamented the fact that several Board members who participated in the April 14, 1988 decision to reverse the revocation were not present on January 13, 1987, when the Board had taken evidence and heard oral argument on the case; nor did they request or have the opportunity to review the original record of proceedings. Because the court did not disturb the Board's earlier fraud findings, the minority believed that these Board members should have deferred to the decision of those members who were present at the evidentiary hearing, rather than participating in reversing it. According to the minority, "[a]n individual's decision, not being based on the record, leads one to conclude that his decision was personally motivated." The minority also implied that a Board member had received ex parte information about the case, and had refused to recuse him/herself.

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). BOE regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine and enforces professional standards. The 1922 initiative, which provided for a five-member Board consisting of practicing osteopaths, 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.

The Board's licensing statistics as of September 1988 include the issuance of 1,330 active licenses and 498 inactive licenses to osteopaths.

On August 27, Governor Deukmejian reappointed Bryn Henderson, a physician from Orange, and Kenneth Stahl, a physician from Irvine, to the Board.

MAJOR PROJECTS:

1989 Exam Schedule. At its June 18 meeting in Pomona, the BOE announced its 1989 exam schedule. Oral practical examinations will be administered on



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February 25 in Monterey, and on April 2, June 24, and October 28 in Pomona. The California two-day written examination will be administered on March 31-April 1 in Pomona.

LEGISLATION:

SB 1552 (Kopp), as amended August 23, requires boards regulating certain licensees, including physicians and surgeons, to consider including training regarding the characteristics and methods of assessment and treatment of AIDS in specified continuing education and training requirements for those licensees. This bill was signed by the Governor on September 22 (Chapter 1213, Statutes of 1988).

The following is a status update on bills reported in CRLR Vol. 8, No. 3 (Summer 1988) at pages 124-25:

AB 4197 (Isenberg) authorizes BOE to establish a substance abuse diversion program. The bill contains a provision stating that the committees established therein are responsible for promoting the program to the public and within the profession, and for providing all licentiates with written information concerning the program. An administrative fee, to be established by the Board, may be charged for participation in the program, but all costs of treatment shall be paid by the participant. This bill was signed by the Governor and chaptered (Chapter 384, Statutes of 1988).

AB 4622 (Bader), as amended June 8, authorizes a program of reciprocity between BOE and other state boards, specifying requirements which may include passage of a special examination prepared by any of several specified organizations in lieu of a recognized and approved state examination. This bill was signed by the Governor and chaptered (Chapter 405, Statutes of 1988).

AB 1924 (Bader), as amended August 4, would have required the Office of Statewide Health Planning and Development to create a special program to increase, particularly in underserved areas, the number of primary care osteopathic physicians and surgeons in the state. This bill was vetoed by the Governor on September 20.

AB 3949 (Leslie), as amended June 21, would have authorized an administrative law judge to order a licensee to pay the costs of investigation associated with disciplinary proceedings when the licensee is found guilty of unprofessional conduct. This bill was referred for interim hearing.

SB 2491 (Montoya), as amended

June 20, clarifies the extent to which a health facility is prohibited from discriminating against a physician and surgeon on the basis of whether the individual holds an MD or DO degree. The bill mandates specific procedures to ensure high professional and ethical practices and provides that violations of provisions therein may be enjoined by a district attorney. This bill also prohibits professional medical or osteopathic associations from requiring membership as a prerequisite for a physician to obtain staff privileges, employment, or a contract for services. This bill was signed by the Governor and chaptered (Chapter 661, Statutes of 1988).

SB 2536 (Craven) adds the charging of an unconscionable fee to the grounds for disciplinary action which may be taken against osteopathic physicians and surgeons. This bill has been signed by the Governor and chaptered (Chapter 325, Statutes of 1988).

SB 2267 (Greene), as amended June 20, would have specified that osteopathic medical students enrolled in an approved school are not to be discriminated against, as described therein. This bill was vetoed by the Governor on September 30.

SB 2565 (Keene), as amended August 26, would have clarified existing law regarding immunity of hospitals, persons, or organizations for peer review actions which are required to be reported to various state agencies. The bill would have established specific procedural guidelines for professional review actions and the reporting thereof in order for immunity from liability to attach. However, SB 2565 was vetoed by the Governor on September 30.

RECENT MEETINGS:

The Board's August 28 meeting was cancelled.

FUTURE MEETINGS:

To be announced.

PUBLIC UTILITIES COMMISSION

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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 the PUC regulates the service and rates of more than 25,000 privately-owned utilities and transpor-

tation 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.

In late 1987, the PUC renamed three of its organizational units to clarify their roles and responsibilities. The former Evaluation and Compliance Division, which implements Commission decisions, monitors utility compliance with Commission orders, and advises the PUC on utility matters, is now called the Commission Advisory and Compliance Division. The former Public Staff Division, charged with representing the long-term interests of all utility ratepayers in PUC rate proceedings, is now the Division of Ratepayer Advocates. The former Policy and Planning Division is now the Division of Strategic Planning.

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:

PG&E Attempts to Settle Diablo Canyon Costs Proceeding. Two months after the California Supreme Court upheld the authority of the PUC to grant interim rate increases, the PUC and Pacific Gas & Electric Company (PG&E) reached a proposed settlement allowing PG&E to raise electricity rates by \$147.4 million to recover non-investment costs for the Diablo Canyon Nuclear Power Plant. Non-investment expenses include operation and maintenance costs, insurance, pensions and