



Deats to attempt to facilitate a negotiation between the two associations.

Commissioner Ferraro reported on the progress of the Medication Committee. In response to a proposal from Cliff Goodrich, Vice President and General Manager at Santa Anita, information will now be placed in the Daily Programs to advise the public as to those horses which are being treated as bleeders and those which are coming off the bleeder list. Commissioner Ferraro also reported that the Medication Committee is taking a stand to ensure the safety of horses and jockeys and to curb excess use of even permitted medications. The Committee, she said, plans to do everything it can to enforce the medication rules.

#### FUTURE MEETINGS:

May 22 in Los Angeles.  
June 19 in Los Angeles.

### NEW MOTOR VEHICLE BOARD

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

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. Most licensees deal in cars or motorcycles.

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.

#### LITIGATION:

In *Yamaha Motor Corp., U.S.A. v. Superior Court*, 185 Cal. App. 3d 1232 (1986), the Second District Court of Appeal has held that a motorcycle dealership franchisee's failure to exhaust its administrative remedies against its franchisor before the NMVB precludes the franchisee from seeking judicial relief.

Van Nuys Cycle Inc. (Van Nuys)

was a motorcycle dealership franchised by Yamaha Motor Corp., U.S.A. (Yamaha). Yamaha began sales of a new motorscooter called the Riva, but established new dealerships for its distribution rather than selling it to Van Nuys. Yamaha maintained that because the Riva is a motorscooter, it is not within the terms of its motorcycle dealership agreement with Van Nuys. Van Nuys sued Yamaha, seeking damages for breach of the franchise agreement and an implied covenant of good faith and fair dealing, and for intentional interference with a prospective business advantage. The trial court overruled Yamaha's demurrer. The Second District Court of Appeals issued a peremptory writ of mandate ordering the lower court to vacate its order overruling the demurrer and to enter an order sustaining the demurrer. The court held that Yamaha's refusal to supply the new product to Van Nuys was a modification of the franchise agreement and that Van Nuys should have sought a determination of the issue by the NMVB.

In *Toyota of Visalia Inc. v. New Motor Vehicle Board*, 87 DAR 379 (Jan. 14, 1987), the Fifth District Court of Appeal has affirmed the trial court's ruling that new evidence in an administrative proceeding may be admissible to mitigate a Department of Motor Vehicles (DMV) penalty if the evidence was not reasonably available at the time of the original hearing.

In January 1980, the DMV accused Toyota of Visalia Inc. (Toyota) of false and misleading advertising in violation of Vehicle Code provisions. After an administrative hearing, the DMV found that the dealership was guilty of ten Code violations and ordered the dealership license suspended. Toyota petitioned to the NMVB. The Board ultimately reduced the penalty to a license suspension of thirty days with three years' probation. Toyota sought to augment the record before the Board with eleven new exhibits relevant to the penalty issue, but the Board refused to review the evidence.

The Fifth District affirmed the Board's ruling in part and reversed in part. The eleven proffered exhibits contained evidence of restitution to certain injured customers and evidence that the Toyota dealership agreement would be terminated if it were closed for more than five days. The court found that eight of the exhibits could not have been diligently produced at the original hearing and therefore should have been admitted by the Board.

In *Sonoma Subaru Inc. v. New Motor Vehicle Board of California*, 87 DAR 526 (Jan. 7, 1987), the Third District Court of Appeal held that an automobile franchisee's failure to timely protest the termination of its franchise license to the NMVB bars judicial relief. Subaru of Northern California and Subaru of America, Inc. (Subaru) had decided to terminate the Sonoma Subaru (Sonoma) dealership franchise after Sonoma had repeatedly failed to provide Subaru with a certified financial statement and proof that it was solvent. Under Vehicle Code section 3060, a franchisor may terminate its franchisee's dealership if the franchisee cannot demonstrate its solvency. Section 3060 also provides the franchisee with an automatic right to appeal the termination notice to the Board within ten days of receipt of the notice.

Sonoma failed to file a timely appeal although it had properly filed two earlier appeals with the Board. The Board refused to hear an untimely protest, and the trial court upheld the refusal due to Sonoma's failure to meet the ten-day requirement. The Third District Court of Appeal affirmed.

#### 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.

#### MAJOR PROJECTS:

*Regulation Changes.* The Office of Administrative Law (OAL) has disapproved the regulations submitted by the BOE in December 1986. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 94.) According to the OAL, some regulations failed to satisfy the clarity, consistency, and necessity standards of Government Code section 11349. Other regulations did not comply with the incorporation