

**MOTOR VEHICLE DEALER BOARD  
MINUTES**

**July 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, 1<sup>st</sup> Vice President  
Robert Feder  
Philip Harris  
Eva Wilson

**MEMBERS ABSENT:** James Varner, 2<sup>nd</sup> Vice President  
James Reitz  
Lisa Schomp  
John Medved

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

**EXECUTIVE SECRETARY:** Bruce Zulauf

**LEGAL ASSISTANT:** Leland BeBee

**DEPT OF REVENUE,  
AID, ENFORCEMENT  
DIVISION STAFF** Chris Rouze  
Eric Hartsough  
Kaye Kopecky  
Bud Heinrich  
Gloria Breeden  
Margaret Jungmann  
Jerry Smith

**A.G.'S OFFICE:** Rob Huss  
Chris Puckett, Conflicts Council

**BUDGET OFFICE:** Pamela Keller  
Curtis Tremble

**VISTORS:**

Becky Davis, Business Analyst  
Tammy McCoy, CADA  
Jon Kroneberger, CIADA

### **OPENING STATEMENT:**

Board President Jeff Carlson opened the Colorado Dealer Licensing Board meeting stating the Board would be moving through the Agenda swiftly as we currently have a quorum thanks to Steve Perkins coming back in. As Mr. Reitz would not be in and Ms. Wilson would be leaving early, the Board would address those items needing a vote, requiring a quorum, to be addressed first.

Mr. Carlson stated this was a carry over Board as they have not yet replaced other members on the Board; Mr. Perkins, Ms. Schomp and Mr. Feder who has applied to remain on the Board. Motion made to carry over Board officers – unanimous.

Bruce Zulauf explained the redistribution of duties regarding the Auto Industry Division staff to the Board. Gloria Breeden would be responsible for the recording and minutes; Margaret Jungmann would be responsible for the Board's expenses; and Eric Hartsough would be responsible for the Board lunches. There are also changes to the configuration of the Board layout to provide a space for guest speakers to provide a more professional image and to assist with the recording issues.

### **MINUTES:**

The minutes of the June 12, 2008 meeting were unanimously approved as submitted.  
The minutes of the June 26, 2008 meeting were unanimously approved as submitted.

### **BUDGET:**

Pamela Keller of the Budget Office asked the board if there were any questions regarding the budget reports. Mr. Carlson stated it appeared revenue was going to fall short of projected figures. Ms. Keller stated it was, at fee setting time she had projected the ending fund balance and it appears it will be short about 150. Ms. Keller stated we have not seen June's revenue figures and we are all quite anxious. Mr. Feder asked if we would see a decline. Ms. Keller stated it was early, but there was a possibility of yes.

Mr. Matt Cook announced Ms. Keller's retirement at the end of the month and stated she would be missed.

Agenda amended to move forward to Licensing.

### **LICENSING REPORT:**

The Dealer and Wholesale Application Approved list was reviewed by the Board. Mr. Feder asked for clarification on Felker Sales. It was noted that the Portal activity has picked up.

The following salesperson licenses with previous Board Actions were presented to the Board:

- Jeffrey Alcorn – A motion was made to approve a probationary license with fines to be paid. The Board had questions regarding the 2005 conviction. The motion was tabled until the file could be pulled. The Board passed a motion to deny the license. Motion carried 3-2.
- Kevin Lacroix – The Board unanimously passed a motion to deny the license.

The following salesperson license applications were presented to the Board:

- Stan Ford – A motion was made to deny the license. The motion to deny was carried 3-2.
- Michael Gonzales – A motion was made to approve the license. The motion was approved unanimously.

Bud Heinrich provided a Board requested comparison report of dealer application figures. Mr. Heinrich reported application figures were down from last year. Mr. Matt Cook pointed out some of the figures are actually up a little. Mr. Carlson said the report was just what the Board was looking for and would appreciate it being continued. Mr. Heinrich agreed to do so.

#### **ATTORNEY GENERAL'S OFFICE:**

AAG Huss presented the Board with a Stipulation & Agreement for R & L Auto Sales LLC. A motion was made to accept the Stipulation & Agreement with an amendment to item 11B to include the wording "*an actual inventory, listing Year, Make, Model and VIN*" and include this in the Stipulation. The motion to accept the Stipulation & Agreement with the amendment was unanimously approved. AAG Huss advised the Board he would be reporting to the ALJ

AAG Huss presented the Board with Davco Motors; a matter that had come before the Board in May or June of last year. AAG Huss stated while in negotiations with opposing council it became apparent the license expired in July 2007, however, the Notice of Charges was not filed until November so there was nothing to revoke. AAG Huss wanted to ask the Board how they wanted to proceed. The mandatory is still in effect if the dealer reapplies until late 2009. The dealership is out of business. His advice to the Board would be to dismiss; possibly a letter to the dealership stating "in the future if there's a conviction these are the things you need to do". So there is a record that there was some action, maybe not a final action, but the Board did consider action at one point.

Mr. Carlson suggested the issues be noted in the dealer file as well to show this did not disappear. AAG Huss agreed stating this action would dismiss the case at the OAC but there would still be something in the file if the dealer ever comes back. A motion to have the AAG

prepare a letter for the file of the individual and sent to the individual, stating the licensure came before the Board, and while the individual doesn't have a license, the Board still has concerns. Since he was mandatorily disqualified till late 2009, he is on notice is to provide proper notice of all convictions and compliance with all requirements of the application. Motion passed unanimously.

#### **EXECUTIVE SECRETARY'S REPORT:**

Mr. Zulauf informed the Board that Hearings took place on 5-28-08 and 6-18-08 with Arthur Julian as the Hearing Officer. These Hearings will be presented to the Board at the next Board meeting.

Mr. Zulauf also gave warning that next month's agenda would be lengthy.

Mr. Zulauf introduced Chris Puckett of the AG's office to act as Conflict's Counsel at the Board's request regarding Eric Wass. Mr. Zulauf gave the Board a brief synopsis of the matter to be discussed. A hearing was held on 4/22/08 with Elizabeth Kelly acting as the Hearing Officer. The initial decision was presented at the June 12, 2008 Dealer Board Meeting. The Hearing Officer made a recommendation that the Board grant a probationary license for a total period of twelve months and to impose a fine of \$550. The Board passed a motion to set aside the Hearings Officer's decision – unanimously. The Board then passed a motion to conduct a full board hearing of the license – unanimously. The Board discussed the matter with AAG Huss and after lengthy discussion discussed the need for Conflicts Counsel. The Board then unanimously passed a motion to retract the previous motions. The Board then passed a motion to table the matter until the next meeting to discuss with Conflicts Counsel. Mr. Zulauf reminded the Board the original motion was passed to set the matter aside.

Mr. Carlson welcomed Mr. Puckett and asked for clarification feeling the Hearing Officer took a lot of latitude concerning this matter.

Mr. Puckett stated his understanding is first we have to deal with the motion that is out there pending, he would recommend that we withdraw that and then we can discuss how the Board wants to proceed with the decision. Mr. Puckett stated it sounded as if there are several major questions: (1) involving recommendations; how you deal with that, how you modify, whether that was proper or not and (2) the issue of the Hearings – he would give advice and recommendations on that. A motion was passed to set aside the previous motion to set aside.

Mr. Puckett stated his understanding is in the initial decision the recommendation seemed to be backwards. Ms. Eva Wilson stated she could fill in the blanks. Other than the initial recommendation there are specific concerns regarding both the Findings of Fact and Conclusions of Law. Under the Findings of Fact, #4 it appears from the Hearing Officer's decision that entered into evidence were court records regarding the cases and the application, there was obviously testimony that was taken, and the applicant must have given testimony that was excuse for what was going on. There were concerns by the Board as to what the evidence was in support of these statements and why the Hearing Officer adopted those. Under Conclusions of Law under

subsection 3, the Hearing Officer reversed the penalties and the Board had concerns about her understanding. The Board does not know if this was deliberate or a typographical error or what it was. The two coupled together with the recommendation caused the Board basic problems with the procedure.

Mr. Puckett stated Conclusions of Law can be modified virtually without any concerns. Conclusions of Law can be changed on motions.

Findings of Fact are controlled by the Administrative Procedures Act (APA) which says the Findings of Fact shall not be set aside unless such findings are contrary to the weight of the evidence.

There was discussion about whether or not the Hearings were transcribed and if a transcription were routinely provided to the Board. Mr. Zuluaf stated the Hearings are probably recorded and a transcription could probably be made available if ordered. Or, Mr. Puckett stated, if somebody wanted to listen to the recording and make a recommendation that it is contrary to the weight of the evidence. This is his only concern about reversing because it does have to be contrary to the weight of the evidence. There has to be some knowledge, finding or evidence of that.

Mr. Puckett would not recommend changing the Finding of Fact unless someone has specific evidence that based on the record was presented and can speak to that. This may mean tabling this until the next meeting and giving somebody the opportunity to review the tape or to review the evidence.

Mr. Carlson asked if in lieu of listening to the recording if it would be an option to hold another hearing with the individual. Mr. Puckett he did not believe this was an option. Once it comes up and the Board decides to set for a hearing and there is a motion and it is assigned the process is done.

It was asked "When can the Board conduct a Hearing on a Salesperson?" The answer was the Board cannot conduct Hearings on Salespeople.

There was discussion about the dissatisfaction of the Board and the inability of the Board to question the individual further to find all details.

Mr. Puckett stated there was a possibility of a Remand. He is aware that other Boards are able to do this. The Board would need to delineate the scope of what the Board wants the Hearing Officer to clarify. The order would need to specify what piece needs to be clarified or application of law in light of concerns. The Hearing Officer could then have the individual present for further questions. Mr. Feder asked if there would be the opportunity for 1-3 Board members to be present to hear testimony. Mr. Puckett advised that the Board members could not be present.

Mr. Carlson stated this was an opportunity for the Board to Remand the case back to the Hearing Officer for the two discomforts the Board has. (1) Under Finding of Fact, item #4, "the conviction arose from the relationship... " all that language. The Board needs to understand what supporting evidence allowed that finding to occur. The Board wants to see what makes that a

Finding of Fact. (2), #3, under Conclusions of Law, clarified. The Board would like to see a detailed explanation of what constituted the preponderance of evidence on #3 and clear that up for the Board.

A motion was made to set the recommendation aside – passed unanimously.

A motion made to remand this case to the Hearing Officer to make additional Findings of Fact and to amend the Conclusions of Law that are inaccurate. The Finding of Fact that needs additional information are: how did the Hearing Officer find by a preponderance of evidence that the “convictions arose from the relationship problems and alcohol abuse”. The Board is interested in knowing: the basis for the Hearing Officer’s Finding of Fact; the evidence that was presented supporting these Findings of Fact (if it was testimony of the applicant, credibility findings, any counter evidence and supporting documents). As to Findings of Fact, did the Hearing Officer make any findings regarding the previous February 2003 misdemeanor charges for assault and domestic violence that were asserted as being “part of the pattern of convictions that are constituted as unfitness for licensing purposes”?

As to conclusions of Law, paragraph 3 needs to be amended to accurately state Class 2 misdemeanor vs. Class 1 misdemeanor vs. Class 3 misdemeanor penalties. What is Hearing Officer’s recommendation? Motion passed unanimously to remand the case to the Hearing Officer for clarification.

#### **INVESTIGATION:**

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

**Hearing Schedule** was reviewed by the board

**Statistical Reporting** – Monthly Update

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

**Fines imposed & Received Log** was reviewed with the Board.

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

**Warning Notice Log and its Summary** was reviewed with the Board.

#### **Affidavit of Probable Cause:**

**ATM Sales, Used Dealer #8387**

The Board reviewed the affidavit of probable cause and passed a Motion to refer this matter to a Hearing before an ALJ – Unanimously.

It was noted that Rick Bailey was not on the Fine Schedule. Mr. Bailey needs to be rated as probability of collections – uncollectible.

Mr. Phil Harris had concerns regarding a Gaming Investigator working a case against a Board member. Mr. Matt Cook responded to the concerns stating the Gaming Investigators are being

trained and working under supervision. Mr. Cook stated the Gaming Investigators have worked approximately a dozen cases and he is confident with their ability.

Legal Assistant Leland BeBee presented a rulemaking update. Mr. BeBee stated we are working in a tandem process right now. We are working with the emergency rules and the standard rule making. The emergency rules will go into effect on August 5, 2008 and the permanent rules on September 30, 2008. The permanent rulemaking meeting is scheduled for August 14, 2008 and has been published in the Colorado Register. DORA has acknowledged receipt of all materials and started their process.

## **PORTAL REPORT:**

Becky Davis informed the Board she had spoken with Mike Locadis, the new CIO for the State of Colorado. Mr. Locadis wanted it known that he concerned about the situation and he would support any IT efforts in this regard and has contacted the CIO for the DOR, David Loewi.

Mr. Loewi is aware his team needs to put the resources together to support whatever effort needs to made. They would ask two things from the Auto Industry Division:

1. High level functional requirements ex: to license 100 salespeople we need to build in adequate understanding for 5 year data elements: multiple addresses, multiple licenses – whatever would need to be captured – on line applications
2. Mr. Locadis suggested either we look into other State systems or look at commercial off the shelf licensing systems.

The problem with off the shelf systems is they don't mesh with the investigation side seamlessly. Want the system to interface robustly, Hardware/Software/IT side is aware of the situation. Mr. Loewi will contact Scott Petrilla to let them know the resources will be made available from a labor and whatever side needs to be done.

There is no projected timeframe. Ms. Davis said is possible within 1 year with financial resources.

## **NEW BUSINESS**

### **Issue of "Permitting" on line:**

- Would eliminate a lot of permit theft
- Would electronically check the title vs the temporary registration permit.
- Would help to ensure the 30 day compliance

Mr. Matt Cook said Maren Rubino and Becky Davis were looking into this. At this point there were concerns regarding safety issues.

Ms. Tammy McCoy, CADA, informed the Board she has some background materials on these items that she would be willing to share with the Board. She did indicate that the Colorado State Patrol did have security issues with this.

Mr. Steve Perkins would like to see another component added requiring lenders on receipt of pay-off to deliver title within a specific date period.

Mr. John Kronenberger, CIADA, advised the Board the State of Arizona had shown their system to CIADA. There are benefits to this system as it helps catch those dealers who are in trouble.

Mr. Kronenberger stated he and Ms. McCoy along with Powersports would be having monthly meetings and had the capability to act as a focus group and can get the information from other states. Ms. McCoy indicated she would look into other State's processes for issuance of licenses and permits and plates.

The meeting was concluded at 11:30 AM.

Bruce Zulauf  
Executive Secretary.