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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board held a General meeting on March 28, 2007, in Hearing Room #1, at the offices of the New Motor Vehicle Board ("Board").

2. **ROLL CALL**

Alan J. Skobin, President of the Board, called the General meeting to order at 10:45 a.m.

Present:	Robert V. Branzuela	William G. Brennan, Executive Director
	Ryan L. Brooks	Howard Weinberg, General Counsel
	Robert T. (Tom) Flesh	Robin Parker, Senior Staff Counsel
	(Left at 12:22 p.m.)	Polly Riggerbach, Staff Counsel
	Alan J. Skobin	
	Glenn E. Stevens	
Absent:	David C. Lizárraga	
	David W. Wilson	

3. **APPROVAL OF THE MINUTES FROM THE JANUARY 31, 2007, GENERAL MEETING**

Mr. Flesh moved to adopt the January 31, 2007, General Board meeting minutes. Mr. Brooks seconded the motion. The motion carried unanimously.

4. **PRESENTATION OF RESOLUTION TO SUNNE WRIGHT MCPEAK, FORMER SECRETARY, BUSINESS, TRANSPORTATION & HOUSING AGENCY**

At the December 13, 2007, General meeting, the members unanimously moved to present Sunne Wright McPeak with a resolution for her contribution to the New Motor Vehicle Board, to the motor vehicle industry, and to the people of the State of California. Mr. Skobin presented the Resolution to Ms. Wright McPeak on behalf of the members and staff.

5. **BOARD MEMBER EDUCATION CONCERNING THE OL 124 FORM (CERTIFICATE OF PROPOSED FRANCHISE), BY MARY GARCIA, BRANCH CHIEF, OCCUPATIONAL LICENSING BRANCH, DEPARTMENT OF MOTOR VEHICLES - BOARD DEVELOPMENT COMMITTEE**

Mary Garcia, Branch Chief, Occupational Licensing, for the Department of Motor Vehicles, presented the members and staff with an overview of the OL 124 Form (Certificate of Proposed Franchise). Ms. Garcia indicated that the OL 124 Form serves to comply with DMV's licensing requirements and the notice requirements under Vehicle Code sections 3062 and 3072. Every document DMV accepts must contain the correct name and address, or it is rejected. Ms. Garcia indicated that most OL 124 Forms do not require the manufacturer to "clear the market." For example, a buy-sell does not require the market to be cleared because it is not establishing an additional franchise it is just changing the ownership. OL 124 Forms must be completed by the manufacturer or distributor but need to be presented by the dealer to their local DMV inspector. Ms. Garcia provided the members with a matrix used by DMV to indicate when an OL 124 Form is required and when the market needs to be cleared. The members were also provided with the form itself.

6. **ANNUAL REVIEW OF THE BOARD'S MISSION AND VISION STATEMENTS - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the annual review of the Board's Mission and Vision Statements. Mr. Brennan indicated that the Board has been working under these goals for the last several years and they have functioned very well, however if the Board wishes to make additions or changes it is appropriate to do so at this time. There were no changes or additions suggested by members of the Board.

7. **ANNUAL UPDATE ON STAFF TRAINING PROGRAMS IMPLEMENTED FOR SUPPORT PERSONNEL, STAFF COUNSEL, AND ADMINISTRATIVE LAW JUDGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning an update on staff training programs implemented for all of the Board's staff including support personnel, staff counsel, and administrative law judges. Ms. Kindel stated that this is the annual update on the training programs that have been attended by all of the staff. Mr. Brennan reported that because the Board's staff is small there are few opportunities for salary increases beyond the present staffing level. He indicated that the Board offers training to its staff for self improvement even if it means they may promote elsewhere.

8. **DISCUSSION CONCERNING WHETHER THE DEPARTMENT OF MOTOR VEHICLES CAN ISSUE PROBATIONARY OCCUPATIONAL LICENSES TO MANUFACTURERS AND DISTRIBUTORS THAT FAIL TO PAY OR TO TIMELY PAY THE DEPARTMENT OF CONSUMER AFFAIRS, ARBITRATION CERTIFICATION PROGRAM FEES OR THE ANNUAL BOARD FEE - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg describing the DMV's authority and practice for issuing probationary occupational licenses to manufacturers and distributors that fail to pay or to timely pay the Department of Consumer Affairs Arbitration Certification Program Fees or the Annual Board Fee. Mr. Weinberg indicated that Vehicle Code § 11718 authorizes probationary licenses under certain circumstances and the authority for disciplinary actions is found in 13 CCR § 440.04.

9. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg along with a CD of reference materials pointing out the changes that have occurred to the Administrative Procedure Act, Bagley-Keene Open Meeting Act, Political Reform Act and Public Records Act. The changes that may be of importance to the Board and its members were highlighted in the memo. Under the Political Reform Act, the gift limit increased from \$360.00 to \$390.00 for the period January 1, 2007, to December 31, 2008. Mr. Weinberg reminded the members that their FPPC filings were due by April 2, 2007.

10. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 2ND QUARTER OF FISCAL YEAR 2006-2007 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel and Linda Lighter concerning the Board's financial condition for the second quarter of Fiscal Year 2006-2007. Ms. Kindel indicated that the Board expended 42% of its appropriated budget through the 2nd quarter of fiscal year 2006-07, which is within the Board's budget allocation.

11. **CONSIDERATION OF THE REVISED NEW MOTOR VEHICLE BOARD ADMINISTRATIVE LAW JUDGES BENCHBOOK - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a revised version of the *New Motor Vehicle Board Administrative Law Judges Benchbook*. Mr. Weinberg indicated that the changes to the *Benchbook* were noted in a cover memorandum. Mr. Skobin indicated that he wants a CD of the *Benchbook* to go to the Board administrative law judges and wants it to be made available to the public. Mr. Stevens moved to approve the revised *New Motor Vehicle Board Administrative Law Judge's Benchbook*. Mr. Brooks seconded the motion. The motion carried unanimously.

12. **CONSIDERATION OF DRAFT STIPULATION TO PERMIT DEALER BOARD MEMBERS THAT ALSO HAVE AN INTEREST IN AN RV DEALERSHIP TO PARTICIPATE, DISCUSS, AND VOTE ON ARTICLE 5 RECREATIONAL VEHICLE PROTESTS (VEH. CODE §§ 3070, 3072, 3074, 3075, AND 3076) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning a draft stipulation to permit dealer Board members that also have an interest in an RV dealership to participate, discuss, and vote on Article 5 RV Protests. Mr. Stevens moved to adopt the stipulation. Mr. Branzuela seconded the motion. The motion carried unanimously.

13. **DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation that impacts the Board.
- b. Pending Legislation of general interest.
 - (1) Assembly Bill 305 (Assembly Member Ma)
 - (2) Assembly Bill 1092 (Assembly Member Emmerson)
 - (3) Senate Bill 525 (Senator Lowenthal)
 - (4) Senate Bill 889 (Senator Maldonado)
 - (5) U.S. House of Representatives Bill 1029 (U.S. Representative Stearns, Co-sponsors - Representatives Blackburn, Campbell, Jones, Moore, and Sensenbrenner) – “Damaged Vehicle Information Act”
 - (6) U.S. Senate Bill 545 (U.S. Senator Trent Lott, Mississippi) – “Passenger Vehicle Loss Disclosure Act”

The members were provided with a memorandum from Bill Brennan and Robin Parker updating them on pending legislation. Ms. Parker indicated that there are no bills that directly impact the Board. There is pending legislation of general interest that staff will track and report back to the Board findings at future meetings. Mr. Flesh requested that the staff report at the next meeting on Vermont legislation that impacts air quality standards.

Subsequent to the meeting, it was learned in that a Vermont trial is beginning over new rules, adopted by California in 2005 and by nine other states, designed to reduce emissions of the greenhouse gas carbon dioxide. This trial is the first in a series of court fights expected in the states. At issue is which set of federal regulations will control vehicle carbon emissions. California is the only state that can devise emissions rules that differ from Federal standards. Then other states can choose between the California and federal regulations. (Sources: Gram, *In Vermont, court challenge for state regulation of emissions* (April 9, 2007) Associated Press <<http://www.detnews.com/apps/pbcs.dll/article?AID=2007704090388>> [as of April 11, 2007]; Lifsher and O’Dell, *Automakers challenging states’ emission laws* (March 23, 2007) Times Staff Writers <<http://www.latimes.com/business/la-fi-vermont23mar23,1,3970138.story>> [as of April

11, 2007] and Malone, *Automakers challenge Vermont emissions law* (April 10, 2007) Reuters <<http://www.washingtonpost.com/wp-dyn/content/article/2007/04/10/AR2007041000337.html>> [as of April 11, 2007]).

14. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
 - (1) Status of Protests.
 - (2) Status of Petitions.
 - (3) Status of Appeals.
 - (4) Matters Resolved.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Brennan provided the members with a Report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Brennan highlighted the success of the 6th Annual Industry Roundtable held the previous day. Additionally, he reported that the staff was planning an Attorney Roundtable to assist attorneys that practice before the Board or who would like to.

The members were also provided with a summary of case management. Ms. Riggerbach indicated that there was a trend toward setting settlement conferences whereas the previous trend was to go to hearing without such a settlement conference. There had been a number of cases set for hearing as well as settlement since the written report was prepared. Ms. Riggerbach reported that case management was quite busy. Mr. Stevens requested that hearings be set in *David J. Phillips Buick-Pontiac, Inc., dba David Phillips Buick-Pontiac-Mazda v. General Motors Corporation* [Protest No. PR-1991-06], *Santa Monica Group, Inc., a California corporation, dba Santa Monica Chevrolet Buick v. General Motors Corporation*, Protest No. PR-1982-05, and *South Shore Motors v. Subaru of America, Inc.*, Protest No. PR-1970-05.

Due to time constraints, Mr. Weinberg's report on the status of pending court cases was postponed until the next meeting.

15. **SELECTION OF BOARD MEETING DATES FOR 2007**

Mr. Skobin went off the record for this discussion. Given the vacancies on the Board, this matter was postponed until the June 6, 2007, General Meeting in Southern California.

16. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY ALAN SKOBIN, BOARD PRESIDENT**

Mr. Skobin went off the record to appoint members to the various committees. Mr. Skobin went back on the record and announced the following appointments:

The Executive Committee

Chair: Alan J. Skobin

Member: Robert T. (Tom) Flesh

The Administration Committee

Chair: David C. Lizárraga

Member: Open

The Board Development Committee

Chair: Robert V. Branzuela

Member: Ryan L. Brooks

The Fiscal Committee

Chair: Ryan L. Brooks

Member: Open

The Government and Industry Affairs Committee

Chair: Robert T. (Tom) Flesh

Member: David W. Wilson

The Policy and Procedure Committee

Chair: Glenn E. Stevens

Member: David W. Wilson

Mr. Skobin stated that certain committee member positions were left vacant in anticipation of two new Board Members being appointed in the near future.

17. **PUBLIC AND/OR BOARD MEMBER COMMENTS OR SUGGESTIONS FOR PLACING MATTERS ON AGENDAS FOR FUTURE BOARD MEETINGS. (GOV. CODE § 11125.7(A))**

Mr. Skobin commented on the success of the Industry Roundtable.

Mike Norton, Assistant General Counsel for National RV Holdings, Inc., requested on the Recreation Vehicle Industry Association's behalf that it be heard on the Board's recent policy that allows Dealer Board Members to participate in RV Protest cases.

Mr. Skobin thanked Mr. Norton for his comments.

Mr. Brooks requested that Howard Weinberg prepare a memo concerning whether the Bagley-Keene Open Meeting Act prevents the Board from responding to public comment concerning a non-agendized matter during a noticed meeting.

18. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE

The members of the Board convened in closed Executive Session to discuss this agenda item.

19. **OPEN SESSION**

Mr. Flesh left the meeting prior to returning to Open Session, therefore, the meeting was concluded as an Ad Hoc Committee Meeting.

The members returned to open session. Mr. Skobin indicated that the Board had considered Mr. Brennan's performance as the Board's Executive Director and directed him to take action in accordance with the Board's decision.

20. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 12:34 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____

Alan J. Skobin
President
New Motor Vehicle Board