STATE OF CALIFORNIA

MEMO

To : EXECUTIVE COMMITTEE
GLENN STEVENS, CHAIR
RAMON ALVAREZ C., MEMBER

Date: February 22, 2016

From : WILLIAM G. BRENNAN
ROBIN PARKER

Subject: UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY, AND THE RESULTANT CORRECTIVE ACTION PLAN

The legal staff[1] annually reviews the Board's compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency[2] ("Agency") and the resulting Corrective Action Plan. At the May 26, 2011, General Meeting, the members made this an exception report. Most recently the members reviewed the Audit at the July 15, 2014, General Meeting. Since there have been several updates, this matter is being agendized for informational purposes at the March 16, 2016, General meeting.

The enclosed updated matrix provides an overview of each audit finding, the chronology of each step taken toward Board compliance, and the Department of Motor Vehicles ("DMV") responses thereto. It further encompasses the Corrective Action Plan Committee's proposal that was adopted by the Board at its December 8, 1998, General meeting, and the Audit Review Committee's recommendations concerning restructuring the senior management positions which were adopted at the May 25, 2000, General meeting.

The following provides a brief summary of the Audit Findings and updates the corrective action taken by the Board:

1. The Board does not have statutory authority or budgeted resources to establish a "Lemon Law" consumer protection legal services program.

The Board has continued to enhance and improve the services offered by its Consumer Mediation Services Program without exceeding the guidelines established by the Corrective Action Plan Committee. It improved the complaint form which has been renamed the Mediation Request Form, which is available on the Board's website or by

[1] At the November 20, 2008, General Meeting, the Audit Compliance Officer duties were assigned to the General Counsel, however, given the General Counsel's resignation, Robin Parker assumed this duty.
[2] Effective July 1, 2013, California State Transportation Agency superseded Business, Transportation & Housing Agency.

calling the Board's offices. The staff will continue informal mediation and direct consumers to the Lemon-Aid pamphlet on the Department of Consumer Affairs website. Specific "Lemon Law" complaints are referred to the Department of Consumer Affairs. The Board adopted the use of a Mediation Checklist for Recreational Vehicle Jurisdiction when dealing with complaints from the public regarding RVs. The members are provided an annual update on the Consumer Mediation Program at a noticed meeting in January.

2. Duty Statements of the principal administrative officials are not in conformance with the provisions of the "new" Administrative Procedure Act.

At the May 25, 2000, General meeting, the members adopted the Corrective Action Plan Committee's recommendation that the Board's organization structure and duties of the Executive Secretary and Assistant Executive Secretary be redefined to eliminate all duties related to hearing Board cases. The Executive Secretary position was recast as the Board's Executive Director and Tom Novi was appointed to this position on December 12, 2000, until he retired in 2005. The Executive Director is responsible for all administrative and statutory functions of the Board. The Assistant Executive Secretary duties were changed to that of General Counsel, eliminating all involvement in hearing specific cases. Howard Weinberg was appointed to the position of General Counsel on January 8, 2002. Mr. Weinberg resigned in February 2010. The Office of the Attorney General is serving in this capacity on an as needed basis. On September 8, 2005, the Board appointed William G. Brennan to the position of Executive Director.

In 2003, the Board sponsored legislation (Assembly Bill 1718, Chaptered September 22, 2003) that changed references to "Executive Director" from "secretary" to reflect the current organizational structure and duties of the Board staff and administration. Vehicle Code section 3014 was amended to remove any reference to Assistant Executive Secretary and changed the Executive Director position from a civil service to an exempt position. These statutes were effective on January 1, 2004. The Board promulgated regulations to reflect these changes that were effective on January 1, 2004. The Board also promulgated a regulation that deleted the authority of the Executive Director to conduct protest hearings (operative April 23, 2006).

3. The Board may not provide all due process protections of the "new" Administrative Procedure Act.

On September 23, 1998, Tom Flesh, Fritz Hitchcock, and Robin Parker met with then DMV Director, Sally Reed, Marilyn Schaff, then Chief Counsel, and Madeline Rule, then Assistant Chief Counsel, concerning the Board's compliance with the Administrative Procedure Act ("APA"). Based upon Departmental input, the Corrective Action Plan Committee determined that the Board was in compliance with the "new" APA. The legal staff annually reviews the legislative changes to the APA to ensure Board procedures are in compliance, and provides a staff analysis to the Board Members and the Administrative Law Judges. This is scheduled for the March 16, 2016, General meeting.

4. The Board staff did not seek prior approval for filing amicus curiae briefs with the courts.

A formal policy pertaining to the filing of amicus curiae briefs was developed and approved at the July 12, 1996, General meeting. In essence, the policy provides that the Board will not file any amicus curiae briefs without the consent of Agency. As a prerequisite to requesting the consent of Agency,[3] the Board must (a) discuss and approve the consent request at a noticed public meeting, or (b) in the case where time constraints do not permit the foregoing, the President of the Board may authorize the request for consent. If the Board decides at a subsequent meeting not to file the amicus brief, the request for consent will be withdrawn. On March 9, 2011, the Board filed an amicus curiae letter in support of Yamaha's petition for review in the California Supreme Court in *Powerhouse Motorsports Group, Inc. and Timothy L. Pilg v. Yamaha Motor Corp, Inc.; Powerhouse Motorsports, Petitioner v. New Motor Vehicle Board, Respondent; Yamaha Motor Corp, Inc., Real Party in Interest.* In compliance with this policy, the necessary approvals from the Board Vice President, the Public Members (since this matter involves a dispute between a franchisee and franchisor), Agency, and the Governor's Office were received. It was reported to the full Board at its March 29, 2011, General Meeting.

5. The New Motor Vehicle Board does not comply with established policy and law pertaining to legal representation.

On March 18, 1997, the Board revised its Board Policy Regarding Representation in Court Actions. The Board has an established policy whereby all pending court matters are reviewed by the Board President or a Board Member designated by the President, for the determination of whether an important State interest/issue is implicated and whether it will participate in the litigation via the Attorney General's Office, or with the consent of the Attorney General, by the Board's own counsel.

Discussion of a Board Designee by the President consistent with this policy was considered at the June 26, 2008, General Meeting. As a result the Board decided that it is only those matters in which the Dealer Member would be disqualified from having heard in the first place that are being delegated. Further, if a Dealer Member is Board President, and a Public Member is Vice President, then the delegation should automatically go to the Vice President.

Unless an important State interest/issue is implicated, the Board notifies the parties of its policy not to appear in mandamus actions, and further requests that the parties notify the court and keep it on the proof of service list. If a court requests the Board's participation, the Board would not file any pleadings in the court action which would obviate the necessity of involvement by the Office of the Attorney General. If an important State issue is raised, prior to the Board participation, the matter would be presented to the full Board for review at a regularly scheduled Board Meeting. In the absence of sufficient time for consideration at a noticed Board Meeting, the President, or

[3] Agency is not the final decision maker for the filing of amicus briefs, rather after Agency review, the filing such briefs must be approved by the Governor's Office of Legal Affairs.

a Board member designated by the President, can authorize the filing of appropriate pleadings. If this occurs, a copy of the petition and supporting documents are mailed to each member with an indication that the President, or his designee, has authorized Board participation. Any member who objects to Board participation would then immediately notify the staff and the matter would be scheduled for discussion at either the next General Meeting or, if three Public Members request, then at a Special Board Meeting.

The above policy would apply to ex parte hearings for a stay of the Board's order, as well as law and motion proceedings in which a stay order is sought. All judicial matters are monitored by the Board legal staff whether it is represented or not, and the status of each case is reported on the Executive Director's Report at each General Board meeting.

6. The amount of time devoted to hearing cases may be insufficient to allow for full consideration of all issues.

The Board continues to place a high level of importance on making materials available to Board members and allowing sufficient time to discuss issues at noticed meetings. The staff provides a website link to the Board meeting materials to all members and upon request mails a binder that is tabbed according to the agenda at least 10 days in advance of an upcoming meeting. In general, committee memorandums are disseminated to the appropriate members and blind courtesy copied to the Board President in advance of the materials mailing. Feedback is solicited from the committee members prior to finalizing the memo for dissemination to the full Board.

7. The Board should adopt parliamentary procedures.

At its March 18, 1997, General Meeting, the members adopted Board Parliamentary Procedures. On October 14, 1998, Robin Parker met with Madeline Rule, then Assistant Chief Counsel, DMV. Ms. Rule indicated that the Parliamentary Rules overlapped with other statutes and dealt primarily with internal Board procedures. The Parliamentary Rules did not require to be promulgated as rulemaking. At the January 8, 2003, General meeting, the Parliamentary Procedures were modified to reflect changes in the Board's organizational structure. At the May 26, 2011, General Meeting, the Parliamentary Procedures were amended to accurately reflect the current practice concerning debate and voting. In the event the Parliamentary Rules require further modification, this would be agendized for all Board members to consider.

8. Board may not always be in compliance with the Bagley-Keene Open Meeting Act.

In 1996, the auditors found during discussions with Board members that some were unfamiliar with the technical requirements of the Bagley-Keene Open Meeting Act. For instance, some members misinterpreted the prohibitions against "serial meetings" and other requirements controlling informal communications between Board members. The Board's General Counsel has been designated the Bagley-Keene Open Meeting Act Compliance Officer and is responsible for ensuring compliance with the Act in addition to

providing guidance, legal opinion, and education to the members and staff. The Board members have all been provided with educational materials pertaining to the Bagley-Keene Open Meeting Act, including the website reference for A Handy Guide to the Bagley-Keene Open Meeting Act of 2004 published by the Attorney General's office. The members are provided an annual update of the Open Meeting Act and a brief staff analysis. Continuous education on this topic is provided to the members and has been a noticed agenda item on many occasions. This is scheduled for the March 16, 2016, General meeting.

9. The Department and the Board should develop an issue memo for reorganization.

After the Corrective Action Plan Committee reviewed the option of referring all matters to the Office of Administrative Hearings, it determined that the present system as modified with several proposed recommendations would be more efficient, cost effective, and would afford the parties an effective means to resolve disputes. At its May 25, 2000, General meeting, the members adopted the Audit Review Committee's recommendation that Board cases continue to be heard by the Board's Administrative Law Judges. All of the Committee's recommendations as adopted by the Board have been implemented. See Audit Finding 2 for a further discussion concerning the Board's reorganization of its senior management positions.

10. The Board should consider referring its consumer inquiries to departments with primary jurisdiction and adequate resources.

The Board, in compliance with this Audit Finding, does refer all consumer inquiries to departments with primary jurisdiction. For example, "Lemon Law" complaints are referred to the Department of Consumer Affairs, complaints concerning used vehicle dealers are referred to DMV Investigations, and complaints concerning auto repair facilities that are not also new motor vehicle dealers are referred to the Bureau of Automotive Repair. However, staff in the Consumer Mediation Services Program processes consumers' requests for mediation of disputes with new vehicle dealers and manufacturers. In May 2011, an inter-agency memo was sent to agencies the Board refers to and those that refer to the Board to reinforce the Board's jurisdiction and services offered by the Consumer Mediation Program. In March 2014, letters similar to those sent out in 2011 were again mailed to government and private agencies to reinforce the Board's jurisdiction and services offered by its Mediation Program.

11. The Board does not have a new member introduction program.

At its July 18, 2000, General meeting, the members adopted a report from the Board Development Committee which recommended new member orientation and a Board member education program for new and existing members. The new member orientation program is used for all new Board members. Board member education is scheduled for most, if not all, Board meetings. Annually, a schedule of educational speakers and industry related tours are developed and implemented. Most recently, this occurred at the November 12, 2015, General Meeting.

12. The Board should review its case management quality assurance system.

In mid 2002, the Board installed a relational database for the Legal Division. Cases are managed by the Board counsel through a calendaring system. Efforts to improve the management of Board cases via software are regularly reviewed internally and tested for compatibility. DMV monitors all acquisitions in this regard and also provides testing services.

The Policy and Procedure Committee, along with input from legal counsel for dealers and manufacturers, also recommended the following revisions to the Board case management procedures which were adopted by the members at the April 27, 2001, General meeting:

- In an effort to ensure the expeditious management of protests and petitions, staff will refer, as necessary, a specific matter to the appropriate Administrative Law Judge ("ALJ") for review, and/or staff will report the status of the case to the Board as an agenda item at a scheduled Board meeting to allow for Board action and the opportunity for the parties to appear and comment.

- In an effort to ensure that protest matters proceed to hearing within the statutorily mandated time frame, the Board staff is directed to adhere to the mandates of Vehicle Code section 3066, which provides that hearings may not be postponed beyond 90 days from the Board's original order setting the hearing date, and Title 13 of the California Code of Regulations section 592 which provides that hearings may not be continued within 10 days of the date for hearing except in extreme emergencies. Any request for a continuance that would violate the above-referenced sections or when it appears that it would be beneficial to the expeditious management of the case will be referred to the assigned "merits" ALJ for review. Petition matters that do not proceed to hearing within a reasonable period of time will also be referred to the assigned "merits" ALJ for review.

The above revisions did not require statutory or regulatory changes.

In March 2002, the Board adopted a proposal to undertake a comprehensive review and analysis of its enabling statutes and regulations. Input was solicited from the Board Administrative Law Judges and legal staff, attorneys that regularly practice before the Board, industry personnel, and Board members. As a result of the review, the following changes were approved at the September 10, 2002, and October 29, 2002, General meetings:

- Promulgate a regulation that gives the Board explicit authority to dismiss protests.

- Promulgate a regulation that allows the Board to waive the annual fee for a new motor vehicle distributor or manufacturer who either does not sell vehicles in California or does not have an independent dealership in California.

- Promulgate a regulation that formalizes the procedure for litigants to make motions for change in venue and provides for Board recovery of travel and hearing facilities costs when the party requesting the change cancels the proceeding at the new venue.

- Sponsor non-substantive legislation that changes references to “executive director” from “secretary” and to “administrative law judge” from “hearing officer” to reflect the current organizational structure and duties of the Board staff and administration. In January 2004, Vehicle Code section 3014 was amended to remove any reference to Assistant Executive Secretary and changed the Executive Director position from a civil service to an exempt position. Additionally, Vehicle Code section 3066 was amended to reference Government Code section 11511.5 that gives the Board authority to conduct law and motion practice as part of the pre-hearing conference.

- Promulgate regulations which change references to “executive director” from “secretary” and to “administrative law judge” from “hearing officer” to reflect the current organizational structure and duties of the Board staff and administration. The regulations were effective on December 31, 2003.

As noted, all of the legislative and regulatory changes have been approved and are effective. The Board’s internal procedures, policies, and publications have been updated to incorporate the above changes.

13. The Board has not adopted an Administrative Enforcement Manual.

A Guide to the New Motor Vehicle Board was published in July 1997 and revised in April 1999. The Guide functions like a practice manual for attorneys appearing before the Board. It contains references to the Administrative Procedure Act, as well as, the applicable Vehicle Code and regulatory sections. Annually, the Board revises its Guide to incorporate all statutory and regulatory changes. The Guide was recently updated and approved by the Board at its February 10, 2016, General Meeting.

14. The Board should ensure that all required transaction reports are filed with the Agency.

The DMV has taken steps to ensure that the Board is provided all necessary information to file the necessary transaction reports. Senior Staff Counsel is in contact with Agency counsel concerning the Board’s court cases. Agency is also provided with a Week Ahead Report containing significant issues that may be of interest to the administration.

15. Board delegations are not formalized.

The Budget and Finance Committee presented recommendations concerning Board delegations which were adopted at the March 18, 1997, General meeting. The Committee considered all of the duties of the Board and staff, and recognized those that, by statute or regulation, are retained by the Board or are already delegated to

designated individuals. In addition, the Committee report recommended which administrative duties should be delegated to staff and the level of Board oversight over these activities. The recommendations also contained an indication as to transaction type and dollar limit for procurement of goods and services, where applicable. The Board's internal procedures are consistent with the policy developed by the Budget and Finance Committee. At the May 26, 2011, General Meeting the annual review of these delegations was made an exception report. The Board staff continues to review these delegations each year. Revised delegations were adopted at the July 15, 2014, and February 10, 2016, General Meetings to implement legislation (Senate Bill 155, and Assembly Bills 759 and 1178, respectively).

16. The Board should consider distribution of assignments.

At the July 1996, General meeting, the Judicial Policies and Procedures, and Budget and Finance Committees were established. At its May 25, 2000, General meeting, the members adopted the Audit Review Committee's proposal to consolidate the existing 10 advisory committees into the following committees: (1) Administration Committee; (2) Policy and Procedure Committee; (3) Board Development Committee; and, (4) Executive Committee. At the September 12, 2000, General meeting, the members adopted the Executive Committee's recommendation of splitting off the budget and finance functions currently assigned to the Administration Committee and created a Fiscal Committee. At the December 5, 2002, Special meeting, the Government and Industry Affairs Committee was created. At the April 21, 2005, General meeting, a Search Committee was created on an ad hoc basis for purposes of filling the Executive Director vacancy upon Tom Novi's retirement. Annually, the Board President at the first General meeting of the year reviews these committee designations after the election of officers. Most recently, these committee designations were revised at the February 10, 2016, General meeting.

17. The Board should adopt an audit resolution policy.

The Board adopted an audit resolution policy and submitted a Corrective Action Plan ("CAP") in response to the audit. Board members and staff were actively involved in the development of the CAP.

18. The New Motor Vehicle Board does not have an adequate audit trail to account for all fees paid to the Board.

The Budget and Finance Committee adopted a policy that addresses this finding at its November 1996, Committee meeting. The Board then adopted the Corrective Action Plan Report in which this policy was encompassed at its February 12, 1997, General meeting. The Board's internal procedures are consistent with the policy developed by the Budget and Finance Committee.

19. Travel Expenses for out of state trips were not approved by the Board.

At the July 12, 1996, General meeting, the Board adopted a policy to ensure that Board

members are fully apprised of and actually approve the budgetary allotment for and participation in any out-of-state travel. This topic is agendized annually for Board member consideration, and was recently affirmed and ratified at the June 17, 2015, General meeting. If travel restrictions are eased for the current fiscal year, staff submits the requests to the Department of Motor Vehicles, the California State Transportation Agency, the Department of Finance and the Governor's office for final approval. Once final administration approval is received, the Executive Committee authorizes which individuals will actually attend. This final approval is agendized for the first half of the fiscal year at a regularly scheduled Board meeting.

20. Public funds cannot be used for legal work to represent for-profit corporations where the state is not a party to the action.

The Board instituted a policy that requires the Board President and Agency approval, as necessary. See Audit Finding 4 for a discussion of the Board policy implemented for filing of amicus curiae briefs.

21. Exempt position time reporting is not in compliance with state requirements.

From 1996 to April 2000, attendance sheets were submitted for the exempt position. In May 2000, the Board agreed to loan its statutory exempt entitlement to then DMV Director, Steven Gourley, for a period of time. At the December 11, 2003, Special meeting, then DMV Director Chon Gutierrez informed the Board that it no longer needed the Board's exempt entitlement. By motion and unanimous vote, the Board's exempt entitlement is being used for the Executive Director position effective January 1, 2004. All Board staff, including the Executive Director, report their time to the DMV in compliance with State requirements.

22. The Board does not have an Information Security Officer (ISO).

At the August 20, 1996, General meeting, the Board designated then Assistant Executive Secretary, Michael Sieving, to serve as Information Security Officer. When Tom Novi was appointed to the position of Assistant Executive Secretary and ultimately the Executive Director, Mr. Novi assumed these duties. When Mr. Novi retired and Mr. Brennan was appointed, he assumed these duties.

23. Inventory tags have not been attached to state equipment.

Inventory tags have been attached to all required equipment. New equipment receives the appropriate inventory decals as prescribed. The DMV maintains the property tag numbers on an equipment inventory list.

24. The computer system needs additional physical security devices.

The Board staff has installed the required smoke detectors in the computer room, and has a plastic tarp available to cover the network server, if necessary. The smoke detectors and tarps are still operational.

24(25).[4] Virus protection procedures need improvement.

Anti virus software has been installed on the LAN server and on all PCs and laptops. The software is updated regularly by DMV's Information Systems Division (DMV/ISD).

25(26). Password protection is inadequate or not operational.

The Board's LAN servers and PCs are monitored and maintained by DMV/ISD. Passwords are required to be changed every 45 days.

26(27). Data processing system documentation could be strengthened.

Configurations of the LAN server are documented in numerous procedural manuals which are maintained by DMV/ISD. Software installation and data back up are strictly controlled.

27(28). Higher-level security access control is inadequate.

Security access to the Board's LAN server is controlled by DMV/ISD. No Board employees have access to the server. A limited number of Board employees have administrative access to the Board's PCs and laptops.

28(29). Designation of economic conflict-of-interest filing officials is incomplete.

In August 1996, the Fair Political Practices Commission (FPPC) staff advised the Board that statements of economic interests for the Assistant Executive Secretary and the Hearing Officers should be retained internally. Due to the restructuring of the Board's senior management, the Conflict of Interest Code was revised in accordance with the procedure established by the FPPC and the Office of Administrative Law. At the November 20, 2001, General meeting, the members approved the revised text of proposed revisions to the Conflict of Interest Code that incorporated suggestions from the Fair Political Practices Commission. Rulemaking implementing these changes was effective on February 17, 2002. The Conflict of Interest Code was recently updated and effective August 23, 2013.

29(30). The Board should promptly cause the investigation of suspected irregular activities.

The Board staff complies with all DMV policies concerning reporting and investigating suspected irregular activities.

[4] Due to a typographical error, the Performance Audit contained two separate audit findings numbered "Finding 24." The Board's Corrective Action Plan did not note this and numbered the findings sequentially, resulting in the numbers above enclosed in parentheses.

30(31). Board staff does not have access to written guidance on appropriate behavior.

Board staff is provided with all materials disseminated by the DMV with regard to inappropriate behavior.

31(32). The Board has not purged computer records.

The Board staff retains mediation records on the LAN for three-years. After three years, data is removed from the LAN and stored on CD ROM. With regards to the Legal Division, computer records are archived to a CD ROM on an as needed basis.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 324-6197 or Robin at (916) 323-1536.

Enclosure

Audit Finding**: 1**	The Board does not have statutory authority or budgeted resources to establish a "Lemon Law" consumer protection legal services program.

Audit Recommendation	Settlement and arbitration services to individual Lemon Law related consumers is potentially a very large program. If the Board's plans include expanding into this program area, we recommend that the Board develop its workload indicators and prepare appropriate budget and policy documents to assure that the proposed activities are in coordination with policies of the Agency, the DMV, which has jurisdiction over licensing of dealers, and Department of Consumer Affairs, which has jurisdiction over certifying the manufacturer's arbitration program.

NMVB Response	The Board concurs. The Board has not in the past, and does not now have, any intention or interest in regard to establishing a "Lemon Law" consumer protection legal services program. However, the Board provides voluntary consumer mediation service for the benefit of any consumer who has a dispute with a new motor vehicle dealer, manufacturer, or distributor. This mediation service is not related specifically to Lemon Law matters. This service, for which there is no charge to the parties, is provided in order to comply with the legislative mandate of California Vehicle Code section 3050(c)(2).

NOTE: The Board has continued to enhance and improve the services offered by its Consumer Mediation Services Program without exceeding the guidelines established by the Corrective Action Plan Committee. It improved the complaint form which has been renamed the Mediation Request Form, which is available on the Board's website or by calling the Board's offices. The staff will continue informal mediation and direct consumers to the Lemon-Aid pamphlet on the Department of Consumer Affairs website. Specific "Lemon Law" complaints are referred to the Department of Consumer Affairs. The Board adopted the use of a Mediation Checklist for Recreational Vehicle Jurisdiction when dealing with complaints from the public regarding RVs. The members are provided an annual update on the Consumer Mediation Program at a noticed meeting in January.

DMV's Response	All programs will be reviewed to assure proper policy and budgetary approval.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	The Board does not plan to expand its informal mediation program into a "Lemon Law" program.

DMV's Response to CAP	The response indicates an intent to continue the Consumer Newsletter, which provides information on the Lemon Law and advises the consumer as to the existence of the Board and its informal mediation program. The Newsletter and the mediation program appear to be beyond any authority conferred on the Board by statute and should be discontinued. The Board serves as a referral function.

Date Completed	February 1997

CAP Committee Proposal	The Board staff will continue informal mediation and will send out the Lemon-Aid pamphlet prepared by the Department of Consumer Affairs. It will not advertise its services nor will any type of consumer newsletter be disseminated.

[1] All references to Agency refer to Business, Transportation & Housing Agency or California State Transportation Agency (7/1/13).

Audit Finding**: 2**	Duty Statements of the principal administrative officials are not in conformance with the provisions of the "new" Administrative Procedure Act.

Audit Recommendation	The Board should determine a method of organizing duties which is compatible with the requirements of the Administrative Procedure Act. The Board should work in conjunction with the Department to ensure that any resulting personnel changes follow requirements.

NMVB Response	The Board concurs. The Board President and Executive Secretary have discussed with a representative from Agency the changes necessary for the Board to be in conformance with the "new" Administrative Procedure Act when the Act becomes effective July 1, 1997. NOTE: Duty Statements for the principal administrative officers are in conformance with existing law, and operate with a written Duty Statement for the Executive Secretary that has been in existence since April of 1981, as well as a written Duty Statement for the Assistant Executive Secretary that has been in existence since January 1987.

NOTE: At the May 25, 2000, General meeting of the Board, the members adopted the Audit Review Committee's recommendation that the Board's organization structure and duties of the Executive Secretary and Assistant Executive Secretary be redefined to eliminate all duties related to hearing Board cases. The Executive Secretary position would be recast as the Board's Executive Director, with responsibility for all administrative and statutory functions of the Board, including processing cases filed with the Board and conducting informal mediation designed to efficiently and expeditiously settle disputes whenever possible. This would include all statutory responsibilities of the Board's "secretary." The Assistant Executive Secretary duties would be changed to that of General Counsel, eliminating any involvement in hearing specific cases. The General Counsel would analyze proposed decisions and rulings, and advise the Board thereon. Additionally, the General Counsel would advise the Executive Director and the Board on all other legal matters of interest to the Board. These positions would be designated as Career Executive Assignment. On December 12, 2000, Tom Novi was appointed to the position of Executive Director until he retired in 2005. Howard Weinberg was appointed to the position of General Counsel on January 8, 2002. Mr. Weinberg resigned in February 2010. The Office of the Attorney General is serving in this capacity on an as needed basis. In 2003, the Board sponsored legislation that changed references to "Executive Director" from "secretary" to reflect the current organizational structure and duties of the Board staff and administration. Vehicle Code section 3014 was amended to remove any reference to Assistant Executive Secretary and changed the Executive Director position from a civil service to exempt position. These statutes were effective on January 1, 2004. The Board also promulgated regulations to reflect these changes that were effective on January 1, 2004. On September 8, 2005, the Board appointed William G. Brennan as Executive Director. The Board also promulgated a regulation that deleted the authority of the Executive Director to conduct protest hearings (operative April 23, 2006).

DMV's Response	None.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	The separation of power provisions of the "new" APA are not applicable to the Executive Secretary/Chief Administrative Law Judge.

DMV's Response to CAP	The duty statements are not sufficiently delineated to ensure the separation of functions will occur. Duty statements/functions should be outlined to clearly show that no conflicts will be created or the appearance of a conflict. The mandates of the "new" APA do apply to the Board and its staff.

Date Completed	May 2000

CAP Committee Proposal	At the January 22, 1998, General meeting of the Board, the members adopted a numerical designation for assigning hearing officers. The Executive Secretary and Assistant Executive Secretary may preside over a settlement conference by mutual consent of the parties but they are not given a numerical designation and therefore are not assigned cases.

Audit Finding**: 3**	The Board may not provide all due process protections of the "new" Administrative Procedure Act.
Audit Recommendation	The Board should review its processes to assure compliance with the additional protections required by the Administrative Procedure Act.
NMVB Response	The Board concurs. The Board President and Executive Secretary have met with a representative from Agency to discuss changes that may be necessary for the Board to be in conformance with the "new" Administrative Procedure Act when the Act becomes effective July 1, 1997.

NOTE: The legal staff annually reviews the legislative changes to the APA to ensure Board procedures are in compliance, and provides a staff analysis to the Board Administrative Law Judges.

DMV's Response	Departmental legal staff will be available for consultation with the "new" Administrative Procedure Act. Staff will review the advantages and disadvantages of referring Board protest hearings to the office of Administrative Hearings and will discuss this option with the Board. If hearings remain within the Board, comprehensive regulations will be developed along with staff reorganization. Privatization will also be explored, given the number of arbitration services available.
Current Status	The Board will submit a CAP regarding this finding.
Corrective Action Plan Report	Board staff analyzed the Act, and have implemented efforts to ensure compliance.
DMV's Response to CAP	The Board's analysis of the "new" APA is superficial and incomplete. No contact has been made by Board staff with DMV Legal Office for assistance in complying with the mandates.
Date Completed	September 1998
CAP Committee Proposal	On September 23, 1998, Tom Flesh, Fritz Hitchcock and Robin Parker met with then DMV Director, Sally Reed, then Chief Counsel, Marilyn Schaff, and then Assistant Chief Counsel, Madeline Rule concerning the Board's compliance with the APA. Based upon Departmental input, the Corrective Action Plan Committee determined that the Board was in compliance with the "new" APA.

Audit Finding**: 4**	The Board staff did not seek prior approval for filing amicus curiae briefs with the Courts.

Audit Recommendation	During the field work of the audit, the Board began requesting approval for filings. The Board should continue to remain in compliance and should review its procedures for using the amicus curiae process as a legal and policy strategy.

NMVB Response	The Board concurred, with a formal policy relating to filing of amicus curiae briefs developed and approved at the July 12, 1996, General meeting. The Board's policy is that the Board will not file any amicus briefs without the consent of Agency. As a prerequisite to requesting the consent of Agency, the Board must (a) discuss and approve the consent request at a noticed public meeting, or (b) in the case where time constraints do not permit the foregoing the President may authorize the request for consent. In any instance when the President authorizes the request, a notice shall be immediately sent to Board members. If any member seeks immediate review of this action, the member may request that the President call a special meeting of the Board to discuss the matter. If there is no such immediate review requested, the matter will be included in the agenda of the next regularly scheduled Board meeting. If the Board decides at a subsequent meeting not to file the amicus brief, the request for consent will be withdrawn.

NOTE: On March 9, 2011, the Board filed an amicus curiae letter in support of Yamaha's petition for review in the California Supreme Court in *Powerhouse Motorsports Group, Inc. and Timothy L. Pilg v. Yamaha Motor Corp, Inc.; Powerhouse Motorsports, Petitioner v. New Motor Vehicle Board, Respondent; Yamaha Motor Corp, Inc., Real Party in Interest*. In compliance with this policy, the necessary approvals from the Board Vice President, the Public Members (since this matter involves a dispute between a franchisee and franchisor), Agency, and the Governor's Office were received. It was reported to the full Board at its March 29, 2011, General Meeting. Agency is not the final decision maker for the filing of amicus briefs, rather after Agency review, the filing such briefs must be approved by the Governor's Office of Legal Affairs.

DMV's Response	None.

Current Status	As a result of the Corrective Action implemented the Board does not anticipate submitting a CAP regarding this finding.

Corrective Action Plan Report	None required.

DMV's Response to CAP	

Date Completed	July 1996

CAP Committee Proposal	

Audit Finding: **5**	The New Motor vehicle Board does not comply with established policy and law pertaining to legal representation.

Audit Recommendation	The Board should seek written consent from the Attorney General's Office for each specific case or should seek a general consent before employing legal counsel other than Attorney General's staff for judicial proceedings. Finally, the Board should adopt policies for determination of whether to request permission to participate in judicial proceedings. The policy should include provisions for a discussion by the Board of the merits of the action.

NMVB Response	The Board concurred and is taking decisive action to adopt policies and procedures so that all legal representation is in full compliance. These actions include, but are not limited to, increased Board participation in policies and procedures, the formation of a Judicial Policies and Procedures Committee of the Board, and a series of meetings that have occurred with the Board President and high level officials within the Office of the Attorney General. Each of the Audit Recommendations is being incorporated into these discussions and subsequent policies and procedures. It should be noted that the officials within the Office of the Attorney General have been very helpful in formulating policies and procedures that are conducive to quality legal representation within limited budget levels.

NOTE: Discussion of a Board Designee by the President consistent with this policy was considered at the June 26, 2008, General meeting. As a result the Board decided that it is only those matters in which the Dealer Member would be disqualified from having heard in the first place that are being delegated. Further, if a Dealer Member is Board President, and a Public Member is Vice President, then the delegation should automatically go to the Vice President. All judicial matters are monitored by the Board legal staff whether it is represented or not, and the status of each case is reported on the Executive Director's Report at each General Board meeting.

DMV's Response	None.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	On October 22, 1996, the Board adopted a policy entitled Board Policy Regarding Representation in Court Actions. On March 18, 1997, the Board revised this policy. All pending court matters are reviewed by the Board President or his designee for the ultimate determination of whether an important State interest/issue is implicated and whether it will participate in the litigation via the Attorney General's Office. Unless an important State issue is implicated, the Board notifies the parties of its policy not to appear in mandamus actions, and further requests that the Court keep it on the proof of service list. If the Court requests the Board's participation, it would retain the services of the Attorney General's Office.

DMV's Response to CAP	

Date Completed	March 1997

CAP Committee Proposal	

Audit Finding**: 6**	The amount of time devoted to hearing cases may be insufficient to allow for full consideration of all issues.
Audit Recommendation	The Board should review its hearing process to ensure that all Board members understand the policy guidelines used for selection of information presented to them and feel they have sufficient time and information from which to make appropriate decisions.
NMVB Response	The Board concurs. A high degree of importance has already been focused on the method of placing an item on the agenda, advance availability of materials, and adequate consideration of matters. The Board members are enthusiastically embracing more active participation. At the July 12, 1996, meeting, Board members addressed a lengthy agenda. There was active participation by the various members many of whom expressed a desire to continue working despite the passage of considerable time.

NOTE: The Board continues to place a high level of importance on making materials available to Board members and allowing sufficient time to discuss issues at noticed meetings. The staff provides a website link to the Board meeting materials to all members and upon request mails a binder that is tabbed according to the agenda at least 10 days in advance of an upcoming meeting. In general, committee memorandums are disseminated to the appropriate members and *blind* courtesy copied to the Board President in advance of the materials mailing. Feedback is solicited from the committee members prior to finalizing the memo for dissemination to the full Board.

DMV's Response	None.
Current Status	The Board will submit a CAP regarding this finding.
Corrective Action Plan Report	The Board now places a high level of importance on making materials available and having sufficient time to discuss issues.
DMV's Response to CAP	The Board's response to this finding is non-responsive and includes no corrective action plan.
Date Completed	July 1996
CAP Committee Proposal	

Audit Finding**: 7**	The Board should adopt parliamentary procedures.

Audit Recommendations	The Board should adopt the parliamentary procedures which fit its needs and should appoint a recording secretary to be responsible to assure that minutes are complete and timely prepared.

NMVB Response	The Board concurs. Board members were given a copy of Robert's Rules of Order to review at the August 20, 1996, meeting. The issue was discussed, and staff was instructed to prepare a presentation to the Board members, at a subsequent meeting, concerning which provisions of Robert's Rules of Order should be adopted by the Board or, in the alternative, some other parliamentary procedure.

NOTE: New members are provided with the Board adopted Parliamentary Procedures. Periodically, on an as-needed basis this topic is agendized for Board member review.

DMV's Response	None.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	At its March 18, 1997, General meeting, the members adopted Board Parliamentary Procedures.

DMV's Response to CAP	The Board cannot just adopt "parliamentary rules" at a meeting of the Board; such rules must be properly adopted as administrative regulations, in accordance with the APA.

Date Completed	October 1997

CAP Committee Proposal	On October 14, 1998, Robin Parker met with Madeline Rule, then Assistant Chief Counsel, DMV. Ms. Rule indicated that the Parliamentary Rules overlapped with other statutes and dealt primarily with internal Board procedures. The Parliamentary Rules did not require to be promulgated as rulemaking.

Audit Finding**: 8**	Board may not always be in compliance with the Bagley-Keene Open Meeting Act.

Audit Recommendation	The Board should consider an education program which includes inviting an experienced presenter to cover the requirements of the Act and to describe the risks and typical mistakes which are made by quasi-judicial state entities such as this Board.

NMVB Response	The Board concurs. The Bagley-Keene Open Meeting Act and how it applies to meetings of the Board was a specific agenda item at the July 12, 1996, General meeting. The President and the Executive Secretary gave a detailed presentation to the members of the Board regarding the Act, including notice and agenda requirements, limitations and requirements of advisory committees, factors which are considered in determining what constitutes a "meeting", as well as the prohibition against "serial" or "hub" meetings. In addition, the members of the Board have been provided with the booklet entitled Open Meeting Laws, published in 1989 by the California Attorney General's Office together with the 1995 supplement. Further, the Executive Secretary is designated to be the Bagley-Keene Compliance Officer with responsibility for Board member education and compliance.

NOTE: The General Counsel is now the Bagley-Keene Compliance Officer[2] and is responsible for ensuring compliance with the Act in addition to providing guidance, legal opinion, and education to the members and staff. The members are provided an annual update of the Open Meeting Act and a staff analysis. Continuous education on this topic is provided to the members and has been a noticed agenda item on many occasions.

DMV's Response	None.

Current Status	As a result of corrective action already implemented the Board does not anticipate submitting a CAP regarding this finding.

Corrective Action Plan Report	None required.

DMV's Response to CAP	

Date Completed	July 1996

CAP Committee Proposal	

[2] Robin Parker, Senior Staff Counsel, is performing all of the duties previously assigned to the Board's General Counsel including the Bagley-Keene Compliance Officer.

Audit Finding**: 9**	The Department and the Board should develop an issue memo for Reorganization.

Audit Recommendation	The Board should meet with Agency and the Department to explore organization alternatives which would provide the best and most efficient resolution of manufacturer and dealer disputes.

NMVB Response	The Board concurs. This matter was discussed by the Board at its General meeting of August 20, 1996. The Board is in the process of preparing the recommended issue memorandum.

NOTE: At its May 25, 2000, General meeting, the members of the Board adopted the Audit Review Committee's recommendation that Board cases should be heard by the Board's Administrative Law Judges.

See Audit Finding 2 for discussion concerning the Board's reorganization of its senior management positions.

DMV's Response	The Director concurs with the recommendation that the Board and the Department meet with Agency to explore organization alternatives. These discussions should include consideration of the primary benefits offered by the Board, the importance of the appellate function to these benefits, and consideration of limiting the appellate function to new vehicle transactions. Further, the report suggests that some functions may be duplicated by both the Department and the Board. Once an organizational structure is determined along with the development of the restructure, duplicative functions will be consolidated or eliminated in the most cost-effective and efficient manner. A more detailed review of comparable Boards in similar states may offer some alternatives to consider for implementation to the Board.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	The Board is to meet with DMV, BT&H Agency and other state agencies to explore organizational alternatives and will prepare an issue paper for reorganization.

DMV's Response to CAP	Corrective action is different from the Department's proposal. Some are similar but the Board appears to be taking an independent course, not entirely consistent with the Director.

Date Completed	May 2000

CAP Committee Proposal	After the Corrective Action Plan Committee reviewed the option of referring all matters to the Office of Administrative Hearings, it determined that the present system as modified with several proposed recommendations would be more efficient, cost effective, and would afford the parties an effective means to resolve disputes.

Audit Finding**: 10**	The Board should consider referring its consumer inquiries to departments with primary jurisdiction and adequate resources.

Audit Recommendation	The Board should meet with the Department of Consumer Affairs, the Department of Motor Vehicles, and the Agency to explore organization alternatives which would provide the best and most efficient consumer services.

NMVB Response	The Board concurs. The Board looks forward to implementing the audit recommendation, especially in light of the fact that eight other government entities referred 160 written consumer complaints to the Board in fiscal year 1995/96 alone. This number does not include telephone inquiries from other government entities which ultimately resulted in the consumer directly filing a complaint form with the Board. The Board President has already had preliminary discussions with the Agency Secretary of the State Consumer and Services Agency. The Board is confident that future meetings will be very productive.

NOTE: In compliance with this Audit Finding, all consumer inquiries are referred to departments with primary jurisdiction. For example, "Lemon Law" complaints are referred to the Department of Consumer Affairs, complaints concerning used vehicle dealers are referred to DMV Investigations, and complaints concerning auto repair facilities that are not also new car dealers are referred to the Bureau of Automotive Repair. However, consumers requesting mediation of disputes with new vehicle dealers and manufacturers are processed by staff in the Consumer Mediation Services Program. In 2004, legislation became effective that brought recreational vehicles (RVs) under the Board's jurisdiction. The legislation included provisions requiring the Board to recommend that the consumer seeking a refund or replacement of an RV consult with the Department of Consumer Affairs. In May 2011, an inter-agency memo was sent to agencies the Board refers to and those that refer to the Board to reinforce the Board's jurisdiction and services offered by the Consumer Mediation Program. In March 2014, letters similar to those sent out in 2011 were again mailed to government and private agencies to reinforce the Board's jurisdiction and services offered by its Mediation Program.

DMV's Response	The Director concurs with this recommendation. It would require the Board to stay within its statutory and budgetary parameters if the Board remains within the Department. A start toward this objective should also include a review of the Board's mission and goals to determine essential services.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	Board and staff members should meet with BT&H, DMV and DCA to discuss organizational alternatives with a report to the full Board.

DMV's Response to CAP	Corrective plan does not address Department's recommendation that the Board review its mission and goals to determine essential services. The response indicates that for the time being, the Board will continue doing what it has been doing.

Date Completed	December 1998

CAP Committee Proposal	The Board staff will continue informal mediation and will send out the Lemon-Aid pamphlet prepared by the Department of Consumer Affairs. It will not advertise its services nor will any type of consumer newsletter be disseminated.

Audit Finding**: 11**	The Board does not have a new member introduction program.

Audit Recommendation

The Board should consider organizing some type of member education program to assure that all members are exposed to the rules, regulations, and procedures governing their areas of responsibility.

NMVB Response

The Board concurs. The Board is now participating in training for new members as well as ongoing in-service training for current members. At the July 12, 1996, General meeting, the Board specifically discussed member training and education, NMVB's Consumer Mediation Program, the computer system and support services, and Open Meeting Laws. Additionally, the Board discussed availability of specialized Board member training for both new and existing Board members in order to help familiarize the members with issues concerning the responsibilities of Board members, state administrative duties of the members and staff, limitations and restrictions on members to act in certain situations and over certain matters submitted to the Board for determination. The members of the Board were receptive to this type of training and education, and Board staff was instructed to explore, in greater detail, the availability of such programs for future Board member participation. It is anticipated that Board training and education will be part of most future meetings.

NOTE: At its July 18, 2000, General meeting, the members of the Board adopted a report from the Board Development Committee, which recommended new member orientation and a Board member education program for new and existing members. The new member orientation program is used for all new Board members. Board member education is scheduled for most, if not all, Board meetings. Annually, a schedule of educational speakers and industry related tours are developed and implemented.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

Board member education has been discussed at the July and October 1996, General meetings, and is scheduled for most, if not all general Board meetings.

DMV's Response to CAP

Date Completed

October 1996

CAP Committee Proposal

Audit Finding**: 12**	The Board should review its case management quality assurance system.

Audit Recommendation	The Board should develop a process for reviewing case management activity including the quality, quantity, and timeliness of legal work performed on behalf of the Board. One method is to assign a specific Board member as a case liaison for each case.

NMVB Response	The Board concurs. Board members have discussed the existing data processing system, including the hardware and software configurations, as well as the advantages and limitations of the system. The Board members were apprised that, at present, the Board does not have a specific automated case management system in place, the existence of which would ensure that matters are handled more expeditiously. At the July 12, 1996 General meeting, staff was authorized to explore implementation of an automated case management system which would utilize existing hardware. Staff work would include an analysis of the cost of such system in relationship to the benefits provided. The Board President recently attended an exhibition on computer software for the legal profession and has provided materials to staff. The Board staff is currently working on an analysis of these materials, as well as independent research. The results of the staff research will be presented for Board consideration at a future meeting.

NOTE: Cases are managed by the Board counsel ~~and legal analyst~~ through a calendaring system. Efforts to improve the management of Board cases via software are regularly reviewed internally and tested for compatibility. DMV monitors all acquisitions in this regard and also provides testing services. In addition, the Policy and Procedure Committee, along with input from legal counsel for dealers and manufacturers, recommended revisions to the Board case management procedures which were adopted by the members at the April 27, 2001, General meeting. The recommended changes did not require regulatory and statutory revisions. In March 2002, the Board adopted a proposal to undertake a comprehensive review and analysis of its enabling statutes and regulations that would require revisions. Input was solicited from the Board Administrative Law Judges and legal staff, attorneys that regularly practice before the Board, industry personnel, and Board members. As a result of the review, recommended revisions to the Board case management procedures that require regulatory and statutory changes were approved at the September 10, 2002, and October 29, 2002, General meetings. All of the legislative and regulatory changes have been approved and are effective. The Board's internal procedures, policies, and publications have been updated to incorporate these changes.

DMV's Response	None.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	Board members and staff are currently reviewing the new DMV Legal Office case management system, along with other alternatives. A decision should be made soon.

DMV's Response to CAP	The CAP does not address quality issues. Even if the Board could use or acquire the DMV Legal Office's new case management system, that would not resolve quality issues associated with substantive legal work, meeting minutes, etc.

Date Completed	January 1998

CAP Committee Proposal	

Audit Finding**: 13**	The Board has not adopted an Administrative Enforcement Manual.

Audit Recommendation	The Board should consider whether publication of introductory materials and/or availability of an administrative enforcement manual would be sufficiently helpful to either Board members, new practitioners, or others to justify investment of the required resources.

NMVB Response	The Board concurs. In 1986, the Board published a guide to the New Motor Vehicle Board. However, this guide is presently not up to date. The Board's staff has been working for more than one year on a practice and procedure guide for those who seek to use the Board's services. The Board discussed this issue at the August 20, 1996, General meeting and provided direction to the staff regarding the types of materials the Board feels appropriate. Other avenues of public education are being explored, e.g., continuing education classes, Internet web sites, and educational brochures. The Board is also exploring methods of publishing and disseminating the above materials at no cost to the State by utilizing private sector resources.

NOTE: A Guide to the New Motor Vehicle Board was published in July 1997 and revised in April 1999. The Guide functions like a practice manual for attorneys appearing before the Board. It contains the "new" APA, as well as, the applicable Vehicle Code and regulatory sections. Supplements to the Guide have also been published as changes dictate. A March 2001, Supplement was published and disseminated to Board members and staff, the public mailing list, and specific manufacturer and dealer attorneys. In January 2002, the Board staff incorporated all of the changes contained in the Supplement into the Guide along with all statutory changes effective January 1, 2002. A revised Guide dated January 2002 was disseminated to all new motor vehicle and motorcycle dealers, manufacturers, distributors, the public mailing list, and in-house and outside counsel that regularly practice before the Board. At the December 5, 2003, Special meeting, the members adopted a revised Guide. A revised Guide dated January 2003 was disseminated by the DMV to all licensees within the Board's jurisdiction in March 2003. Annually the Board revises its Guide to incorporate all statutory and regulatory changes. The Guide is available on the website and a notice to that effect is disseminated annually.

DMV's Response	None.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	Draft manual presented to the Board at February 1997 General meeting. Following Board review of the manual titled "Guide to the New Motor Vehicle Board" will be printed and disseminated to interested parties.

DMV's Response to CAP	Under the "new" APA, the Board must make available to interested parties all statutes and regulations pertaining to hearing procedures for matters heard by the Board. It must be noted that the Board cannot simply draft a manual containing substantive procedural requirements; unless adopted as a regulation.

Date Completed	July 1997

CAP Committee Proposal	During a meeting with Madeline Rule, then Assistant Chief Counsel, DMV, it was determined that as long as the Guide was a recitation of the Vehicle Code, regulations, and case law with the authorities referenced thereto, it did not need to be promulgated as rulemaking.

Audit Finding**: 14**	The Board should ensure that all required transaction reports are filed with the Agency.
Audit Recommendation	The Board should work with the Department and the Agency to ensure that all required transaction reports are correctly forwarded.
NMVB Response	The Board concurs. Action has been taken to bring the Board into compliance with this finding. The Board did not always file the required transaction reports with Agency because, oftentimes, it was not aware of any requirement to do so. It appears that the memorandums setting forth the policy concerning the various transaction reports were sent to the Department, but often the Department didn't forward them to the Board or otherwise make the Board aware of the requirements.

NOTE: Senior Staff Counsel is in contact with Agency counsel concerning the Board's court cases. Agency is also provided with a ~~Bi-weekly~~ *Week Ahead* Report containing significant issues that may be of interest to the administration.

DMV's Response	None.
Current Status	The Board will submit a CAP regarding this finding.
Corrective Action Plan Report	The DMV has taken steps to ensure that the Board is provided all necessary information to file the reports. The significant litigation report is filed with BT&H Agency by the 5th of each month.
DMV's Response to CAP	The Director is being provided reports sent by the Board to Agency.
Date Completed	July 1996
CAP Committee Proposal	

Audit Finding**: 15**	Board delegations are not formalized.

Audit Recommendation

Delegation authorities should be formally adopted by the Board. Delegations which include signature authority should specify transaction type or dollar limits where applicable and should distinguish between the granting of powers reserved to the Board and duties arising from existing statutory provisions already reserved to individuals.

NMVB Response

The Board concurs. The Board's enabling statutes and regulations, contained in Title 13 of the California Code of Regulations, contain several references to situations where the Board, its secretary, or a hearing officer designated by the Board, can perform certain functions. The Board recognizes the need to develop further formal delegations, and has commenced corrective action.

NOTE: The Budget and Finance Committee considered all of the duties of the Board and staff, and recognized those that, by statute or regulation, are retained by the Board or are already delegated to designated individuals. In addition, the Committee report recommended which administrative duties should be delegated to staff and the level of Board oversight over these activities. The recommendations also contained an indication as to transaction type and dollar limit for procurement of goods and services, where applicable. The Board's internal procedures are consistent with the policy developed by the Budget and Finance Committee. At the May 26, 2011, General Meeting the annual review of these delegations was made an exception report. *The Board staff continues to review these delegations each year. Revised delegations were adopted at the July 15, 2014, and February 10, 2016, General Meetings to implement legislation (Senate Bill 155, and Assembly Bills 759 and 1178, respectively).*

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

The Board's Budget and Finance Committee presented recommendations concerning delegation that were adopted at the March 18, 1997, meeting.

DMV's Response to CAP

The response and corrective action plan are vague and not fully responsive. Further, the absence of an approved organization chart of the Board is not addressed.

Date Completed

March 1997

CAP Committee Proposal

Audit Finding**: 16**	The Board should consider distribution of assignments.

Audit Recommendation	The Board should review the amount of routine administrative detail which might be appropriately dealt with by committee or temporary task group in order to ensure that the Board receives all of the information which it desires and that deliberative processes of the Board are not reduced in favor of administrative detail. For instance, the Board might consider whether there is a need for the following types of committees: budget & finance; personnel; ethics; audit; legislative; judicial relations; board education; consumer education; industry education; and intergovernmental relations.

NMVB Response	The Board concurs. At its General meeting of July 12, 1996, the Board President announced the formation of a Budget and Finance Committee and a Judicial Procedures Committee and appointed members to each Committee. Other committees will be formed as and when appropriate. The Board is also implementing a rotation system whereby all Board members will have the opportunity to be the presiding official at Board hearings. **NONE:** A number of Board committees have been created over the past 12 years. At its May 25, 2000, General meeting, the members adopted the Audit Review Committee's proposal to consolidate the existing ten advisory committees into the following committees: (1) Administration Committee; (2) Policy and Procedure Committee; (3) Board Development Committee; and, (4) Executive Committee. At the September 12, 2000, General meeting, the members adopted the Executive Committee's recommendation of splitting off the budget and finance functions currently assigned to the Administration Committee and created a Fiscal Committee. At the December 5, 2002, Special meeting, the Government and Industry Affairs Committee was created. At the April 21, 2005, General meeting, a Search Committee was created on an ad hoc basis for purposes of filling the Executive Director vacancy upon Tom Novi's retirement. At the February 11, 2008, General meeting, an Ad Hoc Rulemaking Committee was created. Annually, the Board President reviews these committee designations. Most recently, these committee designations were revised at the February ~~4, 2014~~ *10, 2016*, General meeting.

DMV's Response	None.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	At the July 1996, General meeting, Judicial Policies and Procedures, and Budget and Finance Committees were established.

DMV's Response to CAP	

Date Completed	May 2000

CAP Committee Proposal	

Audit Finding**: 17**	The Board should adopt an audit resolution policy.

Audit Recommendation

The Board should adopt an audit resolution policy which involves the Board, management, and program staff in ensuring that corrective actions are satisfactorily resolved. The Audit Office has developed suggested language which can be used if desired.

NMVB Response

The Board concurs. The Board President shall prepare initial responses to findings of the draft audit report, and have the responsibility to submit these responses to Agency. The Board should designate a Board employee to oversee audit follow-up, including resolution and corrective action. The designated Board employee shall work with the Board President to develop a written Corrective Action Plan (CAP) for those audit findings which indicated that a deficiency exists in Board operations. The CAP shall be presented to the full Board for approval. The CAP will include targeted improvement measures, responsibility of assignments, and estimated completion times. It will also describe the level of risk assumed by the proposed resolution and the level of loss prevention controls desired. The designated Board employee shall also be responsible for ensuring that prompt and proper implementation of the adopted CAP actually occurs, monitoring corrective action and preparing summary reports that shall be submitted to the full Board for approval. Summary reports should be prepared and filed with Agency at no less than 6-month intervals until the subject of the audit findings is corrected.

DMV's Response

None.

Current Status

As a result of the corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.

Corrective Action Plan Report

None required.

DMV's Response to CAP

Date Completed

July 1996

CAP Committee Proposal

Audit Finding**: 18**	The New Motor Vehicle Board does not have an adequate audit trail to account for all fees paid to the Board.

Audit Recommendation	The Board should revise its petition and protest case log and check log formats to ensure that they provide sufficient information to enable internal staff and external auditors to verify that all required fees have been paid and are accounted for. Further, the Board should review the duties of Board staff and revise responsibilities so that sufficient separation of duties exists to ensure adequate internal controls over cash receipts. Specifically, one person who is responsible for billing, accounts receivable detail, general ledger posting, and invoice processing should open all mail and list all checks. That listing should periodically be reconciled with amounts recorded on the deposit log prepared by a different person who records the check deposits. These reconciliations should be available for audit.

NMVB Response	The Board concurs. Corrective action has been taken to satisfy the concerns raised by this finding.

NONE: The Board's internal procedures are consistent with the policy developed by the Budget and Finance Committee.

DMV's Response	None.

Current Status	The Board will submit a CAP regarding this finding to confirm the action taken adequately addresses the finding.

Corrective Action Plan Report	The Budget and Finance Committee adopted a policy which addresses this finding at a November 1996, Committee meeting. The Board adopted the Corrective Action Plan Report in which this policy was encompassed at its February 12, 1997, General meeting.

DMV's Response to CAP	Based on the revisions presented it appears the Board's revised procedures should ensure that all monies received were deposited and that a record of those receipts will be retained for audit purposes. The response appears to have addressed the separation of duties problem. There are four concerns: (1) how the reconciliation will be documented and retained for audit purposes; (2) unsure whether all filing fees for petitions are accounted for; (3) unsure if proper amount was collected for each party; (4) unsure if there is a separation between the person that records the cash receipts and the person that records deposits.

Date Completed	November 1996

CAP Committee Proposal

Audit Finding**: 19**	Travel expenses for out of state trips were not approved by the Board.

Audit Recommendation	The full Board or its Personnel, Finance, or Program Committee should review out-of-state trip requests before they are submitted through the budget process to the Governor's Office for approval to decide appropriate Board representation if the trips are determined to be cost beneficial. This recommendation is made only as a matter of appropriate policy regarding separation of duties and management authorization. Our testing of accounting controls did not note any monetary violations of state procedures for filing claims for travel expenses by employees or officers of the Board for either in-state or out-of state trips.

NMVB Response	The Board concurs. Travel procedures for the Board and its staff were discussed at the July 12, 1996, meeting. At that time, the Board adopted a policy to ensure that the members of the Board are fully apprised of and actually approve the budgetary allotment for and participation in any out-of-state travel. This policy requires review of the out-of-state travel proposals prior to the time the requests for out-of-state travel are submitted to Agency. Prior Board review and approval will also be obtained when any previously approved out-of-state trip is modified as to time, individuals traveling, or destinations. NOTE: The Executive Committee will authorize who actually attends the out-of-state trips for each fiscal year. This topic is agendized annually for Board member consideration.

DMV's Response	Out-of-state trips for the Board's employees will be appropriately in the Department's out-of-state blanket after they are approved by the Board.

Current Status	As a result of corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.

Corrective Action Plan Report	None required.

DMV's Response to CAP	

Date Completed	July 1996

CAP Committee Proposal	

Audit Finding**: 20**	Public funds cannot be used for legal work to represent for-profit corporations where the state is not a party to the action.
Audit Recommendation	When the Board develops its internal procedures for legal strategies which include participation in judicial procedures, it should obtain guidance on possible constitutional issues with respect to positions it wishes to advocate.
NMVB Response	To be developed.

NOTE: The Board instituted a policy that requires the Board President and Agency approval, as necessary. See Audit Finding 4 for a discussion of the Board policy implemented concerning filing amicus curiae briefs.

DMV's Response	None.
Current Status	
Corrective Action Plan Report	The Board instituted a policy that results in Board President and BT&H Agency approval, as necessary.
DMV's Response to CAP	
Date Completed	July 1996
CAP Committee Proposal	

Audit Finding**: 21**	Exempt position time reporting is not in compliance with state requirements.

Audit Recommendation	The Board and the Department should meet to determine that all necessary personnel duties regarding the Department's employees stationed at the Board and the Board's exempt position have been assigned to responsible staff.

NMVB Response	The Board concurs. Board staff, in conjunction with staff of the Department's Human Resources unit, have implemented a procedure to comply with the finding. Beginning with the July 1996, pay period, the exempt position began submitting the executed monthly attendance reports to the Department. However, the Board interprets the recommendation regarding personnel duties to be much broader than accounting or attendance issues, and will meet with the Department to discuss broader personnel duties.

NOTE: At the May 25, 2000, General meeting, the members of the Board adopted the Audit Review Committee's recommendation concerning restructuring the Board's senior management. To help facilitate these changes, Steven Gourley, then DMV Director, committed to working closely with the Executive Committee to appoint the Committee's selections for the Executive Director and General Counsel positions. In turn, the Board decided that the Director could use its statutory exempt entitlement on a loaned basis during the Director's tenure. At the December 11, 2003, Special meeting, then DMV Director Chon Gutierrez informed the Board that it longer needed the Board's exempt entitlement. By motion and unanimous vote, the Board's exempt entitlement is being used for the Executive Director position effective January 1, 2004. All Board staff, including the Executive Director, report their time to the DMV in compliance with state requirements.

DMV's Response	The Department's Human Resources staff will meet with Board staff to ensure that duty statements are current and that Board staff and Department employees have a time reporting procedure.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	Since the audit, attendance sheets have been submitted for the exempt position.

DMV's Response to CAP	

Date Completed	May 2000

CAP Committee Proposal	

Audit Finding**: 22**	The Board does not have an Information Security Officer (ISO).
Audit Recommendation	The Board should appoint a liaison ISO to work with the Department's ISO to ensure that the Board's operations maintain at least the same level of security as the rest of the Department.
NMVB Response	The Board concurs. At the August 20, 1996, meeting, the Board designated Assistant Executive Secretary Michael M. Sieving to serve as liaison Information Security Officer to work with the Department's ISO to ensure compliance with information security procedures.

NOTE: When Tom Novi was appointed to the position of Assistant Executive Secretary and ultimately the Executive Director, Mr. Novi assumed these duties. When Mr. Novi retired in October 2005, and Mr. Brennan was appointed to the Executive Director position, he assumed these duties.

DMV's Response	The Director is requesting that our Information Security Officer meet with the Board Liaison to ensure that there is a comparable and adequate security level.
Current Status	As a result of corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.
Corrective Action Plan Report	None required.
DMV's Response to CAP	
Date Completed	July 1996; December 2000
CAP Committee Proposal	

Audit Finding**: 23**	Inventory tags have not been attached to state equipment.
Audit Recommendation	The Board should immediately affix the inventory tags which have been provided by the Department to the appropriate equipment.
NMVB Response	The Board concurs. Board staff has affixed the decals as prescribed and has noted the property tag number on the equipment inventory.

NOTE: New equipment receives the appropriate inventory decals as prescribed.

DMV's Response	The department has already provided the inventory tags to the Board. We support your recommendation that the Board immediately affix the tags.
Current Status	As a result of corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.
Corrective Action Plan Report	None required.
DMV's Response to CAP	
Date Completed	July 1996
CAP Committee Proposal	

Audit Finding**: 24**	The computer system needs additional physical security devices.
Audit Recommendation	The Board should acquire some type of smoke detector and a plastic emergency tarp to cover the network server computer equipment in the event of water damage.
NMVB Response	The Board concurs. The Board is in the process of procuring a smoke detector, as well as plastic tarps which will be available to cover the main server and other computer equipment in the unlikely event of water damage.

NOTE: The smoke detectors and tarps are still operational.

DMV's Response	None.
Current Status	The Board will submit a CAP regarding this finding.
Corrective Action Plan Report	A smoke detector will be installed in February 1997. Tarps are operational.
DMV's Response to CAP	Physical security devises are usually called for to protect the utility of desktop computing assets. The CAP does not include provisions for lock down devices to prevent the removal of hardware.
Date Completed	February 1997
CAP Committee Proposal	

Audit Finding**: 24(25)**	Virus protection procedures need improvement.
Audit Recommendation	Responsible data processing staff should become familiar with installed protections and obtain training on activation of protective software.
NMVB Response	The Board concurs. The Board believes that the current virus protection system is inadequate, and is in the process of procuring additional virus protection software. Additionally, appropriate staff training will be implemented.

NOTE: Anti virus software has been installed on the LAN server and on all PCs and laptops. The software is updated regularly by DMV's Information Systems Division (DMV/ISD).

DMV's Response	None.
Current Status	The Board will submit a CAP regarding this finding.
Corrective Action Plan Report	In January 1997, Anti virus software was ordered, and subsequently installed in September 1997.
DMV's Response to CAP	The Anti Virus program will be an automated program which will protect the system from viruses from local input devices and on-line services. The staff will be trained once the system is received and installed.
Date Completed	September 1997
CAP Committee Proposal	

Audit Finding**: 25(26)**	Password protection is inadequate or not operational.
Audit Recommendation	The Board should ensure that its data processing system receives a periodic independent review to detect situations where internal controls have been inadvertently removed.
NMVB Response	The Board concurs. The Board has instituted a policy of changing passwords at scheduled intervals. Unused workstations have been locked off so that unauthorized users are unable to access the network, and the Board is exploring the option of procuring additional software to increase password protection. **NOTE:** The Board's LAN servers and PCs are monitored and maintained by DMV/ISD. Passwords are required to be changed every 45 days.
DMV's Response	None
Current Status	The Board will submit a CAP regarding this finding.
Corrective Action Plan Report	In September 1996, password protection was installed.
DMV's Response to CAP	The CAP does not identify the password mechanism used, it does not address the basic issue of security awareness so that employees understand the importance of effective password management, nor does it state that all critical systems and files are password protected.
Date Completed	September 1996
CAP Committee Proposal	

Audit Finding**: 26(27)**	Data processing system documentation could be strengthened.
Audit Recommendation	Data processing staff should update diagrams and documentation sufficiently to allow unfamiliar users to learn the system.
NMVB Response	The Board concurs. The Board's staff is in the process of preparing procedural manuals for all data processing programs currently in operation.

NOTE: Configurations of the LAN server are documented in numerous procedural manuals which are maintained by DMV/ISD. Software installation and data back up are strictly controlled.

DMV's Response	None.
Current Status	The Board will submit a CAP regarding this finding.
Corrective Action Plan Report	New software installations are recorded on a software installation log. Procedures for re-installing and restoring software and backup data are currently being re-established to meet Departmental standards.
DMV's Response to CAP	
Date Completed	August 1997
CAP Committee Proposal	

Audit Finding**: 27(28)**	Higher level security access control is inadequate.

Audit Recommendation	The Executive Secretary should assure that duty statements covering access at the highest level of security are limited to those who cannot originate or approve transactions and who are directly responsible for the tasks associated with system security.

NMVB Response	The Board concurs. The Board is taking steps to modify the procedure to comply with the audit recommendation.

NOTE: Security access to the Board's LAN server is controlled by DMV/ISD. No Board employees have access to the server. A limited number of Board employees have administrative access to the Board's PCs and laptops.

DMV's Response	None.

Current Status	The Board will submit a CAP regarding this finding.

Corrective Action Plan Report	At the time of the Audit, six Board employees had Supervisory status. Supervisory equivalence on the LAN allows total access to the entire system. Since the Audit, Supervisory status has been delegated to two individuals on the Board's staff. This has eliminated the problems identified by the Audit.

DMV's Response to CAP	The Board should have a detailed, properly adopted Conflict of Interest Code, designating the positions and disclosure category for each, just as the DMV does.

Date Completed	July 1996

CAP Committee Proposal

Audit Finding**: 28(29)**	Designation of economic conflict-of-interest filing officials is incomplete.

Audit Recommendation	The full Board or its Ethics or Personnel Committee should review its economic conflict-of-interest regulations to determine whether changes are needed to conform inconsistencies in its regulations in order to comply with applicable statutes. Since the administrative law judges of the Board are employees of the Department, the Board should work with the Department to ensure that regulations are in conformance.

NMVB Response	The Board concurs with the recommendation regarding this Audit Finding, but needs additional information to reach a conclusion regarding the finding itself. Both the Board President and a staff counsel have been in contact with the FPPC to determine the best method to implement the recommendation. A representative of the FPPC advised the Board that it generally receives filings only from Board members and the senior member of the executive staff, not positions such as administrative law judges or the Assistant Executive Secretary. This is due to storage limitations at the FPPC. The Board will continue to explore this topic.

NOTE: Due to the restructuring of the Board's senior management, the Conflict of Interest Code was revised in accordance with the procedure established by the FPPC and the Office of Administrative Law. At the November 20, 2001, General meeting, the members approved the revised text of proposed revisions to the Conflict of Interest Code which incorporated suggestions from the Fair Political Practices Commission. Rulemaking implementing these changes was effective on February 17, 2002. The Conflict of Interest Code was recently updated and effective August 23, 2013.

DMV's Response	The Director concurs with this recommendation. The DMV's Legal Staff is available for consultation to the Executive Secretary, should he require additional information.

Current Status	The Board will submit a CAP regarding this funding.

Corrective Action Plan Report	In August 1996, Wayne Imberi of the Fair Political Practices Commission stated that the FPPC does not want the statements of the Assistant Executive Secretary or hearing officers. These statements should be retained by the agency. The Assistant Executive Secretary and hearing officers file conflict of interest statements with the Board which are retained internally.

DMV's Response to CAP	

Date Completed	August 1996

CAP Committee Proposal	

Audit Finding**: 29(30)**	The Board should promptly cause the investigation of suspected irregular activities.
Audit Recommendation	The Board should promptly investigate or cause the investigation of suspected irregular activities and should file the required incident reports.
NMVB Response	The Board concurs. The Board staff has contacted the Department's Information Protection Program and has met with officials of the Department's Internal Affairs investigations unit. Additional meetings are scheduled to discuss implementation of procedures for reporting future incidents. It should be noted that the Department has been extremely cooperative in this regard, and has responded to the Board's concerns with valuable suggestions and information.

NOTE: The Board staff complies with all DMV policies concerning reporting and investigation of suspected irregular activities.

DMV's Response	None.
Current Status	The Board will submit a CAP regarding this finding.
Corrective Action Plan Report	In December 1996, the Board staff implemented the DMV policy concerning reporting of suspected irregular activities.
DMV's Response to CAP	
Date Completed	December 1996
CAP Committee Proposal	

Audit Finding**: 30(31)**	Board staff do not have access to written guidance on appropriate behavior.
Audit Recommendation	The Department of Motor Vehicles should ensure that the Board's employees are added to the appropriate distribution lists for its department wide announcements. The Board should make an effort to seek guidance when it encounters situations for which it is likely that published rules exist.
NMVB Response	The Board concurs. The Board's staff has sent a memorandum to the Department specifically requesting that the Board be put on the mailing list for all documents which are disseminated to the Department's programs and divisions.

NOTE: Board staff are provided with all materials disseminated by the DMV with regard to inappropriate behavior.

DMV's Response	The Director has requested that the Board be added to the appropriate distribution lists and encourages management at the Board to ensure employees have received adequate training which is available to them from the Department.
Current Status	The Board will submit a CAP regarding this finding.
Corrective Action Plan Report	The Board is now on the DMV mailing list for all divisions. Copies of all memos are given to all Board employees.
DMV's Response to CAP	
Date Completed	July 1996
CAP Committee Proposal	

Audit Finding**: 31(32)**	The Board has not purged computer records.
Audit Recommendation	Staff should review the requirements for retention and destruction of electronic records to ensure that the program is in compliance.
NMVB Response	The Board concurs. The Board will seek assistance and guidance from the Department in the development and implementation of a policy for retention/purging of computer records.

NOTE: The Board staff retains mediation records on the LAN for three-years. After three years, data is removed from the LAN and stored on CD ROM. With regards to the Legal Division, computer records are archived to CD ROM on an as needed basis.

DMV's Response	None.
Current Status	The Board will submit a CAP regarding this finding.
Corrective Action Plan Report	Since September 1996, the Board has implemented a two-year retention policy for computer records for the Mediation Services Program. Any data older than two years is purged at the end of each fiscal year. The Board backs-up the entire system every day and these tapes are kept in the safe.
DMV's Response to CAP	
Date Completed	September 1996
CAP Committee Proposal	