



New Motor Vehicle Board

In-Site

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GOVERNOR'S CALIFORNIA PERFORMANCE REVIEW RECOMMENDS ELIMINATION OF NEW MOTOR VEHICLE BOARD

The California Performance Review ("CPR") was created "to find ways to make California Government work better and cost less". Governor Arnold Schwarzenegger directed the CPR study group to critically review the functions and structure of State government. Included in the broad areas of California government that were reviewed by the CPR were a total of 339 boards and commissions scattered across the executive branch of government. On August 3, 2004, the CPR issued a report proposing the elimination of 117 of those boards and commissions under review.

In some cases the board or commission was proposed for elimination with its functions transferred to another governmental entity. In others, both the board or the commission and its functions are proposed for elimination. The New Motor Vehicle Board ("NMVB") and its major functions were recommended for elimination. Specifically, the CPR found that the Board's "dispute resolution function should be handled by the parties directly, and that there is no need for a governmental body to take on this work. Furthermore, consumer complaint mediation should be a core function of the Office of Consumer Protection within the new Department of Commerce and Consumer Protection."

The CPR solicited comments and feedback from all interested parties and the public on its recommendations. Board President Glenn Stevens requested that Board staff summarize the likely consequences in the event that the recommendation is carried out and provide the information to the CPR Commission and Governor Schwarzenegger. The matter went before the Board at its September 30, 2004, General meeting and was approved by the members.

The staff report found that an initial rationale for

establishing the Board was to create a system of regulation designed to displace unfettered business freedom in establishing, relocating, and terminating new automobile, truck, motorcycle, and recreational vehicle franchised dealerships, carried out primarily by resolving disputes between manufacturers and new vehicle dealers in a low-cost expeditious manner. It was pointed out that the Board (like similar public sector boards and commissions in other states) is self-funded, with the operating revenue for the Board coming from the new motor vehicle industry. The Board receives no public funds. Since 1973, the Board has continuously and successfully demonstrated its value by maintaining economic balance that is essential in the new motor vehicle industry in California. In calendar year 2003 alone, California dealers sold \$55.5 billion worth of new cars and trucks and contributed 20.8% of all retail sales tax revenue to the State.

In resolving disputes, the efficiency of Board action is manifest in discovery which is utilized and controlled so that it is accomplished within a very short period of time at minimal costs to the parties. Upon request of a party and for good cause shown, the Board is empowered to, and will typically provide, an expedited hearing in a time significantly less than normally available in the courts. This again greatly reduces costs to the parties. The Board's extensive expertise and experience resolving franchise disputes and special jurisdiction also yields greater uniformity of result. Due to its statewide jurisdiction and extensive experience, the Board will generally reach the equivalent result in different cases when there are similar issues and similar facts resulting in fewer disputes and less litigation. It is extraordinarily successful in settling cases, thus resolving the disputes at an early stage of the proceedings and at a minimum cost to the parties. Because of the greater predictability of result under similar facts and because of the Board's experienced and specialized administrative law judges, the Board is instrumental in settling the vast majority of the cases filed before they get to a formal hearing.

(See CPR, page 4)

SEPTEMBER 30, 2004 GENERAL BOARD MEETING HIGHLIGHTS

The Board held a General meeting on September 30, 2004, in Ontario, California. Among the agenda items were two case management matters for consideration and deliberation by the members.

The Public and Dealer members of the Board considered the Proposed Decisions in *Ray Fladeboe Lincoln-Mercury, Inc., Fladeboe Automotive Group, Inc. v. American Isuzu Motors, Inc.*, Protest Nos. PR-1880-03 and PR-1881-03. In this case, the attorneys for both sides agreed to allow the dealer members to participate in the deliberations. In PR-1880-03, Protestant sought payment for nine-franchisor incentive claims totaling \$34,000 for vehicles sold between late 2002 and July 2003. In PR-1881-03, Protestant sought warranty reimbursement for 16 claims for repairs performed between October 2002, and February 2003, totaling \$11,398.88. After consideration of the oral arguments presented by counsel, the members voted unanimously to adopt the Proposed Decisions and found good cause existed for each of the claim disapprovals. Ray Fladeboe Lincoln Mercury was not entitled to the amounts claimed and the protests were overruled.

The second matter considered by the Public members in *Auto Stiegler, Inc. v. Mercedes-Benz USA, LLC*, Protest No. PR-1898-04, was a Recommendation that the Executive Director seek direction from the Board that Mercedes-Benz USA, LLC, recover attorneys' fees

and costs from third-party Camarilla, Inc., d/b/a V.I.P. Auto Upholstery and its attorney for failure to comply with authorized discovery without substantial justification for that failure. After presentation of oral arguments, the parties were given an opportunity to resolve the matter prior to the Board's deliberation. In the absence of reaching a settlement, the Public members unanimously adopted the Recommendation that required Camarilla and its attorney to pay Mercedes-Benz's attorneys' fees and costs incurred in seeking compliance with the subpoena duces tecum, which totaled \$15,781.25.

A licensing action was taken on Western Golf Car. Pursuant to Vehicle Code section 3016, the Board is required to assess licensees under its jurisdiction fees sufficient to fully fund the Board's activities. Section 553.10 of Title 13 of the California Code of Regulations states that all manufacturers and distributors of new vehicles are required to file a written statement with the Board on or before May 1 of each calendar year. The statement includes, in part, the number of new motor vehicles that were sold, leased, or otherwise distributed in California to a consumer in the preceding calendar year. Western Golf Car Manufacturing, Incorporated ("Western") failed on numerous occasions to furnish the data necessary to calculate the annual Board fee. At the meeting, the members voted to request the Department of Motor Vehicles to withhold the renewal of its occupational license and suspend its existing license until the data has been provided.

Immediately following the General meeting, a Special meeting was held to tour the Fleetwood Motor Homes of California manufacturing facility in Riverside, California.



State of California

Arnold Schwarzenegger, Governor

Officers

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

IN-SITE

California New Motor Vehicle Board
1507 21st Street, Suite 330 Sacramento, California 95814
(916) 445-2080

e-mail: nmvp@pacbell.net

Department of Motor Vehicles

Chon Gutierrez, Director

New Motor Vehicle Board

Members

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

Questions or comments: nmvp@pacbell.net



*Business, Transportation
and Housing Agency*

Sunne Wright-McPeak, Secretary

Executive Director

Tom Novi

General Counsel

Howard Weinberg

Senior Staff Counsel

Robin P. Parker

Staff Counsel

Cara M. Peralta

LETTER TO THE EDITOR

The Board received the following letter concerning its July issue from one of the titans of California's vehicle industry:

"Your quarterly newsletter is an excellent reminder to dealers like myself that there's at least one administrative board in Sacramento that delivers value to the citizens of California and to their retail dealers.

My late father, Bob Smith, worked hard in the Board's creation back in the sixties and was one of its first members. It's no less important to our family today.

The New Motor Vehicle Board has the expertise to understand our industry and deal with issues fairly. Hence, it continues to ensure that disputes involving franchise issues are handled with a balanced perspective and in a timely manner.

Congratulations on your continued good work serving an industry that represents 20% of California's economy.

Kind regards,"

Tim Smith
Bob Smith BMW-MINI

WEBSITE ENHANCEMENTS

The New Motor Vehicle Board's website (www.nmvp.ca.gov) is currently undergoing extensive revisions and updates. As part of the revisions, pages have been added containing the Board's enabling statutes (Veh. Code § 3000, et seq.), the Board's regulations (Cal. Code Regs., Tit. 13, § 550, et seq.), and all of the published decisions of litigation the Board has been involved in since its inception.

The site has been updated to include the effect of the recent decision in *Mazda Motor of America, Inc., v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal. App. 4th 1451; 2 Cal.Rptr.3d 866, on the Board's petition jurisdiction.

The statutes providing for the addition of recreational vehicles ("RVs") to the Board's jurisdiction have been added to the file containing the Board's statutes, information on filing an RV protest has been included in the area of protests, pertinent forms for prospective RV

litigants have been created, and hyperlinks integrating all three areas are in place.

The revision is scheduled to be completed by the end of calendar 2004. Please contact Howard Weinberg at (916) 445-2080, or howard-w@pacbell.net with any comments or suggestions about the site.

BOARD INDUSTRY ROUNDTABLE RECEIVES NATIONAL ATTENTION

The Board was recently recognized in four separate articles in the July 2004 WARD'S DealerBusiness Magazine concerning its leadership role in organizing a unique meeting of vehicle manufacturers and dealers to discuss a number of sensitive issues. The issues were addressed at the 2004 Annual Industry Roundtable held in Indian Wells on April 21, 2004.

WARD'S reported on Mark Iuppenlatz, Senior Vice President - Corporation Development for Sonic Automotive Inc. and Jerry Heuer of AutoNation discussion of publicly owned dealership chains and the close scrutiny they are under. Vito Scattaglia, a regional commander and a 31-year veteran of the California Department of Motor Vehicles ("Department"), talked about the investigation process for dealerships by the Investigative Division of the Department. Brady Schmidt, President, National Business Brokers, discussed the successful sale of an auto dealership. And finally, how manufacturers deal with dealers who are under achievers, was vigorously discussed at the Roundtable by the attendees.

The articles in Wards Dealer Business Magazine provided an excellent summary of the discussions that occurred.

A LITTLE TRIVIA

What was the last state to put photographs on driver's licenses?

- a) Ohio
- b) California
- c) Hawaii
- d) New York



(answer on page 8)

CPR: from page 1

The Board also acts as a safeguard to the new motor vehicle industry and the public interest. By far, the Board's most profoundly beneficial function on behalf of the new motor vehicle industry in California, and thus on the consumers in the state, is one which cannot be quantified with certainty. The broad sanction power of the Board is a significant deterrent to the risk of liability for a breach of contract. When a protest is filed, the proposed conduct of a manufacturer is automatically stayed pending a decision by the Board. The Board has broad authority to order DMV to exercise its authority with respect to licensing matters over licensees under the Board's jurisdiction. Together, the existence of the Board and the strong franchise laws of the State act to prevent injudicious or hasty actions by either the manufacturers or the new vehicle dealers that could have detrimental consequences on the economically crucial new motor vehicle industry.

The Board's staff and administrative law judges are particularly sensitive to the special requirements of the members of the automotive industry. Their expertise is also a useful resource when proposing and drafting legislation taking into account not only the interests of franchisors and franchisees but also those of the consuming public.

In addition to its dispute resolution function, the Board's consumer complaint mediation function (which accounts for about 10% of the Board's resources) provides free services to members of the public that have disputes with new car dealers or manufacturers. In the event the Consumer Mediation Program is moved to the Office of Consumer Protection within the proposed Department of Commerce and Consumer Protection (as the CPR report recommends), the net effect would be that the program, now funded by the vehicle industry through Board fees, would be funded from the State General Fund, i.e., the public.

The Board concluded there would be serious consequences of privatization options in replacing Board functions. Specifically, while various options exist for the parties to handle the new vehicle dealer/manufacturer dispute resolution function directly, they are not without cost. The options and the likely consequences for exercising them may be summarized as follows:

Alternate Dispute Resolution ("ADR") – The resolution of disputes without resort to litigation. Insofar as ADR requires voluntary participation of the parties, it is unlikely to be used in the highly contentious types of disputes

brought before the Board.

Dispute Review Boards - These boards are comprised of members with expertise in the fields in which the disputes arise. In the new motor vehicle industry, there exist manufacturer review boards as another type of ADR, provided for in the franchise agreements of some, but not all, manufacturers. However, in practice, these manufacturer review boards have not significantly modified the Board's caseload.

Judicial Resolution – If the Board and its dispute resolution function were to be eliminated, disputes in the new motor vehicle industry would default to the courts. In summary, while the dispute resolution functions of the Board could in theory and practice be privatized, the net effect on the automotive industry in California would be decreased efficiency and increased costs and delays in resolving disputes, which would result in a less effective means of dispute resolution. Consequently, the beneficial effects of the Board's dispute resolution process on California's car-buying consuming public and vehicle dealers would be lost.

In summary, it was concluded that, (a) the Board has extensive expertise and experience in resolving franchise disputes and results in a more expeditious and far less expensive process than proceeding through the judicial system; (b) is extraordinarily successful in settling cases thereby resolving disputes at an early stage in the proceeding, at a minimum cost to the parties, while maintaining and fostering the crucial relationship between the parties that can oftentimes become adversarial during a legal proceeding; and (c) the broad sanction power of the Board and the strong franchise laws of the State act as a significant deterrent to new motor vehicle dealers and manufacturers to prevent illegal actions.

This information was forwarded to Governor Schwarzenegger, the CPR Commission and Business Transportation and Housing Secretary, Sunne Wright McPeak, on October 1, 2004.

CASE MANAGEMENT REVISION

At the September 30, 2004, General Board Meeting, the Board members considered a recommendation to adjust the Board's case management procedures.

(See CASE, page 5)

CASE: from page 4

Over the years, the process of assigning Administrative Law Judges (ALJs) to New Motor Vehicle Board (Board) cases had been modified to both conform with the law and to fit the current needs of the Board. The current random process of assigning Board cases to ALJs originated as the result of the *July 1996 Performance Audit* ("Audit") conducted by the Business, Transportation & Housing Agency Audit Office concerning the operations of the Board.

In March of 2002, the Board began experiencing a shortage of trained ALJs. At that time, the Board considered and adopted a staff proposal to appoint Cara Peralta, Board Staff Counsel, as an ALJ for purposes of conducting Mandatory Settlement Conferences (MSCs) in the event of a shortage of ALJs due to their unavailability.

An additional modification to the ALJ procedure was adopted at the January 8, 2003, General Board meeting when the Board instituted a Merits Judge Substitution Log (Log) used to assign "substitute" ALJs for merits hearings and MSCs.

The assignment of cases to ALJs was again revised at the April 24, 2003, General Board meeting when the Board approved using Staff Counsel Cara Peralta for MSCs where feasible in order to reduce the Board's Personal Services budget allocation.

These changes worked extremely well. The substitution log proved to be an effective, efficient, and fair way to distribute and track cases when substitute ALJs were needed while ensuring a randomized method of selecting ALJs. In addition, utilizing Ms. Peralta for MSCs was not only financially beneficial, but this change enabled her to assist the litigants in minimizing calendar conflicts.

Once again, though, the availability of trained Board ALJs had become problematic, and therefore was brought up at the September General meeting for recommendation that the Board reconfigure the manner in which cases were assigned to maximize the utilization of existing ALJs and to minimize the need to rely upon Office of Administrative Hearings (OAH) ALJs.

The result from the Board meeting was the adoption of the recommendation to designate Board ALJ Anthony Skrocki as the law and motion judge, and revision of Cara Peralta's appointment as settlement conference administrative law judge to encompass the non-substantive procedural function of issuing pre-hearing conference orders. The utilization of the remaining judges for merits hearings was also decided, and if for any reason no Board judge is

available, the hearing would be scheduled with an ALJ from OAH.

PENDING COURT CASES

The Board does not participate in any action unless a state interest is implicated. The Board, as represented by the Attorney General's Office, is only participating in the case(s) marked with an asterisk:

DAUGHERTY LINCOLN MERCURY, INC., Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent; FORD MOTOR COMPANY, LINCOLN MERCURY DIVISION, Real Party In Interest. Sacramento Co. Sup. Court No. 03CS00861, Filed August 12, 2003

UNIVERSITY FORD, INC., dba BOB BAKER FORD, Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent; FORD MOTOR COMPANY, Real Party In Interest. Sacramento Co. Sup. Court No. 03CS01227, Filed August 27, 2003

FREMONT AUTOMOBILE DEALERSHIP, LLC, dba FREMONT TOYOTA, Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent; TOYOTA MOTOR SALES U. S. A., INC., Real Party in Interest. Sacramento Co. Sup. Court No. 04CS00715, Filed June 3, 2004

***NEW MOTOR VEHICLE BOARD v. CAMARILLA, INC., dba V.I.P. UPHOLSTERY**
Sacramento County Superior Court No. 04CS01253, Filed September 16, 2004

SUPERIOR COURT HEARING

Board General Counsel, Howard Weinberg, attended a hearing on a Petition for a Writ of Administrative Mandamus pursuant to Code of Civil Procedure section 1094.5. challenging the Board's decision in *Fremont Automobile Dealership, LLC, dba Fremont Toyota v. Toyota Motor Sales, USA, Inc.*, Protest No. PR-1844-03, on October 1, 2004. The Petition was heard by Judge Lloyd Connely, Judge of the Sacramento County Superior Court, in case number 4CS00715. In denying the Petition, Judge Connely ruled that there was substantial evidence to support the Board's decision, that there was a thoughtful application of the evidence and facts to support the findings, and that the findings in turn supported the conclusions. The Judge complimented the Board and Judge Kenneth Wilson in stating that the decision was well-written, thoughtful and carefully prepared.

Mediation Statistics

Mediation Phone Calls Received **1,266**

Mediation Request Forms
Sent to Consumers **303**

Cases Filed **134**

July 2004 through September 2004

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



Jeannette Wilson

NEW STAFF MEMBER JEANNETTE WILSON

Upon the lifting of the hiring freeze on July 1, 2004, the Board hired a new Consumer Mediation Representative for its very busy and understaffed Consumer Program. Jeannette Wilson is a first year graduate student at California State University at Sacramento and will work on a part-time basis. Ms. Wilson was quick to catch on to the Mediation Program and was fielding calls on her own after only two weeks of training. The Board is extremely happy to have her as one of the staff.

CONSUMER MEDIATION SPOTLIGHT

The Board is pleased to spotlight the recent mediation accomplishments of our newest mediation services representative, Jeannette Wilson. She has already successfully resolved a number of cases within her first two months of working at the New Motor Vehicle Board, and was especially pleased with the outcome of a Kawasaki motorcycle case.

On August 20, 2004, a consumer submitted a mediation request to the New Motor Vehicle Board asking for help with a 2003 Kawasaki Vulcan 1600cc motorcycle. Immediately after purchasing her Kawasaki motorcycle, the consumer noticed a pinging noise coming from the

engine. The dealership suggested that the consumer try running a higher-octane gasoline in the motorcycle or to try shifting the motorcycle at a higher rpm to alleviate the noise, but these remedies did not work. The consumer and her husband continued to bring their motorcycle in to the dealership at least once or twice a month over a 15-month period, but the motorcycle was never properly fixed. It was at this time that the consumer turned to the Board for help.

After reading over the request for mediation, Ms. Wilson immediately sent a letter, along with a copy of the consumer's complaint, to the dealership and to Kawasaki notifying them that the Board was going to mediate the complaint. On September 9th, 2004, the manufacturer responded to the letter stating that, although they felt that the pinging noise was a common characteristic that would not result in any mechanical failure, they would agree to perform additional diagnostic tests. A few days later, a different response from the dealership arrived claiming that they had done all they could to satisfy the consumer and it was now out of their hands.

Unfortunately, the conflicting responses from the manufacturer and the dealership so incensed the consumer, that she and her husband refused to bring the motorcycle back to the dealership for the diagnostic tests. They, instead, had planned to start a campaign against the dealership by putting a sign on the back of their motorcycle letting everyone know that the dealership had treated them badly. Ms. Wilson let the consumer know that she understood her frustration, and that this might be a drastic response to a situation that would be better resolved through mediation. Ms. Wilson urged her to allow the dealership to inspect the motorcycle one more time.

On September 17th, 2004, Ms. Wilson received a letter from the dealership indicating that the consumer had brought in her motorcycle and traded it for another model. The letter stated that the "customer is now satisfied and happy with the new motorcycle." Ms. Wilson called the consumer and found that she and her husband were, in fact, very happy with the outcome of this situation. Although they had lost faith with the dealership, she and her husband had decided to follow Ms. Wilson's recommendation and take the motorcycle back to the dealership for a final inspection. They were surprised and relieved to find that the dealership finally took their complaint seriously. The consumer thanked Ms. Wilson and the Board for their help and our newest mediation representative was happy with her first successfully resolved case.

BOARD TO HOLD SPECIAL MEETING ON DIVERSITY

The Board recently received correspondence from Assembly Member Marco Antonio Firebaugh that commented on California's new car dealer demographics not reflecting the State's population in terms of ethnicity and gender. Assembly Member Firebaugh, who is the Chair of the Latino Legislative Caucus, along with Assembly Member Judy Chu, Chair of the Asian Pacific Islander Legislative Caucus, suggested that the New Motor Vehicle Board invite a group of major vehicle manufacturers to appear before the Board at its November 4, 2004, meeting to discuss this issue. It was suggested that the invitation ask the manufacturers to summarize their current policy and plans and the status of their efforts to increase diversity among new vehicle franchisees.

The Board met on September 30, 2004, for a General Meeting in Ontario with this topic as an agenda item to be considered. The Board unanimously concurred with the suggestion and has scheduled a Special Meeting immediately following the General Meeting in San Francisco on November 4, 2004, to hear this matter. Letters of invitation that specifically address the issues of discussion expected from them have been prepared for the manufacturers and associations listed below. The discussion topics were suggested by Assemblyman Firebaugh.

- American International Automobile Dealers Association (AIADA) - Representing international nameplate dealers, AIADA has been requested to discuss current diversity activities designed to increase dealer diversity.
- DaimlerChrysler Motors Company LLC - DaimlerChrysler has been requested to discuss their plans to improve profitability of their ethnic minority dealers.
- Ford Motor Company - Although Ford has been a diversity pioneer, the corporation has sustained an approximate 50% attrition rate since its inception and has terminated approximately 50 ethnic minority dealers. Ford has been requested to discuss corporate plans to improve quality and profitability among new vehicle franchisees.
- General Motors Corporation - As the first automotive manufacturer to establish a dealer development program, General Motors has been requested to discuss successful

strategies and pitfalls in building dealer diversity.

- American Honda Motor Company - As a strong partner with the National Association of Minority Automobile Dealers, Honda will be given the opportunity to discuss their perceptions of the benefits generated by this partnership.
- National Automobile Dealers Association (NADA) - Request NADA to discuss diversity efforts.
- National Association of Minority Automobile Dealers (NAMAD) - Representing ethnic minority dealers, NAMAD can provide background information and suggested methodologies to increase dealer diversity.
- Toyota Motor Sales, U.S.A., Inc. - As the fastest growing automotive manufacturer, Toyota has been challenged with developing a more formalized dealer development program. Toyota will also discuss its current practice of awarding customer convenience center franchises to existing dealers.

Why not visit us

on the web...



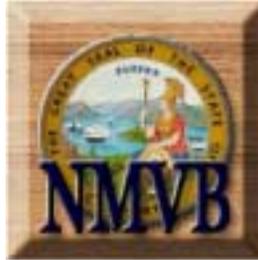
...at www.nmvb.ca.gov

REVENUE

NEW MOTOR VEHICLE DEALER Annual Fee:	\$ 71,566.00
NEW MOTOR VEHICLE BOARD Manufacturer/Distributor Annual fee:	702,309.70
NEW MOTOR VEHICLE BOARD Filing fees:	1,200.00
Document Requests:	0
Arbitration Cert. Program Reimbursement:	3,937.84
July & August 2004	\$ 783,889.60

UPCOMING BOARD MEETINGS

General Board Meeting
 *November 4, 2004
 Burlingame



Special Board Meeting
 *December 16, 2004
 Sacramento

Special Board Meeting
 *November 4, 2004
 Burlingame

(*Board Meeting dates and locations 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.)



Dana Lolmaugh

NMVB EMPLOYEE RECOGNITION AWARD

The Board recognizes at least one member of the staff for outstanding performance twice each year. At its September 30, 2004, General meeting, the Board considered and unanimously approved the Development Committee's recommendation that Dana Lolmaugh receive the Employee Recognition Award for a job well done.

Mr. Lolmaugh is a Senior Legal Typist in the Board's Legal Program. He is being recognized for his high energy and positive attitude, which makes working with him a pleasure. He goes out of his way to respond to constituent requests, comes to work early and volunteers to stay late if needed and rarely misses work. His outstanding performance in preparing legal orders, document requests, maintaining case files and handling the Board's busy phone lines is to be commended. Mr. Lolmaugh has contributed greatly to the Board's operations. Congratulations, Dana!

OCTOBER IS CSECC KICKOFF MONTH

The Board will officially begin its kickoff of the California State Employee Charitable Campaign ("CSECC"), the State's version of the United Way campaign, on October 13, 2004. Nicole Angulo is this year's Chair, with Heather Collins as Co-Chair and Susanna Badalyan-Deus as an assistant.

Because of the small number of Board employees, fundraisers for CSECC generally start mid-year. There was one event in June, two in July, two in August and one in September, with themes such as ice cream sundae day, taco sale and International Food day, just to name a few.

The January 2005, In-Site will provide an update of all events and report on the success of the campaign.



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