



New Motor Vehicle Board

In-Site

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A Publication of the California New Motor Vehicle Board

04.2 Edition

PROPOSED LEGISLATION WOULD ABOLISH BOARD

Senator Debra Bowen, D-Marina del Rey, recently introduced SB1711 which would, as currently drafted, abolish the New Motor Vehicle Board. The bill would repeal statutes authorizing new motor vehicle dealers (new car, truck, motorcycle and RV dealers) to appeal a disciplinary action of the DMV Director, protest the termination or modification of a franchise, protest the establishment or relocation of a dealership, and contest the reasonableness and timeliness of manufacturer reimbursement for pre-delivery, warranty, and incentive program payments. The Board's Consumer Mediation Services Program, which offers an informal, no cost, dispute resolution program for consumers, would also be abolished.

While the New Motor Vehicle board does not take positions on pending legislation, the California Motor Car Dealers Association ("CMCDA") has taken a strong position opposing this bill, noting the following in a published statement:

- When enacting the California Automobile Franchise Act, the Legislature found that "*The distribution and sale of new motor vehicle in the State of California vitally affects the general economy of the state...*" [*New Motor Vehicle Board v. Orrin W. Fox Co.* (1978) 439 U.S. 96, 100-101] New vehicle sales in California now total over 2 million units annually, thus the need for an industry regulatory board and automotive franchise laws has never been greater;

- Most of the State's new car dealerships are still family owned and operated. With the passage of this bill, manufacturer/franchisors would be free to terminate franchise agreements without good cause, allow the geographical dealer areas to become out of balance without regard to the investment of existing dealers or the interests of the consuming public, and leave new car dealers with little or no recourse to resolve franchise and warranty disputes;

- The expertise and sophistication of the Board and its Administrative Laws Judges in franchise matters have proven successful over the years in settling 90-95% of the

cases brought before it without the need of formal adjudication. Eliminating the Board would lead to increased court congestion and expense by turning each franchise dispute into a potential multi-million dollar lawsuit instead of a streamlined administrative proceeding;

- The Board is a special fund agency deriving all operating funds (including funds to operate the Consumer Mediation Services Program) from fees assessed on all new motor vehicle dealers, manufacturers and distributors.

The CMCDA statement concluded with "The compelling question is, why eliminate an administrative agency and system that costs the public nothing and effectively regulates 20% of our retail economy?"

The Board was informed during the printing of this issue that bill amendments by the author were in process. SB1711 is scheduled to be heard on April 20, 2004, by the Senate Transportation Committee.

BOARD ELECTS OFFICERS



Glenn E. Stevens
President



David Wilson
Vice President

At its March 9, 2004, General meeting, the New Motor Vehicle Board unanimously elected Glenn E. Stevens to serve as the Board's President for a second term. Mr. Stevens operates the Law Offices of Glenn E. Stevens, specializing in real estate matters, and is counsel to Nelson Shelton & Associates, a real estate brokerage located in Beverly Hills. David W. Wilson was unanimously elected to serve as the Board's Vice President for a second term. Mr. Wilson is the owner and president of twelve automobile dealerships, employing more than 1,300 people. He owns and operates several award-winning automobile dealerships such as Toyota of Orange, Desert Lexus, Ford of Orange, and many others including Acura and Honda dealerships. Messrs. Stevens and Wilson will also serve as the Board's Executive Committee.

NAMVBC 28TH ANNUAL BREAKFAST MEETING

The National Association of Motor Vehicle Boards and Commissions (“NAMVBC”) held its Annual Workshop and Breakfast Meeting in Las Vegas, Nevada on February 1st and 2nd, 2004. Tom Novi, New Motor Vehicle Board Executive Director and Treasurer of the NAMVBC, gave his yearly treasurer’s report. The workshop provided a forum for the exchange of information and ideas of common interest to the various motor vehicle board and commission members who attended.

Sunday’s breakfast was called to order at 8:00 am. A host of speakers were featured, including Gregory R. DePasquale, Assistant General Counsel of Copart, Inc., Jay Landers, Senior Director, Government Affairs, Recreation Vehicle Industry Association, Jim Moors, Director of Franchising and State Law, National Automobile Dealers Association (“NADA”), and Jules Gollins, Dealer and Founder of the former National Wholesale Auto Dealer Association. The meeting progressed well into the afternoon with discussions on licensing and regulatory issues in various

states, out-of-state dealers displaying and/or selling at events without a license from the state where the event takes place, and misuse of temporary license plates. On Monday morning, the meeting continued with guest speaker Peter Brown, Associate Publisher and Editorial Director of Automotive News, who discussed a number of emerging issues in the automotive industry.

The NAMVBC meeting was held in conjunction with the NADA 2004 Convention. Throughout the four day show, innovative and resourceful workshops were offered on topics involving tough industry issues. The workshops provided an outstanding setting for industry professionals to network and brainstorm complex issues facing the automobile industry. Several speakers were present, including Dieter Zetsche, CEO and president of the Chrysler Group, General Tommy Franks, recently retired commander-in-chief of the U.S. Central Command, Emmy Award winning journalist Deborah Norville, and author D. Michael Abrashoff.

The New Motor Vehicle Board was represented at both functions by Executive Director Tom Novi and Board President Glenn Stevens.



State of California
Arnold Schwarzenegger, Governor

IN-SITE

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*Business, Transportation
and Housing Agency*
Sunne Wright-McPeak, Secretary

Department of Motor Vehicles
Chon Gutierrez, Director

New Motor Vehicle Board

Officers

Glenn E. Stevens,
President
David W. Wilson,
Vice-President

Members

Robert Branzuela
Robert T. (Tom) Flesh
David C. Lizárraga
Haig Papaian
Andy Robles
Sushil K. Sharma
Alan J. Skobin

Executive Director

Tom Novi
General Counsel
Howard Weinberg
Senior Staff Counsel
Robin P. Parker
Staff Counsel
Cara M. Peralta

Questions or comments: nmvb@pacbell.net

THE NMVB ON REVIEW

The Board recently reported on its efforts to improve operations by establishing a document retention policy that resulted in the confidential destruction of hundreds of boxes of evidence, case files, and notices that ranged back to the Board's establishment in 1967 (see October 2003 In-Site). During the staff review of the documents, items of interest that recap the Board's history were found and may be of interest to the Board's constituency.

Following Governor Reagan's signing of SB-91, which established the New Car Dealers Policy and Appeals Board, the Board started out housed in the basement at the Department of Motor Vehicles ("DMV") headquarters in Sacramento in 1967, and was staffed by two people. The first Executive Secretary, Harry Towne, was previously a staff counsel for DMV. The Board's budget appropriation was \$75,000, and the Board members earned \$25 per day per diem. All new car dealers paid \$30 a year to support the Board. The first Board meeting was held on February 7, 1968, with Board members Robert Nesen, Audrey Jones, Gilbert Ashcom, Melicio Jacaban, Warren Biggs, Pascal Dilday, Robert Kutz (all appointed by Governor Reagan), Eddie Kaplan, (appointed by Senator Burns), and Bartley Cavanagh (appointed by Speaker Unruh). The Board's jurisdiction at that time was limited exclusively to holders or applicants for a new car dealer's license. The powers and duties were limited to reviewing appeals from disciplinary actions taken by DMV and considering any matter concerning the activities of any new car dealer submitted by any person, i.e., a petition. In 1969 the Board faced its first major hurdle. Governor Reagan submitted a plan to eliminate or consolidate all 31 state boards and commissions then in existence as a comprehensive government reorganization plan. DMV Director, Verne Orr, recommended to Governor Ronald Reagan that the Board be abolished. The proposal was rejected by the legislature.

Leonard Reiss replaced Mr. Towne as Executive Secretary in 1973. Mr. Reiss had formerly served as an attorney with the Social Security Administration, and a Staff Judge Advocate for the Air Force. Assembly Bill 225, was signed by Governor Reagan in 1974, which changed the name of the New Car Dealers Policy and Appeals Board to the New Motor Vehicle Board and expanded its jurisdiction to include manufacturers, distributors, or

representatives. The protest provisions were added to the Vehicle Code. The Board could now adjudicate disputes involving the termination, refusal to renew, or modification of a franchise agreement, the establishment of an additional franchise, the relocation of an existing franchise, new vehicle delivery and preparation obligations, and warranty obligations between franchisors and franchisees. The bill also placed added responsibilities upon manufacturers of motor vehicles with the intent of protecting retail dealers and, ultimately, California consumers. This new responsibility was quite a change from the Board's former workload which consisted of dealing with "bird-dogging" and consumer complaints.

Mr. Reiss transferred to the Unemployment Insurance Appeals Board in 1975, and was replaced by Sam W. Jennings. Mr. Jennings left his position as Special Assistant to the Secretary for Legal Affairs, Agriculture and Services Agency, to become the Board's Executive Secretary. In 2001, Mr. Jennings retired and was replaced by the Board's current Executive Director, Tom Novi.

Times were definitely different in the early days – telegrams and mailgrams were popular, pleadings were typewritten and blue back bound, postage was 13 cents, and case dockets were handwritten. Rubber bands were commonly used to fasten documents together, which after more than 30 years, we found had largely disintegrated into dust. When subpoenas were issued, the State of California sent "greetings" to the recipient.

Some of the issues facing the industry back then were allegations of misleading advertising, misrepresentation of contract terms and failure to disclose material facts to customers in connection with vehicle sales contracts. There was the state's odometer dilemma, where some dealers abused a law passed by the legislature in 1968 allowing a car dealer to disconnect odometers on new cars when driven from one dealer to another prior to being sold. In 1970, the Board became increasingly involved in consumer complaints in addition to the hearing of appeals by new car dealers.

In terms of staffing, there has been relatively little turnover in the Board's history. Four individuals have served as the Board's Executive Secretary or Executive Director. There have been several Assistant

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Secretaries including Michael Flanagan (currently a dealer attorney), Ken Wilson (now a Board Administrative Law Judge), Michael Sieving (currently a dealer attorney), and Tom Novi (current Executive Director). Anthony Skrocki and Marilyn Wong, Administrative Law Judges, have been on the Board's staff for more than 20 years. J. Keith McKeag, practiced with Downey, Brand, Seymour & Rohwer, and was outside counsel to Ford Motor Company for many years prior to joining the Board's staff as an Administrative Law Judge.

In addition, the litigants appearing before the Board have remained steady over the years. In the 1970's, the law firms of Pilot and Spar and Wright Britton Coder & Tuel represented a number of dealers. Gibson, Dunn, and Crutcher, and O'Melveny & Myers, among others, represented most factories. Many of the attorneys currently practicing before the Board have more than 20 years experience. They include John Britton, Carl Chiappa, Michael Flanagan, Bruce Ishimatsu, Ken Murphy, Greg Oxford, Robert M. Wheatley, Harold C. Wright, and Chris C. Vaughn, to name a few. Several attorneys that regularly appear before the Board started out as in-house counsel for the manufacturer. For example, Mo Sanchez of Alvarado, Smith & Sanchez, served as in-house counsel for Hyundai and Mazda. Finbarr O'Neill, current CEO and Co-Chairman of Mitsubishi North America, Inc., was in-house counsel for Hyundai as well. Many of the DMV attorneys that appeared before the Board also have more than 20 years experience, including Ben Bucceri, Bernard Lu, and Marilyn Schaff.

During the years of its existence, the Board, its Administrative Law Judges, and staff have developed substantial expertise and understanding of the legal and factual issues pertaining to an area extremely important to the people of California – the new motor vehicle industry.



Archive photo of Board meeting in 1967

In researching the archive materials, some interesting quotes and facts were happened upon:

LA Times article (date unknown) on disconnecting odometers

“a few fast-buck used-car dealers who were passing off automotive dogs as low mileage lovelies.”

1970 Quote from William Randolph Hearst, Jr. regarding future vehicles

“Cars will be made so safe and so pollution free that the only unsafe, pollution dispensing thing about them will be the guy who sits behind the wheel puffing a cigarette.”

Stats from a May 1969 magazine article

“In California, dealers were told there were 2,011 franchises in 1930 that sold 215,047 cars and trucks. Last year (1968) 1,975 dealers were responsible for the sale of 1,062,168 vehicles.” As a point of reference, there are now 1,400 dealers that sell approximately 2,000,000 new vehicles annually.

2004 COMMITTEE ASSIGNMENTS

At its March 9, 2004, General meeting, the following committee assignments were made by Board President, Glenn E. Stevens:

Executive Committee

Glenn Stevens, President
David Wilson, Vice President

Administration Committee

Robert Branzuela, Chair
Alan Skobin, Member

Board Development Committee

Tom Flesh, Chair
Haig Papaian, Member

Fiscal Committee

Andy Robles, Chair
Sushil Sharma, Member

Government and Industry Affairs Committee

Tom Flesh, Chair
Alan Skobin, Member

Policy and Procedure Committee

Alan Skobin, Chair
David C. Lizárraga, Member



CMCDA DEALER DAY 2004

The California Motor Car Dealers Association (“CMCDA”) held its annual Dealer Day meetings on Tuesday, March 9, 2004, and Wednesday, March 10, 2004, at the Hyatt Regency in Sacramento. The event focused on legislation affecting dealers, the impact on dealers, and the economic benefit of dealers within their communities.

Tuesday’s session began with a presentation from keynote speaker, the Honorable Kevin McCarthy, Assembly Republican Leader. Allan Zaremborg, President California Chamber of Commerce, John Sullivan, President Civil Justice Association of California, and Rick Claussen, GC Strategic Advocacy discussed issues concerning the CMCDA’s campaign for tort reform. At the conclusion of the presentations, dealers walked across the street to the State Capitol to meet with their legislators and discuss legislation of interest to the industry. The dealers focused on SB1711 (Bowen)- abolition of the New Motor Vehicle Board, AB2363 (Correa)– disclosure of language on vehicle sales and lease contracts, and AB1839 (Montanez)– a three day cooling off period for certified used car sales, and a proposed ballot initiative to amend the Unfair Business Practices Act (Business & Professional Code §17200 et seq.). One major theme of the Dealer Day was to build partnerships and establish individual dealer relations with the legislators.

As it does every year, the Board held a General Board Meeting on March 9, 2004, in conjunction with the

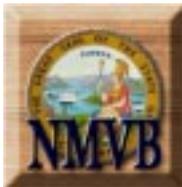
CMCDA Dealer Day event. At the conclusion of the Board meeting, Board members Glenn Stevens, David Wilson, Robert Branzuela, Tom Flesh, David Lizárraga, Haig Papaian, Andy Robles, Sushil Sharma and Alan Skobin, attended the Dealer Day functions. Former Board members Joseph Putnam and Fritz Hitchcock also attended.



Board members David Lizárraga, Robert Branzuela, Andy Robles, Alan Skobin, former Board member Angelo Quaranta, Robert (Tom) Flesh, Glenn Stevens, Sushil Sharma, Haig Papaian

ANGELO QUARANTA RECEIVES BOARD RESOLUTION

Former Public Board member, Angelo Quaranta, was honored with a resolution at the Board’s March 9, 2004, General Board meeting. Mr. Quaranta resigned from the Board in November 2003, to accept an appointment by Senator John Burton to the State Contractors License Board. Mr. Quaranta chaired the Board’s Fiscal Committee and dedicated his time and expertise to matters concerning the motor vehicle industry during his tenure with the Board. Mr. Quaranta remains active in political and community affairs, having served as a member of the Board of the Juvenile Diabetes Foundation, was the founder of Candlelight Again, a nonprofit organization which brought together restaurant owners and their patrons on the anniversary of the Loma Prieta Earthquake to raise money for community needs, was appointed to San Francisco’s Commission of Parking and Traffic, and currently serves on the San Francisco Police Commission.



**THE GUIDE TO THE
NEW MOTOR VEHICLE BOARD
IS NOW AVAILABLE ON
THE BOARD’S WEB-SITE
WWW.NMVB.CA.GOV.**

Mediation Statistics

Mediation Phone Calls Received	4,129
Mediation Request Forms Sent to Consumers	1,079
Cases Filed	381

July 2003 through March 2004

*You can reach
Mediation Services Staff at
(916) 445-1888*

CONSUMER MEDIATION SPOTLIGHT

The Board is pleased to report on two recent mediation cases that were successfully resolved by Heather Collins, Senior Mediation Analyst.

On October 20, 2003, the New Motor Vehicle Board's Consumer Mediation Services Program received a request for mediation from a consumer who had purchased a new Mercedes-Benz model S430 in June of 2002. He had noticed from the start that the vehicle's engine was extremely noisy while idling. Hoping to break in the engine, he waited approximately 6,000 miles before bringing the problem to the attention of the service department of the dealership. After numerous unsuccessful repair attempts, the consumer concluded that the vehicle was a defective car and asked the dealership to buy back the vehicle or put him in a newer model at an equitable price. The dealership was unwilling to replace or buy back the vehicle.

On October 21, 2003, Ms. Collins sent a letter to the manufacturer and dealership along with a copy of the consumer's complaint, requesting their version of the situation and the remedy they would be willing to offer to satisfy the consumer. On November 6, 2003, Ms. Collins

received a mailgram from the manufacturer stating the case would be reviewed on a local level. Shortly after, Ms. Collins received a call from the consumer stating a factory representative had inspected the vehicle on November 3, 2003 at the dealership, and determined that the vehicle had numerous problems and the transmission needed to be replaced.

The manufacturer sent an offer letter to Ms. Collins on January 5, 2004, who immediately faxed it to the consumer. The consumer would be able to return his vehicle and get into an S500 model at a fair price difference. Finally, on January 9, 2004, the consumer was able to pick up his new vehicle. The consumer wrote a letter to Ms. Collins expressing his sincere appreciation for her expertise and efficiency in successfully mediating his complaint.

The second case was received by the Board on November 25, 2003, from a consumer who was having problems with her 2003 Mazda Tribute. The consumer's complaint was that the ignition would lock the steering wheel, and that there was no way to turn the car on. The vehicle had been returned to the dealership four times for the same problem, each time having to be towed. By this time, the consumer was quite frustrated. She requested that the vehicle be returned and get her money back, as she refused to purchase another Mazda.

Letters were sent to the manufacturer and dealership by Ms. Collins on December 2, 2003, with a copy of the consumer's complaint, requesting their version of the situation and the remedy they would be offering to satisfy the consumer. On December 22, 2003, the manufacturer called Ms. Collins, stating that the consumer had three options available to her. She could have the vehicle repaired by their master technician, have the vehicle replaced, or choose to have the vehicle repurchased. Ms. Collins called the consumer, who chose the repurchase option.

By January 16, 2004, the manufacturer had begun the initial process of the repurchase. Although there were some disagreements between the manufacturer and consumer, such as a mileage usage fee and negative equity, through Ms. Collins' diligence in working between the two parties, an agreement was reached. On February 19, 2004, the consumer called Ms. Collins and said the transaction had been completed to her satisfaction.



Skip Daum and Mary Garcia

APPRECIATION FROM CALRVDA

At its March 9, 2004, General meeting in Sacramento, Skip Daum, Executive Director, California Recreation Vehicle Dealers Association thanked the Board and staff for their assistance in implementing the legislation that added the recreational vehicle industry to the Board's jurisdiction. Mr. Daum complimented the Board on its tenure, and record of fair rulings and interpretations. He expressed his appreciation for the personal touch and hands-on involvement provided by the Board, its staff, and in particular Tom Novi, Executive Director. Mr. Novi was presented with a certificate of appreciation from the California Recreation Vehicle Dealers Association and noted the key contributions of Board staff, particularly Robin Parker, Senior Staff Counsel.

Mary Garcia, Manager, Occupational Licensing Branch, Department of Motor Vehicles was also present at the meeting and was presented with a certificate of appreciation from Mr. Daum for her assistance in providing three statewide training sessions for recreational vehicle dealers.

RECENT RECREATIONAL VEHICLE ACTIVITY

The January 2004 Edition of the In-Site featured an article welcoming the recreational vehicle industry to the Board's jurisdiction. As an update, the Board has thus far received two RV related protests.

The first RV protest was filed on March 4, 2004, which is a termination protest. A motion to reject the protest has been filed by the respondent, and if granted, will be considered by the Board at its June 10, 2004, General meeting, in Sacramento.

An off-site sale protest was filed on March 10, 2004. The filing of the protest precludes the same line-make dealer within the relevant market area from participating in the off-site sale. Once the time period for the sale passes, the protest is rendered moot. It is anticipated that this matter will be dismissed shortly.

Since this is a new process for the recreational vehicle industry, the Board encourages questions concerning the filing of a protest or issuing the proper statutory notice, and calls can be directed to the legal staff at (916) 445-2080. In addition, the Board's web site has been updated to encompass the RV industry, which offers assistance through the *Guide to the New Motor Vehicle Board and Informational Guide for Manufacturers and Distributors*.

REVENUE

NEW MOTOR VEHICLE DEALER Annual Fee:	\$ 419,448.00
NEW MOTOR VEHICLE BOARD Manufacturer/Distributor Annual fee:	774,905.79
NEW MOTOR VEHICLE BOARD Filing fees:	11,800.00
Document Requests:	4,798.13
Arbitration Cert. Program Reimbursement:	3,937.84
July 2003 - February 2004	\$ 1,214,889.76

Why not visit us



on the web...

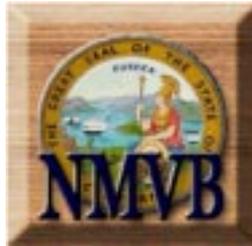
...at www.nmvb.ca.gov

or contact us at

**NMVB e-mail:
nmvb@pacbell.net**

UPCOMING BOARD MEETINGS

Special Board Meeting
 *April 21, 2004
 Indian Wells



General Board Meeting
 *June 10, 2004
 Sacramento

General Board Meeting
 *April 22, 2004
 Indian Wells

Special Board Meeting
 *June 10, 2004
 Sacramento

(*Board Meeting dates are subject to change. A meeting agenda with time and location details is mailed 10 days prior to the meeting and is posted on the Board's website.)

NMVB EMPLOYEE RECOGNITION AWARD



Robert (Tom) Flesh and Heather Collins

The Board recognizes a member of the staff for outstanding performance twice each year. At its March 9, 2004, General meeting, the Board considered and unanimously approved the Board Development Committee's recommendation that Heather Collins receive the Employee Recognition Award for a job well done.

Tom Flesh, Board Development Committee Chair reported to the Board that Ms. Collins, Staff Services Analyst in the Consumer Mediation Services Program, was recognized by the Committee for her excellent job performance in customer service, and her courteous handling of consumers who call with complaints. Ms. Collins has been featured in the Board's newsletter, In-Site, several times for helping consumers achieve a successful end to their complaints, especially in their receiving refunds

and buy-backs. Her highly organized and efficient skills in researching complex issues, and assisting in administrative matters, are greatly appreciated by all. She has been commended for her outstanding ability to complete projects in a timely and accurate manner, is highly motivated, and her positive attitude makes working with her a pleasure. Congratulations, Heather!

ACTIVE LEGAL CASES

Vehicle Code Section

3060	Termination/Modification	20
3062	Establishment/Relocation	14
3065	Warranty Reimbursement	2
3065.1	Franchisor Incentive	2
3070	Termination/Modification	1
3072	Establishment/Relocation	1

TOTAL CASES: **40**