



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



REGULATORY AGENCY ACTION

by reference requirement of Title 1, section 20 of the California Administrative Code.

The regulations may be rewritten and submitted within 120 days. The BOE will continue to work with the OAL to resolve the disapproved sections.

LEGISLATION:

AB 81 (Tucker), which is supported by BOE, would require the Department of Health Services to increase by 54% the amount of Medi-Cal reimbursement to physicians for obstetrical services. Currently, Medi-Cal pays a physician \$657.28 for total obstetrical care while private patients pay physicians three times that amount. Under AB 81, the Department of Health Services would be required to establish a reasonable fee schedule of not less than \$1,135. This bill would take effect immediately as an urgency statute, and has been assigned to the Health Committee.

AB 214 (Margolin), as amended February 14, would regulate the treatment of patients brought to hospital emergency rooms and the transfer of those patients to other medical facilities. It would prohibit basing an emergency patient's treatment on race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status, or ability to pay for medical services. This bill is pending in the Health Committee.

AB 219 (Margolin) would appropriate \$25 million to the Health Care Deposit Fund in order to provide hospitals which provide a disproportionate share of uncompensated care with a more adequate level of reimbursement. This bill would also appropriate \$6 million to the Health Care Deposit Fund to provide a more adequate level of reimbursement to physicians for the disproportionate share of uncompensated emergency care they provide. The bill is also pending in the Health Committee.

AB 249 (Margolin), as amended March 11, would specify that a disabled person whom the state has determined to need the level of care provided in a hospital or long-term health care facility, but for whom it is appropriate to provide care outside an institutional setting, where the cost is less than the estimated cost of the institutional care, shall be eligible for the Medi-Cal program as a categorically needy recipient, provided the individual obtains a waiver from the Secretary of the U.S. Department of Health and Human Services.

AB 250 (Hughes) is supported by BOE. Under existing law, physicians are subject to specified penalties for disclosing test results for antibodies to the probable causative agent of AIDS without the patient's consent. AB 250, as amended March 9, would provide that a physician shall not be held criminally or civilly liable for disclosing to the spouse of a patient that the patient has tested positive on a test to detect antibodies to the probable causative agent of AIDS.

AB 258 (Wyman), as amended February 26, would require the Department of Health Services to develop policies and procedures which may be utilized by skilled nursing facilities to inventory, project, and assist in the recovery of personal property, as defined, of residents of skilled nursing facilities in their possession during their stay at the facility.

AB 258 as amended is completely different from the original bill. As introduced, AB 258 would have authorized the Director of the Department of Health Services, as an alternative to suspension of a license or special permit of a health facility, to appoint a receiver for the facility. BOE opposed AB 258 as introduced.

AB 261 (Grisham) would provide that any person who is convicted of selling, administering, furnishing, or giving away a controlled substance to a person under the age of 14, and who has previously been convicted of any such crime, shall be punished by imprisonment for 25 years to life. This bill has been referred to the Committee on Public Safety.

SB 12 (Maddy), as amended March 16, is somewhat similar to AB 214 (Margolin) (*see supra*). This bill would regulate the treatment of persons brought to hospital emergency departments and the transfer of those patients to other medical facilities. It would specify conditions under which emergency medical patients may be transferred and procedures which may be followed, and would prohibit basing an emergency patient's treatment on, among other things, the patient's insurance status, economic status or ability to pay for medical services, unless the circumstances are medically significant.

SB 306 (Montoya) is supported by BOE. Existing law prohibits health facilities and various public entities from discriminating with respect to employment, staff privileges, or the provision of professional services against a licensed physician/surgeon on the basis of whether the physician/surgeon holds an MD or DO degree. This bill would also pro-

hibit health care service plans, nonprofit hospital service plans, disability insurance policies, and self-insured employer welfare benefit plans from discriminating on that basis.

RECENT MEETINGS:

On January 13, the Board held a meeting in Sacramento. Bryn Henderson, DO, was elected President; Kenneth Stahl, DO, was elected Vice President; and Maureen Duffy-Lewis was elected Secretary/Treasurer.

BOE is currently developing a revised examination. Each Board member is developing questions and answers to submit to the examination committee. Guidelines for test procedures are also being developed. The staff is contacting other medical examining boards as to their examination procedures.

Also at the January meeting, the Board denied one request for permission to take the oral/practical examination because of prior disciplinary action; granted two requests for waiver of its Certified Medical Examiner (CME) requirements; and withheld decision (pending further clarification) on several other requests for waiver of its CME requirements.

On February 21, the Board met in Palm Springs in conjunction with the Osteopathic Physicians and Surgeons of California (OPSC) convention. The BOE held its meeting and then participated in a joint meeting with the OPSC. The Board feels that better communication with the OPSC will help in providing quality osteopathic medicine in California.

The Board discussed goals for 1987, which include provision of quality medical care, a decreased expense budget, and increased communication with other medical boards. One way in which the Board hopes to achieve these goals is by improving its relations with the legislature. Each Board member will contact his/her respective legislators and inform them about BOE's activities. The Board hopes this communication will increase legislative concern about BOE and osteopathic medicine.

Also at the February meeting, the Board held two reinstatement hearings. The Board denied one of the petitions on grounds the petitioner is still on parole for a felony violation; the Board took the other petition under advisement.

FUTURE MEETINGS:

June 19 in Pomona.

August 14 in Sacramento.