

1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-2080
Contact Person: Kathy Tomono
www.nmvb.ca.gov

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on January 26, 2005, at the Hilton Los Angeles Airport Hotel, La Jolla B Room, 5711 West Century Boulevard Los Angeles, California.

2. **ROLL CALL**

Glenn E. Stevens, President of the Board, called the General meeting to order at 9:18 a.m.

Present:	Robert V. Branzuela	Tom Novi
	Robert T. (Tom) Flesh	Executive Director
	Haig Papaian (arrived 9:22 a.m.)	Howard Weinberg
	Sushil K. Sharma	General Counsel
	Alan J. Skobin	Robin Parker
	Glenn E. Stevens	Senior Staff Counsel
	David W. Wilson	

Absent: David C. Lizárraga
Andy Robles

3. **APPROVAL OF THE MINUTES FROM THE NOVEMBER 4, 2004, GENERAL MEETING, AND NOVEMBER 4, 2004, AND DECEMBER 16, 2004, SPECIAL MEETINGS**

Mr. Flesh moved to adopt the November 4, 2004, General Board meeting minutes. Mr. Wilson seconded the motion. Mr. Sharma did not vote because he was unable to attend the meeting. The motion carried unanimously.

Mr. Flesh moved to adopt the November 4, 2004, Special Board meeting minutes. Mr. Wilson seconded the motion. The motion carried unanimously.

Mr. Wilson moved to adopt the December 16, 2004, Special Board meeting minutes. Mr. Sharma seconded the motion. The motion carried unanimously.

4. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CONSIDERATION OF PROPOSED DECISION AFTER REMAND

S & C MOTORS, INC., dba S & C KIA v. KIA MOTORS AMERICA, INC.
Protest No. PR-1894-04

Consideration of the Administrative Law Judge's Proposed Decision After Remand, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Protestant. Maurice Sanchez, Esq., of Adorno, Yoss, Alvarado & Smith represented Respondent.

The Public members of the Board deliberated in closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Decision After Remand. Mr. Papaian seconded the motion. The motion carried unanimously.

5. **OPEN SESSION**

The Public members returned to Open Session and Mr. Stevens announced the decision in Agenda item 4.

6. **REPORT ON THE SUCCESSFUL COMPLETION OF A NUMBER OF ADMINISTRATIVE PROJECTS BY THE BOARD STAFF - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning the successful completion of a number of administrative projects by the Board staff. Mr. Novi reported that the staff developed, completed, and monitored the projects.

7. **STATUS REPORT ON VARIOUS ADMINISTRATIVE TOPICS RAISED BY THE BOARD INCLUDING PROCESSING CHECKS ELECTRONICALLY, A SPANISH LANGUAGE WEBSITE, DMV TRAINING FOR BOARD STAFF, AND THE VOLUME AND TYPE OF MEDIATION PHONE CALLS - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning a number of administrative topics raised by the Board that included processing checks electronically, a Spanish language website, DMV training for Board staff, and the volume and type of mediation phone calls received. Mr. Novi reported that the staff was still working to determine the need and cost of a Spanish language website and would report back to the Board at a future meeting.

8. **CONSIDERATION OF 2005 REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Informational Guide for Manufacturers and Distributors*. Ms. Parker reported that the Guide was revised to incorporate the licensing by the Department of Motor Vehicles of all-terrain vehicle dealers and manufacturers. The changes this year were minimal and contained on page 1 of the Guide. Mr. Wilson moved to adopt the revised Guide. Mr. Flesh seconded the motion. The motion carried unanimously.

9. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning the annual review of Board adopted policies. The new policies that were approved in 2004 are as follows:

- The gift amount that Board members may accept from any single source was increased to \$360.00.
- The Board adopted the use of a Mediation Checklist for Recreational Vehicle Jurisdiction when dealing with complaints from the public regarding RVs.
- Cara Peralta's authority as a Settlement Conference Administrative Law Judge was extended to include nonsubstantive procedural matters such as ordering discovery and hearing dates.
- Anthony Skrocki was designated the Law and Motion Administrative Law Judge responsible for hearing all pre-hearing and discovery motions.
- The Board ALJs who preside over merits hearings will be assigned on a rotational basis at the Hearing Readiness Conference utilizing an assignment log.
- The policies concerning the Board's exercise of jurisdiction and collection of the annual Board fee and Arbitration Certification Program fee for all-terrain vehicle dealers and manufacturers were mooted in light of legislation effective January 1, 2005, that licenses these entities by the Department of Motor Vehicles.
- The Employee Recognition Award program was renamed the Solon C. Soteras Employee Recognition Award.
- The Mission and Vision statements were revised to ensure that they accurately reflect the Board's current responsibilities.

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

- a. **CONSIDERATION OF PROPOSED REGULATION THAT DEFINES “PROTESTANT” (13 CCR § 550(K))**
- b. **CONSIDERATION OF PROPOSED AMENDMENTS TO REGULATIONS THAT REFLECT MANDATORY SETTLEMENT CONFERENCE STATEMENTS ARE REQUIRED PRIOR TO A MANDATORY SETTLEMENT CONFERENCE (13 CCR § 551.11)**
- c. **CONSIDERATION OF PROPOSED AMENDMENTS TO REGULATIONS THAT DELETE OBSOLETE REFERENCES TO THE TIMING OF ASSIGNING ADMINISTRATIVE LAW JUDGES IN THE EVENT OF A PEREMPTORY CHALLENGE (13 CCR § 551.12)**
- d. **CONSIDERATION OF PROPOSED NONSUBSTANTIVE AMENDMENTS TO REGULATIONS THAT DELETE REFERENCES TO “HIS” AND INSERTS “ITS” (13 CCR §§ 550 ET SEQ.)**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning proposed regulatory amendments. Ms. Parker reported that the proposed amendments implement minor changes that cleanup and clarify existing regulations. As outlined in the memorandum, those changes are as follows:

- Section 550(k) is being added to define “protestant.” There is no definition of protestant in the regulations; however, both petitioner and respondent are defined. This amendment would provide the missing definition.
- Section 551.11 is being amended to reflect that Mandatory Settlement Conference Statements are required prior to the commencement of a Mandatory Settlement Conference (MSC). Currently, the Board issued Notice of Mandatory Settlement Conference requests the submission of a settlement conference statement five business days prior to the actual MSC. The amendment is being proposed to formalize this practice in a regulation.
- Section 551.12 is being amended to delete obsolete references to the timing of assigning Administrative Law Judges in the event of a peremptory challenge. Due to enhancements in the assigning of ALJs, this amendment is necessary to delete obsolete language in subdivision (e). Subdivision (h) is being amended to reflect that ALJs are assigned 30 days in advance of hearing.
- Sections 550, et seq. are being amended to delete references to “his” and insert “its” where appropriate. These amendments are being proposed to make the Board’s regulations gender neutral.

Mr. Wilson moved to adopt the proposed regulatory amendments. Mr. Sharma seconded the motion. The motion carried unanimously.

11. **CONSIDERATION OF THE 2005 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and 2005 Rulemaking Calendar from Tom Novi and Robin Parker. Ms. Parker reported that once the Rulemaking Calendar was approved, it would be forwarded to Business, Transportation & Housing Agency, and ultimately published in the California Regulatory Notice Register. Mr. Flesh moved to adopt the 2005 Rulemaking Calendar. Mr. Wilson seconded the motion. The motion carried unanimously.

12. **SELECTION OF BOARD MEETING DATES FOR 2005**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning upcoming Board meeting dates. The members went off the record for this discussion. Mr. Stevens went on the record to announce the following schedule:

- March 8, 2005, Sacramento - General Meeting and CMCD A Dealer Day
- April 20, 2005, Indian Wells - Special Meeting (4th Annual Industry Roundtable) and CMCD A State Convention
- April 21, 2005, Indian Wells - General Meeting and CMCD A State Convention
- July 7, 2005, Sacramento – General Meeting
- September 22, 2005, San Francisco – General Meeting
- November 17, 2005, Los Angeles – General Meeting
- December 19, 2005, Sacramento – Special Meeting

13. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- g. Other.

Mr. Novi 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. Novi indicated that the Board should be able to accept credit card payments by the first of February.

The members were also provided with a copy of the Executive Director's Report. Ms. Parker indicated that two protests were dismissed and a 13-day trial on a termination case started the day of the meeting. Mr. Weinberg provided an update on the judicial matters. He indicated that an Order to Show Cause might be issued in the *Camarilla* case.

14. **2005 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Mr. Stevens moved to nominate David Wilson as President. Mr. Papaian seconded the motion. Mr. Stevens moved to close the nominations, with Mr. Flesh seconding the motion. The motions carried unanimously.

Mr. Stevens moved to nominate Alan Skobin as Vice President. Mr. Flesh seconded the motion. Mr. Wilson moved to close the nominations, with Messrs. Sharma and Papaian seconding the motion. The motions carried unanimously.

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

The members were provided with a memorandum from Tom Novi and Robin Parker concerning Committee assignments. Mr. Stevens went off the record so Mr. Wilson, the incoming president, could appoint members to the various committees. Mr. Stevens went back on the record and Mr. Wilson announced the following appointments:

The Executive Committee

Chair: David Wilson

Member: Alan Skobin

The Administration Committee

Chair: Robert Branzuela

Member: Glenn Stevens

The Board Development Committee

Chair: Haig Papaian

Member: Tom Flesh

The Fiscal Committee

Chair: Sushil Sharma

Member: Andy Robles

The Government and Industry Affairs Committee

Chair: Tom Flesh

Member: Glenn Stevens

The Policy and Procedure Committee

Chair: Andy Robles

Member: David Lizárraga

16. **CLOSED EXECUTIVE SESSION**

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

a. **ORAL INTERVIEWS OF THE ADMINISTRATIVE LAW JUDGE CANDIDATES, BY ALL MEMBERS OF THE BOARD - ADMINISTRATION COMMITTEE**

The Public and Dealer members of the Board conducted oral interviews of the Administrative Law Judge candidates.

b. **CONSIDERATION OF THE ADMINISTRATIVE LAW JUDGE NOMINEES, BY ALL MEMBERS OF THE BOARD - ADMINISTRATION COMMITTEE**

The Public and Dealer members of the Board considered the administrative law judge nominees. Mr. Sharma moved to offer positions to all three candidates conditionally upon the completion of a background check. Mr. Branzuela seconded the motion. The motion carried unanimously. The Executive Committee will make the final hiring decision.

c. **CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

The Public and Dealer members of the Board conducted the annual performance review for the Executive Director.

17. **OPEN SESSION**

The members of the Board returned to open session. Mr. Stevens announced the Decision in Agenda item 16(b).

Mr. Wilson, as incoming Board President, indicated that Glenn Stevens, past Board President, would preside over matters in which Dealer members are precluded.

18. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 11:44 a.m.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____

David W. Wilson
President
New Motor Vehicle Board