



R O S T E R
NEW MOTOR VEHICLE BOARD

2415 1st Avenue, MS L242
Sacramento, California 95818

<u>NAME</u>	<u>APPOINTING AUTHORITY</u>	<u>STATUS</u>
Anne Smith Boland Term exp. 1-15-27	Governor's Office	Dealer Member
Ashley Dena Term exp. 1-15-26	Governor's Office	Dealer Member
Kathryn Ellen Doi Term exp. 1-15-25	Governor's Office	Public Member
Ryan Fitzpatrick Term exp. 1-15-23	Governor's Office	Dealer Member
Ardashes (Ardy) Kassakhian Term exp. 1-15-26	Senate Rules Committee	Public Member
Bismarck Obando Term exp. 1-15-26	Governor's Office	Public Member
Karthick Ramakrishnan Term exp. 1-15-27	Speaker of the Assembly	Public Member
Brady Schmidt Term exp. 1-15-25	Governor's Office	Dealer Member
Jacob Stevens Term exp. 1-15-27	Governor's Office	Public Member

2415 1st Avenue, MS L242
Sacramento, California 95818
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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
A G E N D A
GENERAL MEETING

Department of Motor Vehicles
2415 1st Avenue, Fifth Floor
Room 5F
Sacramento, California 95818
(916) 445-1888

September 21, 2023

Please note that Board action may be taken regarding any of the issues listed below. As such, if any person has an interest in any of these issues, they may want to attend.

The Board provides an opportunity for members of the public to comment on each agenda item before or during the discussion or consideration of the item as circumstances permit. (Gov. Code § 11125.7) However, comments by the parties or by their counsel that are made regarding any proposed decision, order, or ruling must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board. Members of the public may not comment on such matters.

The meeting is being held at the Department of Motor Vehicles' Headquarters in Sacramento located between Broadway and 24th Street. Attendees need to check in at the security desk on the 1st floor to receive a visitor's badge. Guest parking passes are available in advance by emailing the Board at nmvp@nmvp.ca.gov or can be requested on the day of the meeting in the lobby. Board staff will be available to answer any questions and escort attendees from the lobby to the meeting room.

1. **10:00 a.m. -- Meeting called to order.**
2. **Roll Call.**
3. **Pledge of Allegiance.**

4. **Introduction and welcome of newly appointed Dealer Board Member Ashley Dena.**
5. **Announcement of newly appointed Public Board Member Karthick Ramakrishnan.**
6. **Presentation of Resolution to Inder Dosanjh, former Dealer Board Member.**
7. **Appointment of committee members to the Administration Committee, Board Development Committee, Fiscal Committee, Government and Industry Affairs Committee, Legislative Committee, Policy and Procedure Committee, and Ad Hoc Committee on Equity, Justice and Inclusion, by President Kassakhian.**
8. **Discussion and consideration of the Ad Hoc Committee on Equity, Justice and Inclusion's new policies and other *Core Four*-related recommendations - Ad Hoc Committee.**
 - a) Board policy that recruitment and hiring practices be designed and implemented with the goal of filling at least 44% of Board public contact positions with bilingual employees who have passed the Department of Motor Vehicles' Bilingual Verbal Proficiency Examination.
 - b) Board policy requiring the Ad Hoc Committee on Equity, Justice, and Inclusion review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs.
9. **Discussion and consideration of tasking the Government and Industry Affairs Committee to develop a Core Four - Safety initiative (OKR) related to improving the repair rate of California-registered vehicles subject to the Takata air bag inflator "stop drive" safety recall.**
10. **Discussion and consideration of revised Board policy concerning the allocation of court reporter fees exclusively to the parties consistent with Section 551.7 of Title 13 of the California Code of Regulations - Administration Committee.**
11. **Update on Board Development Activities - Board Development Committee.**
12. **Update concerning the Board's compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency, and the resultant Corrective Action Plan - Executive Committee.**

13. **Report on non-substantive changes suggested by the Office of Administrative Law to the following regulations - Executive Committee.**
 - a. Request for Informal Mediation (13 CCR § 551.14)
 - b. Contents (13 CCR § 555)
 - c. Procedure at Hearings (13 CCR § 580)
 - d. Format of First Page; Format and Filing of Papers (13 CCR § 595)
14. **Report on the Board's financial condition and related fiscal matters - Fiscal Committee.**
 - a. Report on the Board's Financial Condition for the 3rd Quarter of Fiscal Year 2022-2023.
 - b. Status report concerning the Board's collection of the Annual Board Fee.
 - c. Discussion and consideration of the Board's proposed budget for the next fiscal year, and whether any dealer/manufacturer fee adjustments are necessary.
15. **Discussion regarding the 2024 New Motor Vehicle Board Industry Roundtable focusing on "industry services" such as an overview of Board programs and the Department of Motor Vehicles' Investigations Division, Occupational Licensing Inspections Program, and the newly formed Industry Services Branch - Government and Industry Affairs Committee.**
16. **Discussion concerning pending legislation - Legislative Committee.**
 - a. Pending Legislation of Special Interest:
 - (1) Assembly Bill 473 (Assembly Member Aguiar-Curry) - Motor vehicle manufacturers, distributors, and dealers.
 - b. Pending Legislation of General Interest:
 - (1) Senate Bill 143 (Assembly Committee on Budget and Fiscal Review) - State Government (teleconference meetings under the Bagley-Keene Open Meeting Act)
 - (2) Senate Bill 544 (Senator Laird) - Bagley-Keene Open Meeting Act: teleconference.
 - c. Pending Federal Legislation of General Interest: None
17. **Discussion and consideration of proposed revisions to the assignment of cases to Board Administrative Law Judges and Office of Administrative Hearings by assigning cases according to the last digit in the protest no. when the protest is filed - Policy and Procedure Committee.**

18. **Executive Director's Report.**

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

19. **Selection of Board meeting dates for 2024.**

20. **Closed Executive Session.**

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

a. **Discussion and consideration of personnel matters - Administration Committee.**

Discussion and consideration of personnel matters, by all members of the Board.

b. **Consideration of annual performance review for Executive Director - Executive Committee.**

Consideration of annual performance review for Executive Director, by all members of the Board.

21. **Open Session.**

22. **Public Comment. (Gov. Code § 11125.7)**

23. **Oral Presentation before the Public Members of the Board.**

Let's Ride Motorsports Inc v. Textron Specialized Vehicles Inc. ("TSV")
Protest Nos. PR-2815-23

24. **Closed Executive Session deliberations.**

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

Consideration of Proposed Order.

Let's Ride Motorsports Inc v. Textron Specialized Vehicles Inc. ("TSV")
Protest Nos. PR-2815-23

Consideration of the Administration Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protest, by the Public Members of the Board.

25. **Open Session.**

26. **Adjournment.**

To request special accommodations for persons with disabilities at this or any future Board meeting or to request any accommodation for persons with disabilities necessary to receive agendas or materials prepared for Board meetings, please contact Alex Martinez at (916) 445-1888 or Alejandro.martinez2@dmv.ca.gov .



Memorandum

Date : AUGUST 15, 2023

To : NEW MOTOR VEHICLE BOARD

**From : ARDASHES “ARDY” KASSAKHIAN
PRESIDENT**

Subject : COMMITTEE ASSIGNMENTS

At the September 21, 2023, General Meeting, we are going to review committee assignments so our newest members can be appointed to a committee.

The current committee assignments are as follows:

ADMINISTRATION COMMITTEE

Ryan Fitzpatrick, Chair
Bismarck Obando, Member

BOARD DEVELOPMENT COMMITTEE

Kathryn Ellen Doi, Chair
Brady Schmidt, Member

EXECUTIVE COMMITTEE

Ardy Kassakhian, President
Jake Stevens, Vice President

FISCAL COMMITTEE

Anne Smith Boland, Chair
Bismarck Obando, Member

GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

Anne Smith Boland, Chair
Ryan Fitzpatrick, Member

LEGISLATIVE COMMITTEE

Ardy Kassakhian, President
Jake Stevens, Vice President

POLICY AND PROCEDURE COMMITTEE

Jake Stevens, Chair

Kathryn Ellen Doi, Member

AD HOC DELEGATED COMMITTEE ON EQUITY, JUSTICE AND INCLUSION

Anne Smith Boland, Chair

Kathryn Ellen Doi, Member

Bismarck Obando, Member

Jake Stevens, Member

The description of the standing committees are as follows:

- **Executive Committee** – comprised of the Board President and Vice President includes approval of Board meeting Agendas, meeting with Department and Agency Directors, monitoring the Business, Transportation & Housing Agency audit of Board activities, and other matters requiring Board representation.
- **Administration Committee** – personnel, hiring, internal operations (as they relate to administration), office forms (including letterhead) and the Board's website.
- **Board Development Committee** – Board Member education, welcoming new Board Members, meeting with the CNCDA (all Board members, as their schedules allow, may volunteer for this activity) and the employee recognition program.
- **Fiscal Committee** – budget and finance matters related to Board operation.
- **Government and Industry Affairs Committee** – expanding efforts related to government and industry outreach, including the Industry Roundtable. Review industry related advertising laws.
- **Legislative Committee** – comprised of the Board President and Vice President unless otherwise designated by the President. Provides analyses on legislation that directly affects the Board's laws and functions.
- **Policy and Procedure Committee** – regulations, Board protocol (including parliamentary procedures and meeting minutes), legal action participation, case management and internal operations (as they relate to policy and procedure).

If you have any questions, please do not hesitate to contact me or Tim Corcoran at (916) 244-6774.



Memorandum

Date : AUGUST 15, 2023

**To : AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION
ANNE SMITH BOLAND, CHAIR**

From : TIMOTHY M. CORCORAN

**Subject : DISCUSSION AND CONSIDERATION OF NEW POLICIES AND OTHER CORE
FOUR-RELATED RECOMMENDATIONS**

Background

As a board situated within the California State Transportation Agency (CalSTA) umbrella of state governmental bodies, the Board and its staff are subject to CalSTA oversight and also serve in support of CalSTA's agency-wide objectives.

CalSTA Secretary Toks Omishakin established the *Core Four* priorities, and convened a workshop and summit in January to gather the executive leadership of the CalSTA departments, boards and commissions to collaboratively develop ideas to take back to their respective bodies in furtherance of one or more of the following priorities:

- 1) Safety
- 2) Equity
- 3) Climate Action
- 4) Economic Prosperity

At the May 23, 2023 meeting of the Ad Hoc Committee on Equity, Justice and Inclusion, the members heard and discussed proposals, and prepared the following recommendations to the Board, related to *Core Four* priority, Equity:

- a) Adopt new Board policy that recruitment and hiring practices shall be designed and implemented with the goal of filling at least 44% of Board public contact positions with bilingual employees who have passed the Department of Motor Vehicles' Bilingual Verbal Proficiency Examination.
- b) Adopt new Board policy requiring the Ad Hoc Committee on Equity, Justice and Inclusion review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs.

New Policies and CalSTA Core Four Priorities
Page 2
August 15, 2023

This topic is being agendized for discussion and consideration at the September 21, 2023, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 445-1888.

Attachment

cc: Ardashes "Ardy" Kassakhian



CALSTA'S CORE FOUR PRIORITIES



SAFETY

Nearly 10% of all the year 2021 traffic deaths in the U.S. occurred on California roadways. Fatalities for Active Transportation users are also at a 16-year high. By embedding the Safe System approach into our investments, planning, design and innovation, we will be able to achieve better outcomes on this urgent responsibility.



EQUITY

Historically, transportation decisions prioritized movement of vehicles over the movement of people. We also built a transportation system that in some cases had detrimental impacts in underserved communities. We aim to create an equitable and accessible transportation network and to provide equitable opportunities for all people.



CLIMATE ACTION

Nearly half of all climate-changing pollution in California comes from the transportation sector, and this demands our action for a cleaner future for all Californians. We must continue making our carbon footprint smaller by investing in a more multimodal system, embracing smarter land use development and utilizing innovation around zero emission vehicles.



ECONOMIC PROSPERITY

Transportation policy done right creates well-paying jobs, provides affordable options, supports housing opportunities and powers our economy. This must be our focus as we strive for all people to be on equal footing, resulting in more thriving, robust communities.





Memorandum

Date : AUGUST 15, 2023

**To : ADMINISTRATION COMMITTEE
RYAN FITZPATRICK, CHAIR
BISMARCK OBANDO, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

**Subject : DISCUSSION AND CONSIDERATION OF REVISED BOARD POLICY
CONCERNING THE ALLOCATION OF COURT REPORTER FEES
EXCLUSIVELY TO THE PARTIES CONSISTENT WITH SECTION 551.7 OF
TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS**

History of Board Policy

Beginning in March 2012, the New Motor Vehicle Board ("Board") first authorized the assignment of costs for reporting merits hearings and dispositive motions¹ to the parties equally after the first day of hearing. This included the Board's cost of the hearing transcripts. Subsequent amendments were adopted to improve the policy and pattern it more closely to the courts (June 2013) and to give the parties the option to use or not use the Board's contracted reporter service (March 2018).

The existing policy is:

For the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs excluding Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired.

For each subsequent day, the Board or counsel, at the Board's discretion, will arrange reporting services and the Board will order the parties, on an equal basis, to pay the court reporter service for the reporter's appearance fees, the delivery fee and any other costs including Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

¹ "Dispositive motions" are those that result in a final determination of the protest or petition before the Board.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fees, the delivery fee, and any other costs. Counsel can utilize the Board's contracted reporting service but are not required to do so. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

The parties are notified of the Board's policy at the scheduling conference, in the order establishing the date for the hearing, and in a separate enclosure sent with the order.

Regulatory Authority

Section 551.7 of Title 13 of the California Code of Regulations pertains to the reporting of Board proceedings, as follows:

The board may, at its discretion, assign the cost of reporting any proceedings before the board, including, but not limited to, transcript fees, reporter's per diem costs, exhibits, pleadings, and reproduction of board files as follows:

- (a) Allocated entirely to one of the parties; or apportioned among the various parties at the discretion of the board; or
- (b) Assumed by the board, in whole or in part.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code.

Proposed Revision

The Office of Administrative Hearings ("OAH") is presiding over its first hearing on the Board's behalf beginning September 18, 2023 for eight non-consecutive days, in Protest No. PR-2759-21 *KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company*. The Board has the option of providing the court reporter, requesting OAH provide the court reporter at the Board's expense, or all parties consent to electronic recording pursuant to subdivision (d) of Government Code section 11512, which is unlikely. Regardless of which option is selected, all parties, OAH, and the Board require transcripts to cite to the record.

When a matter is transferred to OAH, the Board's role in the process is limited to issuing the Order of Time and Place of Hearing. It has no interaction with counsel for the parties so determining any special requests such as dailies, real-time transcription, or an expedited turnaround is restricted. In light of this, allowing the parties more flexibility to select a court reporter of their choice that meets their needs seems prudent. This would also reduce the Board's expenditures and eliminate a time consuming task.

For consistency and the same benefits noted above, this same practice should apply to hearings on dispositive motions.

Recommendation

It is recommended that the Board revise its existing policy so the parties are equally responsible for scheduling the court reporter and for paying all court reporter-related fees and costs including hearing transcripts on the first hearing day for all merits hearings and dispositive motions. This would allow the parties to timely secure the court reporter of their choice and ensure any special requests are met.

The proposed revised policy is:

For merits and dispositive motion hearings, the parties, on an equal basis, are responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs, and the cost of certified hearing transcript(s) for the New Motor Vehicle Board and Office of Administrative Hearings, if applicable. Counsel are responsible for purchasing their own transcript(s), if desired.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fee, the delivery fee, and any other costs. The requesting party or parties will also be responsible for providing the New Motor Vehicle Board and Office of Administrative Hearings, if applicable, with a certified copy of the transcript. Counsel are responsible for purchasing their own transcript(s), if desired.

The Order of Time and Place of Hearing issued by the Board would be amended to reflect the revised policy. For example, in a merits hearing assigned to OAH, the language would include the following paragraph:

The parties are equally responsible for scheduling the stenographic reporter and for paying any appearance fees, delivery fees, and other costs, and for providing the Office of Administrative Hearings and the New Motor Vehicle Board certified copies of the transcripts in the manner they deem appropriate. (Cal. Code Regs., tit. 13, § 551.7)

For instances in which an Administrative Law Judge or staff deem reporting services necessary, the revised policy, if adopted, would not apply. The Board would be responsible for scheduling the court reporter and incur all associated fees and costs.

Revised Board Policy - Court Reporter Fees

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August 15, 2023

This topic is being agendized for discussion and consideration at the September 21, 2023, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 244-6774 or Robin at (916) 244-6776.

Attachment

cc: Ardashes "Ardy" Kassakhian

REVISED TRANSCRIPT INFORMATION SHEET

The chart below provides the Board adopted policy concerning the allocation of court reporter fees. (Cal. Code Regs., tit. 13, § 551.7)

Circumstances	Reporting Costs including Appearance, Delivery Fees, and any Other Costs	Transcript Fees for the Board and Office of Administrative Hearings (if applicable)
Hearings on the merits and dispositive motions ¹	Participating parties	Participating parties
Other motions (venue, consolidation, continuation, etc.)	Requesting party or parties	Requesting party or parties
Pre-hearing conference	Requesting party or parties	Requesting party or parties
Discovery disputes (ruling on objections to production, motions to quash, etc.)	Requesting party or parties	Requesting party or parties

For merits and dispositive motion hearings, the parties, on an equal basis, are responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs, and the cost of certified hearing transcript(s) for the New Motor Vehicle Board and Office of Administrative Hearings, if applicable. Counsel are responsible for purchasing their own transcript(s), if desired.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fee, the delivery fee, and any other costs. The requesting party or parties will also be responsible for providing the New Motor Vehicle Board and Office of Administrative Hearings, if applicable, with a certified copy of the transcript. Counsel are responsible for purchasing their own transcript(s), if desired.

If you have any questions, please contact the Board legal staff at (916) 445-1888 or nmvp@nmvp.ca.gov.

¹ "Dispositive motions" are those that result in a final determination of the protest or petition before the Board.



Memorandum

Date : AUGUST 15, 2023

To : BOARD DEVELOPMENT COMMITTEE
KATHRYN E. DOI, CHAIR
BRADY SCHMIDT, MEMBER

From : TIMOTHY M. CORCORAN

Subject : UPDATE ON BOARD ACTIVITIES

In an effort to have on-going discussions regarding Board Member education and activities of interest, the Board Development Committee has suggested agendizing this topic at each Board Meeting.

In addition, educational presentations will be agendized for each Board Meeting. Board Members can advise staff of any topics on which they wish to receive more information or training, which will be added to the following list:

- Presentation on buy-sell transactions by Dealer Member, Brady Schmidt
- Presentation on implementation of alternative fuel vehicles in mass transit
- Topics on Board procedure, including:
 - Writs of Administrative Mandate
 - Stipulated Decisions and Orders
 - Dealer Member Participation
 - Foundational Board published cases and their common application
 - Petitions
 - Case management procedures:
 - Paths a protest can take (law and motion, settlement, merits hearing)
 - Types of protests and the various burdens of proof
 - Role of the statutorily required notices and time to file a protest
 - Protests that do not require a notice

Update on Board Development Activities
Page 2
August 15, 2023

The information in this memorandum is provided for informational purposes only at the September 21, 2023, General Meeting. No Board action is required.

cc: Ardy Kassakhian, President



Memorandum

Date : AUGUST 15, 2023

**To : EXECUTIVE COMMITTEE
ARDASHES "ARDY" KASSAKHIAN, CHAIR
JACOB STEVENS, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. 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 staff¹ annually reviews the Board's compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency² ("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 November 7, 2022, General Meeting. There have been several updates so this matter is being agendaized for informational purposes at the September 21, 2023, General Meeting.

The attached updated matrix provides an overview of each audit finding, the chronology of each step taken toward Board compliance, and the Department of Motor Vehicles' responses. 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 that were adopted at the May 25, 2000, General Meeting. The updates are highlighted yellow in underline and strikeout font.

¹ At the November 20, 2008, General Meeting, the Audit Compliance Officer duties were assigned to the Board's General Counsel. However, given the General Counsel's resignation in 2011, Robin Parker assumed these duties.

² Effective July 1, 2013, California State Transportation Agency superseded Business, Transportation & Housing Agency.

The chart below provides a brief summary of the updates¹ to the corrective action plan taken by the Board:

Finding No.	Description	Update
9	Issue memo for reorganization.	The Office of Administrative Law was added to the Board's "Merit Hearings Judge Assignment Log," so it is next in line to preside over a protest hearing between a franchisee and franchisor. For a period not to exceed three years, the Executive Director has discretion to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH outside the normal rotation, the Executive Director will seek Executive Committee permission.
15	Board delegations are not formalized.	Reflects updates to the Board adopted delegations.
24	The computer system needs additional physical security devices.	Locks are provided for all laptops. The Board's server is managed/housed by DMV IT and is subject to their mitigation protocols. Smoke detectors are managed by DMV Facilities and are subject to Fire Marshall rules.
30(31)	Board staff do not have access to written guidance on appropriate behavior.	All staff have access to written guidance on appropriate behavior via the DMV Driver and the DMV Expectations document.

This matter is for information only at the September 21, 2023, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 244-6774 or Robin at (916) 244-6776.

Attachment

¹ Non-substantive changes and updates to current staff titles were not reflected in this chart but are reflected in the Audit Matrix.

Business, Transportation & Housing Agency¹ Performance Audit of the New Motor Vehicle Board

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). Mr. Brennan passed away in November 2017 and Timothy M. Corcoran was appointed as the Executive Director on January 24, 2018.

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 Recommendation

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 agendaized 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 Officer² 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, Chief 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. At the January 25, 2023, General Meeting, the Office of Administrative Hearings ("OAH") was added to the Board's "Merit Hearings Judge Assignment Log," so OAH is next in line to preside over a protest hearing between a franchisee and franchisor. For a period not to exceed three years, the Executive Director has discretion to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director will seek Executive Committee permission. (April 28, 2023, General Meeting)

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 and June 2016, 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 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, 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: Board Chief Counsel is in contact with Agency counsel concerning the Board's court cases. Agency is also provided with a Week Ahead Report by Senior Staff Counsel 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, February 10, 2016, and January 18, 2017, General Meetings to implement legislation (Senate Bill 155, Assembly Bills 759 and 1178, and Assembly Bill 287, respectively). Article 6 of the Vehicle Code was repealed effective January 1, 2019, and the Board revised its Legislative Policy so revised delegations were adopted at the June 7, 2019, General Meeting. At the February 16, 2021, General Meeting, revised delegations were adopted to reflect: (1) Section 3050 was re-lettered; (2) Article 3 Appeals were repealed; (3) The methodology for calculating a franchisee's "retail labor rate" or "retail parts rate" (Section 3065.2); (4) Sections 3065.3 and 3065.4 protests; (5) The Board's authority to hear Export or Sale-for-Resale Prohibition Policy protests in Article 6 was restored (Assembly Bill 179); and (6) Updates concerning recent staff promotions. **At the April 28, 2023, General Meeting, delegations were updated to delete obsolete references to appeals in Section 3008. Additionally, for a period not to exceed three years, the Executive Director was given discretion to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director will seek Executive Committee permission.**

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 years. 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. At the February 11, 2008, General meeting, an Ad Hoc Rulemaking Committee was created. Annually, the Board President reviews these committee designations and periodically creates Ad Hoc Committees.

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 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.

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 until his passing in November 2017. Timothy M. Corcoran was appointed the Executive Director on January 24, 2018; he took his oath of office on February 5, 2018, and 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. Locks have been installed for all laptops, which recently replaced the desktop computers. The server is no longer housed at the Board's offices. Locks are provided for all laptops. The Board's server is managed/housed by DMV IT and is subject to their mitigation protocols. Smoke detectors are managed by DMV Facilities and are subject to Fire Marshall rules.~~

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 devices 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 most recently updated and effective on June 20, 2019. At the February 16, 2021, General Meeting, the members approved proposed amendments to the Conflict of Interest Code that were approved by the FPPC in June 2022. The effective date is September 8, 2022.

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. All staff have access to written guidance on appropriate behavior via the DMV Driver and the DMV Expectations document.

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



Memorandum

Date : AUGUST 30, 2023

**To : EXECUTIVE COMMITTEE
ARDASHES "ARDY" KASSAKHIAN, CHAIR
JACOB STEVENS, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

Subject : REPORT ON NON-SUBSTANTIVE CHANGES SUGGESTED BY THE OFFICE OF ADMINISTRATIVE LAW TO THE FOLLOWING REGULATIONS

- a. Request for Informal Mediation (13 CCR § 551.14)
- b. Contents (13 CCR § 555)
- c. Procedure at Hearings (13 CCR § 580)
- d. Format of First Page; Format and Filing of Papers (13 CCR § 595)

At the April 26, 2002, General Meeting, the members adopted the following policy concerning promulgating regulations:

The Board will delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. All substantive changes to the proposed text suggested by Board staff, the public, or the Office of Administrative Law will be brought before the members at the next meeting. Non-substantive changes suggested by the Office of Administrative Law or staff will be submitted to the Executive Committee for consideration and ultimately reported to the Board at the next meeting.

At the April 28, 2023, General Meeting, the members approved a number of regulatory amendments to eliminate references to "residence addresses" and "facsimile," update the Board's address, and make language gender neutral. These changes were submitted to the Office of Administrative Law ("OAL") as changes without regulatory effect, i.e., non-substantive. (Attachments 1 and 2)

During its review, OAL suggested a number of non-substantive changes as summarized below:

1. Request for Informal Mediation (13 CCR § 551.14): In subparagraph (c)(2), "residence addresses and business" could not be deleted as OAL deemed these substantive changes.

2. Contents (13 CCR § 555): In subparagraph (a), the replacement of “he or she appears” with “appearing” was approved by the Board but inadvertently not underlined when submitted to OAL so the underline was added. OAL suggested replacing “his or her” with “petitioner’s” in subparagraph (a). In subparagraph (b) “residence addresses and business” could not be deleted as OAL deemed these substantive changes.
3. Procedure at Hearings (13 CCR § 580): In subparagraph (c), OAL suggested replacing “him or her” and “him” with “the witness” and “his or her” with “their” so this section is gender neutral.
4. Format of First Page; Format and Filing of Papers (13 CCR § 595): In subparagraphs (a)(1), (d), and (e), references to “facsimile” could not be deleted as OAL deemed this a substantive change. In subparagraph (a)(1), references to office and residence address could not be deleted as OAL deemed these substantive changes.

The changes OAL determined to be substantive will be added to future rulemaking.

The Executive Committee approved these changes so the staff could proceed with the proposed rulemaking. The proposed changes were approved by OAL and filed with the Secretary of State on August 22, 2023. (Attachment 3)

This matter is being agendaized for information only at the September 21, 2023, General Meeting.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 244-6774 or Robin at (916) 244-6776.



Memorandum

Date : APRIL 3, 2023

**To : POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

Subject : DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS

- A. Challenge (13 CCR § 551.1)**
- B. Testimony by Deposition (13 CCR § 551.6)**
- C. Intervention; Grant of Motion; Conditions (13 CCR § 551.13)**
- D. Request for Informal Mediation (13 CCR § 551.14)**
- E. Informal Mediation Process (13 CCR § 551.16)**
- F. Sanctions (13 CCR § 551.21)**
- G. Interpreters and Accommodation (13 CCR § 551.23)**
- H. Transmittal of Fees by Mail (13 CCR § 553.72)**
- I. Contents (13 CCR § 555)**
- J. Procedure at Hearings (13 CCR § 580)**
- K. Article 7. New Motor Vehicle Board – Conflict-of-Interest Code**

The legal staff is proposing a number of regulatory amendments as indicated in the attachment to eliminate references to “residence addresses,” update the Board’s address, and make language gender neutral where possible.

If the Board adopts the proposed regulatory changes, the staff will proceed with the rulemaking process as delineated in Government Code section 11340, et seq. Updates concerning the status of the rulemaking process will be provided at future Board meetings during the Administrative Matters portion of the Executive Director’s Report.

This matter is being agendaized for consideration at the April 28, 2023, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me or Robin at (916) 445-1888.

Attachment: as stated

cc: Ardashes “Ardy” Kassakhian

ATTACHMENT 1

§ 551.1. Challenge.

An administrative law judge or board member shall voluntarily disqualify ~~himself or herself~~ **themselves** and withdraw from any hearing or deliberation in which ~~he or she~~ **cannot be accorded** a fair and impartial hearing or consideration **cannot be accorded**. Any party may request the disqualification of any administrative law judge or board member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns a board member, the issue shall be determined by the other members of the board. Where the request concerns the administrative law judge, the issue shall be determined by the board if the board itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge.

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Sections 11425.40 and 11512, Government Code.

§ 551.6. Testimony by Deposition.

On verified petitions of any party, the board may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions. Petition shall set forth the nature of the pending proceedings; the name and address of the witness whose testimony is desired; the showing of the materiality of ~~his or her~~ **the** testimony; a showing that the witness shall be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. Where the witness resides outside the state and where the board has ordered the taking of ~~his or her~~ testimony by deposition, the board shall obtain an order of court to that effect by filing a petition therefor in the Superior Court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189 of the Government Code.

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Section 11189, Government Code.

§ 551.13. Intervention; Grant of Motion; Conditions.

Any person, including a board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, may file a motion with the executive director of the board (or designee) requesting that the movant be allowed to intervene in a pending proceeding. The motion to intervene may be granted subject to the following:

- (a) The motion shall be submitted in writing, with copies served on all parties named in the pending proceeding.
- (b) The motion shall be filed as early as practicable in advance of the hearing.

(c) The motion shall state facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding.

(d) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall determine that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(e) The board, its executive director, or an administrative law judge designated by the board or its executive director, may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a subsequent time. Such conditions shall be at the sole discretion of the board, its executive director, or an administrative law judge designated by the board or its executive director, based on the knowledge and judgment at that time, so as to promote the interests of justice. Conditions include, but are not limited to, the following:

(1) Limiting the intervenor's participation to designated issues;

(2) Limiting or excluding the intervenor's participation in discovery and cross-examination; and

(3) Limiting or excluding the intervenor's participation in settlement negotiations.

(f) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall issue an order granting or denying the motion for intervention as early as practicable in advance of the hearing, specifying any conditions, and briefly stating the reasons for the order. The board, its executive director, or an administrative law judge designated by the board or its executive director, may modify the order at any time by giving notice to all parties, stating the reasons for the modification. The determination of the board, its executive director, or an administrative law judge designated by the board or its executive director, in granting or denying the motion for intervention, or the determination modifying the order previously issued, is not subject to administrative or judicial review.

The board, its executive director, or an administrative law judge designated by the board or its executive director, may, in ~~their~~ ~~his or her~~ discretion, allow the filing of amicus curiae briefs.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code; and Section 11440.50, Government Code.

§ 551.14. Request for Informal Mediation.

(a) Prior to initiating a petition pursuant to section 3050(b) of the Vehicle Code, either party may request that the board mediate any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

(b) Participation in informal mediation is voluntary, informal, and nonadversarial.

(c) The request for informal mediation shall set forth the nature of the matter which the board is requested to mediate. The request for informal mediation shall comply substantially with the following requirements:

(1) Include the name, mailing address and telephone number of the person requesting informal mediation; the name, mailing address and telephone number of ~~their~~ ~~his or her~~

attorney or authorized agent if any, and the name and address of the licensee or applicant for license whose activities or practices are in question.

(2) Insofar as is known to the person requesting informal mediation, include the names, ~~residence addresses~~ and ~~business~~ addresses of persons and the dates, places and specific actions or practices involved in the matter.

(3) Describe the relief or disposition of the matter which the person requesting informal mediation would consider acceptable.

(d) A copy of the request for informal mediation shall be served on the licensee or applicant for license whose activities or practices are in question and proof of service (in compliance with Sections 1013a, 1013b and 2015.5, Code of Civil Procedure) thereof shall accompany the request for informal mediation filed with the executive director of the board.

(e) The form of the request for informal mediation shall substantially conform with the provisions of Article 6 herein.

(f) Article 1, section 553.40 shall apply to all requests for informal mediation.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050, Vehicle Code.

§ 551.16. Informal Mediation Process.

(a) Upon receipt of the request for informal mediation, the Board staff will initiate a conference call with the parties to ascertain whether the licensee or applicant for license whose activities or practices are in question is agreeable to participating in informal mediation.

(b) If the licensee or applicant for license whose activities or practices are in question is not agreeable to participating in informal mediation, either party may request that this matter be converted to a petition proceeding pursuant to Article 1, section 551.17.

(c) If the licensee or applicant for license whose activities or practices are in question is agreeable to participating in informal mediation, a mutually agreeable date for informal mediation will be calendared.

(1) Upon order of the board, and at least five business days prior to participating in informal mediation, the parties shall file and serve a premediation statement which includes a detailed statement of facts, statement of issues, and a realistic proposal for resolving the dispute.

(2) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall preside over the informal mediation.

(3) Evidence set forth in declarations of expert or percipient witnesses made under penalty of perjury may be considered by the board, its executive director, or an administrative law judge designated by the board or its executive director, in ~~their~~ ~~his or her~~ discretion.

(4) At any time during informal mediation, either party may request that this matter be converted to a petition proceeding pursuant to Article 1, section 551.17

(5) All communications, negotiations, or settlement discussions by and between participants in the course of informal mediation shall remain confidential.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050, Vehicle Code.

§ 551.21. Sanctions.

- (a) In any proceeding before the board or an ALJ, no party or representative of a party shall engage in or participate in any actions or tactics that are frivolous, or that are intended to cause or will result in unnecessary delay.
- (b) For purposes of this section, “party” or “representative of a party” includes, but is not limited to, a party's officer, director, managing agent, dealer principal or the equivalent, or their attorney.
- (1) “Actions or tactics” include, but are not limited to, the making or opposing of motions or the failure to comply with a lawful order or ruling of the board or an ALJ, including a failure to comply timely with a pre-hearing conference order or discovery order.
- (2) “Frivolous” includes, but is not limited to:
 - (A) Totally without merit as there is an absence of reasonable support, under the facts or law, for making or opposing the motion(s), or for the failure to comply; or
 - (B) For the purpose of harassing an opposing party or counsel.
 - (C) Actions or tactics, whether consisting of affirmative conduct or failure to act or respond, that will result or do result in unnecessary delay or costs, or are otherwise not in good faith.
- (c) A party asserting a violation of this section may, by way of written motion in compliance with Article 1, section 551.19, or oral motion made on the record during reported proceedings, request that the board or an ALJ recommend that the board impose sanctions upon a party, or party's representative, or both.
- (d) An ALJ presiding over the matter who believes there has been a violation of this section may on their ~~his or her~~ own initiative recommend that the board impose sanctions upon a party, or party's representative, or both.
- (e) The board shall not order sanctions, or an ALJ shall not recommend an award of sanctions, without providing the party or party's representative against whom sanctions are sought notice and an opportunity to be heard.
- (f) The board or ALJ shall make determinations as to whether the actions or tactics were frivolous based upon the administrative record and any additional testimony or documentary evidence presented.
- (g) Any proposed order recommending sanctions by the ALJ or board order imposing sanctions shall be on the record, or in writing, setting forth the factual findings on which the recommended or board ordered sanctions are based, as well as setting forth the factual findings as to the reasonableness of the sanctions, including the reasonableness of any amount(s) to be paid.
- (h) A proposed order recommending an award of sanctions shall be considered by the board members at their next regularly scheduled meeting. A determination not to award sanctions shall not be considered by the board members and is final upon issuance by the ALJ.
- (i) The board members' consideration to affirm, reject or modify the ALJ's award of sanctions does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

(j) If the motion for sanctions is granted, the board may order or an ALJ may recommend that the party or party's representative or both pay the movant's reasonable expenses and attorney's fees incurred in bringing and pursuing the motion. However, payment of attorney's fees and expenses will not be ordered if:

(1) The movant filed the motion before attempting in good faith to obtain compliance by the opposing party without board action;

(2) The opposing party's noncompliance, nondisclosure, response, or objection was substantially justified; or

(3) Other circumstances make an award unjust.

(k) If the motion for sanctions is denied, the board may order or an ALJ may recommend, after giving an opportunity to be heard, the movant or movant's representative or both to pay the party or party's representative who opposed the motion reasonable expenses and attorney's fees in opposing the motion for sanctions as well as bringing and pursuing the motion for expenses and attorney's fees. However, payment of attorney's fees and expenses will not be ordered if the motion for sanctions was substantially justified or other circumstances make an award unjust.

(l) If the motion for sanctions is granted in part and denied in part, the board may order or an ALJ may recommend that an award of reasonable expenses and attorney's fees incurred in connection with bringing or opposing the motion be apportioned.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 128.5, Code of Civil Procedure; Section 11455.30, Government Code; and Section 3050.2, Vehicle Code.

§ 551.23. Interpreters and Accommodation.

(a) Each party and each party's attorney are responsible for timely communicating to the board any needs of the party, the party's agent or a witness for the following:

(1) Language assistance, including sign language.

(2) Accommodation for a disability.

(3) Electronic amplification for hearing impairment.

(4) Any other special accommodation.

(b) In accordance with Government Code section 11435.25, the board may direct that the cost of providing an interpreter shall be paid by the board or by the party at whose request the interpreter is provided. The board's decision to direct payment shall be based upon an equitable consideration of all the circumstances, such as the ability of the party in need of the interpreter to pay.

(c) An interpreter at a hearing or other proceeding shall be sworn by oath or affirmation to perform **their** ~~his or her~~ duties truthfully. The oath or affirmation shall be in substantially the following form:

"Do you swear or affirm that, to the best of your skill and judgment, you will make a true interpretation of the questions asked and the answers given and that you will make a true translation of any documents which require translation?"

(d) Any interpreter used at the hearing must have an oath on file with the Superior Court, and be certified and registered in accordance with Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code. However, if an

interpreter certified pursuant to Government Code section 11435.30 cannot be present at the hearing, the board shall have discretionary authority to provisionally qualify and use another interpreter.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 751, Evidence Code; and Sections 11435.05, 11435.10, 11435.25, 11435.55, 11435.65 and 68560, et seq., Government Code.

§ 553.72. Transmittal of Fees by Mail.

No penalty shall be imposed for delinquent payment of any fee required to be paid under this article in the event any instrument for effective payment of such fee is placed in the United States mail or in any postal box maintained by the United States Postal Service with sufficient identification, in an envelope with postage thereon prepaid and addressed to the New Motor Vehicle Board, ~~1507 21st Street, Suite 330~~ **2415 1st Avenue, MS L242**, Sacramento, California, ~~95811~~ **95818** prior to the date the fee becomes delinquent.

Note: Authority cited: Section 472.5(f), Business and Professions Code. Reference: Sections 472.5(b) and (d), Business and Professions Code.

§ 555. Contents.

The petition shall set forth in clear and concise language the nature of the matter which the petitioner wishes the board to consider. The petition shall comply substantially with the following requirements:

- (a) Include the name, mailing address and telephone number of the petitioner; the name, mailing address and telephone number of ~~his or her~~ attorney or authorized agent if any, and the name and address of the licensee or applicant for license (hereinafter referred to as "respondent") whose activities or practices are in question. All correspondence with petitioner and notices to petitioner shall be addressed to petitioner's said address, if ~~he or she appears~~ **appearing** in person, or to the address of ~~his or her~~ **petitioner's** attorney or agent, if ~~he or she is~~ represented by an attorney or agent. Petitioner shall promptly give the executive director and respondent written notice by mail of all subsequent changes of address or telephone number.
- (b) Insofar as is known to petitioner, include the names, ~~residence addresses and business~~ addresses of persons and the dates, places and specific actions or practices involved in the matter.
- (c) If the actions or practices described in the petition are believed to be in violation of law, a concise recitation of applicable law and citation to the applicable statutes or other authorities.
- (d) If the petitioner desires that the board mediate, arbitrate or resolve a difference between the petitioner and respondent, recite that fact and describe the relief or disposition of the matter which petitioner would consider acceptable.
- (e) The petitioner may submit, as exhibits to the petition, photographic, documentary or similar physical evidence relevant to the matter referred to in the petition, in which event

an appropriate description of the exhibits shall be set forth in the petition sufficient to identify them and to explain their relevancy.

(f) The petitioner shall set forth in the petition an estimate of the number of days required to complete the hearing.

(g) The petitioner shall set forth in the petition a request for a prehearing conference if one is desired.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050, Vehicle Code.

§ 580. Procedure at Hearings.

(a) Evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Evidence that is irrelevant or unduly repetitious shall be excluded.

(b) Official Notice. Before or after submission of a matter for decision, official notice may be taken by the board of any generally accepted technical or scientific matter within the board's special area of competence or of such facts as may be judicially noticed by the courts of this state.

(c) Examination of Witnesses. Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; to rebut the evidence against him **or her**; and to call and examine an adverse party or adverse witness as if under cross-examination without being bound by his or her testimony. Board members and, at the direction of the chairman of the board presiding at the hearing or of any member of the board, representatives of the staff of the board, may participate as appropriate, using their knowledge and experience for the primary purpose of developing a full, fair and accurate record. Questioning of witnesses will be controlled by the board and will generally be permitted only by the attorneys or agents of parties so represented, or by the parties who appear on their own behalf, members of the board and its staff. The board may in its discretion, during the examination of a witness, exclude from the hearing, any or all other witnesses in the same matter.

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Sections 11512 and 11513, Government Code; and Section 3050, Vehicle Code.

Article 7. New Motor Vehicle Board – Conflict-of-Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested

incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

NEW MOTOR VEHICLE BOARD
~~1507 — 21ST STREET, SUITE 330~~
~~2415 1st AVENUE, MS L242~~
SACRAMENTO, CALIFORNIA ~~95814~~ 95818

FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 620
SACRAMENTO, CALIFORNIA 95814

ARCHIVES
SECRETARY OF STATE
1020 O STREET
SACRAMENTO, CALIFORNIA 95814

The conflict-of-interest code is designated as Article 7 of Chapter 2 of Division 1 of Title 13 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Article 7. New Motor Vehicle Board – Conflict of Interest Code

Section
599. General Provisions
 Appendix A
 Appendix B

Note: Authority cited: Section 3050(a), Vehicle Code; and Sections 87300, 87304 and 87306, Government Code. Reference: Section 81000, et seq., Government Code.



Memorandum

Date : APRIL 3, 2023

**To : POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

Subject : DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS TO ELIMINATE REFERENCES TO FACSIMILE AND RESIDENCE ADDRESSES IN SECTION 595 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS (FORMAT OF FIRST PAGE; FORMAT AND FILING OF PAPERS) AND MAKE GENDER NEUTRAL

Most case management documents are submitted to the Board via email or overnight delivery like Fed Ex or UPS. It has been many years since any documents have been sent via fax. With the Board's recent move to the Department of Motor Vehicles in Sacramento, our hoteling space and planned permanent facility do not have a landline so litigants seeking to file a protest via fax would need to contact the Board's legal staff in advance to make the necessary arrangements.

In light of this, staff are proposing amending Section 595 of Title 13 of the California Regulations to delete references to "facsimile." Additionally, staff are recommending that all references to "residence address" be removed and gender specific language be gender neutral.

The proposed amendments are as follows:

13 CCR § 595. Format of First Page; Format and Filing of Papers.

(a) The first page of all papers shall be in the following form:

(1) Commencing in the upper left hand corner and to the left of the center of the page, the name, office address (or if none, the residence address), mailing address (if different from the office or residence address), electronic-mail address (if available), and the telephone number and facsimile number (if available) of the attorney or agent for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person. If the party is represented by an attorney, the state bar number of the attorney shall be beside the name of the attorney.

ATTACHMENT 2

(2) Below the name, address and telephone number, and centered on the page, the title of the board. Below the title of the board, in the space to the left of the center of the page, the title of the proceeding, e.g., John Doe, petitioner (or protestant) v. Richard Roe, respondent, as the case may be.

(3) To the right of and opposite the title, the number of the proceeding which shall be assigned consecutively by the executive director in the order of filing in petition and protest proceedings. The same number shall not be assigned to more than one petition or protest.

(4) Immediately below the number of the proceeding, the nature of the paper, e.g., "Request for Informal Mediation," "Petition," "Protest," "Answer," "Request for Hearing," "Petitioner's Opening Brief," etc. If the paper is a "Petition", the first allegation of the petition shall state the name and address of the respondent and whether the respondent is the holder of or an applicant for an occupational license of the type issued by the department such that the respondent is subject to the jurisdiction of the board.

(5) The dates of the hearing and any future pre-hearing or settlement conferences, if known.

(b) In addition to a paper copy, the board may direct a party to submit pleadings or other papers by electronic means if the party is able to do so.

(c) A party may obtain proof of the filing of a paper by submitting either an extra copy of the paper or a copy of the first page only, with a self-addressed, return envelope, postage prepaid. The copy will be returned to the party with the date of filing indicated.

(d) Papers may be filed with the board by ~~facsimile or~~ electronic-mail transmission. Unless required by the ALJ or by order of the board, the original paper need not be filed with the board if the party obtains telephonic or other confirmation from the board that a complete and legible copy of the papers was received.

(e) Notwithstanding Code of Civil Procedure Section 1013(a), papers delivered to the board by the U.S. Postal Service or other means are deemed filed on the date actually received by the board. Papers hand delivered to the board and complete papers received by ~~facsimile or~~ electronic-mail transmission during regular business hours (8 a.m. to 5 p.m.) will be filed on the date received. Papers received after regular business hours are deemed filed on the next regular business day.

(f) Protests sent by U.S. Postal Service certified or registered mail are deemed received by the board on the date of certified or registered mailing and will be filed as of the date of the certified or registered mailing.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 3051, Vehicle Code.

If the Board adopts the proposed regulatory changes, the staff will proceed with the rulemaking process as delineated in Government Code section 11340, et seq. Updates concerning the status of the rulemaking process will be provided at future Board meetings during the Administrative Matters portion of the Executive Director's Report.

Proposed Regulatory Amendments

Page 3

April 3, 2023

This matter is being agendaized for consideration at the April 28, 2023, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me or Robin at (916) 445-1888.

cc: Ardashes "Ardy" Kassakhian

§ 551.1. Challenge.

An administrative law judge or board member shall voluntarily disqualify ~~himself or herself~~ **themselves** and withdraw from any hearing or deliberation in which ~~he or she~~ **cannot be accorded** a fair and impartial hearing or consideration **cannot be accorded**. Any party may request the disqualification of any administrative law judge or board member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns a board member, the issue shall be determined by the other members of the board. Where the request concerns the administrative law judge, the issue shall be determined by the board if the board itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge.

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Sections 11425.40 and 11512, Government Code.

§ 551.6. Testimony by Deposition.

On verified petitions of any party, the board may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions. Petition shall set forth the nature of the pending proceedings; the name and address of the witness whose testimony is desired; the showing of the materiality of ~~his or her~~ **the** testimony; a showing that the witness shall be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. Where the witness resides outside the state and where the board has ordered the taking of ~~his or her~~ testimony by deposition, the board shall obtain an order of court to that effect by filing a petition therefor in the Superior Court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189 of the Government Code.

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Section 11189, Government Code.

§ 551.13. Intervention; Grant of Motion; Conditions.

Any person, including a board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, may file a motion with the executive director of the board (or designee) requesting that the movant be allowed to intervene in a pending proceeding. The motion to intervene may be granted subject to the following:

- (a) The motion shall be submitted in writing, with copies served on all parties named in the pending proceeding.
- (b) The motion shall be filed as early as practicable in advance of the hearing.

(c) The motion shall state facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding.

(d) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall determine that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(e) The board, its executive director, or an administrative law judge designated by the board or its executive director, may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a subsequent time. Such conditions shall be at the sole discretion of the board, its executive director, or an administrative law judge designated by the board or its executive director, based on the knowledge and judgment at that time, so as to promote the interests of justice. Conditions include, but are not limited to, the following:

(1) Limiting the intervenor's participation to designated issues;

(2) Limiting or excluding the intervenor's participation in discovery and cross-examination; and

(3) Limiting or excluding the intervenor's participation in settlement negotiations.

(f) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall issue an order granting or denying the motion for intervention as early as practicable in advance of the hearing, specifying any conditions, and briefly stating the reasons for the order. The board, its executive director, or an administrative law judge designated by the board or its executive director, may modify the order at any time by giving notice to all parties, stating the reasons for the modification. The determination of the board, its executive director, or an administrative law judge designated by the board or its executive director, in granting or denying the motion for intervention, or the determination modifying the order previously issued, is not subject to administrative or judicial review.

The board, its executive director, or an administrative law judge designated by the board or its executive director, may, in their ~~his or her~~ discretion, allow the filing of amicus curiae briefs.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code; and Section 11440.50, Government Code.

§ 551.14. Request for Informal Mediation.

(a) Prior to initiating a petition pursuant to section 3050(b) of the Vehicle Code, either party may request that the board mediate any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

(b) Participation in informal mediation is voluntary, informal, and nonadversarial.

(c) The request for informal mediation shall set forth the nature of the matter which the board is requested to mediate. The request for informal mediation shall comply substantially with the following requirements:

(1) Include the name, mailing address and telephone number of the person requesting informal mediation; the name, mailing address and telephone number of their ~~his or her~~

attorney or authorized agent if any, and the name and address of the licensee or applicant for license whose activities or practices are in question.

(2) Insofar as is known to the person requesting informal mediation, include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved in the matter.

(3) Describe the relief or disposition of the matter which the person requesting informal mediation would consider acceptable.

(d) A copy of the request for informal mediation shall be served on the licensee or applicant for license whose activities or practices are in question and proof of service (in compliance with Sections 1013a, 1013b and 2015.5, Code of Civil Procedure) thereof shall accompany the request for informal mediation filed with the executive director of the board.

(e) The form of the request for informal mediation shall substantially conform with the provisions of Article 6 herein.

(f) Article 1, section 553.40 shall apply to all requests for informal mediation.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050, Vehicle Code.

§ 551.16. Informal Mediation Process.

(a) Upon receipt of the request for informal mediation, the Board staff will initiate a conference call with the parties to ascertain whether the licensee or applicant for license whose activities or practices are in question is agreeable to participating in informal mediation.

(b) If the licensee or applicant for license whose activities or practices are in question is not agreeable to participating in informal mediation, either party may request that this matter be converted to a petition proceeding pursuant to Article 1, section 551.17.

(c) If the licensee or applicant for license whose activities or practices are in question is agreeable to participating in informal mediation, a mutually agreeable date for informal mediation will be calendared.

(1) Upon order of the board, and at least five business days prior to participating in informal mediation, the parties shall file and serve a premediation statement which includes a detailed statement of facts, statement of issues, and a realistic proposal for resolving the dispute.

(2) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall preside over the informal mediation.

(3) Evidence set forth in declarations of expert or percipient witnesses made under penalty of perjury may be considered by the board, its executive director, or an administrative law judge designated by the board or its executive director, in their his or her discretion.

(4) At any time during informal mediation, either party may request that this matter be converted to a petition proceeding pursuant to Article 1, section 551.17

(5) All communications, negotiations, or settlement discussions by and between participants in the course of informal mediation shall remain confidential.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050, Vehicle Code.

§ 551.21. Sanctions.

- (a) In any proceeding before the board or an ALJ, no party or representative of a party shall engage in or participate in any actions or tactics that are frivolous, or that are intended to cause or will result in unnecessary delay.
- (b) For purposes of this section, “party” or “representative of a party” includes, but is not limited to, a party's officer, director, managing agent, dealer principal or the equivalent, or their attorney.
- (1) “Actions or tactics” include, but are not limited to, the making or opposing of motions or the failure to comply with a lawful order or ruling of the board or an ALJ, including a failure to comply timely with a pre-hearing conference order or discovery order.
- (2) “Frivolous” includes, but is not limited to:
 - (A) Totally without merit as there is an absence of reasonable support, under the facts or law, for making or opposing the motion(s), or for the failure to comply; or
 - (B) For the purpose of harassing an opposing party or counsel.
 - (C) Actions or tactics, whether consisting of affirmative conduct or failure to act or respond, that will result or do result in unnecessary delay or costs, or are otherwise not in good faith.
- (c) A party asserting a violation of this section may, by way of written motion in compliance with Article 1, section 551.19, or oral motion made on the record during reported proceedings, request that the board or an ALJ recommend that the board impose sanctions upon a party, or party's representative, or both.
- (d) An ALJ presiding over the matter who believes there has been a violation of this section may on their his or her own initiative recommend that the board impose sanctions upon a party, or party's representative, or both.
- (e) The board shall not order sanctions, or an ALJ shall not recommend an award of sanctions, without providing the party or party's representative against whom sanctions are sought notice and an opportunity to be heard.
- (f) The board or ALJ shall make determinations as to whether the actions or tactics were frivolous based upon the administrative record and any additional testimony or documentary evidence presented.
- (g) Any proposed order recommending sanctions by the ALJ or board order imposing sanctions shall be on the record, or in writing, setting forth the factual findings on which the recommended or board ordered sanctions are based, as well as setting forth the factual findings as to the reasonableness of the sanctions, including the reasonableness of any amount(s) to be paid.
- (h) A proposed order recommending an award of sanctions shall be considered by the board members at their next regularly scheduled meeting. A determination not to award sanctions shall not be considered by the board members and is final upon issuance by the ALJ.
- (i) The board members' consideration to affirm, reject or modify the ALJ's award of sanctions does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

(j) If the motion for sanctions is granted, the board may order or an ALJ may recommend that the party or party's representative or both pay the movant's reasonable expenses and attorney's fees incurred in bringing and pursuing the motion. However, payment of attorney's fees and expenses will not be ordered if:

(1) The movant filed the motion before attempting in good faith to obtain compliance by the opposing party without board action;

(2) The opposing party's noncompliance, nondisclosure, response, or objection was substantially justified; or

(3) Other circumstances make an award unjust.

(k) If the motion for sanctions is denied, the board may order or an ALJ may recommend, after giving an opportunity to be heard, the movant or movant's representative or both to pay the party or party's representative who opposed the motion reasonable expenses and attorney's fees in opposing the motion for sanctions as well as bringing and pursuing the motion for expenses and attorney's fees. However, payment of attorney's fees and expenses will not be ordered if the motion for sanctions was substantially justified or other circumstances make an award unjust.

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(c) An interpreter at a hearing or other proceeding shall be sworn by oath or affirmation to perform ~~their~~ ~~his or her~~ duties truthfully. The oath or affirmation shall be in substantially the following form:

"Do you swear or affirm that, to the best of your skill and judgment, you will make a true interpretation of the questions asked and the answers given and that you will make a true translation of any documents which require translation?"

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(b) Official Notice. Before or after submission of a matter for decision, official notice may be taken by the board of any generally accepted technical or scientific matter within the board's special area of competence or of such facts as may be judicially noticed by the courts of this state.

(c) Examination of Witnesses. Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called ~~the witness him or her~~ to testify; to rebut the evidence against ~~the witness him~~; and to call and examine an adverse party or adverse witness as if under cross-examination without being bound by ~~their his or her~~ testimony. Board members and, at the direction of the chairman of the board presiding at the hearing or of any member of the board, representatives of the staff of the board, may participate as appropriate, using their knowledge and experience for the primary purpose of developing a full, fair and accurate record. Questioning of witnesses will be controlled by the board and will generally be permitted only by the attorneys or agents of parties so represented, or by the parties who appear on their own behalf, members of the board and its staff. The board may in its discretion, during the examination of a witness, exclude from the hearing, any or all other witnesses in the same matter.

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telephone number and facsimile number (if available) of the attorney or agent for the party in whose behalf the paper is presented, or of the party **if he or she is** appearing in person. If the party is represented by an attorney, the state bar number of the attorney shall be beside the name of the attorney.

(2) Below the name, address and telephone number, and centered on the page, the title of the board. Below the title of the board, in the space to the left of the center of the page, the title of the proceeding, e.g., John Doe, petitioner (or protestant) v. Richard Roe, respondent, as the case may be.

(3) To the right of and opposite the title, the number of the proceeding which shall be assigned consecutively by the executive director in the order of filing in petition and protest proceedings. The same number shall not be assigned to more than one petition or protest.

(4) Immediately below the number of the proceeding, the nature of the paper, e.g., "Request for Informal Mediation," "Petition," "Protest," "Answer," "Request for Hearing," "Petitioner's Opening Brief," etc. If the paper is a "Petition", the first allegation of the petition shall state the name and address of the respondent and whether the respondent is the holder of or an applicant for an occupational license of the type issued by the department such that the respondent is subject to the jurisdiction of the board.

(5) The dates of the hearing and any future pre-hearing or settlement conferences, if known.

(b) In addition to a paper copy, the board may direct a party to submit pleadings or other papers by electronic means if the party is able to do so.

(c) A party may obtain proof of the filing of a paper by submitting either an extra copy of the paper or a copy of the first page only, with a self-addressed, return envelope, postage prepaid. The copy will be returned to the party with the date of filing indicated.

(d) Papers may be filed with the board by facsimile or electronic-mail transmission. Unless required by the ALJ or by order of the board, the original paper need not be filed with the board if the party obtains telephonic or other confirmation from the board that a complete and legible copy of the papers was received.

(e) Notwithstanding Code of Civil Procedure Section 1013(a), papers delivered to the board by the U.S. Postal Service or other means are deemed filed on the date actually received by the board. Papers hand delivered to the board and complete papers received by facsimile or electronic-mail transmission during regular business hours (8 a.m. to 5 p.m.) will be filed on the date received. Papers received after regular business hours are deemed filed on the next regular business day.

(f) Protests sent by U.S. Postal Service certified or registered mail are deemed received by the board on the date of certified or registered mailing and will be filed as of the date of the certified or registered mailing.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 3051, Vehicle Code.

Article 7. New Motor Vehicle Board – Conflict-of-Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2)

incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

NEW MOTOR VEHICLE BOARD

~~1507 — 21ST STREET, SUITE 330~~

2415 1st AVENUE, MS L242

SACRAMENTO, CALIFORNIA ~~95814~~ 95818

FAIR POLITICAL PRACTICES COMMISSION

428 J STREET, SUITE 620

SACRAMENTO, CALIFORNIA 95814

ARCHIVES

SECRETARY OF STATE

1020 O STREET

SACRAMENTO, CALIFORNIA 95814

The conflict-of-interest code is designated as Article 7 of Chapter 2 of Division 1 of Title 13 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Article 7. New Motor Vehicle Board – Conflict of Interest Code

Section

599. General Provisions

Appendix A

Appendix B

Note: Authority cited: Section 3050(a), Vehicle Code; and Sections 87300, 87304 and 87306, Government Code. Reference: Section 81000, et seq., Government Code.



Memorandum

Date : August 31, 2023

**To : FISCAL COMMITTEE
ANNE SMITH BOLAND, CHAIR
BISMARCK OBANDO, MEMBER**

**From : SUZANNE LUKE
TIMOTHY CORCORAN
DAWN KINDEL**

Subject : REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 3RD QUARTER OF FISCAL YEAR 2022-2023

The following is a financial summary of the Board's expenditures and revenue through the 3rd quarter of Fiscal Year (FY) 2022-2023. This information was also provided in the June Quarterly Administrative report.

Expenditures Fiscal Year 2022-23

Annual Appropriation	Quarter 1 Expenditures	Quarter 2 Expenditures	Quarter 3 Expenditures	Quarter 4 Expenditures	Appropriation Remaining	Appropriation Remaining %
\$2,028,000	\$398,894	\$422,273	\$393,981	TBD	\$812,852	40%

Revenue Fiscal Year 2022-23

Beginning Reserve Balance	Revenue Fiscal Year-to-Date	Total Resource Balance	Total Revenue in Prior Fiscal Year
*\$2,258,303	\$1,444,191	\$3,702,494	\$1,639,042

Current Reserve Balance - \$2,487,346 balance after 3rd Quarter Expenditures.
The Board expended 60% of its appropriated budget as of the 3rd quarter.

For further information, I've attached revenue and expenditure details as well as the Board's fund condition breakdown.

Given the current reserve balance, staff does not see a need for an adjustment to the Board's fee structure at this time. Staff will continue to closely monitor new vehicle sales along with expenditures and report any need for adjustments of industry fees at future meetings.

- New Motor Vehicle Board (NMVB) Annual Fee – The NMVB annual collection of fees from manufacturers and distributors began in July. Staff have collected \$641,857.00 of the \$767,248.00 from manufacturers and distributors under NMVB jurisdiction.

This memorandum is being provided for informational purposes only, and no Board action is required. If you have any questions prior to the Board Meeting, please contact me at (916) 244-6778 or Dawn Kindel at (916) 244-6775.

Attachments as stated

cc: Ardy Kassakhian, President

Third Quarter Revenue and Expenditure Summary

Fiscal Year 2022-2023

Covers July 1, 2022 to March 31, 2023

REVENUES

New Dealer Licensing Fee:	\$550,847
Manufacturer and Distributor Fee	\$881,619
NMVB Filing Fee	\$8,200
Miscellaneous Services	\$2,019
Arbitration Program	\$1,506
Year-to-date total:	\$1,444,191

EXPENDITURES

Payroll

Full-Time staff salaries:	Budgeted Amount \$1,079,954	Expended \$653,018	Remaining Balance \$426,936
Part-Time staff salaries:	Budgeted Amount \$82,914	Expended \$31,830	Remaining Balance \$51,084
Benefits:	Budgeted Amount \$570,941	Expended \$338,439	Remaining Balance \$232,502

Operating Expense and Equipment

General Expense (includes equipment, office supplies, dues, legal library, etc.)
Budgeted Amount \$24,003 Expended \$11,001 Remaining Balance \$13,002

Rent: Budgeted Amount \$165,000 Expended \$105,424 Remaining Balance \$59,576

Facilities Planning: Budgeted Amount \$10,000 Expended \$2,676 Remaining Balance \$7,324

Professional Services (Attorney General): Budgeted Amount \$12,000 Expended \$56,799
Remaining Balance \$-44,799

Professional Services (Court Reporters): Budgeted Amount \$18,000 Expended \$1,479
Remaining Balance \$16,521

TOTAL OPERATING EXPENSE AND EQUIPMENT

Budgeted Amount \$263,191; Expenditure Year to Date \$180,421 – 69%; Balance Remaining \$82,770 – 31%

GRAND TOTAL – Fiscal Year 2022-2023

Budgeted Amount \$2,028,000; Expenditure Year to Date \$1,215,148 - 60%; Balance Remaining \$812,852 - 40%



Memorandum

Date : SEPTEMBER 5, 2023

To : LEGISLATIVE COMMITTEE
ARDY KASSAKHIAN, CHAIR
JAKE STEVENS, MEMBER

From : TIMOTHY M. CORCORAN
ROBIN P. PARKER

Subject : DISCUSSION CONCERNING PENDING LEGISLATION

The following provides a summary of pending State legislation that is of interest to the New Motor Vehicle Board ("Board"). The criteria for reporting on "legislation of general interest" is that the bill impacts the Vehicle Code, the Board, and/or the automotive industry in general and does not directly impact the Board or its enabling statute. For purposes of this report "legislation of special interest" is that which directly affects the Board's laws or functions.

Bill summaries include a brief overview of the bill as provided by the Legislative Counsel's Digest or the Congressional Research Service, if available, as well as the current status of the bill.¹

a. Pending Legislation of Special Interest:

- (1) **Assembly Bill 473 - Assembly Member Aguiar-Curry**
(Introduced February 6, 2023)
Status: Ordered to Assembly
Support: California New Car Dealers Association, California Conference of Machinists, California Motorcycle Dealers Association, California Teamsters Public Affairs Council, California Motorcycle Dealer's Association (CMDA)
Opposition: Alliance for Automotive Innovation, Civil Justice Association of California, California Manufacturers and Technology Association, Motorcycle Industry Council, Silicon Valley Leadership Group, Ford, Scout Motors Inc.
Legislative Counsel's Digest: Motor Vehicle manufacturers, distributors, and dealers.

Existing law establishes the New Motor Vehicle Board in the Department of Motor Vehicles, and requires the board to hear and decide certain protests presented by a motor vehicle franchisee in regard to a dispute with the vehicle manufacturer.

¹ All statutory references are to the Vehicle Code, unless otherwise indicated.

Existing law prohibits a franchisor from engaging in specified proscribed business practices. A violation of the Vehicle Code is punishable as an infraction.

This bill would prohibit additional acts, including allocating vehicles and parts inconsistent with specified standards.

Existing law prohibits a licensed manufacturer, manufacturer branch, distributor, distributor branch, or affiliate from engaging in specified proscribed business practices, including establishing or maintaining a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance, unless specified requirements are satisfied. A violation of the Vehicle Code is punishable as an infraction.

This bill would prohibit additional acts, including exercising a right of first refusal in bad faith and implementing or modifying a vehicle reservation system for the sale or lease of motor vehicles that does not comply with specified requirements.

This bill would additionally provide that a licensed manufacturer, manufacturer branch, distributor, distributor branch, or affiliate is not unlawfully competing with a franchise (*sic*) by providing an update or repair of motor vehicle software over-the-air at no cost or by creating a new line of motor vehicles and using new or existing franchisees to sell and service those vehicles. The bill would also declare the severability of its provisions.

Because a violation of these new provisions would be punishable as a crime, the bill would impose a state-mandated local program.

The bill includes legislative findings and declarations and would make other conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

b. Pending Legislation of General Interest:

- (1) **Senate Bill 143 - Assembly Committee on Budget and Fiscal Review** (Gut-and-Amend August 28, 2023)
Status: Assembly Committee on Budget
Support: unknown
Opposition: unknown
Legislative Counsel's Digest: State Government

Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to

attend any meeting of a state body. The act authorizes meetings through teleconference under specified conditions, including, among others, that each teleconference location be accessible to the public and that at least one member of the state body be physically present at the location specified in the notice of the meeting.

Prior to July 1, 2023, existing law authorized, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and suspended certain requirements of the act, including the requirements referenced above.

This bill, until December 31, 2023, would reinstate the above-described authorization for a state body to hold public meetings through teleconferencing.

(2) **Senate Bill 544 - Senator Laird** (Gut-and-Amend March 20, 2023)

Status: In Assembly Appropriations Committee

Support: California Commission on Aging (source), AARP, Board of Registered Nursing, California Acupuncture Board, California Association of Area Agencies on Aging, California Senior Legislature, California State Board of Barbering and Cosmetology, California State Board of Pharmacy, Health Officers Association of California, Little Hoover Commission, State Bar of California

Opposition: ACLU California Action, Cal Aware, California Broadcasters Association, California News Publishers Association, First Amendment Coalition, Howard Jarvis Taxpayers Association

Legislative Counsel's Digest: Bagley-Keene Open Meeting Act: teleconference.

Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act authorizes meetings through teleconference subject to specified requirements, including, among others, that the state body post agendas at all teleconference locations, that each teleconference location be identified in the notice and agenda of the meeting or proceeding, that each teleconference location be accessible to the public, that the agenda provide an opportunity for members of the public to address the state body directly at each teleconference location, and that at least one member of the state body be physically present at the location specified in the notice of the meeting.

Existing law, until July 1, 2023, authorized, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and suspended certain requirements of the act, including the above-described teleconference requirements.

This bill would remove the teleconference requirements that a state body post agendas at all teleconference locations, that each teleconference location be identified in the notice and agenda of the meeting or proceeding, and that each teleconference location be accessible to the public. The bill would require a state body to provide a

means by which the public may remotely hear audio of the meeting, remotely observe the meeting, or attend the meeting by providing on the posted agenda a teleconference telephone number, an internet website or other online platform, and a physical address for at least one site, including, if available, access equivalent to the access for a member of the state body participating remotely. The bill would require any notice required by the act to specify the applicable teleconference telephone number, internet website or other online platform, and physical address indicating how the public can access the meeting remotely and in person. The bill would revise existing law to no longer require that members of the public have the opportunity to address the state body directly at each teleconference location, but would continue to require that the agenda provide an opportunity for members of the public to address the state body directly. The bill would require a member or staff to be physically present at the location specified in the notice of the meeting. The bill would require a majority of the members of the state body to be physically present at the same location for at least 1/2 of the meetings of that state body.

This bill would provide that it does not affect prescribed existing notice and agenda requirements and would require the state body to post an agenda on its internet website and, on the day of the meeting, at any physical meeting location designated in the notice of the meeting. The bill would prohibit the notice and agenda from disclosing information regarding any remote location from which a member is participating and define “remote location” for this purpose. The bill would provide that members of the public shall be entitled to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit public comments prior to the meeting or in writing.

This bill would require a state body, upon discovering that a means of remote participation required by the bill has failed during a meeting and cannot be restored, to end or adjourn the meeting in accordance with prescribed adjournment and notice provisions, including information about reconvening.

This bill would require a state body that holds a meeting through teleconferencing pursuant to the bill and allows members of the public to observe and address the meeting telephonically or otherwise electronically to implement and advertise, as prescribed, a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990.

This bill would require a member of a state body who attends a meeting by teleconference from a remote location to disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member and the general nature of the member’s relationship with any such individuals.

This bill would repeal its provisions on January 1, 2026.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the

need for protecting that interest.

This bill would make legislative findings to that effect.

c. Pending Federal Legislation of General Interest: None.

This matter is for information only at the September 21, 2023, General Meeting.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 244-6774 or Robin at (916) 244-6776.



Memorandum

Date : SEPTEMBER 5, 2023

**To : POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

**Subject : DISCUSSION AND CONSIDERATION OF PROPOSED REVISIONS TO THE
ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES AND
OFFICE OF ADMINISTRATIVE HEARINGS BY ASSIGNING CASES
ACCORDING TO THE LAST DIGIT IN THE PROTEST NO. WHEN THE
PROTEST IS FILED**

The process of assigning Administrative Law Judges ("ALJs") to New Motor Vehicle Board ("Board") cases has been modified over time to conform with the law and to fit the current needs of the Board.

In 1998, the Board approved a numerical designation system for assigning ALJs. Under that system, an ALJ was assigned from a list based upon the last digit of the case no. Beginning in 2002, this system proved problematic as it resulted in an unequal distribution of cases especially when an assigned ALJ was unavailable for a significant period of time.

Beginning in 2002, there were a number of modifications to the numerical system that was eventually replaced in 2005 with the current system that assigns the merits hearing ALJ on a rotational basis at the Hearing Readiness Conference. This system has worked well over the years with several temporary and permanent modifications to meet the existing case management needs.

At the January 25, 2023, General Meeting, the Board added the Office of Administrative Hearings ("OAH") to the "Merit Hearings Judge Assignment Log," so OAH would be next in line to preside over a protest hearing between a franchisee and franchisor.

This action was taken in response to a regulation CalPERS is proposing that would, for purposes of the Government Code, define "limited duration" employment "as a limit of twenty-four consecutive months per appointment of a retired person in the employ of a CalPERS-covered public employer, regardless of how many months or hours in those months the retired person served in the appointment during that twenty-four consecutive month period." (Cal. Code Regs., tit. 2, § 574.1)

Adding OAH to the assignment log would allow the Board to evaluate if this is an effective long-term alternative if the Board is unable to retain its retired annuitant merits Administrative Law Judges. It would also highlight any statutory or regulatory changes that may be necessary if, in the future, the Board's merits hearings are referred to OAH.¹

Given the limited number of matters that proceed to a merits hearing each year, at the April 28, 2023, General Meeting, the Board granted temporary discretion (not to exceed 3 years) to the Executive Director to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director would seek Executive Committee permission.

The first protest assigned to OAH is scheduled for hearing on September 18, 2023. As we work through this process and learn how hearing dates are assigned, it became apparent that notifying the parties at the Hearing Readiness Conference² that their hearing is being transferred to OAH is not fair. Counsel have proceeded for many months accomplishing various pre-hearing tasks with an anticipation that the date selected for the hearing would remain unchanged. We learned that once the Board requests OAH preside over a matter, it could take several months for a hearing date due to the length (5-10 days) and complexity.

Given the broad discretion granted to the Executive Director, it became necessary to seek permission from the Executive Committee to institute an immediate change in how merits hearings are assigned. On July 31, 2023, Mr. Corcoran notified the Executive Committee that the ALJ needs to be assigned when the protest is filed similar to the numerical designation adopted in 1998. This eliminates any surprise as ALJ assignments are made when the protest is filed and the parties are notified at the initial telephonic Pre-Hearing Conference. Any delays can be accounted for in hearing dates if the matter is assigned to OAH. Additionally, more opportunities to assign hearings to OAH was factored in as reflected below:

- 1, 6 OAH
- 2, 7 Pipkin [Next Board ALJ in order]
- 3, 8 OAH
- 4, 9 Nelsen [Following Board ALJ in order]
- 5, 0 Woodward-Hagle [Following Board ALJ in order]

For new protests starting with Protest No. PR-2832-23, the ALJ was assigned based on the last digit of the case no. Protest No. PR-2832-23 was assigned to ALJ Pipkin. (See Attachment 1) In consolidated matters such as Protest Nos. PR-2833-23 through PR-2836-23, OAH was assigned. The first protest in numerical order is always the lead case in consolidated matters and would be used for ALJ assignments. In the event a Board ALJ is not available, OAH would be the default.

¹ All law and motion hearings and settlement conferences will continue to be heard by the Board ALJs up to the Hearing Readiness Conference. If counsel for the parties, at the Hearing Readiness Conference, indicate they are prepared to go to hearing then the Board submits to OAH a Request for Hearing and takes no further action in the protest unless Protestant files a Request for Dismissal.

² The Hearing Readiness Conference is typically held 45 days prior to commencement of the merits hearing.

Assignment of Cases

Page 3

September 5, 2023

For existing protests, ALJs will continue to be assigned at the Hearing Readiness Conference using the Merit Hearings Judge Assignment Log on a rotational basis. (See Attachment 2)

This matter is being agendized for consideration at the September 21, 2023, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 244-6774 or Robin at (916) 244-6776.

Attachment: as stated

cc: Ardashes "Ardy" Kassakhian

1, 6 OAH
2, 7 PIPKIN
3, 8 OAH
4, 9 NELSEN
5, 0 WOODWARD HAGLE

[illegible]

2023 MERIT HEARINGS

JUDGE ASSIGNMENT LOG

Judge: **Dwight Nelsen**

First Date of Hearing: **10-25-23** Start Time on First Date: 10:00 a.m.

Estimated Days of Hearing: **5** Venue: Zoom

Case Name: Auto Gallery, Inc., dba Auto Gallery Mitsubishi – Corona v. Mitsubishi Motors North America, Inc./Soraya, Inc., dba Auto Gallery Mitsubishi – Murrieta v. Mitsubishi Motors North America, Inc. (3065)

Soraya, Inc., dba Auto Gallery Mitsubishi – Murrieta v. Mitsubishi Motors North America, Inc. (3060(t))

Case No.: PR-2754-21/PR-2755-21 Judge Response to Offer: **Accepted**

Case No.: PR-2819-23 [not consolidated but tracking the same schedule]

Staff: Robin

Date: 1-9-23 Outcome of Case: _____

Notes: March 6, 2023, hearing was amended to May 15, 2023, and then October 25, 2023

Office of Administrative Hearings

First Date of Hearing: **9-18-23** Start Time on First Date: 9:00 a.m.

Estimated Days of Hearing: **8** Venue: OAH Sacramento/Video

Case Name: KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company

Case No.: PR-2759-21 Judge Response to Offer: **Accepted**

Staff: Danielle

Date: 5-31-23 Outcome of Case: _____

Notes:

2023 MERIT HEARINGS

JUDGE ASSIGNMENT LOG

Judge: **Diana Woodward Hagle**

First Date of Hearing: **10-9-23**

Start Time on First Date: 9:00 a.m.

Estimated Days of Hearing: **5**

Venue: Zoom

Case Name: KM3G Inc., dba Putnam Kia of Burlingame v. Kia America Inc.

Case No.: PR-2803-22

Judge Response to Offer: **Accepted**

Staff: Robin

Date: 7-28-23

Outcome of Case: _____

Notes: Respondent's Motion to Continue was granted so the hearing on 9-11-23 was continued to 10-9-23.

Judge: **Kymerly Pipkin**

First Date of Hearing: **11-15-23**

Start Time on First Date: 9:00 a.m.

Estimated Days of Hearing: **2**

Venue: Zoom

Case Name: Carmaddie LLC v. General Motors LLC

Case No.: PR-2809-22

Judge Response to Offer: **Accepted**

Staff: Robin

Date: 8-16-23, 8-18-23 Outcome of Case: _____

Notes: Unavailable 10-23 to 10-25 but is available 11-1 to 11-3. Emailed counsel to check their availability. Alternatively, this matter would be heard by OAH as all other Board ALJs are assigned to hearings. All parties and ALJ are available 11-15 through 11-17-23.

2023 MERIT HEARINGS JUDGE ASSIGNMENT LOG

Office of Administrative Hearings¹

First Date of Hearing: _____ Start Time on First Date: _____
Estimated Days of Hearing: _____ Venue: _____
Case Name: _____
Case No.: _____ Judge Response to Offer: ____
Staff: _____
Date: _____ Outcome of Case: _____

Notes: Pursuant to the temporary discretion granted to the Executive Director, this matter will be assigned to OAH outside the current assignment log.

Dwight Nelsen

First Date of Hearing: _____ Start Time on First Date: _____
Estimated Days of Hearing: _____ Venue: _____
Case Name: _____
Case No.: _____ Judge Response to Offer: ____
Staff: _____
Date: _____ Outcome of Case: _____

Notes:

¹ At the April 28, 2023, General Meeting, the Board granted the Executive Director temporary discretion (not to exceed 3 years) to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director would seek Executive Committee permission. The use of OAH in general and any additional assignments would be reported to the Board in the Executive Director's Report.

2023 MERIT HEARINGS

JUDGE ASSIGNMENT LOG

Office of Administrative Hearings

First Date of Hearing: _____ Start Time on First Date: _____
Estimated Days of Hearing: _____ Venue: _____
Case Name: _____
Case No.: _____ Judge Response to Offer: ____
Staff: _____
Date: _____ Outcome of Case: _____
Notes: _____

Judge: Diana Woodward Hagle

First Date of Hearing: _____ Start Time on First Date: _____
Estimated Days of Hearing: _____ Venue: _____
Case Name: _____
Case No.: _____ Judge Response to Offer: ____
Staff: _____
Date: _____ Outcome of Case: _____
Notes: _____

Judge: Kymerly Pipkin

First Date of Hearing: _____ Start Time on First Date: _____
Estimated Days of Hearing: _____ Venue: _____
Case Name: _____
Case No.: _____ Judge Response to Offer: ____
Staff: _____
Date: _____ Outcome of Case: _____
Notes: _____



***EXECUTIVE
DIRECTOR'S
REPORT***

September 21, 2023

A. ADMINISTRATIVE MATTERS

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
<u>1. Update concerning moving the Board's Offices to DMV Headquarters</u> Tim Corcoran, Dawn Kindel	Update regarding moving of the Board's Offices upon the expiration of the current lease to DMV Headquarters.	Ongoing	In progress.
<u>2. Revise Transcript Policy to Allocate Court Reporter Fees Exclusively to the Parties</u> Robin Parker	Revise the transcript policy so the parties are equally responsible for scheduling the court reporter and paying for all court reporter-related fees and costs for all merits hearings and dispositive motions.	September 2023	In progress. The revised policy will be considered at the September 21, 2023, General Meeting.
<u>Update Guide to the New Motor Vehicle Board</u> Robin Parker	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	April 2023	<u>Completed</u> The revised Guide was adopted at the April 28, 2023, General Meeting.
BOARD DEVELOPMENT COMMITTEE			
<u>1. Schedule Board Member Education Presentations</u> Tim Corcoran	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	Ongoing	In progress. Board education presentations will be made at every Board meeting.
EXECUTIVE COMMITTEE			
<u>1. Update concerning Board's Compliance with 1996 Performance Audit</u> Tim Corcoran, Robin Parker	Update regarding the Board's compliance with the 1996 Performance Audit and the resultant Corrective Action Plan	September 2023	In progress. An update will be given at the September 21, 2023, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>Consider Amendments to Board Delegations</u> Tim Corcoran, Robin Parker	Review and consider amendments to the Board adopted delegations in compliance with the 1996 Performance Audit.	April 2023	<u>Completed</u> Amendments to the Board adopted delegations were adopted at the April 28, 2023, General Meeting.
FISCAL COMMITTEE			
<u>1. Quarterly Financial Reports</u> Dawn Kindel, Suzanne Luke	Quarterly reports on the Board's financial condition and related fiscal matters.	Ongoing	In progress.
<u>2. Status Report on the Collection of Fees for the Arbitration Certification Program</u> Dawn Kindel, Suzanne Luke	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	September 2023	In progress. A status report will be provided at the September 21, 2023, General Meeting.
<u>3. Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel, Suzanne Luke	The staff, in conjunction with the Fiscal Committee, will discuss and consider the Board's proposed Budget for fiscal year 2023-2024.	September 2023	In progress. The 2023-2024 Budget will be presented for consideration at the September 21, 2023, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			
1. <u>Host Board Administrative Law Judge Roundtable</u> Robin Parker	Host a Board Administrative Law Judge ("ALJ") Roundtable for purposes of education and training. Provide an opportunity for ALJs to meet in an informal setting, exchange ideas, and offer suggestions to improve the case management hearing process.	TBD	In progress. An ALJ Roundtable may be scheduled in 2023.
LEGISLATIVE COMMITTEE			
1. <u>Review of Pending Legislation</u> Tim Corcoran, Robin Parker	The staff will provide an overview of pending legislation of special interest and general interest.	September 2023	In progress. A report will be provided at the September 21, 2023, General Meeting.
POLICY AND PROCEDURE COMMITTEE			
1. <u>For New Protests, Assign Merits Hearings to Board ALJs and the Office of Administrative Hearings (OAH) Based on the Last Digit in the Protest No.</u> Robin Parker	For all new protests, assign merits hearing ALJs when the protest is filed based on the last digit in the protest no. (a numerical designation versus a rotational designation).	September 2023	In progress. A revised policy will be considered at the September 21, 2023, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>Consider temporary authorization of discretion to Executive Director regarding the assignment of merits hearings to the Office of Administrative Hearings</u> Tim Corcoran, Robin Parker	The Board will consider granting temporary authorization of discretion to the Executive Director to assign additional merits hearings to the Office of Administrative Hearings outside the current "Merits Hearings Judge Assignment Log."	April 2023	<u>Completed</u> The Board approved the temporary authorization of discretion to the Executive Director at the April 28, 2023, General Meeting.
<u>Promulgate new regulations in several sections of Title 13 of the California Code of Regulations</u> Robin Parker	In compliance with the Administrative Procedure Act, amend Sections 551.1, 551.6, 551.13, 551.14, 551.16, 551.21, 551.23, 553.72, 555, 580, 595 and 599 of the Board's regulations to update the Board's address and make language gender neutral.	August 2023	<u>Completed</u> The Board approved the text at the April 28, 2023, General Meeting. The Office of Administrative Law (OAL) approved the non-substantive rulemaking, which was effective August 22, 2023.
<u>Promulgate new regulation Section 551.26 of Title 13 of the California Code of Regulations</u> Danielle Phomsopha	In compliance with the Administrative Procedure Act, add Section 551.26 to the Board's regulations regarding representation in protests or petitions.	July 2023	<u>Completed</u> The Board approved the text at the November 7, 2022, General Meeting. The regulation was approved by OAL and was effective July 1, 2023.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION			
<u>1. Develop Strategies for Board Consideration</u> Tim Corcoran, Danielle Phomsopha	Develop strategies for the Board's consideration, which advance California State Transportation Agency's stated goal of "Enhancing the lives of all Californians – particularly people of color and disadvantaged communities..." Draft a Mission Statement for consideration by the full Board.	Ongoing	In progress. The Committee considered new policies at its May 23, 2023, Meeting. The Board will consider adopting those policies and other <i>Core Four</i> -related recommendations at the September 21, 2023, General Meeting.

B. CASE MANAGEMENT

CASE VOLUME

APRIL 12, 2023, THROUGH SEPTEMBER 5, 2023

VEHICLE CODE SECTION	CASE TYPE	NUMBER OF NEW CASES	NUMBER OF RESOLVED CASES	NUMBER OF PENDING CASES
3060	Termination	7	7	9
3060	Modification	3	1	14
3062	Establishment	1	1	1
3062	Relocation	4	0	4
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	6	1	8
3065.1	Incentive Program Reimbursement	0	2	1
3065.3	Performance Standard	0	0	0
3065.4	Retail Labor Rate or Retail Parts Rate	1	0	4
3070	Termination	0	0	0
3070	Modification	0	0	0
3072	Establishment	0	0	0
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	0	0
3076	Incentive Program Reimbursement	0	0	0
3085	Export or Sale-For Resale	0	0	0
3050(b)	Petition	0	0	1
TOTAL CASES:		22	12	42

PENDING CASES

BY CASE NUMBER

ABBREVIATIONS			
ALJ	Administrative Law Judge	Bd. Mtg.	Board Meeting
HRC	Hearing Readiness Conference	IFU	Informal Follow-Up
MH	Merits Hearing	CMH	Continued Merits Hearing
RMH	Resumed Merits Hearing	MSC	Mandatory Settlement Conference
CMSC	Continued Mandatory Settlement Conference	RMSC	Resumed Mandatory Settlement Conference
MTCP	Motion to Compel Production	MTC	Motion to Continue
MTD	Motion to Dismiss	PHC	Pre-Hearing Conference
CPHC	Continued Pre-Hearing Conference	RPHC	Resumed Pre-Hearing Conference
PD	Proposed Decision	RFPD	Requests for Production of Documents
PSDO	Proposed Stipulated Decision and Order	ROB	Rulings on Objections
CROB	Continued Rulings on Objections	RROB	Resumed Rulings on Objections
SC	Status Conference	CSC	Continued Status Conference
* Consolidated, non-lead case			

PROTESTS

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
1.	PR-2501-17 1-19-17	Parties working on Proposed Stipulated Decision and Order	Stevens Creek Luxury Imports, Inc. dba AutoNation Maserati Stevens Creek v. Maserati North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Randy Oyler, Bob Davies, Mary Stewart	Modification
2.	PR-2506-17* 1-23-17	Parties working on Proposed Stipulated Decision and Order	Rusnak/Pasade na, dba Rusnak Maserati of Pasadena v. Maserati North America, Inc.	Protestant: Christian Scali Respondent: Randy Oyler, Bob Davies, Mary Stewart	Modification
3.	PR-2754-21 12-7-21	HRC: 9-8-23 MH: 10-25-23 (5 days)	Auto Gallery, Inc., dba Auto Gallery Mitsubishi - Corona v. Mitsubishi Motors North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Dean A. Martoccia, William F. Benson, Brandon L. Bigelow	Warranty
4.	PR-2755-21* 12-7-21	HRC: 9-8-23 MH: 10-25-23 (5 days)	Soraya, Inc., dba Auto Galley Mitsubishi – Murrieta v. Mitsubishi Motors North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Dean A. Martoccia, Brandon L. Bigelow	Warranty

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	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
5.	PR-2759-21 12-30-21	MH: 9-18 to 9-21, 9-25 to 28 (OAH)	KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Steven M. Kelso, Gwen J. Young, H. Camille Papini-Chapla	Retail Labor Rate
6.	PR-2769-22 3-25-22	Parties are working on settlement IFU: 10-9-23	Motorrad LLC, a California limited liability company dba BMW Motorcycles of San Francisco v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
7.	PR-2770-22* 3-25-22	Parties are working on settlement IFU: 10-9-23	Moto Miyako Inc., a California Corporation dba BMW Motorcycles of Burbank v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
8.	PR-2771-22* 3-25-22	Parties are working on settlement IFU: 10-9-23	O & O Motorrad, Incorporated, a California Corporation dba San Diego BMW Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
9.	PR-2773-22* 3-25-22	Parties are working on settlement IFU: 10-9-23	Central Coast Powersports LLC, a California limited liability company dba BMW Motorcycles of Ventura County v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
10.	PR-2774-22* 3-25-22	Parties are working on settlement IFU: 10-9-23	San Jose Motosport, Inc., a California Corporation dba San Jose BMW Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
11.	PR-2775-22* 3-25-22	Parties are working on settlement IFU: 10-9-23	Ride on Powersports, Inc., a California Corporation dba BMW Motorcycles of Riverside v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
12.	PR-2776-22* 3-25-22	Parties are working on settlement IFU: 10-9-23	Motorrad LLC, a California limited liability company dba BMW Motorcycles of Concord v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
13.	PR-2777-22* 3-25-22	Parties are working on settlement IFU: 10-9-23	Powersports Unlimited, Inc., a California corporation dba BMW Motorcycles of Escondido	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
14.	PR-2778-22* 3-25-22	Parties are working on settlement IFU: 10-9-23	Winner Motorcycles, Limited Liability Company dba BMW Motorcycles of Santa Rosa v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

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	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
15.	PR-2789-22* 5-11-22	Parties are working on settlement IFU: 10-9-23	SEAVCO, a California corporation dba Irv Seaver Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
16.	PR-2803-22 9-15-22	MH: 10-9-23 (5 days)	KM3G Inc., d/b/a Putnam Kia of Burlingame v. Kia America Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Jonathan R. Stulberg, John J. Sullivan	Retail Labor Rate
17.	PR-2805-22 9-29-22	Parties working on settlement IFU: 9-15-23	Putnam Automotive, Inc., dba Volvo of Burlingame v. Volvo Car USA, LLC	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Colm Moran, Robert Feyder	Retail Labor Rate

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
18.	PR-2807-22 11-14-22	Order Denying Respondent's MTD pending Proposed stipulated schedule pending	Universal Auto Group d/b/a Subaru of Glendale a California Corporation v. Subaru of America, Inc., New Jersey corporation; Los Angeles Motor Cars II, Inc., Intervenor	Protestant: Halbert B. Rasmussen Respondent: Lisa M. Gibson, Amy M. Toboco Intervenor: Gavin M. Hughes, Robert A. Mayville, Jr.	Establishment
19.	PR-2808-22 11-14-22	HRC: 12-20-23 MH: 2-12-24 to 2-16-24; 2-26-24 to 3-1-24 (7 days)	Martin Saturn of Ontario, Inc. dba Subaru of Ontario v. Subaru of America, Inc.	Protestant: Timothy D. Robinett, Gary H. Prudian Respondent: Lisa M. Gibson, Amy M. Toboco	Termination
20.	PR-2809-22 11-28-22	PHC w/ALJ: 9-7-23 MH: 10-23-23 (2 days)	Carmaddie LLC v. General Motors LLC	Protestant: Steve Barnhill Respondent: Ashley Fickel	Termination
21.	PR-2812-22 11-30-22	Parties working on settlement IFU: 9-29-23	San Luis Obispo Hyundai LLC dba Hyundai San Luis Obispo v. Hyundai Motor America	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Shaun Kim, Sarah Rathke, Nathan Leber	Franchisor Incentive

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
22.	PR-2815-23 1-24-23	Proposed Order Granting Respondent's MTD pending Board consideration 9-21-23	Let's Ride Motorsports Inc v. Textron Specialized Vehicles Inc. ("TSV")	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Amy M. Toboco, Paul T. Collins, Patrick D. Quinn	Termination
23.	PR-2818-23 4-20-23	ROB: 10-16-23 HRC: 3-15-24 MH: 5-20-24 (5 days)	Cars Dawydiak, Inc. v. Lotus Cars USA Inc.	Protestant: Victor P. Danhi, Franjo M. Dolenac Respondent: Gwen Young, Steve Kelso, Camille Papini-Chapla	Termination
24.	PR-2819-23 4-20-23	Proposed Order Granting Respondent's MTD pending	Soraya, Inc., dba Auto Galley Mitsubishi – Murrieta v. Mitsubishi Motors North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Dean A. Martoccia, Brandon L. Bigelow	Termination
25.	PR-2820-23 5-1-23	Parties working on settlement IFU: 9-11-23	R&A Alexander Investments, LLC v. Hyundai Motor America, LLC	Protestant: Victor P. Danhi, Franjo M. Dolenac Respondent: Lauren Deeb	Warranty

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
26.	PR-2821-23 5-11-23	Parties are working on a proposed schedule	Liberty Motors, Inc., dba Liberty Chevrolet v. General Motors LLC	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Ashley Fickel	Modification
27.	PR-2822-23 5-12-23	ROB: 1-26-24 HRC: 3-11-24 MH: 5-6-24 (8 days)	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (15-day)
28.	PR-2823-23* 5-19-23	ROB: 1-26-24 HRC: 3-11-24 MH: 5-6-24 (8 days)	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (15-day)

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
29.	PR-2824-23* 5-19-23	ROB: 1-26-24 HRC: 3-11-24 MH: 5-6-24 (8 days)	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (60-day)
30.	PR-2826-23 5-25-23	ROB: 10-18-23 HRC: 2-28-24 MH: 4-15-24 (10 days)	KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Steve Kelso, Camille Papini-Chapla, Elayna Fiene, April Connally	Warranty
31.	PR-2827-23 6-1-23	RMSC: 9-7-23	72 Hour LLC. dba Chevrolet of Watsonville, a California limited liability company v. General Motors LLC, a Delaware Limited Liability Company	Protestant: Halbert B. Rasmussen Respondent: Ashley Fickel	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
32.	PR-2829-23 6-16-23	ROB: 1-26-24 HRC: 3-11-24 MH: 5-6-24 (8 days)	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (60-day)
33.	PR-2831-23 6-30-23	MTD: Reply: 9-8-23 Hearing: 10-5-23	Oakland Auto Ventures, Inc. d/b/a Volkswagen of Oakland v. Volkswagen of America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Patrick Quinn	Retail Parts Rate
34.	PR-2832-23 7-18-23	IFU: 9-12-23	AutoNation Acura Stevens Creek v. American Honda Motor Co., Inc.	Protestant: Larry Miles, Brady McLeod Respondent: Lauren Deeb, Steven McFarland	Relocation
35.	PR-2833-23 7-19-23	Parties working on dates for MSC in October or November IFU: 9-12-23	Redlands Automotive Sales, Inc., dba Redlands Chrysler Jeep Dodge RAM v. FCA US LLC [Chrysler]	Protestant: Gavin M. Hughes, John D. Wooten Respondent: John Streelman, Lauren Deeb	Warranty

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
36.	PR-2834-23* 7-19-23	Parties working on dates for MSC in October or November IFU: 9-12-23	Redlands Automotive Sales, Inc., dba Redlands Chrysler Jeep Dodge RAM v. FCA US LLC [Dodge]	Protestant: Gavin M. Hughes, John D. Wooten Respondent: John Streelman, Lauren Deeb	Warranty
37.	PR-2835-23* 7-19-23	Parties working on dates for MSC in October or November IFU: 9-12-23	Redlands Automotive Sales, Inc., dba Redlands Chrysler Jeep Dodge RAM v. FCA US LLC [Jeep]	Protestant: Gavin M. Hughes, John D. Wooten Respondent: John Streelman, Lauren Deeb	Warranty
38.	PR-2836-23* 7-19-23	Parties working on dates for MSC in October or November IFU: 9-12-23	Redlands Automotive Sales, Inc., dba Redlands Chrysler Jeep Dodge RAM v. FCA US LLC [RAM]	Protestant: Gavin M. Hughes, John D. Wooten Respondent: John Streelman, Lauren Deeb	Warranty
39.	PR-2837-23 7-21-23	IFU: 9-29-23	BMNVT Motors LLC dba Serramonte Ford, a Delaware limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Victor P. Danhi, Franjo M. Dolenac Respondent: Steve Kelso, Camille Papini-Chapla, Elayna Fiene, April Connally	Relocation

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
40.	PR-2838-23* 7-24-23	IFU: 9-29-23	James Ford, Inc dba James Ford, a California corporation v. Ford Motor Company, a Delaware corporation	Protestant: Victor P. Danhi, Franjo M. Dolenac Respondent: Steve Kelso, Camille Papini-Chapla, Elayna Fiene, April Connally	Relocation
41.	PR-2839-23 8-29-23	PHC: 9-14-23	McKenna Motor Company, Inc., dba McKenna Audi, a California corporation v. Audi of America, Inc., and operating unit of Volkswagen Group of America, Inc.	Protestant: Aaron H. Jacoby. Franjo M. Dolenac	Relocation

PETITIONS

CASE			
P-463-22 6-20-22	Referred to DMV Investigations Petitioner's relief granted pursuant to Section 3050(b)(1)	Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc.	Petitioner: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Lisa M. Gibson, Amy M. Toboco

C. JUDICIAL REVIEW

Either the Protestant/Petitioner/Appellant or Respondent seeks judicial review of the Board's Decision or Final Order by way of a petition for writ of administrative mandamus (Code of Civil Procedure section 1094.5). The writ of mandamus may be denominated a writ of mandate (Code of Civil Procedure section 1084).

1. BARBER GROUP, INC., dba BARBER HONDA, a California corporation v. CALIFORNIA NEW MOTOR VEHICLE BOARD, a California state agency; AMERICAN HONDA MOTOR CO., INC., a California corporation, and GALPINSFIELD AUTOMOTIVE, LLC

Court of Appeal, Third Appellate District No. C095058

Sacramento County Superior Court No. 34-2020-80003479

New Motor Vehicle Board No. CRT-279-20

Protest No. PR-2539-17

At the July 10, 2020, Special Meeting, the Public Members of the Board adopted ALJ Dwight Nelsen's Proposed Decision as the Board's final Decision. The Decision overruled the protest and permitted American Honda to proceed with the establishment of Galpinsfield Automotive, LLC at the proposed location in North Bakersfield.

On August 27, 2020, Barber Honda filed a "Verified Petition for Writ of Administrative Mandate, Traditional Mandate and Seeking Stay." The writ was served on September 14, 2020. A copy of the record has been requested.

Barber Honda contends that the Board's actions in adopting the Proposed Decision constitute an abuse of discretion because: (1) The Board's Decision is not supported by the evidence; (2) The Decision is not supported by the findings; (3) Barber Honda was not provided a fair hearing; and (4) The Board's hearing did not proceed in a manner required by law.

Barber Honda requests that the Superior Court consider additional evidence that could not have been produced during the merits hearing or that was improperly excluded at the hearing including the COVID-19 pandemic, higher unemployment in Bakersfield, sharp declines in automotive sales, and the impact to the oil and gas industry in Bakersfield.

Barber Honda seeks the issuance of a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision sustaining the protest. In the alternative, the issuance of a writ of traditional mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision sustaining the protest. Also, alternatively, Barber Honda seeks the issuance of a writ of administrative or traditional mandate directing the Board to set aside and vacate its Decision and to "consider evidence improperly excluded from the underlying hearing and to issue findings required by Sections 3063 and 11713.13(b)." Barber Honda also seeks the issuance of a stay

pending the judgment of the writ of administrative mandate directing the Board to stay the operation of the Decision until judgment by the court.

Kathryn Doi, Board President, determined that there is an interest in participating in the writ via the Attorney General's Office to address several procedural issues.

The Board's counsel, Michael Gowe, received the bates stamped record on November 30, 2020. Therefore, the Board's answer was filed December 30, 2020. Barber Honda's opening brief was filed Tuesday, April 6, 2021. American Honda's and the Board's opposition briefs were filed Monday, April 26, 2021. Barber Honda's reply briefs were filed Thursday, May 6, 2021. On May 20, 2021, the Court issued a tentative ruling denying the writ. At the May 21, 2021, hearing, the Court took the matter under submission.

On May 26, 2021, the Court requested additional briefing from the Board and Barber Honda on what appears to be an issue of first impression. One of Barber Honda's arguments is that Section 11713.13 required the Board to determine whether certain performance standards established by American Honda are reasonable before it could rely on those standards in reaching its decision. According to the Court, it appears that "registration effectiveness" was critical to both American Honda and to the Board, and was used to establish, at least in part, that there was sufficient opportunity in the Bakersfield market to support a second Honda dealership. The issues to be addressed are:

- Whether an open point protest like the one at issue here is a "proceeding" within the meaning of section 11713.13.
- Whether the Board believes that section 11713.13 is applicable or relevant to this case.
- If the Board believes that section 11713.13 is applicable or relevant to this case, whether section 11713.13 required Honda to prove at the protest hearing that the two performance measures it established – i.e., "registration effectiveness" and, to a lesser extent, "retail sales effectiveness" – are reasonable in light of the factors identified in section 11713.13.
- If the Board believes that section 11713.13 is applicable to this case and that it required Honda to prove that the two performance measures are reasonable, whether the Board's decision must specifically include an analysis of reasonableness or whether the Court may rely on other matters within the Board's decision to conclude that the Board either did or did not determine the reasonableness of the two performance measures.

The Board's supplemental brief was filed on June 18, 2021, and Barber Honda's response was filed June 25. American Honda already addressed this issue in its opposition brief and Galpinsfield had the opportunity to do so they were not permitted to file supplemental briefs.

On July 26, 2021, the Court issued its final order denying the petition for writ of mandate. The following provides an overview of the Court's conclusions:

- a. The Board did not err in allowing Galpinsfield to exercise a peremptory challenge.
- b. The Board was not required to take official notice of the pandemic and its effects and was not required to grant Barber Honda's request for official notice.
- c. Vehicle Code section 3065.3 did not and could not apply to Barber Honda's protest because it did not go into effect until January 1, 2020, and Barber Honda's protest was filed in 2017.
- d. The reasonableness of American Honda's performance standards is not one of the circumstances or issues the Board is directed to consider when determining whether Barber Honda met its burden of proof. Similarly, the Board is not directed to consider whether Barber Honda is or is not meeting American Honda's performance standards. Instead, the critical issue in this case is whether the market can support another dealer. Section 3066 assigns Barber Honda the burden of proof to establish there is good cause not to allow American Honda to open another dealership in the area, and that burden remains with Barber Honda at all times. The Court found that "the Board was not required to explicitly determine or make findings about whether American Honda's performance standards are reasonable before relying on them - at least in part - when deciding this case."
- e. The findings and decision are supported by the evidence. The Court was unpersuaded by Barber Honda's arguments and spent a number of pages detailing why.

The Notice of Entry of Judgment was served on August 23, 2021. The time to file a Notice of Appeal was October 23, 2021.

On October 13, 2021, the Board received Barber Honda's Notice of Appeal. In general, Barber Honda's Opening brief is due 40 days after the record on appeal is completed and filed with the Appellate Court. The Board's brief is due 30 days after Barber Honda's brief is filed. Barber Honda's reply brief is due 20 days after the Board's brief is filed. If oral argument is requested, then the Appellate Court will schedule it and the decision would follow within 90 days thereafter. The appeal could take six months or longer.

By notice dated January 27, 2022, the Court determined that this case is not suitable for mediation. The Court issued an order dated January 27, 2022, in this regard and all proceedings in the appeal are to recommence as if the notice of appeal had been filed on January 27, 2022.

The record was filed with the Court of Appeal on June 28, 2022. On August 12, 2022, Barber Honda associated with Douglas J. Collodel, Esq. of Clyde & Co US LLP.

Barber Honda requested a 30-day extension to file its brief, which was granted on September 6, 2022. Barber Honda's opening brief was filed October 7, 2022, American Honda, Galpinsfield, and the Board's briefs were due on November 7, 2022, but continued to December 7, 2022, at the Board's request. The Board's brief was filed within the grace period on December 16, 2022. Barber Honda's combined reply brief was due on December 27, 2022, but continued to February 6, 2023.

By letter dated April 11, 2023, the Court of Appeal indicated that it is prepared to render a decision without hearing oral argument but parties could request oral argument by April 21, 2023. Barber Honda requested oral argument on April 19, 2023, which was presented on June 27, 2023.

On July 24, 2023, the Court of Appeal affirmed the judgment in favor of the Board in its entirety. The Opinion was certified for partial publication. In the published portion of the opinion, the court held that:

- *The Board properly determined that the burden of proof did not switch to the manufacturer to prove reasonableness of performance standards.*
- *The court reasoned that the competing statutes (3066 and 11713.13(g)) were irreconcilable, and that to adopt Barber's construction would entail a rewriting of the statute for establishment protests. The court found that this would be improper because it would be contrary to the legislative intent to place the burden solely on the dealer in an establishment protest.*

In the unpublished portion, the court rejected Barber's claims that the peremptory challenge process was improper and that the Board should have taken official notice of the pandemic.

Barber Honda filed a Petition for Rehearing on August 8, 2023, and it was denied the following day. The deadline for Barber Honda to file a Petition for Review with the California Supreme Court is September 5, 2023. If Barber Honda does not file anything or if it does but they are unsuccessful, then the Court of Appeal should issue its Remittitur on or around September 25, 2023. This will return jurisdiction to the Superior Court. The only issue left for the Superior Court to adjudicate will be appellate costs, as the court awarded costs to the Board and the real parties in interest. Historically, the Board does not seek costs.

2. SUBARU OF AMERICA, INC. v. NEW MOTOR VEHICLE BOARD; COURTESY AUTOMOTIVE GROUP, INC. dba COURTESY SUBARU OF CHICO

Alameda County Superior Court No. 22CV010968

New Motor Vehicle Board No. CRT-282-22

Protest No. PR-2570-18

On March 20, 2019, pursuant to Vehicle Code sections 3050.7, 3060, 3061, 3066, and 3067, the parties sought to resolve their termination protest by entering into a Confidential Agreement and Stipulated Decision and Order (Stipulated Decision).

The Public Members of the Board approved the terms of the Stipulated Decision by order dated April 9, 2019. The Board retained continuing jurisdiction over this matter solely to determine if there has been a failure by Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico (Courtesy) to materially comply with any of the conditions of the Stipulated Decision after a timely request.

In 2020, a dispute arose between Courtesy and Subaru of America, Inc. (SOA) concerning Courtesy's compliance with the terms of the Stipulated Decision.

ALJ Evelyn Matteucci was assigned to this matter. After extensive briefing, multiple witness' testimony was taken on September 14-16, 2021, and October 18-19, 26, and 28, 2021.

On March 24, 2022, ALJ Matteucci issued a "Confidential Decision Resolving Stipulated Decision and Order Dispute." The Parties expressly waived any claim that the Board itself should consider the ALJ's Decision. This Decision is not subject to a document request or Public Records Act Request.

On May 9, 2022, SOA filed a confidential "[un-redacted] Petition for Writ of Administrative Mandate" (Petition) and redacted version. A copy of the administrative record has been requested.

In general, SOA contends the ALJ's determination is not supported by the evidence or the ALJ's findings. SOA maintains it was denied a fair hearing. SOA seeks, in part, the following relief: (1) An order reversing ALJ Matteucci's determination; (2) For an order finding that SOA is the prevailing party in this matter; and (3) For such other and further relief as the Court deems just and proper.

On May 31, 2022, Bismarck Obando, Board President, determined that there is an interest in participating in the writ via the Attorney General's Office. This matter will be agendized for the November 7, 2022, General Meeting for a closed Executive Discussion with the Public Members.

The Hearing on SOA' Motion to Seal portions of its Petition and Exhibits 1 and 2 thereto was schedule for June 21, 2022, but continued to July 5, 2022, because SOA did not lodge the unredacted records with the Court in compliance with the Rules of

Court 2.550 and 2.551. SOA is to lodge the records no later than June 24, 2022. The hearing was continued until July 7, 2022, and then again until July 12, 2022. The Court granted the motion and ordered that SOA's Petition and Exhibits 1 and 2 be sealed consistent with the redacted versions filed with the Court.

A Case Management Conference was held on June 28, 2022. The Board had until August 15, 2022, to prepare the administrative record; it was completed on July 14, 2022.

On August 11, 2022, SOA filed a motion to seal the entire administrative record. The September 2, 2022, Tentative Ruling granted the "unopposed motion to seal and intends to file the proposed order provided by" SOA. "The Court does not make any findings with regard to whether documents in the Administrative Record might be subject to disclosure under the California Public Records Act ("CPRA"), and this Order is not intended to alter any party or entity's duties or rights under the CPRA. The Motion to Seal Notice of Motion and Motion To Seal Administrative Record; Declaration of Lisa M. Gibson in Support Thereof filed by Subaru Of America, Inc. on 08/11/2022 is Granted."

The administrative record was filed by SOA with the Court on August 12, 2022, so the Board's Answer was filed on September 12, 2022.

Courtesy filed a Demurrer on August 29, 2022, which will be heard on October 18, 2022, at 10:00 a.m. The Board will not participate in the demurrer.

A subsequent Case Management Conference was held on August 30, 2022. Due to the Demurrer filed by Courtesy, the Court continued the Case Management Conference to October 18 (the date for the hearing on the Demurrer). SOA raised its arguments about the Board's withholding of the staff summary of the Stipulated Decision provided to the Public Members on the basis of privilege. After some discussion, it was agreed that the Board will provide a privilege log by September 7, 2022, that provides the basic information about the document in question and if SOA wishes to contest privilege, then SOA can file a motion, which would be heard the same day as the Demurrer. SOA's motion to compel was filed on September 22, 2022. On October 11, 2022, SOA filed a request for judicial notice in support of its reply to the motion to compel.

The hearing set for October 18 was continued to November 1 by the Court as both SOA and Courtesy need to make corrections in order to properly submit their filings under seal. By way of Tentative Rulings, the Court reminded the parties that they must concurrently file a motion to seal relevant portions of each subsequent filing referring to the materials sealed by the July 12, 2022, order. The Court did not intend to grant blanket authorization to submit filings under seal going forward. The Court noted that discovery motions are exempt from the sealing rules and a motion to seal is not required. SOA filed a Motion to Seal its unredacted opposition to demurrer to the writ petition that was also heard on November 1.

On October 31, 2022, the Court issued the following tentative rulings:

- “The Demurrer filed by Courtesy Automotive Group, Inc. on 08/29/2022 is Sustained with Leave to Amend.”
- Petitioner’s Motion to Compel Production of Staff Summary Withheld by Respondent New Motor Vehicle Board from Administrative Record or, In the Alternative, for Privilege Determination is denied. The Staff Summary at issue is protected from disclosure by the attorney-client privilege and by the deliberative process exception; it may also be protected by the work product doctrine.
- “The Motion to Seal Notice of Motion and Motion of Petitioner Subaru of America, Inc. to Seal Unredacted Opposition to Demurrer to Writ Petition; Declaration of Lisa M. Gibson in Support thereof filed by Subaru of America, Inc. on 10/19/2022 is Granted.”
- The Motion to Seal Notice of Motion and Motion to Seal [Un-Redacted] Memorandum of Points and Authorities in Support of Real Party in Interests Demurrer to Petition and [Un-Redacted] Reply in Support of Demurrer Filed by Courtesy Automotive Group, Inc. on 10/20/2022 is Granted.

Oral arguments were submitted by the parties on November 1, 2022, and the matters were taken under submission.

On January 11, 2023, the Court filed the following orders:

- (1) Courtesy Subaru of Chico’s Demurrer to the Petition for Writ of Administrative Mandate is sustained with leave to amend. Petitioner has until Friday, February 3, 2023 to file a First Amended Petition.
- (2) Subaru’s Motion to Compel Production of Staff Summary is denied.
- (3) Subaru’s Request for Judicial Notice is granted.
- (4) Courtesy Subaru of Chico’s Motion to Seal portions of its Demurrer and Reply is granted.
- (5) Subaru’s Motion to Seal portions of its opposition to the Demurrer is granted.

On February 3, 2023, Subaru filed its First Amended Petition for Writ of Administrative Mandate. On March 1, 2023, Courtesy filed its Demurrer to Subaru’s amended petition. With President Kassakhian’s permission, on March 6, 2023, the Board filed a demurrer limited to Subaru’s allegations that the Board lacked or acted in excess of its subject matter or fundamental jurisdiction and that it deprived Subaru of procedural due process.

The Board also requested judicial notice of the legislative history of Senate Bill 3515, which was the 1990 legislation that added subdivision (b) to Vehicle Code section 3050.7. In conjunction with these pleadings, each party filed motions to seal that will be heard with the demurrer on April 4, 2023.

During the March 14, 2023, Case Management Conference, the Court continued Subaru's motion to seal to April 4 (the Demurrer hearing date). The Court set the hearing on the merits, in the event that the demurrers are overruled. The hearing date is September 26, 2023, with Subaru's moving papers due July 7, 2023, oppositions due September 1, 2023, and reply due September 15, 2023.

On April 3, 2023, Judge Kahn issued tentative rulings sustaining both demurrers without leave to amend and denying all four motions to seal. During the April 4, 2023 hearing, Judge Kahn indicated that he is prepared to confirm his tentative rulings. These orders were issued on April 4, 2023. *Initially, it was thought that Subaru had until June 5, 2023, to file a Notice of Appeal. However, upon further review, a judgment needed to be entered first. On May 23, 2023, the Board received the Notice of Entry of Judgment. This started the 60-day clock on Subaru's deadline to appeal, which would run on July 24, 2023, due to the actual deadline falling on a weekend.*

Courtesy's motion for attorneys' fees and costs was filed on May 26, 2023. On June 13, 2023, Subaru filed a Motion to Strike, or in the Alternative, to Tax Costs. The Board did not seek costs. Oral arguments initially scheduled for July 11 were continued to August 1, 2023, to allow Courtesy to file a declaration. The Court indicated that "Courtesy provides reasonable hourly rates for its attorneys but does not confirm that these were the hourly rates actually charged by counsel to Courtesy. Without this information, it is unclear what Courtesy agreed to pay its counsel for its representation in this writ action and if this comports with the fees sought in Courtesy's motion." (Tentative Ruling dated July 6, 2023)

Tentative rulings were issued by the Court on July 28, 2023, awarding Courtesy attorneys' fees of \$62,508.00 and \$1,495.65 in costs. Oral arguments were scheduled for August 1, 2023. The Board did not participate. On August 1, 2023, the Court issued its orders consistent with the tentative rulings.

This matter is closed and will not be reported on future Executive Director Reports.

NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS

3060/3070 AND 3062/3072

APRIL 12, 2023, THROUGH SEPTEMBER 5, 2023

These are generally notices relating to termination or modification (Sections 3060 and 3070) and establishment, relocation, or off-site sales (Sections 3062 and 3072).

SECTIONS 3060/3070

Manufacturer	Number of Notices
BMW/Mini	
Ford	
GM (Buick, Cadillac, Chevrolet, GMC)	314
Honda/Acura	
Hyundai/Genesis	4
Kia	
Nissan/Infiniti	2
Stellantis (Chrysler, Jeep, Dodge, RAM,)	
Stellantis (Alfa Romeo, FIAT)	1
Stellantis (Maserati)	1
Subaru	
Toyota/Lexus	5
Volkswagen/Audi	
Miscellaneous Car	4
Miscellaneous Motorcycles	1
Miscellaneous Recreational Vehicle	2
Total	334

SECTIONS 3062/3072

Manufacturer	Number of Notices
BMW	
Ford	3
GM (Buick, Cadillac, Chevrolet, GMC)	3
Honda/Acura	2
Hyundai/Genesis	
Kia	1
Nissan/Infiniti	
Stellantis (Chrysler, Jeep, Dodge, RAM)	
Stellantis (Alfa Romeo, FIAT)	
Stellantis (Maserati)	
Subaru	
Toyota/Lexus	
Volkswagen/Audi	1
Miscellaneous Car	1
Miscellaneous Motorcycles	
Miscellaneous Recreational Vehicle	
Total	11



Memorandum

Date : SEPTEMBER 7, 2023

To : ALL BOARD MEMBERS

From : TIMOTHY M. CORCORAN

Subject : BOARD MEETING DATES

The following identify planned Board meeting dates:

- December 8, 2023, General Meeting (location to be determined)
- February 2024, General Meeting (location to be determined)
- Summer 2024, General Meeting (location to be determined)
- Fall/Winter 2024, General Meeting (location to be determined)
- Industry Roundtable (date and location to be confirmed)

If you have any questions or concerns about any of the upcoming Board meetings, please do not hesitate to call me at (916) 244-6774.