

**MOTOR VEHICLE DEALER BOARD  
MINUTES  
May 12, 2011**

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

<b>BOARD MEMBERS:</b>	John Medved Philip Harris Scott Ehrlich Eva Wilson Beau Smith Fred Wegener Deborah Thompson Jason Wagner
<b>MEMBERS ABSENT:</b>	Bob Perry
<b>SENIOR DIRECTOR OF ENFORCEMENT:</b>	Matt Cook
<b>EXECUTIVE SECRETARY:</b>	Bruce Zulauf
<b>LEGAL ASSISTANT:</b>	Leland BeBee
<b>DEPT OF REVENUE, AID, ENFORCEMENT DIVISION STAFF</b>	Chris Rouze Bud Heinrich Gloria Breedon Eric Hartsough Margaret Jungmann Matt Heap Brenda Byers Hunter Helton Chuck Halberstadt
<b>ATTORNEY GENERAL'S OFFICE:</b>	Brendon Reese Skip Spear, Conflicts Counsel
<b>BUDGET OFFICE:</b>	Jill Vaughan Curtis Tremble
<b>VISITORS:</b>	Mary Marvin, CAPSS Jon Setzer Tammy McCoy, CADA Todd O'Connell Michael Ibarra William Holbrook Mike McKinnon

Angel Compian  
Angel Compian Jr.

President of the Board, John Medved opened the meeting of May 12, 2011 at 9:05 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. He announced there would be two oral presentations for Exceptions Hearings at 10:45. Skip Spear will be available as Conflicts Counsel. Mr. Spear has done extensive legal review of these exceptions and the matter of the ALJ's decision on Integrity Auto Consultants, which was tabled last month.

Mr. Zulauf introduced the Division's new Criminal Investigator, Hunter Helton. Mr. Helton comes to the Division from the El Paso County DA's Office.

Mr. Zulauf addressed the size of the Board packet and the quantity of paper used to produce the packet. He stated that the current manner of doing the packet is not efficient nor is it effective. The Division is looking at ways to create a paperless board packet. The IT department has already started looking into an electronic format. This might be on a thumb drive or the packet would be put onto the website in a secure area requiring members to sign on. He stated that the Board members would review the packet, printing whatever documents needed. At the meetings, Board members would bring the thumb drive and log onto laptops to go through the packet. We would need to purchase laptops to have at the meetings. The Department of Regulatory Agencies are using this type of system. Mr. Zulauf said he would need to work through this with the Budget staff. This might be a two fiscal year program. Mr. Zulauf stated his goal would be to go paperless in August or September. Going paperless will require a training session for the staff and the Board.

Mastery Exam – Mr. Zulauf stated that the Division has made significant changes to the affidavit; the Board asked for areas to be highlighted; we have emphasized that the administrator is signing under the penalty of perjury. The Division is currently accepting both forms of the affidavit. An Advisory letter has been put together that is blunt. Mr. Zulauf stated that he is committed to keeping this in licensing; it is being treated as a compliance and educational process. Mr. Zulauf commended Ms. McCoy and CADA for putting a "blast" on the CADA website stating the mastery exam is an electronic internet based test and no longer is on paper.

## **MINUTES**

The minutes of the April 14, 2011 Board meeting were unanimously approved.

## **BUDGET**

Jill Vaughan presented the budget reports:

- For March 2011, **gross** revenue collected was \$225,000. Percentage calculations indicate 67.43% of FY11 projected revenue figures have been collected as of period 9.

- For March 2011, **net** revenue collected was \$223,000, which is \$16,000 more than projected revenue amount of \$207,000. This includes an adjustment for short checks and refunds in the amount of \$1,492.
- **Cash Fund Analysis** – synopsis of the official financial statements for the Division and indicates a current fund balance of \$829,000. This analysis shows that YTD FY11 revenue is down 33.85% and total expenditures are up .47% from the figures last year.
- **Cash Fund Flow Analysis** – displays the cash and fund balance position for FY11 provided all projections hold true for the Division. This analysis summarizes the data provided on the first three budget reports and includes categorized adjustments to the revenue at the bottom. March actual revenue came in at \$16,000 more than the projection of \$207,000. The EOY fund balance for FY11 is projected to be in excess of the Division needs and the projected fund balance for May is adequate at this time to cover two months of personal services expenses for the Division.

Mr. Medved confirmed that the session ended yesterday and our fund had not been touched.

#### **FEE SETTING:**

Mr. Zulauf reminded the Board that last month it was decided upon a 5% increase in fees based upon a 3% decrease in licenses. Mr. Zulauf stated he believed that Mr. Cook has taken this recommendation to the Executive Director and she was comfortable with the recommendation. Mr. Zulauf and the Budget Staff agree with this recommendation.

#### **ATTORNEY GENERAL'S REPORT:**

Brendon Reese announced that he had three Stipulations to present.

- Stipulation and Final Agency Order regarding Baffenk Motors and Consultancy, Wholesale license #39397. Motion to accept the Stipulation and Final Agency Order – Approved unanimously.
- Stipulation and Final Agency Order regarding Colorado Motorsports LLC, Used Motor Vehicle License # 38562. Motion to accept the Stipulation and Final Agency Order – Approved unanimously.
- Stipulation and Final Agency Order regarding Tracie L. Phillips d/b/a Breakaway Motors, Used Motor Vehicle License #36350. Motion to accept the Stipulation and Final Agency Order – Approved unanimously. Mr. Zulauf advised the Board that Tracie Phillips is now a licensed salesperson. Motion to open an investigation of Tracie Phillips' salesperson license – approved unanimously.

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

Mr. Zulauf presented the following report:

- Fines Imposed and Received Log

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation: Scott's Auto Inc. d/b/a Scott's Auto Inc. #36105** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

Mr. Reese recused himself and left the room.

- **Initial Decision: William Lewis Holbrook, #178149** – Motion to accept the Hearing Officer's recommendation – approved unanimously.
- **Initial Decision: Robert C. Webb, #177162** – Motion to set aside the Hearing Officer's recommendation and revoke the license on the basis of material misstatements, unfitness of criminal character and criminal record and a plea of guilty to a mandatory disqualifier – approved unanimously.
- **Initial Decision: Integrity Auto Consultants, Inc. #38132** – Motion to table to meet with conflicts counsel – approved unanimously.

Mr. Reese returned to the room.

## **LICENSING REPORT:**

Agent in Charge Chris Rouze presented the licensing report as Ms. Kopecky is on vacation. Ms. Rouze presented the following to the Board:

### **Dealer Applications:**

- **Freedom Automotive Sales, Inc.** – Motion to deny the application for a dealer license on basis of financial stability – Unanimous

### **Salesperson Applications:**

Mr. Harris recused himself and left the room.

- **Jason Mathew Brown # 178966** – Motion to deny the application for a salesperson license on basis of unfitness of criminal character, unfitness of criminal record, and failure to comply with court orders – approved unanimously.
- **Nelson Eric Kromer #175770** – Motion to approve the application for a salesperson license – approved unanimously.
- **Robert John Bishop #154656 (salesperson application with prior board action)** – Motion to deny the application for a salesperson license on basis of unfitness of criminal character, pending criminal case – approved 4-2 (Wagner, Ehrlich)

Mr. Harris returned to the room.

- **Robert Brandon Castillon #178844** – Motion to approve the application for a salesperson license – approved unanimously.
- **Ramiro Castro #178859** – Motion to deny the application for a salesperson license on basis of unfitness of criminal character, unfitness of criminal record – approved unanimously.
- **Zachary Albert Gillis #178866** – Motion to approve the application for a salesperson license – approved unanimously.
- **Nathan Sang Hammett #178905** – Motion to deny the application for a salesperson license on basis of unfitness of criminal character, unfitness of criminal record, unfitness of financial character – approved unanimously.
- **Emmanuel Hernandez #178960** – Motion to approve the application for a salesperson license – approved unanimously.
- **Steven Ross Parker #178948** – Motion to approve the application for a salesperson license – approved 5-1 (Wegener)
- **Nicholas Eugene Sandoval #179019** – Motion to approve the application for a salesperson license – approved unanimously.
- **Justin Lavelle Wall #178897** – Motion to approve the application for a salesperson license – approved unanimously.

### **Salesperson Applications with Prior Board Action**

- **Jamie Arriaga Camacho #174646** – Motion to deny the application for salesperson license on basis of unfitness of criminal character, unfitness of criminal record, repeated failure to disclose, violation of a Board order, unfitness of financial character – approved unanimously.
- **Michael A. Ibarra #123939** – Motion to deny the application for a salesperson license on basis of unfitness criminal character and unfitness of financial character – approved unanimously.
- **Scott Alan McDonald #119240** – Motion to deny the application for a salesperson license on basis of licensing character, unfitness of criminal character, unfitness of financial character, and material misstatement and prior board action – approved unanimously.

### **Backgrounds:**

292 completed  
 40 disclosed  
 12 failed to disclose

## INVESTIGATION REPORT:

Criminal Investigator Supervisor Matt Heap presented the following report:

**Statistical Reporting** – This report will be given verbally rather than a printed copy. Mr. Heap informed the Board that 129 new cases were opened and 111 cases were closed for the month, giving the Division a balance of 628 open cases.

### Affidavits of Probable Cause:

- **Smartmove Auto LLC, #39905** – 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 Smartmove Auto LLC, #39905; that the case be assigned to the Colorado Office of Administrative Courts for a hearing on the merits – approved unanimously.
- **Matthew W. Hausotter, Salesperson #173093** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Mathew W. Hausotter, Salesperson #173093; 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 licensee's license, pending proceed 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.
- **Tonya J. Vercillo, Salesperson #175811** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Tonya J. Vercillo, Salesperson #175811; 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 licensee's license, pending proceed 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.

The Board took a 10 minute break.

Mr. Reese recused himself and left the room.

The Board discussed going into an Executive Session to discuss Integrity Auto Consultants, which had been tabled earlier, with Conflicts Counsel Skip Spear. The Board made a motion to go into Executive Session to obtain legal advice on Case # MV 2010-0006 in the matter of Integrity Auto Consultants pursuant to C.R.S. 24-6-402 (3)(a)(II). The motion passed unanimously.

Board entered into an Executive Session at 10:43 a.m.

Executive Session ended and the Board resumed open session.

In reviewing the initial decision of the ALJ, a motion was made to overturn the ALJ's decision in that the fines are appropriate and the respondent be fined a total of \$105,000 with \$15,000 due and owing at this time and \$90,000 held in abeyance, payable upon a request for re-licensure; additionally, overturn the initial decision by finding the ALJ was incorrect in legal conclusions; "We couldn't have fines because no hearing was held". A hearing in default is the equivalent to a hearing under the law. The ALJ declined to make a Finding of Fact regarding the weight of the vehicle. The weight only applies to trailers and motorcycles and the vehicles in this case were passenger motor vehicles. Additionally, we find that although the ALJ did not make an explicit finding of fraud, the fraud is implied by reference in the Initial Decision Finding of Fact # 5 and Conclusions of Law # 3 and 4. Motion approved unanimously.

**PUBLIC COMMENT:** There was no public comment.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 11:10 p.m.

**On Review of Initial Decision of the Hearing Officer, Upon Filing of Exceptions by Respondent Case # BD 10-D011 regarding the respondent licensee Angel Compian Jr., Salesperson License #176217**

Brendon Reese representing the State and Mike McKinnon representing licensee Angel Compian Jr. made oral arguments.

(Note: This review was conducted pursuant to the Colorado Administrative Procedure Act, 24-4-105 of the Colorado Revised Statutes. The purpose of this review was to determine what action the Board should take with respect to the Initial Decision).

It was decided to hear oral arguments on both Exception Hearings before deliberations. Mr. Zulauf asked that the Exception Hearings be recorded separately.

**On Review of Initial Decision of the Hearing Officer, Upon Filing of Exceptions by Respondent Case # BD 10-D017 regarding the respondent licensee Angel Compian, Salesperson License #176216**

Brendon Reese representing the State and Mike McKinnon representing licensee Angel Compian made oral arguments.

(Note: This review was conducted pursuant to the Colorado Administrative Procedure Act, 24-4-105 of the Colorado Revised Statutes. The purpose of this review was to determine what action the Board should take with respect to the initial decision).

Following the conclusion of the oral arguments, a motion was made to go into Executive Session to receive legal advice from Senior Assistant Attorney General Skip Spear acting as Conflicts

Counsel regarding Case #BD10-D011 and Case BD10-D017. The Executive Session will be held pursuant to C.R.S. 24-6-402 (3)(a)(II). The motion passed unanimously.

The Board went into Executive Session at 11:40 a.m.

Executive Session ended and the Board resumed open session.

**Angel Compian Jr., Salesperson License # 176217, Case # BD 10-D011**

A motion was made to affirm the Findings of Fact and Conclusions of Law of the Hearing Officer and set aside the Initial Decision and revoke the salesperson license of Angel Compian Jr. for unfitness of criminal character, unfitness of criminal record and unfitness of financial character – approved unanimously.

**Angel Compian, Salesperson License #176216, Case # BD 10-D017**

A motion was made to affirm the Finding of Fact and Conclusions of Law of the Hearing Officer and modify the sanction to revoke the salesperson License of Angel Compian for unfitness of criminal character and unfitness of criminal record – approved unanimously.

The Board meeting ended at 12:07 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