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# STATE OF CALIFORNIA
# NEW MOTOR VEHICLE BOARD
# MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on November 7, 2018, in The William G. Brennan Hearing Room, at the Board's offices.

## 2. ROLL CALL

Ramon Alvarez C., President and Dealer Member, called the meeting of the Board to order at 10:30 a.m.

Present:
Ramon Alvarez C.
Anthony A. Batarse Jr.
Kathryn Ellen Doi
Ardashes "Ardy" Kassakhian
David C. Lizárraga
Glenn E. Stevens

Timothy M. Corcoran, Executive Director
Robin P. Parker, Senior Staff Counsel
Danielle R. Phomsopha, Staff Counsel

Absent:
Rahim Hassanally
Bismarck Obando
Victoria Rusnak

## 3. PLEDGE OF ALLEGIANCE

Mr. Lizárraga led the members and staff in the Pledge of Allegiance.

## 4. INTRODUCTION AND WELCOME TO BRIAN C. ANNIS, SECRETARY FOR THE CALIFORNIA STATE TRANSPORTATION AGENCY - BOARD DEVELOPMENT COMMITTEE

Mr. Alvarez welcomed Brian Annis, Secretary, California State Transportation Agency. Tim provided the members with his bio:

> In February 2018, Governor Edmund G. Brown Jr. appointed Brian Annis as Secretary of the California State Transportation Agency [CalSTA] where he has served as acting secretary since 2018 and was undersecretary from

2013 to 2018. Prior to this appointment, Brian served as Deputy Secretary for Transportation at the Business, Transportation and Housing Agency. Brian served in various positions for the Senate Committee on Budget and Fiscal Review, including deputy staff director, principal consultant and consultant.

He also served in various positions at the California Department of Finance, including principal program budget analyst, staff finance budget analyst and research analyst. Brian has also been an adjunct professor of economics at American River College and an economist for the Bureau of Labor Statistics at the U.S. Department of Labor.

Secretary Annis indicated it was his pleasure to be at the meeting today. He complimented the work of the prior Executive Director, Bill Brennan, whom he had great affection for, and the work of Tim Corcoran, the current Executive Director. Secretary Annis also commended the members for their public service. Secretary Annis commented on the exciting transition transportation is going through including the technology in automobiles, information to travelers and their decisions on how to travel, and autonomous vehicles. These innovations create many challenges. From a broader perspective of these technologies, CalSTA is interested in harnessing them to improve transportation; new ways to get people where they need to go faster and safer. Secretary Annis remarked that the recently approved transportation funding will help maintain and repair California's transportation system and build for some new capacity to meet California's growing population.

5. **BOARD MEMBER EDUCATION CONCERNING AUTONOMOUS VEHICLE REGULATIONS AND THE REAL ID PROJECT BY BRIAN SOUBLET, DEPUTY DIRECTOR, CHIEF COUNSEL, DEPARTMENT OF MOTOR VEHICLES - BOARD DEVELOPMENT COMMITTEE**

Mr. Alvarez welcomed Brian Soublet, Deputy Director, Chief Counsel, Department of Motor Vehicles. Tim provided the members with his bio:

Brian began his career as an Assistant City Attorney in Oakland, California before entering private practice as an insurance defense attorney. Brian returned to public service in 1992 as a Staff Counsel at the California Department of Insurance (CDI), where he worked on issues related to insurance rates and insurance policy underwriting.

At the CDI Brian served as Assistant Chief Counsel and Chief Counsel before coming to the DMV in 2003. Brian has worked on transportation related issues throughout his 26-year career with the State of California.

Mr. Soublet provided an informative and detailed discussion on autonomous vehicles in general. He also discussed the requirements for testing an autonomous vehicle with a driver and what a disengagement means, i.e., the technology fails. Every autonomous vehicle crash, whether minor or significant, is reported to DMV within 10 days of the

incident. Since 2014, there have been 100 crashes with the majority of crashes involving the autonomous vehicle being hit. The crash reports are on DMV's website. Mr. Soublet indicated that 60 companies have been issued permits to test autonomous vehicles with the driver in the vehicle. There are over 630 approved autonomous vehicles and almost 2,000 approved drivers in California.

Mr. Soublet highlighted the requirements for driverless autonomous vehicles. So far only two applications have been submitted and only one has been approved. There is a requirement that companies define the operational design domain of the vehicle, i.e., all things that define where the vehicle is safe to operate. A vehicle must be incapable of operating outside of that domain. Companies are also required to submit a Law Enforcement Interaction Plan to the California Highway Patrol that includes who to contact if there is an issue, whether the autonomous technology is engaged or disengaged, how to disengage it, how to cut it off in an emergency, and if an electric vehicle, how to tow it. Another requirement, Mr. Soublet discussed, is that companies are to notify local authorities when they start driverless testing.

Additionally, Mr. Soublet addressed the push to have national legislation that deals with the testing and deployment of highly automated vehicles. He discussed House of Representatives Bill 3338 (the Self Drive Act) and Senate Bill 1885 (American Vision for Safer Transportation Through the Advancement of Revolutionary Technologies or AV START Act.) There are concerns with how the Federal Government is going to deal with the state and local regulation of driver safety requirements.

The next stage in this area is delivery-type scenarios, which are not allowed under the current regulations. Public workshops are being held to discuss this. After that, large commercial vehicles would need to be addressed.

Mr. Stevens inquired if the DMV gets out-of-state crash reports or reports on emergency problems with the vehicles. Brian indicated that California shares its data but not all states do and DMV does not get reports on emergency problems. In response to Mr. Alvarez' question about reporting safety issues, Mr. Soublet remarked that AAMVA (American Association of Motor Vehicle Administrators) started a workgroup to discuss a model policy for states to follow. Additionally, NHTSA is also encouraging the voluntary reporting of data. There are thoughts to have, on a national level, the collection and sharing of data about, for example, what happens when a tire blows. There is a need to educate the public, customers and dealers. Ms. Doi asked how DMV enforces reporting incidents given competitors' concerns with sharing information. Brian indicated that failure to report an incident to DMV could result in the testing permit being suspended.

As a final note, Brian commented on Real ID, which was something the Federal Government enacted in response to the 9/11 Commission.

6. **INTRODUCTION AND WELCOME TO ELIZABETH "LISA" HUMPHREYS, BRANCH CHIEF OF OCCUPATIONAL LICENSING, DEPARTMENT OF MOTOR VEHICLES - BOARD DEVELOPMENT COMMITTEE**

Mr. Alvarez welcomed Lisa Humphreys, Branch Chief, Occupational Licensing, Department of Motor Vehicles. Tim provided the members with her bio:

> Lisa has 29 years of law enforcement experience, beginning her career as a Police Officer with the Monterey Park Police Department. In 1997, she joined DMV's Investigations (INV) Division, assigned to the Los Angeles (Hope Street) Investigations District Office as an Investigator. From there, she transferred into the Office of Internal Affairs – West Covina Office. In 2005, she was promoted to Supervising Investigator, for the Artesia Investigations District Office, where she worked until promoting to Commander in 2009. As a Commander, Lisa was responsible for Orange Area Command and the INV Divisional Training Committee (Chairperson). In 2014, Lisa transferred to the Special Operations Command for the Southern California Area where she oversaw Offices of Internal Affairs in West Covina and Riverside and the DMV's Computer Forensics Team. In January 2017, Lisa relocated to the Northern Area Command Office and, effective October 1, 2017, was appointed Chief of DMV's Occupational Licensing Branch.

Ms. Humphreys remarked that she takes public integrity extremely seriously. She is transitioning from an enforcement capacity to a regulatory capacity. In Occupational Licensing (OL), Ms. Humphreys is trying to refine and eliminate a lot of redundancy and inefficiency, and streamline operations to better serve the public and DMV's internal customers. A computer modernization approval is in progress that will provide better customer service and eliminate paper. Implementing the electronic report of sale requirement (Assembly Bill 516) is something she has been working on in addition to preparing to implement Senate Bill 1046 (third party participants test commercial licensing components at their business locations. DMV's ignition interlock device program is also being revised. In response to Mr. Alvarez's question, Lisa indicated that OL has an inspection side and operation side.

7. **BOARD MEMBER EDUCATION CONCERNING THE DEPARTMENT OF CONSUMER AFFAIRS, ARBITRATION CERTIFICATION PROGRAM BY SHERRIE MOFFET-BELL, PROGRAM CHIEF - BOARD DEVELOPMENT COMMITTEE**

Mr. Alvarez welcomed José Escobar, Program Deputy Chief, Arbitration Certification Program. Sherrie Moffet-Bell was unable to attend the meeting. Tim provided the members with his bio:

> José Escobar began his career in State service in 1989 in the Department of Consumer Affairs' (DCA) mailroom as a student assistant. Throughout his 28 years working at DCA he has worked for the Respiratory Care Board, Bureau of Security and Investigative Services, Family Support Unit, Licensing Division, and over 18 years with the Arbitration Certification Program, where he serves as the Deputy Chief. Along with his State service career José is active with the International Association of Lemon Law Administrators where he serves on the Board of Directors and is the Vice President of Corporate

Relations/Membership.

Mr. Escobar indicated that the Arbitration Certification Program (ACP) establishes and maintains the certification standards and requirements for voluntary third-party Lemon Law arbitration programs of the 25 participating manufacturers. He indicated that manufacturers are not required to have an arbitration program certified by ACP. For a consumer to obtain the benefit of the Lemon Law presumption, participation in arbitration is a prerequisite. If a manufacturer fails to comply with a decision issued through arbitration, the ACP reports this to the DMV. Mr. Escobar highlighted the functions of the ACP as follows:

- Monitors the arbitration programs;
- Attend hearings;
- Audit arbitrator trainings;
- Conduct on-site inspections of the manufacturers and administrators' headquarters;
- Investigate complaints;
- Audit dealerships to ensure disclosures are provided to consumers;
- Prepare a biennial report for the legislature to show the effectiveness of this program; and
- Ensure titles are properly branded as "lemons."

In response to Ms. Doi's questions, Mr. Escobar indicated that for 2017 there were 2,626 disputes filed, 1,263 were ruled out of jurisdiction, 472 were mediated, 183 withdrew their complaint, and 708 were arbitrated. Of those arbitrated, 457 cases were denied, 179 were bought back for either replacement or repurchase, 64 were for repair, five were awarded reimbursement for expenses, and two were provided extended service contracts. Jose indicated ACP is a small office with only eight employees. Mr. Corcoran inquired about whether ACP is charged with promulgating regulations and further defining how arbitrations do occur. Mr. Escobar indicated yes but only for programs that are certified by the ACP; not for other programs, which would be the responsibility of the FTC. Referrals are made to the Board by the ACP for complaints involving manufacturers without arbitration programs such as Subaru and Honda.

## 8. CLOSED EXECUTIVE SESSION

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

Mr. Alvarez indicated in Open Session that Agenda Items 8-9 involve a dispute between a franchisee and franchisor so these matters were referred to Kathryn Doi, Public Member and Vice President.

Ms. Doi presided over this portion of the agenda and noted that the Public Members would convene in closed Executive Session to receive advice from the Board's legal counsel concerning pending litigation and that Danielle Phomsopha, Board staff counsel, was precluded from participating in this matter.

**DISCUSSION AND ADVICE FROM LEGAL COUNSEL CONCERNING PENDING LITIGATION**

GENERAL MOTORS LLC v. CALIFORNIA NEW MOTOR VEHICLE BOARD; FOLSOM CHEVROLET, INC., d/b/a/ FOLSOM CHEVROLET, Real Party in Interest
California Superior Court, Los Angeles County Case No. BS175257
New Motor Vehicle Board No. CRT-276-18
Protest No. PR-2483-16

Discussion and advice from the Board's legal counsel concerning pending litigation, by the Public Members of the Board.

The Public Members of the Board convened in closed Executive Session. An attorney-client work product privilege memorandum from Robin Parker, Senior Staff Counsel, was provided to the members to justify the closed Executive Session. The members participated in a discussion of this matter with Michael Gowe, Deputy Attorney General. No action was taken.

9. **OPEN SESSION**

Ms. Doi announced that no formal action was taken on this matter during the closed Executive Session.

Mr. Alvarez presided over the remainder of the meeting.

10. **APPROVAL OF THE MINUTES FROM THE AUGUST 13, 2018, GENERAL MEETING**

Mr. Stevens moved to adopt the August 13, 2018, General Meeting minutes. Mr. Kassakhian seconded the motion. The motion carried unanimously.

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

Ramon Alvarez provided the members with a memo on the current composition of the Board Committees and a description of each. The members went off the record to discuss this. There were no changes to the committee assignments.

12. **DISCUSSION CONCERNING LEGISLATION - EXECUTIVE COMMITTEE**

a. Legislation of Special Interest: Assembly Bill 2330 (Assembly Member Bigelow)

b. Legislation of General Interest: None

c. Pending Federal Legislation of General Interest: None.

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning pending legislation. Ms. Phomsopha reported that Assembly Bill 2107 was vetoed by the Governor. However, Assembly Bill 2330 was chaptered and effective immediately. This bill affects the exception to Vehicle Code section 3072 notice requirements, which includes annual shows sponsored by a national trade association of RV manufacturers, if they comply with Section 11713.15(d). Ms. Parker added that the exception pertains to locations with a population of 9,000,000 or more persons and it's at a location 30 miles away from a prior approved location for the show. This appears to pertain to the RVIA Pomona Show and a change in location that required an urgency clause. There is no impact on the Board.

## 13. ANNUAL UPDATE CONCERNING THE DEVELOPMENT AND USE OF THE BOARD'S WEBSITE - ADMINISTRATION COMMITTEE

The members were provided with a memorandum from Dawn Kindel and Eugene Ohta updating the development and use of the Board's website. Miss Kindel reported that in September the DMV launched a "new look" for the Board's website; the data and text are all the same. The staff is working with DMV to make the historical data on the website accessible to users that are vision impaired. Legislation requires this for all state agencies by next year.

In response to Mr. Alvarez's question, Miss Kindel confirmed that the website uses Google Translator so it can be translated into any language. Ms. Doi asked what causes certain Board meetings to get more hits than others. Ms. Parker remarked that since post-hearing briefs and proposed decisions for specific meetings are on the website, it may be interest generated by the media or cases referenced by Automotive News.

As indicated in the memo, the chart below shows a comparison of the top 10 pages that were viewed during visits to the website during fiscal years 2016/2017 and 2017/2018:

| | Website Pages | 2016/2017 Annual Hits | | Website Pages | 2017/2018 Annual Hits |
|---|---|---|---|---|---|
| 1 | Home Page | 14,910 | | Home Page | 14,658 |
| 2 | Mediation | 2,989 | | Mediation | 3,163 |
| 3 | Search | 2,340 | | Search | 2,349 |
| 4 | Forms | 1,114 | | Meetings and Agendas | 1,479 |
| 5 | Meetings and Agendas | 877 | | Board Members | 1,185 |
| 6 | Mar. 2017 Board meeting | 779 | | Form Samples | 1,112 |
| 7 | Protests | 762 | | Protests | 989 |
| 8 | Statutes | 751 | | Statutes | 759 |
| 9 | Board Members | 717 | | Jan. 24, 2018 Board meeting | 611 |
| 10 | Protest Decisions | 648 | | May 18, 2017 Board meeting | 605 |

## 14. ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM - BOARD DEVELOPMENT COMMITTEE

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha reporting on the Board Development Program. Ms. Phomsopha reported that Tom Wilson, Chief of DMV Investigations will be speaking at the March 27, 2019, meeting.

## 15. BOARD FINANCIAL CONDITION REPORT FOR THE PREVIOUS FISCAL YEAR - FISCAL COMMITTEE

The members were provided with a memorandum from Tim Corcoran, Dawn Kindel and Suzanne Luke concerning the Board's financial condition for fiscal year 2017-2018. Ms. Luke reported that the Board's appropriated budget was $1.6 million, expenditures totaled $1.35 million, beginning reserve balance of $1.8 million , revenues of $1.87 million, and a reserve balance of $2.4 million. The Board expended 82% of its appropriated budget through the 4th quarter.

Ms. Doi commented on the large reserve balance. Mr. Corcoran indicated that at the last meeting (August 13), the members discussed the reserve balance and the fact that this particular industry can be subject to a major swing in the amount of revenue it brings in so having a couple of years' reserve is not a bad idea. Also, changing the Board's fees through regulation can take some time and before the Board is able to react, the reserve may be in serious trouble. Ms. Doi inquired whether the DMV or Department of Finance might challenge the amount of the Board's reserve; Mr. Corcoran indicated it was not likely. Mr. Alvarez remarked it was fiscally healthy to have a good reserve.

## 16. CONSIDERATION OF REQUEST FOR OUT-OF-STATE TRAVEL TO RV X - THE RV EXPERIENCE IN SALT LAKE CITY, UTAH IN MARCH 2019 - FISCAL COMMITTEE

The members were provided with a memorandum from Dawn Kindel concerning a request for out-of-state travel for Tim Corcoran to attend the RV X – The RV Experience in Salt Lake City, Utah, March 12-14, 2019.

Ms. Doi moved to approve the out-of-state trip to RV X. Mr. Stevens seconded the motion. The motion carried unanimously.

## 17. DISCUSSION REGARDING THE 2019 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning the 2019 Industry Roundtable. Ms. Phomsopha reported that the Board is excited to host the National Association of Motor Vehicle Boards and Commissions (Association) conference in 2019. This is an opportunity to utilize the Association's resources in organizing a program that would be an expansion of our usual Roundtable. Miss Kindel mentioned that the date of September 18-21, 2019, is almost

finalized. Mr. Corcoran provided the members with an overview of the topics from the 2018 conference in New Orleans that included: Subscription car services; Autonomous connected vehicles; Dealer versus dealer versus manufacturer disputes; Automotive recalls; Overviews of various industry trends, including conditional incentive programs, digital storefronts; and Generational shifts principally in RV and power sports industries. Mr. Corcoran congratulated Dawn Kindel on her election as treasurer of the Association.

To answer Ms. Doi's question, there is no permanent staff for the Association; everyone is a volunteer. Miss Kindel explained that money for funding the annual conference is gained through memberships and registrations at the conference plus sponsorships. Ms. Doi confirmed that the resources of the Board, other than time, will not be spent on this conference. Miss Kindel indicated that it is only staff time and nothing beyond what the Board has done as a member of the Association for the past 25 years. Miss Kindel indicated that she is currently working to secure a facility, lodging and then will work on topics and activities. Ms. Doi suggested that since she and Mr. Obando are local they could assist with venues for meals and activities. Mr. Alvarez suggested a golf outing since that always attracts people. The train museum, automobile museum and State Capital were suggested by Ms. Doi.

18. **CONSIDERATION OF PROPOSED REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

a. Definitions (13 CCR § 550);
b. Dismissals of Petitions, Appeals, and Protests (13 CCR § 551.8);
c. Notice of Assignment of Administrative Law Judges; Peremptory Challenges (13 CCR § 551.12); and,
d. Hearings by Board or by Administrative Law Judge (13 CCR § 590).

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning revisions to proposed regulatory amendments. Ms. Parker provided the members with revised text that contained one additional change. Assembly Bill 2107 would have extended the sunset date for the Article 6 Association protest but the bill was vetoed so the staff need to amend the regulations to take out all references to Vehicle Code section 3085, Article 6 protests. Ms. Parker commented that the regulation amending peremptory challenges is effective January 1, 2019 so that resulted in one additional amendment as reflected in the handout. She believes this rulemaking will be non-substantive.

These revisions remove references to export or sale-for-resale prohibition policy protests in the text and/or authority and reference in Sections 550, 551.8, 551.12, and 590 of Title 13 of the California Code of Regulations. The Board's authority to hear these protests sunsets on January 1, 2019.

As indicated in the memo, if the Board adopts the proposed regulatory amendments, the staff will proceed with the rulemaking process as delineated in Government Code section 11340, et seq. Updates concerning the status of the rulemaking process will be provided

at future Board meetings during the Administrative Matters portion of the Executive Director's Report.

Mr. Stevens moved to adopt the proposed regulations as amended. Ms. Doi seconded the motion. The motion carried unanimously.

Mr. Alvarez read the following statement into the record:

> Given the Board's decision to go forward with the proposed regulations, I hereby delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices may be held to accept oral and written comments.
>
> By the Board instructing staff to go forward with the proposed regulations, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulations. Furthermore, if the staff decides that substantive modifications to the proposed text are necessary, the Board will consider these modifications at a noticed meeting. However, non-substantive changes involving format, grammar, or spelling suggested by the Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They will be considered by the Executive Committee and ultimately reported to the Board at a future meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

19. **EXECUTIVE DIRECTOR'S REPORT**

A. Administrative Matters.
B. Case Management.
C. Judicial Review.
D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
E. Other.

Mr. Corcoran 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. Corcoran indicated that the workforce succession planning has a fluid timeline and depends on the DMV staff, specifically the Enterprise Risk Management Division staff and their resources are currently spread thin.

Ms. Phomsopha indicated that the rulemaking packets for peremptory challenges and electronic service were approved by OAL and effective January 1, 2019. She also provided updates on several cases in which a notice was withdrawn (PR-2526-17), a discovery

schedule was set (PR-2570-18) and a settlement conference scheduled (PR-2574-18).

Ms. Parker reported that *West Covina Nissan* (Protest No. PR-2478-16) is going forward with a 5-day merits hearing on February 4, 2019. In *Kearny Mesa Infiniti* (Protest No. PR-2475-16) and *Hayward Nissan* (Protest Nos. PR-2374-13 and PR-2381-13) amendments to existing Proposed Stipulated Decisions and Orders were submitted for Board approval. Additionally, Ms. Parker noted that the Attorney General's Office is representing the Board in the writ filed by General Motors, which pertains to the *Folsom Chevrolet* decision. The hearing on the writ pertaining to the decision in *Dependable Dodge* is November 16. Ms. Parker mentioned that Mo Sanchez, who regularly practices before the Board, was appointed to the Orange County Superior Court. She indicated that the Board has only received 16 notices of termination this year in comparison to 46 in 2017. Modification notices are down as well, with 57 year-to-date and 109 in 2017 and a high of 320 in 2015. To date, 23 protests have been filed.

## 20. SELECTION OF BOARD MEETING DATES FOR 2019

The members were provided with a memorandum from Tim Corcoran concerning Board meeting dates for 2019. The members went off the record for this discussion. In addition to the January 24, 2019, General Meeting in San Francisco and the March 27, 2019, General Meeting in Sacramento, Mr. Alvarez indicated that a meeting has been set for June 12 or 13, 2019 in Glendale and thanked Mr. Kassakhian for hosting.

## 21. PUBLIC COMMENT (Gov. Code § 11125.7)

No additional public comment was presented.

## 22. ADJOURNMENT

With no further business to discuss, the meeting was adjourned at approximately 1:08 p.m.

Submitted by _____
TIMOTHY M. CORCORAN
Executive Director

APPROVED: _____
Ramon Alvarez C.
President
New Motor Vehicle Board