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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

Minutes

GENERAL MEETING

The New Motor Vehicle Board (Board) held a General meeting on January 24, 2019, at the Department of Business Oversight, Golden Gate Conference Room, One Sansome Street, Suite 600, San Francisco, California.

2. **ROLL CALL**

Ramon Alvarez C., President and Dealer Member, called the meeting of the Board to order at 10:15 a.m.

Present: Ramon Alvarez C. Timothy M. Corcoran, Executive Director
Anthony A. Batarse Jr. Robin P. Parker, Senior Staff Counsel
Kathryn Ellen Doi Danielle R. Phomsopha, Staff Counsel
Bismarck Obando
Ardashes "Ardy" Kassakhian
Glenn E. Stevens

Absent: Rahim Hassanally
David C. Lizárraga
Victoria Rusnak

3. **PLEDGE OF ALLEGIANCE**

Mr. Stevens led the members and staff in the Pledge of Allegiance.

4. **APPROVAL OF THE MINUTES FROM THE NOVEMBER 7, 2018, GENERAL MEETING**

Ms. Doi moved to adopt the November 7, 2018, General Meeting minutes. Mr. Stevens seconded the motion. The motion carried unanimously.

5. **2019 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Mr. Stevens moved to nominate Ms. Doi as President. Mr. Stevens moved to close the nominations. The motion to close the nominations carried unanimously. Mr. Obando seconded the motion to nominate Ms. Doi as President. The motion to nominate Ms. Doi as President carried unanimously.

Ms. Doi moved to nominate Mr. Obando as Vice President. Mr. Alvarez moved to close the nominations, with Mr. Stevens seconding the motion. The motion to close the nominations carried unanimously. Mr. Kassakhian seconded the motion to nominate Mr. Obando as Vice President. The motion to nominate Mr. Obando as Vice President carried unanimously.

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

After a brief discussion off the record, incoming President Kathryn Doi made the following committee appointments:

- ADMINISTRATION COMMITTEE
Ardy Kassakhian, Chair
Bismarck Obando, Member
- BOARD DEVELOPMENT COMMITTEE
David C. Lizarraga, Chair
Ardy Kassakhian, Member
- EXECUTIVE COMMITTEE
Kathryn Ellen Doi, President
Bismarck Obando, Vice President
- FISCAL COMMITTEE
Anthony A. Batarse, Jr., Chair
Kathryn Ellen Doi, Member
- GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE
Ramon Alvarez C., Chair
Glenn E. Stevens, Member
- POLICY AND PROCEDURE COMMITTEE
Glenn E. Stevens, Chair
Ramon Alvarez C., Member

7. **APPOINTMENT OF BOARD MEMBER DESIGNEE IN COMPLIANCE WITH THE BOARD'S 1997 "REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS" BY THE INCOMING BOARD PRESIDENT**

This matter was pulled from the agenda since the incoming President is a Public Member and the incoming Vice President is a Public Member. If both the incoming President and Vice President were Dealer Members this designation would be necessary to comply with the Board adopted policy.

8. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO JEAN SHIOMOTO, FORMER DIRECTOR, DEPARTMENT OF MOTOR VEHICLES**

Mr. Obando moved to present a Resolution to former DMV Director Jean Shiomoto in recognition of her contribution to the State of California. Mr. Stevens seconded the motion. The motion carried unanimously. Ms. Doi commented that she, along with Mr. Alvarez and several Board staff, attended Jean's retirement dinner. Mr. Alvarez and Ms. Doi presented a plaque to Jean on behalf of the Board.

9. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO MAURICE (MO) SANCHEZ, RETIRING MANUFACTURER ATTORNEY**

Mr. Stevens moved to present a Resolution, as amended, to the Hon. Maurice (Mo) Sanchez, a former manufacturer attorney, in recognition of his contribution to the New Motor Vehicle Board. Ms. Doi seconded the motion. The motion carried unanimously.

10. **ANNUAL UPDATE ON BOARD CONSUMER MEDIATION SERVICES PROGRAM - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Dawn Kindel concerning the annual update on the Board Consumer Mediation Program. As indicated in the memo, 338 cases were received in fiscal year 2017/2018. Miss Kindel indicated that a 115 fewer cases were filed compared to the previous fiscal year. Of the cases filed, 65-70% were satisfactorily resolved. Miss Kindel reported that only 15 of the 338 cases were received via hard copy opposed to online. Staff are continuing to work with the DMV Web team to enhance the functionality of the online form to allow consumers to attach documents such as repair orders and sales agreements upon submittal. For the past year, the program did not have a designated mediator. In 2019, a full-time mediator will be hired to fill this vacancy.

11. **CONSIDERATION OF THE REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum and revised *Guide to the New Motor Vehicle Board* from Tim Corcoran and Robin Parker. Ms. Parker reported that the Guide was thoroughly reviewed and the changes pertained to the revised peremptory challenge regulation, an amendment to subdivision (d) of Vehicle Code section 11713.15, the Board's revised policy concerning the allocation of court reporter fees, and revised regulations that added electronic service.

Mr. Obando moved to adopt the revised *Guide to the New Motor Vehicle Board*. Mr. Stevens seconded the motion. The motion carried unanimously.

12. **STATUS REPORT CONCERNING MANUFACTURER AND DISTRIBUTOR COMPLIANCE WITH VEHICLE CODE SECTIONS 3064/3074 AND 3065/3075 (THE FILING OF STATUTORILY REQUIRED SCHEDULES AND FORMULAS) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Danielle Phomsopha, and Eugene Ohta updating manufacturer and distributor compliance with the Board's request that statutorily mandated schedules or formulas be filed with the Board. Ms. Phomsopha reported that 10 manufacturers/distributors fell within the Board's jurisdiction who were required to file mandated schedules and formulas in 2018; there was 100% compliance.

13. **DISCUSSION AND CONSIDERATION OF THE BOARD'S FINANCIAL CONDITION FOR THE 1ST QUARTER OF FISCAL YEAR 2018-2019 AND STATUS ON THE BOARD'S COLLECTION OF ITS ANNUAL FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Dawn Kindel and Suzanne Luke concerning the Board's financial condition for the 1st quarter of fiscal year 2018-2019 and the status of the Board's collection of its annual fee. As indicated in the memo, the current reserve balance is \$2.995 million, expenditures were \$417,344 and revenues were \$1,054,434. Miss Kindel indicated that the Board expended 25% of its budget through the 1st quarter. In addition, the Board's annual fee collection for manufacturers and distributors was completed. The DMV collects the other portion of the Board's revenue from dealers. Miss Kindel indicated that if collection of dealer fees continues at the current pace, then the Board is likely to see a \$150,000 reduction in revenues compared to the prior fiscal year. The Board has a good reserve so, according to Miss. Kindel, its operations will not be impacted if the economy or car sales change.

As indicated in the memo, Board members are provided with numerous financial reports on an annual basis including the Board's methods for determining fees, proposed budget allocations, quarterly updates, year-end wrap up, and the status of Board and Arbitration Certification annual fees. Miss Kindel and Mr. Corcoran recommended the quarterly reports be made exception reports. This would mean only quarterly budgetary items of exceptional interest would be reported on by either a memo or in the Executive Director's Report.

Mr. Alvarez indicated that he would leave this decision to the incoming President since he likes the detail of the report. Ms. Doi likes the quarterly reports and would encourage the staff to provide exception reports if something happens between the quarterly reports. Mr. Batarse also likes the quarterly reports. The staff will continue to provide quarterly reports.

Mr. Obando questioned at what point the Board begins to discuss whether the fees should be increased if revenues continue to decrease. Miss Kindel indicated that if revenues continue to drop then the fees would have to increase, which could take two years. The reserves would cover the Board for about 18 months. Ms. Doi suggested that the Board fees should be on the agenda for each meeting.

14. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2019-2020 - FISCAL COMMITTEE**

The members were provided with a memorandum from Dawn Kindel concerning the out-of-state travel plans for fiscal year 2019-2020. Miss Kindel indicated that the Board staff is looking at the following trips:

- American International Motorcycle Expo in Columbus, Ohio. Staff proposes sending the Executive Director to represent the Board. Travel costs for this trip will be approximately \$1,800.
- National Automobile Dealers Association (NADA) 2020 Show, Las Vegas. Staff proposes sending the Executive Director and Chief of Staff to represent the Board. Travel costs for this trip will be approximately \$4,500.

If the Board approves the travel, Ms. Kindel would submit the requests to the Department of Motor Vehicles, the California State Transportation Agency, and the Governor's office for final approvals.

Mr. Stevens commented, and Miss Kindel confirmed, that as far as NADA was concerned, if Board members want to attend, the Board covers the cost of admission to the convention but not the travel or per diem.

Ms. Doi requested Mr. Corcoran explain the reason for attending the motorcycle expo. Mr. Corcoran indicated that the motorcycle industry is within the Board's jurisdiction so he wanted to engage more with them. In fact, Mr. Corcoran was making a presentation the following week at the California Motorcycle Dealers Association conference to provide an overview of the Board. In preparation for this presentation, he recently toured two motorcycle dealers. Neither dealer was familiar with the Board or knew what rights they have.

Mr. Stevens moved to approve the out-of-state trips. Ms. Doi seconded the motion. The motion carried unanimously.

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

The members were provided with a memo and a revised *Informational Guide for Manufacturers and Distributors* from Tim Corcoran and Robin Parker. As indicated in the memo, the staff reviews the Guide annually to ensure it complies with recent statutory and regulatory amendments. It is being updated to reflect an amendment to subdivision (d) of Vehicle Code section 11713.15 and delete the Occupational Licensing contact name.

Mr. Obando moved to adopt the revised *Informational Guide for Manufacturers and Distributors*. Mr. Batarse seconded the motion. The motion carried unanimously.

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

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning the annual review of Board adopted policies. As indicated in the memo, the new policies that were approved in 2018 pertain to:

- The adjusted annual gift limit was increased from \$470 to \$500 from January 1, 2019, through December 31, 2020.
- The *Export or Sale-for-Resale Prohibition Policy Protest Guide* was removed since the Board's authority to hear these protests ended on January 1, 2019. (Veh. Code § 3085.10)
- The adoption of all updated publications.
- The transcript policy was updated to allow additional flexibility with securing a court reporter and to give the parties the option to use or not use the contracted court reporter service.
- In remembrance of Bill Brennan, Hearing Room #1 was renamed The "William G. Brennan Hearing Room."

17. **ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning the assignment of cases to Board administrative law judges (ALJs) in 2018. Ms. Phomsopha reported that there were nine law and motion hearings, five discovery hearings, five mandatory settlement conferences, and one merits hearing in *Folsom Chevrolet v. General Motors*.

The members commented on the low numbers for 2018 and asked what was anticipated for 2019. Ms. Parker indicated that in a roughly four week period between mid-December and mid-January, there were 34 protests filed. Currently there were 79 open protests and one petition. Ms. Doi inquired if the new protests were related to the same dealer group. Ms. Parker indicated that 21 protests were for franchise terminations related to the same dealer group and eight protests were protesting the establishment of a new Chrysler, Jeep, Dodge, RAM dealer. According to Ms. Parker, the cause of the increase in protests was due to an increase in the number of notices issued.

Ms. Parker commented that even though there were not a lot of hearings in 2018, there is plenty to keep the ALJs busy because the staff provides education throughout the year and there is typically an Annual ALJ Roundtable.

18. **CONSIDERATION OF PROPOSED REGULATION AMENDING SECTION 551.25 (SUBSTITUTION OR WITHDRAWAL OF COUNSEL) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning proposed regulatory amendments to Section 551.25 of Title 13 of the California Code of Regulations. As indicated in the memo, the California Rules of Professional Conduct were amended effective November 1, 2018. Rule 3-700 (termination of employment) is now Rule 1.16 (declining or terminating representation.) Section 551.25 of the Board's regulations relates to the substitution or withdrawal of counsel and references Rule 3-700 so it needs to be amended to reflect this change. An initial draft of the proposed text was submitted to the Policy and Procedure Committee. Concerns were raised that the regulation could violate client confidentiality or the Rules of Professional Conduct. Additional changes were made to address client confidentiality and to ensure the Board's regulation does not contain extra requirements that the courts would not require.

Ms. Doi indicated that she was concerned about potentially infringing on the attorney-client relationship. If an attorney is trying to withdraw in a regular civil or criminal litigation matter, there is not a requirement to state with particularity the reason.

The proposed revisions are as follows:

13 § 551.25. Substitution or Withdrawal of Counsel.

(a) The party to a protest, petition or appeal may substitute counsel of record at any time. It shall be evidenced by a writing signed by the party and new counsel of record and filed with the board. The writing shall be served on all other parties named in the proceeding.

(b) Counsel of record for a party may not withdraw from a protest, petition, or appeal without permission from the board. To obtain permission, counsel must file and serve a written request to withdraw or be relieved as counsel in compliance with Article 1, section 551.19, stating with particularity the factor or factors as set forth in that satisfies the requirements of Rule 3.1362 of the California Rules of Court Rule 3-700 of the Rules of Professional Conduct and Code of Civil Procedure section 284, justifying the request. Declarations of counsel may be filed under seal, but must be served on the party of the moving counsel, who then has an opportunity to be heard.

(c) Substitution or withdrawal of counsel does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code; Rule 3.1362, California Rules of Court, Rule 3-700 1.16, Rules of Professional Conduct; and Section 284, Code of Civil Procedure.

Mr. Stevens moved to adopt the proposed regulation. Mr. Obando seconded the motion. The motion carried unanimously.

Mr. Alvarez read the following statement into the record:

Given the Board's decision to go forward with the proposed regulation, I hereby delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices may be held to accept oral and written comments.

By the Board instructing staff to go forward with the proposed regulations, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulations. Furthermore, if the staff decides that substantive modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. However, non-substantive changes involving format, grammar, or spelling suggested by the Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They will be considered by the Executive Committee and ultimately reported to the Board at a future meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

19. **CONSIDERATION OF 2019 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and 2019 Rulemaking Calendar from Tim Corcoran and Danielle Phomsopha. Ms. Phomsopha reported that if the calendar is approved by the Board, it is then submitted to California State Transportation Agency for their approval, and ultimately published in the California Regulatory Notice Register by the Office of Administrative Law.

Mr. Stevens moved to adopt the 2019 Rulemaking Calendar. Ms. Doi seconded the motion. The motion carried unanimously.

20. **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.

Mr. Corcoran provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status.

At the first meeting of the year and as an annual tradition going forward, Mr. Corcoran highlighted what transpired and was accomplished in the previous year. Mr. Corcoran noted the following for 2018: (1) Mr. Brooks resigned from the Board and Mr. Kassakhian was appointed in his place. Mr. Kassakhian has already inspired a number of efforts including the large "license plate" on the Board's office wall; (2) The Board launched a new website with a clean look, improved functionality, and enhanced accessibility; (3) Two staff members were able to assist DMV field offices to help reduce wait times; (4) Suzanne Luke and Robin Parker celebrated 25 years of service with the State; (5) Staff participated in the "Our Promise" campaign by contributing \$500; (6) Staff also participated in the Great Shoe Race and raised \$300; (7) the weekly Newsfeed was launched to provide members and staff with stories of interest, which was inspired by Mr. Kassakhian; and (8) Staff and ALJ training increased 20%. The ALJs attended the National Judicial College and other programs. Mr. Corcoran acknowledged the members and staff for their time and effort, and thanked them for a job done well.

Ms. Doi thanked Mr. Corcoran for his contributions, and for fresh thoughts and the energy he is bringing to the Board. She also thanked Mr. Kassakhian for his great ideas.

Ms. Phomsopha indicated that there were eight new protests filed since the report was provided: one incentive program dispute; three warranty reimbursement disputes; and four establishment protests. Ms. Phomsopha also stated the California New Car Dealers Association reintroduced their franchise bill, AB 179, which is essentially the same bill as last year (AB 2107). Lastly, case management rulemaking that removed all references to association protests was approved by the Office of Administrative Law.

Ms. Doi asked about whether the Board might want to weigh in on legislation. Ms. Parker noted that this item was initially assigned to the Policy and Procedure Committee at the November 7, 2018, meeting. There was a discussion about whether this should remain with the Policy and Procedure Committee or be assigned to the Executive Committee. Mr. Obando discussed the oversight of the DMV that Secretary Batjer was undertaking and that perhaps, the Board would be part of this, so it should be prepared to respond.

The members started to discuss dates and committee assignments so this was done off the record. Ms. Doi announced that the March 27 meeting will now be held on April 10, 2019. The Executive Committee will work with the staff on the Board's participation in legislation and DMV review issues.

Ms. Parker reported that the decisions in the *Asian Pacific* and *Dependable Dodge* court cases were issued. The Board's decisions were upheld in both matters.

Ms. Doi asked Ms. Parker to discuss the new petition. Ms. Parker indicated that the California New Car Dealers Association (CNCDA) filed a petition against Volvo under Vehicle Code section 3050(c)(1) and (c)(3). The relief sought is a DMV investigation or a Board order that DMV take appropriate licensing action. CNCDA is alleging illegal competition between Volvo and its dealers in violation of the Vehicle Code. They are also contending that Care by Volvo, which is a subscription service, is a modification of the franchise without notice and an opportunity to protest.

CNCDA also contends that Volvo is unfairly discriminating in favor of dealerships that are controlled, in part, by Volvo, in direct competition. The contention is that the program requires dealers to serve as the agent of Volvo Car Financial Services, which is owned by Volvo. There is also an alleged violation of the Vehicle Code section that prohibits payment packing, because the services are all lumped together for a flat fee that does not designate how much it costs for insurance, maintenance, and so on.

Ms. Parker indicated that a petition is handled differently than a protest. The members are provided with a detailed summary of the petition and answer along with all of the documents filed. The discussion is in open session. Both sides present their arguments and there will likely be a handful of Volvo dealers that present comments. There could be media. The members do not make the ultimate determination of whether or not Volvo violated the Vehicle Code; they only determine if there has been a sufficient showing to grant the relief requested. The members handle all facets of the petition like a judge. Ms. Doi questioned whether the development of a factual record could be delegated to one of the Board's judges. Ms. Parker indicated that she was not sure but could look into this.

Ms. Parker noted that in the past, if the Board ordered an investigation it continues to monitor the petition. The Board might allow the DMV 90-to-120 days to provide the Board with a written report. If the Board orders licensing action, then it takes longer for DMV to develop the record. DMV could file an accusation against Volvo. If the accusation is not resolved, then it would go to the Office of Administrative Hearings for a quasi-judicial hearing. Once the DMV Director issues the decision, then if the Board still has appeal jurisdiction and if the manufacturer files an appeal, this matter could come back before the Board.

Mr. Corcoran added that DMV Investigations currently enjoys the privilege of choosing whether or not they can or should investigate a complaint. The difference here is DMV would not enjoy that privilege if the Board says "investigate." They will have to investigate it. The Board would formally request DMV to investigate and provide it with a certified copy of the administrative record.

Ms. Doi requested that the members get all of the petition materials at least a week in advance of the meeting. Mr. Stevens asked if all of the materials are public. Ms. Parker indicated that everything is public including the summary she prepares and it will be posted on the Board's website.

21. **PUBLIC COMMENT** (Gov. Code § 11125.7)

Mr. Alvarez indicated that it has been his honor and privilege to serve the Board as its President. It was a transitional and emotional year with Bill Brennan's passing. In part, a very exciting year because of Mr. Corcoran being hired. Mr. Alvarez remarked that he is so grateful to the Board staff for sticking together and thanked Mr. Corcoran for coming in at this difficult time.

Ms. Doi thanked Mr. Alvarez for his leadership during the difficult times as it came very unexpectedly that the Board had to deal with Bill's passing and Mr. Alvarez rose to the occasion to lead the Board.

To conclude, Mr. Alvarez thanked each of the members and welcomed the incoming officers, Kathryn Doi and Bismarck Obando, who he commented are both very strong leaders.

No additional public comment was presented.

22. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 12:05 p.m.

Submitted by

Original Signature upon request

TIMOTHY M. CORCORAN

Executive Director

APPROVED: Original Signature upon request

Kathryn E. Doi

President

New Motor Vehicle Board