awarded the human drug testing contract to PharmChem Laboratories, which had submitted the only bid for that contract.

At its September 23 meeting, CHRB elected Ralph Scurfield to serve as Board Chair, and Donald Valpredo to serve as Vice-Chair.

FUTURE MEETINGS

January 29 in Monrovia.
February 26 in Arcadia.
March 26 in Berkeley.
April 30 in Arcadia.

NEW MOTOR VEHICLE BOARD

Executive Officer:
Sam W. Jennings
(916) 445-1888

Pursuant to Vehicle Code section 3000 *et seq.*, the New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles (DMV). Most licensees deal in cars or motorcycles.

NMVB is authorized to adopt regulations to implement its enabling legislation; the Board's regulations are codified in Chapter 2, Division 1, Title 13 of the California Code of Regulations (CCR). The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the manufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manufacturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive secretary, three legal assistants and two secretaries.

MAJOR PROJECTS

Board Permits Termination of Franchise. At its July 24 meeting, NMVB considered a protest filed by Jim Lynch Cadillac, Inc., against General Motors Corporation's (GMC) Cadillac Motor Car Division, following GMC's October 1991 decision to terminate the Cadillac franchise held by Lynch. In considering the protest, NMVB noted that Vehicle Code section 3066 imposes upon GMC the burden of establishing the existence of good cause to terminate or refuse to continue Lynch's franchise. In determining whether good cause has been established, Vehicle Code section 3061 requires NMVB to consider the amount of business transacted by the franchisee, as compared to the business available to the franchisee; any investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise; the permanency of the investment; whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted; whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public; whether the franchisee has failed to fulfill the warranty obligations of the franchisor to be performed by the franchisee; and the extent of the franchisee's failure to comply with the terms of the franchise.

According to GMC, good cause existed to terminate Lynch's franchise because of Lynch's breach of the terms of the franchise. According to GMC, Lynch breached its Dealer Agreement by abandoning its sales facility located on La Brea Avenue in Inglewood, and consolidating its new car sales operation at an unapproved and unauthorized service location on Centinela Avenue in Inglewood. Lynch contended that it had been attempting for five years to find possible sites for the relocation of the dealership, and that the Centinela location was merely a temporary arrangement while it continued to pursue efforts to relocate. Lynch also contended that the consolidation was justified because continued operations from both facilities would have resulted in Lynch's insolvency.

After reviewing the available data, NMVB made the following findings:

–In light of the sufficient opportunity for Cadillac sales within Lynch's area of geographic sales and service, Lynch has been "weak and marginal as a Cadillac dealer."

–Of the $2.775 million acquisition price, only $160,000 qualifies as Lynch's permanent investment.

–The public is inconvenienced and Cadillac's image and standards are diminished by the fact that there is no showroom for new vehicles at the Centinela facility; new and used car sales are conducted out of two mobile home-type trailers located in the parking lot; the facility is crowded and new car customers must first go through the service area before they get to the area where the new cars are located.

–The Centinela facility has only 17.3% of the space required by GMC's space and facilities guidelines and is therefore deficient under those guidelines.

–Lynch's decision to consolidate was precipitated by the expiration of its lease at the La Brea location and its desire to reduce its monthly losses.

–Lynch's fiscal condition does not justify an unauthorized relocation of its sales operations.

Accordingly, NMVB concluded that Lynch breached its Dealer Agreement by unilaterally moving its new car sales operations from the approved location to an unauthorized location, and to the extent that the unauthorized relocation resulted in inadequate facilities which are far below the facilities and space guidelines required under the Dealer Agreement. As a result, NMVB held that GMC is permitted to terminate the franchise of Jim Lynch Cadillac.

Board Settles Warranty Debate. In November 1991, Quaid Imports, Inc., a Maserati franchisee since 1983, filed petition number P-230-91 with NMVB, seeking damages and declaratory relief on its claim that Maserati Automobiles, Inc. (Maserati) had refused to reimburse Quaid for warranty repairs made to a certain 1989 Maserati automobile. Pursuant to an April 1990 settlement agreement reached by the parties in an unrelated matter, Maserati had delivered a new Maserati to Quaid and agreed that Quaid would retain "the two new Maserati automobiles currently in its possession"; the 1989 Maserati at issue in Quaid's November 1991 petition was one of the "new Maserati automobiles" referred to in the Aprill 1990 settlement agreement.

Pursuant to Maserati's Standard Dealer Agreement, Quaid was required to maintain at least one demonstrator available at all times. On November 22, 1988, the date of delivery of the 1989 Maserati, Quaid informed his inventory manager that he would use that automobile as his demonstrator; the manager immediately filed a Demonstrator Report Card with Maserati, as required by the Agreement. Under the terms of Maserati's 1989 model year warranty, the coverage period could start either on the date of retail delivery to a customer or upon first use as a demonstrator or company car; the total term of the warranty was three years or 36,000 miles, whichever came first. Maserati was to administer the coverage for the first two years or 24,000 miles directly, and the third year of extended

coverage was provided through Maryland Casualty.

Quaid only drove the vehicle once, and changed his mind about using the car as a demonstrator; however, he did allow the car to be test-driven by prospective purchasers. In October 1990, Quaid informed Maserati that the Demonstrator Report Card was filed in error and that he had not actually used the car as a demonstrator. In March 1991, Quaid discovered that the car's battery was dead; he replaced the battery and filed a claim for reimbursement with Maserati. In May 1991, Maserati rejected the claim, contending that the vehicle's factory warranty term had begun to run on November 22, 1988, and that the two-year factory warranty had expired. In September 1991, the vehicle was sold to a customer who was told that the vehicle was a new vehicle with 340 miles on the odometer. Within a month, the customer had returned the vehicle for repairs totalling $499.81; that claim was also rejected by Maserati, which again contended that the two-year factory warranty had expired.

Because the April 1990 settlement agreement in the separate matter referred to the Maserati in question as "new," Quaid contended that the warranty period on the subject vehicle had not actually commenced. Because the word "new," as it appears in the settlement agreement with reference to the subject vehicle, is reasonably susceptible to more than one meaning, NMVB allowed parol evidence to determine whether the parties intended that the vehicle would be retained by Quaid with a full 36-month warranty or with 28 months of warranty coverage already expired. After reviewing the evidence presented to it, NMVB concluded that in the context of the settlement agreement, the word "new" was meant to designate those vehicles which Quaid would retain for retail sale to the public; it did not mean that the status of the subject vehicle was changed from "demonstrator" to "new vehicle" for the purpose of warranty. Thus, NMVB concluded that Maserati's coverage ended on November 22, 1990; any obligation for warranty claims during the third year of warranty coverage is the responsibility of Maryland Casualty.

LEGISLATION

AB 126 (Moore) would have enacted the "One-Day Cancellation Law" which would have provided that, in addition to any other right to revoke an offer or rescind a contract, the buyer of a motor vehicle has the right to cancel a motor vehicle contract or offer which complies with specified requirements until the close of business of the first business day after the day on which the buyer signed the contract or offer. This bill died in committee.

FUTURE MEETINGS

To be announced.

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

Executive Director:
Linda Bergmann
(916) 322-4306

In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners; 1991 legislation changed the Board's name to the Osteopathic Medical Board of California (OMBC). Today, pursuant to Business and Professions Code section 3600 *et seq.*, OMBC regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine, and enforces professional standards. The Board is empowered to adopt regulations to implement its enabling legislation; OMBC's regulations are codified in Division 16, Title 16 of the California Code of Regulations (CCR). The 1922 initiative, which provided for a five-member Board consisting of practicing doctors of osteopathy (DOs), was amended in 1982 to include two public members. The Board now consists of seven members, appointed by the Governor, serving staggered three-year terms.

The Board is presently awaiting Governor Wilson's appointment of three new members (two DOs and one public member).

MAJOR PROJECTS

Governor Upholds OAL Rejection of Medical Board's Training Program Regulation. On June 11, Governor Wilson upheld the Office of Administrative Law's (OAL) rejection of the Medical Board of California's (MBC) adoption of section 1325.5, Division 13, Title 16 of the CCR, as being discriminatory against osteopathic physicians.

Under regulatory section 1324, MBC's Division of Licensing (DOL) is authorized to approve alternative clinical training programs for foreign medical graduates who have difficulty obtaining a postgraduate training program approved by the Accreditation Council on Graduate Medical Education of the American Medical Association. DOL recently adopted new section 1325.5, which would have required the medical director of a section 1324 training program to have an MD degree. The Division insisted on this provision over numerous objections that it violates Business and Professions Code section 2453, which prohibits discrimination between MDs and osteopathic physicians (DOs) on the basis of the degree. OAL rejected the provision three times, and DOL appealed the rejection to the Governor shortly after its May 7 meeting. *[12:2&3 CRLR 102, 256]*

On June 11, the Governor upheld OAL's rejection of the MD requirement, recognizing the "hundred years war" between the allopathic and osteopathic branches of the medical profession and noting that "[t]he California Legislature has mandated equality between holders of MD degrees (medical doctors) and holders of DO degrees (doctors of osteopathy)....In this state osteopathy is firmly established as 'the practice of medicine.'" The Governor noted that DOL, in its final statement of reasons on its proposed rulemaking, stated that the proposed restriction "'does not prevent an osteopathic physician from being a staff teacher'; it applies only to the director. Thus, the Board explicitly acknowledges that the subject matter to be taught does not specifically require an allopathic orientation."

LEGISLATION

AB 2944 (Brulte). Existing law establishes a state medical contract program with accredited medical schools and programs that train, among others, primary care physician assistants (PAs) and primary care nurse practitioners (NPs) to maximize the delivery of primary care family physician services to specific areas of California where there is a recognized unmet priority need for these services. Existing law requires the Health Manpower Policy Commission to establish standards for family practice training programs, family practice residency programs, and programs that train primary care PAs and primary care NPs. Existing law further requires the Commission to review and make recommendations to the Director of the Office of Statewide Health Planning and Development concerning the funding of those programs. As amended June 26, this bill requires the Commission to also establish standards for postgraduate osteopathic medical programs in family practice. The bill also defines "family practice" for these purposes as including the general practice of medicine by osteopathic physicians. The