

**MOTOR VEHICLE DEALER BOARD
MINUTES**

January 10, 2008

The regular meeting of the Dealer Board was held at the Department of Revenue offices, Lakewood, Colorado. The following persons were present:

BOARD MEMBERS: Jeff Carlson, President
Steve Perkins, 1st Vice President
Jim Varner, 2nd Vice President
Bob Feder
Jim Reitz
Philip Harris
Eva Wilson

MEMBERS ABSENT: Lisa Schomp
John Medved

**DEPUTY EXECUTIVE
DEPARTMENT DIRECTOR** Tim Weber

**DEPT OF REVENUE,
SENIOR DIRECTOR OF
ENFORCEMENT:** Matt D. Cook

EXECUTIVE SECRETARY: Robert Sexton - absent
LEGAL ASSISTANT: Birgit Bindel

**DEPT OF REVENUE,
AID, ENFORCEMENT
DIVISION STAFF:** Kaye Kopecky
Eric Hartsough
Bud Heinrich
Gloria Breeden
Chris Rouze
Charles Halberstadt
Matt Heap

A.G.'S OFFICE: Rob Huss

BUDGET OFFICE: Pamela Keller

VISITORS:
Jon Kroneberger, CIADA
Tammy McCoy, CADA
Mary Marvin, CIADA
Steffen Grimm, German 4 Wheel Center

Patrick Colbert, Colbert Auto Sales

The meeting convened at 9:15 a.m.

Introduction of Tim Weber, Deputy EDO

EXECUTIVE SESSION:

Psychometric testing

Employment status

Re-appointment of Board members

MINUTES:

The minutes of October 11, 2007 were approved unanimously with the following amendments:
(Amendments are underlined and written in Italics.)

Page 4 now reads:

Warning Notice: A name change of this form from "Warning Ticket" to "Warning Notice" will occur with the next printing. A Warning Notice does not constitute a warning letter per Board standards and does not replace a letter of admonition. A copy of the Warning Notice will go into the investigative file, not a Dealer's file.

BUDGET:

Documents were presented to the Board by the Budget Department, Department of Revenue, Enforcement Group regarding FY 06/07 year to date actual legal expenditures and revenue. The Board reviewed the documents. Ms. Pamela Keller was present at the Board meeting. The Revenue Collections reflected an amount of only 40K in August, which report was presented to the Board in October. The Board expressed their discomfort that \$200K is unaccountable for four months. Mr. Feder pointed out that this discrepancy might impact the Board's decision making on fee setting. Mr. Carlson stated that without the Board's persistence in following up on this topic via e-mails and phone calls, this discrepancy might still be in place. Mr. Carlson expressed that the Board wants to avoid carrying over too much when at the same time it is difficult to receive \$10,000 for psychometric testing. The Board requested that Mr. Cook draft a letter expressing the Board's concerns and that a reply from Budget/Controller is expected with an explanation of journal adjustments in FY Oct 08 to Nov 08 and an explanation regarding the miscellaneous line item described as (negative) \$-200,000.00. **Motion passed unanimously.**

DELEGATION OF AUTHORITY:

Mr. Cook stated that the Delegation of Authority echoes the statutes, which are already in place. The Board had asked to quantify the potential impact. The Board discussed whether the Delegation of Authority limits the authority in the sense that no criminal filings will be pursued anymore. The notification of a crime to the District Attorney's Office is still authorized, the issuance of a summons in felony cases however is viewed more narrow since the General

Assembly changed Title 16. The Board discussed the concern that criminal activity won't be followed up due to lack of resources and time by the DA's office. Criminal matters need to be referred to the local law enforcement. Mr. Cook stated that the statute has to be followed.

EXECUTIVE SECRETARY'S REPORT:

Mr. Cook presented the Executive Secretary's report on behalf of Mr. Sexton.

Hybrid Technology: The Board briefly discussed the issue of electric cars possibly being sold at various stores without the requirement of a Dealer license.

Hearing took place on 10/12/07. Kathleen Beesing, who was appointed by the EDO based on SB07-221, acted as Hearing Officer for the Motor Vehicle Dealer Board.

Pamela Dickinson, Salesperson Applicant #163295 - The Hearing Officer decided that a license was to be denied. The Board affirmed this decision. Motion passed - **unanimously**.

The issue whether a previous license denial is deemed to be a disciplinary action will be reviewed at a later time. The Board will have to distinguish between a technical violation e.g. material misstatement on application or substantive violation e.g. mandatory disqualifying convictions.

Hearing took place on 11/15/07. Arthur Julian, who was appointed by the EDO based on SB07-221, acted as Hearing Officer for the Motor Vehicle Dealer Board.

Matthew Rockwell, Salesperson Applicant #32679- The Hearing Officer decided that a license was to be denied. The Board affirmed this decision. Motion passed - **unanimously**.

LICENSING REPORT:

Dealer & Wholesaler Application Approved List was reviewed by the Board.

German 4 Wheel Center: The Board passed a Motion to approve the Dealer license - **unanimously**. The Board explained that although the credit score is low at this time, that all of applicant's payments had been on time.

Colbert, Patrick, SL#34646: The Board had imposed a fine of \$4000 for unlicensed activities pursuant to a Final Agency Order mailed to licensee in October 2007. In December 2007 licensee requested a transfer of his license, which required Board approval since the fine had not been paid to date. The Board passed a Motion to accept licensee's payment plan of \$400 per month until paid in full commencing March 1, 2008 – **unanimously**. The Board advised Mr. Colbert that his license would be suspended if he were in default with payment plan.

Supplement presented to the Board:

The following Salesperson applications were presented to the Board in December 07. The AG's office advised the Division that the Board's Motion to Deny an application AND a Notice to applicants need to be processed within a time period of 120 days. Since the time frame of 120

days had passed, the Board set aside their Motions for Denial from the previous month and referred the following Salesperson applications to **Hearing for Revocation** before a Hearing Officer:

Joshua M. Christianson - Motion passed unanimously.

Eric J. Wass - Motion passed unanimously.

Dustin D. Robison - Motion passed unanimously.

Pete Loma - for failure to comply with previous Board Order to submit a letter from IDTS classes and applicant's wife: Motion passed unanimously.

Nathaniel Tuttle - Motion passed unanimously.

The following Salesperson application had not been previously presented to the Board:

Mark Colangelo, SL169255 applied for a license on 8/3/07. On 6/16/2000 Mr. Colangelo was sentenced being convicted of a mandatory disqualifying conviction in violation of C.R.S. 18-3-206. The Board passed a Motion to refer the matter to a **Hearing for Revocation** before a Hearing Officer - **unanimously**.

Salesperson Applicants –

No license applications were presented this month.

INVESTIGATION REPORT:

Acting Agent in Charge Rouze reported on the following agenda items and various discussion items:

Statistical Reporting – Monthly update.

The Case Statistical Reporting, Licensing Statistics, and Activity Report were reviewed by the Board.

Criminal Filing Log and its Summary were reviewed with the Board.

Fines imposed & received log were reviewed with the Board.

Hearing schedule: was reviewed by the Board.

60/40 ALJ/Board referrals: was reviewed by the Board.

Bailey, Rick, SL 29713: The Board had passed a Motion in November 2007 to refer this matter to a Hearing before an ALJ. C.R.S. 12-6-119(2)(b) states that Salesperson application matters need to be referred to Hearing Officers. Therefore, the Board set aside their Motion from November and passed a Motion to refer this matter to a Hearing Officer - **unanimously**.

Affidavit of probable cause:

LPS, DL#37056: The Board was presented a stipulation proposal by licensee's legal counsel. The Board reviewed the affidavit of probable cause and determined not to recognize opposing counsel's proposal. Mr. Perkins inquired whether the Division Director's visit to the Dealership compromised the investigation, which Mr. Cook denied. The Board passed a Motion to refer this matter to a **Summary Suspension Hearing** before an ALJ - **unanimously**.

R& L Auto Sales LLC, DL#38870: The Board reviewed the affidavit of probable cause. The Board passed a Motion to refer this matter to a **Hearing** before an ALJ - **unanimously**.

Other Investigations Matters: none

ATTORNEY GENERAL'S OFFICE:

AG Huss updated the Board on the CU Aadvantage appeal. Further, the AG emphasized with the Board that any Salesperson matters need to be heard by a Hearing Officer pursuant to C.R.S. 12-6-119(2)(b).

PUBLIC COMMENTS:

Mr. Kroneberger briefed the Board that Titles & Registration did not maintain CIADA's exclusive rights to control secured forms. He stated that a "standard registrar" would be allowed to sell forms to Dealers online, which opens up the risk for misuse.

Mr. Kroneberger suggested presenting to the Board a final version of a pre licensing certification at the next Board meeting.

Lunch break 12:15 – 1:15 p.m.

NEW BUSINESS:

Off Premise Permits:

The Board requested Bud Heinrich to present a list of previous off-premise permit applicants for the last two years. The Board requested for Bud Heinrich to send a letter to all people who had filed an off-permit request inviting them be present when the Board makes a determination at the next meeting giving clear direction to the Division how the Board is going to proceed on that. The Board requested to add to next month's agenda: notification to prior off-premise permit applicants that an off-premise permit is still required. The Board passed a **Motion** that an off-premise sale requires an off-premise permit – **unanimously**. Thereafter, the Board requested notifying all prior off premise permit applicants that they need to continue to apply for off premise permits. The Board expressed their wishes by stating "you all want to run something out there in the industry on the wires you have out there, telling everyone, reminding them."

Executive Secretary/Division Director:

The Board expressed their preference that the position of the Executive Secretary and the Division Director shall be divided in two separate positions to provide continuity to the Board. Mr. Cook stated:" ... If in fact you were to employ such person, where would they be housed, who would supervise them, who would pay them if they were to be co-located in the Div; I'm not quite sure you'd resolve your issues concerning the service kind of thing. Secondly and more importantly, I guess I need to know what the need and the issues are very candidly. I understand the support function to the Bd and those kinds of things, but if there is something you are not getting that you expect I need to know what that is because I perceive those things to be a function of the Exec Sec position at this point. I am not aware of any issues at all and if there is anything I need to be aware of, please let me know. "

The Board stated that specific topics such as additional locations, renewal of Board member appointments, lack of continuity, re-codifying regulations etc. need to be addressed. Mr. Cook felt uncomfortable having this conversation without Mr. Sexton present to comment. The Board expressed that this discussion has nothing to do with Mr. Sexton. Mr. Cook emphasized that if

there are things that directly need to be addressed then he offers to jump in to make those things happen. He wanted to offer that to the Board for consideration.

The Board further requested to prioritize on future Rule Making topics at the next Board meeting. The Board requested for Mr. Cook to bring a list of Rule making topics to the Board at the next meeting.

HEARINGS:

None.

Meeting concluded at 2:15 p.m.

Robert C. Sexton
Executive Secretary