

**MOTOR VEHICLE DEALER BOARD
MINUTES
January 18, 2011**

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

BOARD MEMBERS:	John Medved Bob Perry Philip Harris Deborah Thompson Fred Wegener Jason Wagner Beau Smith Eva Wilson
MEMBERS ABSENT:	Scott Ehrlich
SENIOR DIRECTOR OF ENFORCEMENT:	Matt Cook
EXECUTIVE SECRETARY:	Bruce Zulauf
LEGAL ASSISTANT:	Leland BeBee
DEPT OF REVENUE, AID, ENFORCEMENT DIVISION STAFF	Chris Rouze Kaye Kopecky Bud Heinrich Gloria Breeden Eric Hartsough Sherry Colborg Margaret Jungmann Brenda Byers
ATTORNEY GENERAL'S OFFICE:	Brendon Reese Kit Spalding
BUDGET OFFICE:	Jill Vaughan Curtis Tremble
VISITORS:	Mary Marvin, CAPSS Tammy McCoy, CADA Gary Zimmerman, CIADA Eugene Fuller Jr. Eugene Fuller Sr. Lillie Fuller

President of the Board, John Medved opened the meeting of January 18, 2011 at 9:01 a.m. Mr. Medved turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf stated there were no additions or changes to the agenda. Mr. Zulauf announced he had a brief power point presentation based upon the issue of multiple salesperson licenses brought up at the last meeting. Kit Spalding will be present at 10:30 to serve as Conflicts Counsel for the Board. Mr. Reese will recuse himself during the Executive Secretary's report and there will be at least one case where the Board may need legal advice.

Conference Room - The Division cost shared with the Division of Racing for the painting, flags and carpet cleaning of the conference room. The Board member pictures have been put up and the Division of Racing will be putting up their Board pictures as well.

Minutes - There are corrections to the minutes that have been handed out.

Mastery Exam - Mr. Zulauf stated we have uncovered two dealerships in the last week that did not administer the test properly, which is a violation in the way they did it. Both of these situations have been sent to Investigations for investigative review. One was a franchise dealer that sent in an affidavit affirming that this person had completed the test satisfactorily. This was a person that took the test five times in one day. These test results are sent to Mr. Heinrich immediately. Mr. Heinrich contacted the dealership and informed them the applicant would need to retake the test because the fifth score was not a valid test. We got the affidavit last week saying the person had taken the test successfully; which he had never done at that dealership. The affidavit was dated before the first test result came in. This person then left that dealership and went to a used dealership; he took the test and they sent in the affidavit. When Mr. Heinrich questioned him about this, he admitted the dealership gave him the password and he took the test from his home. While there is not a regulation stating you can't take the test from home; the person signing the affidavit is stating they know you took the test honestly. Mr. Zulauf asked Mr. Heinrich to have the person come in and take the test proctored; he did and passed the test.

The Division also received a request from an out of state outfit that provides salesperson services for off site sales for a password so that they could administer the test. That request was denied. Mr. Zulauf asked the Board members and the associations to make sure their staff and members were administering the test properly.

Board Packet - Last month Mr. Zulauf advised the Board we were looking at ways of making the packet more efficient. In the licensing section, there is one dealer license application with a 2 page summary of the license application data. We are hoping to continue to make this a better document and provide all key information. The staff has been instructed to bring the complete file to the Board meeting. Also, Mr. Heinrich is sitting in an area with a computer hooked into the database to answer any questions that arise during the meeting to save time; we no longer have to run to another office for information.

License Count Comparisons – A license count comparison for FY 2009 vs. FY 2010 and a license count sheet for FY2010/2011 was provided to the Board. The license count comparison for FY2009/2010 is a license count document showing a comparison between FY09 and FY10 of all of the licenses the Division issues. In FY09 we issued about 20,000 different types of licenses and in FY10 we issued 18,000, which was down 10%. In FY 2009 auto industry association members projected that we could be down 20%, so we did a 90% fee increase. At fee setting last

year (FY 2010) there was a discussion of where the license counts could go. At that time we reduced fees 35% because we had too much money and we only saw the 10% decrease not the 20% we had projected. We are now coming around to looking at license counts for FY 2010/2011.

- Right now we are down 1% on overall licenses.
- Salespeople
 - Up 7% in Salesperson original licenses
 - Down 2% in Salesperson renewals.
 - Up 9% in Salesperson multiples
 - Down 10% Salesperson reissues.
- Dealers
 - Down 31% in Dealers, new originals
 - Down 1% in Dealers, new renewals
 - Up 8% in Used originals
 - Down 6% in Used, renewals

MINUTES

The minutes of the December 9, 2010 Board meeting were unanimously approved with the following corrections: Page 4, A Better Recycler – “Wagner” opposed not “Wegener”. Pages 5 & 6 were corrected and handed out before the start of the meeting.

BUDGET

Jill Vaughan presented the budget reports:

- For November 2010, **gross** revenue collected was \$154,263. Percentage calculations indicate 42.12% of FY11 projected revenue figures have been collected as of period 5.
- For November 2010, **net** revenue collected was \$153,678 for period 5 indicating an adjustment of gross revenue in the amount of \$585.
- **Cash Fund Analysis** – synopsis of the official financial statements for the Division and indicates a current fund balance of \$1,057,057. This analysis shows that YTD FY11 revenue is down 33.76% and total expenditures are up .49% from the figures last year.
 - There was discussion regarding the Division intentionally running a deficit to get the fund balance in line with statutory requirements.
- **Cash Fund Flow Analysis** – (this report was not given verbally, information provided on the Cash Fund Flow Analysis spreadsheet)
- **Expenditure Comparison** – (this report was not given verbally, information provided on the Expenditure Comparison spreadsheet)

Mr. Zulauf provided a power point presentation on the issue of salesperson multiple licensing. Mr. Zulauf informed the Board that 22 states license salespeople and 28 states do not. The presentation demonstrated how a salesperson could be licensed at multiple locations.

Discussion centered on the ethics of a salesperson working for two different dealerships; what was to stop the salesperson from taking a customer “out the back door” and over to the other dealership if he could work a better deal. Another issue was the notification, or lack thereof, of the employer. At this time there are no requirements that a salesperson who obtains a multiple license inform his “parent” company that he is employed at another dealership.

To remedy these issues we would need to look at rulemaking and statutory authority. Do we have statutory authority that we can attach to? If none, would need to look at some. Mr. Zulauf reminded the Board that we need to keep in mind that if we eliminate something (the multiple licenses), we would need to make up the funds somewhere else. A short term fix would be to require a letter from the parent license giving “permission” to allow the multiple licenses. The letter would need to be from the owner, not a sales manager. An example would be if one Go dealership submits a letter to allow the salesperson to work at another Go dealership there probably wouldn’t be a problem. Mr. Reese explained that there might be different ownership between the dealerships and this might be an issue. Mr. Reese was asked to provide possible remedies at the next meeting.

ATTORNEY GENERAL’S REPORT

Brendon Reese reported on the enforcement of fines levied by the Board. The Board asked last month, if there was a way to tie the collection of fines into the driver license as Child Support Enforcement (CSE) does. Mr. Reese stated CSE was given very broad authority and there is legislation to provide them with extensive remedies to enforce child support collections because it does affect welfare, social security and it has a broader scope. CSE has specific statutory authority to suspend driver licenses; it is also authorized to offset lottery winnings, gambling winnings, unclaimed property, levy administrative liens against worker’s compensation benefits, inmates’ bank accounts. They have specific statutory authority that our Board does not have. Our remedies are going to be limited to reporting to collections, it is a general unsecured claim as we currently sit. The fines we levy are unsecured. The benefit that the Board has is this is an administrative fine so it is not discharged in bankruptcy where other unsecured claims are.

Our current practice is to attempt the collection in house and then refer to State Collections. It was asked if we obtain an attorney for collections. Mr. Reese answered that the State has attorneys on staff. Mr. BeBee informed the Board State Collections is a full blown collection entity. They have full statutory authority with Colorado Collection Services. When we turn something over to them, we authorize them to go full bore however they can. They will do in house collection procedures, which can include turning it over to an attorney who is an AG to do additional collection work. They can also turn it over to private collections services. They will do all the things you expect a collection service to do. They do garnishments, liens on property, and intercepts on taxes.

Mr. Reese asked for an Executive Session for discussion on pending and imminent litigation of the Troy Boerner case. A motion was made to enter Executive Session pursuant to C.R.S. 24-6-402 (3)(a)(II) to discuss Troy Boerner case # BD10-D028 – passed unanimously.

The Board entered into Executive Session at 9:54 a.m.

The Board resumed open session at 9:57 a.m.

A motion was made to remove the Summary Suspension of Troy Boerner and allow the temporary license to become permanent – passed unanimously.

EXECUTIVE SECRETARY’S REPORT

Mr. Zulauf presented the following reports:

- Case Status Record

- Fines Imposed and Received Log

Mr. Zulauf presented the following to the Board:

- **Holiday RV** – Motion to reinstate the license - Approved unanimously.

Mr. Reese recused himself. Ms. Spalding is present as Conflicts Counsel.

- **Jonathon James Fritzel #177272** – Motion to adopt the Hearing Officer’s recommendation for denial of license – approved unanimously.
- **Eugene Fuller Jr. #177513** – Motion to grant a conditional license with condition that upon change of employment the applicant must go before the board, applicant to self report any misdemeanors or felonies within 10 days – approved 6-1 (Wegener opposed).
- **John James Matheny #177113** – Motion to set aside the Hearing Officer’s Initial Decision based upon a mandatory disqualifying conviction, material misstatement, and unfitness of criminal and financial character and revoke the license – approved unanimously.
- **Daniel Byron Onodera #173156** – Motion to set aside the Hearing Officer’s Initial Decision and revoke the license based on unfitness of criminal and financial character and record, material misstatement and a mandatory disqualifying conviction – approved unanimously.
- **Cephas D. Smith #123775** – Motion to set aside the Hearing Officer’s recommendation and revoke the license on basis of unfitness of criminal and financial character and record, and conviction of four felonies including attempted sexual assault, possession and sale of schedule 1 or 2 controlled substance, possession of schedule 2 controlled substance, and he is currently on parole – approved unanimously.
- **Joel James Woltjen #161651** – Motion to go into Executive Session pursuant to C.R.S. 24-6-402(3)(a)(II) to discuss with Counsel case #SD10-034.

The Board went into Executive Session at 10:07 a.m.

The Board resumed open session at 10:35 a.m.

- **Joel James Woltjen #161651** – Motion to adopt the Findings of Fact, set aside certain Conclusions of Law that indicated there was no evidence of personal misconduct which is a significant mitigating factor, set aside Conclusion of Law which found there was no evidence on the record of any personal misbehavior or offenses on the part of the respondent which contributed to the violations. Based upon remaining conclusions of Law listed by the Hearing Officer, there is evidence in the Conclusions of Law and the Findings of Fact that there is an unfitness of licensing character and record. Set aside the Hearing Officer’s recommendation of a conditional license and deny the license on the basis of unfitness of licensing character and record – approved unanimously.

- **Express Auto Sales Inc. #36348** – Motion to Adopt the Initial Decision of the Administrative Law Judge who found the respondent’s dealers license had expired and respondent is assessed a civil penalty of \$45,000, also explicitly note that based upon the ALJ’s Initial Decision that there is a finding of fraud. Based upon Board review, that be implied by reference that these Findings of Fact and Conclusions of Law that there was fraud and the bond should be opened - passed unanimously.
- **Integrity Motors, LLC #40209** – Motion to adopt the ALJ’s Initial Decision and revoke the dealer license, impose the fines as indicated as civil penalties by the ALJ in the amount of \$22,500, and explicitly find fraud based upon the Initial Decisions Findings of Fact and Conclusions of Law – passed unanimously.
- **Angel Compian Jr. #176217** – Motion to Reserve the Right to Review – approved unanimously.
- **Angel Compian Sr. #177216** – Motion to Reserve the Right to Review – approved unanimously.
- **Theodore Edgecomb #23327** – Motion to Reserve the Right to Review – approved unanimously.
- **Michael A. Ibarra #123939** – Motion to Reserve the Right to Review – approved unanimously.
- **Christopher H. Obeid #176517** – Motion to Reserve the Right to Review – approved unanimously.

LICENSING REPORT:

Kaye Kopecky, Licensing Manager presented the following to the Board:

Dealer Applications:

- **Blue Sky Auto Sales, LLC** – Motion to deny the dealer license on basis of unfitness of financial character – approved unanimously.

Salesperson Applications:

- **Jonathan Eugene Clark** – Motion to deny the license on basis of financial stability and money owed – approved unanimously.
- **Gehrick Anthony Dickson** – Mr. Harris recused himself. Motion to approve the application for a salesperson license – approved unanimously.

List of Approved Dealer and Wholesale Applications

Backgrounds

Ms. Kopecky informed the Board there were 504 backgrounds completed
50 disclosed
14 failed to disclose

INVESTIGATION REPORT:

Agent in Charge, Chris Rouze presented the following report:

Statistical Reporting – This report will be given verbally rather than a printed copy. Ms. Rouze informed the Board that one year ago the Division started the year with 862 open cases; this year we are starting with 662 open cases. 122 new cases were opened and 157 cases were closed for the month, giving the Division a balance of 662 open cases.

Affidavits of Probable Cause:

- **Chrome Dome Motors, Inc. #40075** – Motion made that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Chrome Dome Motors, Inc #40075; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations under the Complaint Investigation Settlement Process – approved unanimously.
- **Colorado Motorsports, LLC #38562** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Colorado Motorsports, LLC #38562; AND that the Board finds that it has objective and reasonable grounds to believe that the Licensee has been guilty of deliberate and willful violations and the public health, safety, or welfare imperatively requires emergency action; AND, that the Board summarily suspend the Licensee's license, pending proceedings to be promptly instituted before the Colorado Office of Administrative Courts; AND that the Board authorize the Attorney General to prepare and serve upon the Licensee the Board's order of Summary Suspension and other documents required to institute proceedings – Approved unanimously. Motion to allow the Executive Secretary to sign the Summary Suspension order – approved unanimously.
- **Go Ford West #8324** – Motion made that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Go Ford West #8324; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations under the Complaint Investigation Settlement Process – approved unanimously.
- **Lakewood Auto & Financial #38736** – Motion made that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Lakewood Auto & Financial #38736; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations under the Complaint Investigation Settlement Process – approved unanimously

- **Prestige Chrysler Dodge #193** – pulled for further investigation
- **Rainbow Motors, Inc. #3257** – Motion made that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Rainbow Motors, Inc. #3257; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations under the Complaint Investigation Settlement Process – approved unanimously
- **Scotts Auto Inc. #36105** – Motion made that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Scotts Auto Inc. #36105; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations under the Complaint Investigation Settlement Process – approved unanimously.
- **Jesus Chacon-Alvarez #35681** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Jesus Chacon-Alvarez #35681; AND that the Board finds that it has objective and reasonable grounds to believe that the Licensee has been guilty of deliberate and willful violations and the public health, safety, or welfare imperatively requires emergency action; AND, that the Board summarily suspend the Licensee's license, pending proceedings to be promptly instituted before the Colorado Department of Revenue Hearings Division; AND that the Board authorize the Attorney General to prepare and serve upon the Licensee the Board's order of Summary Suspension and other documents required to institute proceedings – approved unanimously.
- **Benjamin Herold #29830** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Benjamin Herold #29830, that the case be assigned to the Colorado Department of Revenue Hearings Division for a hearing on the merits – Approved unanimously.
- **James Tyson III #126453** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to James Tyson III #126453; AND that the Board finds that it has objective and reasonable grounds to believe that the public health, safety, or welfare imperatively requires emergency action; AND, that the Board summarily suspend the Licensee's license, pending proceedings to be promptly instituted before the Colorado Department of Revenue Hearings Division; AND that the Board authorize the Attorney General to prepare and serve upon the Licensee the Board's order of Summary Suspension and other documents required to institute proceedings – approved unanimously.
- **Robert Webb #177162** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Robert Webb #177162; AND that the Board finds that it has objective and reasonable grounds to believe that the Licensee has been guilty of deliberate and willful violations and the public health, safety, or welfare imperatively requires emergency action; AND, that the Board summarily suspend the Licensee's license, pending proceedings to be promptly

instituted before the Colorado Department of Revenue Hearings Division; AND that the Board authorize the Attorney General to prepare and serve upon the Licensee the Board's order of Summary Suspension and other documents required to institute proceedings – approved unanimously

NEW BUSINESS: Mr. Harris suggested that a person involved with the failure of a business should not be able to apply for a salesperson license without going through the Board. Mr. Reese responded stating there may be an issue if the investigation is still on going and until we have probable cause against the dealership, we don't have probable cause against the person. There is a gap in the process of investigation and actions taken. Mr. Harris asked if probable cause was found and the dealership is going to the ALJ, is there any way to suspend the salesperson license until we come to a conclusion on the dealership. Mr. Reese gave the example that the Board requires the reporting of any arrest; but we can't take that arrest into consideration for determining criminal character or criminal record because it has not been determined if there was a basis for that action. The same is true of an administrative action taken against the dealership. While we are confident that we are going to succeed on the merits in a case we have against the dealership, we can't do anything with the salesperson license until we have a determination.

Mr. Harris asked if this meant during all of the hearings that the owner still has a salesperson license. Mr. Reese said if the owner had a "no-fee" license then no they don't have a license. If an owner had a separate salesperson license, obtained before or while the dealership was going down, we could not do anything to it until after a determination has been made against the dealer. A separate investigation could be ordered against the salesperson license at that time.

Mr. Harris asked if when a dealer goes to the ALJ and then before the Board, would the Board be notified that the owner/principal has a salesperson license. Mr. Reese stated the Board would be notified that this person has a salesperson license and it may warrant a separate investigation.

Mr. Medved asked if during the interim if there was a potential for public harm. Ms. Wilson asked if based upon a finding of probable cause could we then call into question the status of the licenses of any principals just based upon that finding of probable cause, we still have that gap during the investigation. We would have sufficient basis to move against those other licenses. Mr. Medved asked if Mr. Reese could provide a process at the next meeting. Mr. Reese said to keep in this in mind and to tie this in with the rulemaking we reviewed, one of the issues we are raising is to make a connection between the dealer license and the owners underneath that. Making that connection is key to this whole discussion.

Mr. Harris referred to the license counts presented by Mr. Zulauf and wondered if the reason we are seeing the lower counts is because the Board is more consistent. Ms. Wilson said this was because we are concerned with public safety. Mr. Medved said this was because of the standards that have been implemented during the last few years.

Mr. Wagner stated one application went through today that met the "letter of the law" of financial ability, but we are exercising judgment and said they don't have the ability to function. He is questioning whether we should refine either liquidity, covenant, some standards or otherwise help the public understand what they need to put together to get approval. Mr. Zulauf stated this has been a topic of internal discussion within the Division for probably the last three months; almost every day. The application presented today met the guidelines. The problem is there was not a lot of investigation into the application because we don't have time to do that.

We are hoping to change that. We saw vehicles listed and a house listed that we have to take at someone's word. The Board picked up on the financials listed very quickly. On the investigation side of the house we don't take anybody's word on anything. On the licensing side, because it is a staffing issue, we have to. That does have to change. In other Divisions within the Enforcement Line of Business; when there is a license out there that has to do with financials, they do a full investigation. Where is that money coming from and, where is it going. We need to do this as well. The Division is committed to this change but it will take time.

Mr. Zulauf further stated if the application minimally meets the guidelines; it is going to be scrutinized further and then brought to the Board. If the application clearly meets or exceeds the guidelines, under the delegation of authority given to the Executive Secretary, the license will be issued.

PUBLIC COMMENT: There was no public comment.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 12:00 p.m.

(Note: The Minutes of the Motor Vehicle Dealer Board summarize the contents of the meeting. They are not verbatim transcripts and are based principally upon the digital recording of the meeting and upon the later collaboration of staff attendees to ensure that the summary faithfully captures the matters before the Board and the actions the Board took. The digital recording of the meeting is a permanent record of the Board, retained in the electronic filing system of the Auto Industry Division, and is available as a resource for review, as needed.)

Bruce Zulauf
Executive Secretary