MOTOR VEHICLE DEALER BOARD
MINUTES
July 14, 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 Philip Harris Beau Smith Fred Wegener Deborah Thompson Jason Wagner Joe Gebhardt Bob Perry
MEMBERS ABSENT:	Eva Wilson
SENIOR DIRECTOR OF ENFORCEMENT:	George Thomson
EXECUTIVE SECRETARY:	Bruce Zulauf
LEGAL ASSISTANT:	Leland BeBee
DEPT OF REVENUE, AID, ENFORCEMENT DIVISION STAFF	Chris Rouze Bud Heinrich Gloria Breeden Kaye Kopecky Eric Hartsough Matt Heap Sherry Colborg Chuck Halberstadt
ATTORNEY GENERAL'S OFFICE:	Brendon Reese
BUDGET OFFICE:	Jill Vaughan Curtis Tremble
VISITORS:	Todd O'Connell, CIADA Tammy McCoy, CADA David Gribble, Daniels Long Chevrolet Jeff Green, Redhead Motors LLC James Kopral, Cherry Creek Dodge Cory Hynes, Cherry Creek Dodge James Tyson, Longmont Kia Sean Wardrope, Longmont Kia

President of the Board, John Medved opened the meeting of July 14, 2011 at 9:05 a.m.
Mr. Medved turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCMENTS

Mr. Zulauf stated there were no changes to the agenda.

Mr. Zulauf informed the Board that they might have noticed the amplification of his voice and said this was due to the new digital recording system. Mr. Zulauf advised the Board that we cost shared this new system with the other Enforcement Divisions. Mr. Zulauf instructed the Board on the use of the microphones and asked them to be cognizant of the fact that the microphones are very sensitive and would pick up side conversations.

Mr. Zulauf also advised the Board that the room set-up is a little different and this due in part to the recording system and because we are still working to professionalize our presentations to the Board. We are still working towards going totally paperless and feel this should occur in September or October.

The governor has appointed 1 new member to the Board and reappointed two members. Mr. Zulauf stated he would be introducing the new Senior Director of Enforcement after Ms. Kopecky swears in the newly appointed Board members. The Governor has reappointed Sheriff Wegener; reappointed Mr. Perry and has made a new appointment of Joe Gebhardt. Mr. Zulauf turned the floor to Mr. Medved to introduce Mr. Gebhardt.

Mr. Medved introduced new Board member Joe Gebhardt to the Board saying Gebhardt has been a well respected name in Colorado for decades, with foreign and domestic both; BMW in Boulder and Chevrolet in Loveland. Mr. Gebhardt has been very highly respected on other committees that Mr. Medved has been on with Chevrolet and he looks forward to his contributions and leadership in the future.

Mr. Gebhardt thanked Mr. Medved for his introduction, stating he is proud to have been a Chevrolet dealer for 25 years and he is honored to have been appointed to this Board and looks forward to being an advocate for ethical practices in our industry.

Mr. Zulauf introduced the new Senior Enforcement Director of the Enforcement Business Group, George Baker Thomson Jr. Mr. Zulauf asked Mr. Thomson to say a few words. Mr. Thomson stated he intended to continue Mr. Cooks' work with CATPAW and will probably be appointed to that Board sometime next week once the new Executive Director, Barbara Brohl gets into her office and starts operating. Mr. Thomson stated he intends to continue Mr. Cooks' procedures of processes about informing the Board with regard to policy initiatives that may be undertaken and keeping the Board abreast of any proposed or other legislation that affects what the Board does and how the Board operates.

Mr. Thomson stated that he attended WestPoint and was a career Army officer. He graduated law school and spent the bulk of his military career as a Judge Advocate General's Corps officer. He retired in 1997 out of a position in Europe where he was the Chief of International Operational Law for the Headquarters of the Army in Europe. Since then he practiced trial law and spent the last several years with Qwest.

Mr. Thomson thanked the Board for its service to the public and the State.

Ms. Kopecky performed the swearing in ceremony for Sheriff Wegener, Bob Perry and Joe Gebhardt.

The Board held their annual elections:

Mr. Medved was approved unanimously as President
Mr. Smith was approved unanimously as Vice President
Sheriff Wegener was approved unanimously as 2nd Vice President

MINUTES

The minutes of the June 9, 2011 Board meeting were unanimously approved.

BUDGET

Jill Vaughan presented the budget reports:

- For May 2011, **gross** revenue collected was $148,000**.** Percentage calculations indicate 79% of FY11 projected revenue figures have been collected as of period 11.
- For May 2011, **net** revenue collected was $147,000, indicating an adjustment in gross revenue of $1100.
- **Cash Fund Flow Analysis –** displays the cash and fund balance position for FY11 provided all projections hold true for the Division. May actual revenue collections came in at $15,000 more than the projection of $131,000. Expenses were more than the revenue collected as indicated by the negative net income figure of $46,000. The EOY fund balance for FY11 is projected to be in excess of the Division needs.
- **Expenditure Comparison** - This report was not given verbally, the information was provided on the Expenditure Comparison spreadsheet.

ATTORNEY GENERAL'S REPORT

- Brendon Reese presented a **Stipulation and Final Agency Order regarding U.S. Auto, #8572**. Motion to accept the Stipulation and Final Agency Order – Approved 5-2 (Harris, Thompson)

Mr. Reese asked to enter into Executive Session for discussion on pending and imminent litigation of the Champion Auto dealerships. A motion was made to enter Executive Session for the purpose of discussing disputes that are subject of pending or imminent litigation pursuant to C.R.S. 24-6-402 (3)(a)(II) including discussion with counsel to discuss the following cases # MV2009-0003 Champion Kia Inc license #37721, Champion Chrysler Jeep Dodge license #4106, Champion Mitsubishi license #40631, Champion Chevrolet license # 36331, and Champion Mazda license # 39870 – passed unanimously.

The Board went into Executive Session at 9:40 a.m.

The Board resumed open meeting at 10:10 a.m.

Mr. Reese announced that the Board's discussions were limited to discussing the following cases # MV2009-0003 Champion Kia Inc license #37721, Champion Chrysler Jeep Dodge license #4106, Champion Mitsubishi license #40631, Champion Chevrolet license # 36331, and Champion Mazda license # 39870.

EXECUTIVE SECRETARY'S REPORT

Mr. Zulauf presented the following reports to the Board:

- Case Status report
- Fines Imposed and Received Log

Mr. Zulauf presented the following to the Board: (Mr. Reese recused himself and left the room)

- **Initial Decision: Leslie Knapp Fenlon, Jr. #178547 –** Motion to accept the Hearing Officer's recommendation and deny the license application – approved unanimously.

- **Initial Decision: Charles T. Keller, Jr. #178848:–** Motion to accept the Hearing Officer's recommendation and deny the license application based upon a mandatory disqualifier – approved unanimously.

- **Initial Decision: Haroon Ihsan Sulehria #177735 –** Motion to accept the Hearing Officer's recommendation and deny the license application – approved unanimously.

- **Initial Decision: James Edward Tyson III #126453 -** Motion to set aside the Hearing Officer's recommendation and revoke the salesperson license based upon a mandatory disqualifier and unfitness of financial character – approved unanimously.

- **Initial Decision: Brother Bears Auto Brokers, Inc. #4069 -** Motion to accept the ALJ's findings of fact, modify the recommendation to explicitly include a finding of fraud and revoke the dealer license – approved unanimously.

- **Initial Decision: E & Y Auto Sales #36231** – Motion to accept the ALJ's recommendation, modify the findings of fact to include a finding of fraud and revoke the dealer license – approved unanimously.

Mr. Reese returned to the room.

Mr. Zulauf presented the following **Initial Decisions:**

- **Chacon-Alvarez, Jesus Mario #35681**
- **Childers, Raymond Dean #178799**
- **Clark, Jeremy D. #178847**
- **Defoor, Brandon Shane #164170**
- **Hausotter, Matthew W. #173093**
- **Herold, Benjamin B. #29830**
- **Jarrett, David Anderson #169133**
- **Noble, Nathan A. #178634**

- **Walker, Brandie Lea #174734**
- **Walker, Preston S. #170635**

A motion was made to Reserve the Right to Review for the (10) Initial Decisions – approved unanimously.

LICENSING REPORT:

Ms. Kopecky presented the following to the Board:

Salesperson Applications:

- **Bruce Joe Bates #178891 –** Motion to table this item for further information – approved unanimously.

- **Jonathan David Hobbs #179192 –** Motion to deny the salesperson license application on basis of unfitness of criminal character, unpaid fines and having been convicted of a misdemeanor under Title 18 or any felony – approved unanimously.

- **Robin Howard Jones #179344** – Motion to deny the salesperson license application on basis of unfitness of criminal character, unfitness of financial character and having been convicted of a misdemeanor under Title 18 or any felony – approved unanimously.

- **Robert G**. **Kissner #179123 –** Motion to approve the salesperson license application – approved unanimously.

- **Joe Soriano III #175892 –** Motion to deny the salesperson license application on basis of unfitness of criminal character and having been convicted of a misdemeanor under Title 18 or any felony – approved unanimously.

Salesperson Applications with Prior Board Action (Mr. Reese recused himself and left the room)

(Mr. Harris recused himself and left the room.)

- **Cory Wyland Hynes #138289** –Motion to approve a conditional license; conditional upon the licensee obtaining a letter on company stationery dated and signed by an owner of the dealership in which the dealership declares that: 1) the dealership is aware of the grounds for the conditional license and 2) the dealership shall be responsible for the actions of the salesperson in the course of employment. If licensee wishes to transfer to another dealership, Board notification and a letter from that owner with the same language is required – approved 5-1 (Wegener)

- **James Michael Kopral II #179073 –** Motion to approve the salesperson license application – approved unanimously.

(Mr. Harris and Mr. Reese returned to the room)

- **Brandon Jonathan Arroyo #175211 –** Motion to approve the salesperson license application conditional upon compliance with conditions of probation – approved unanimously.

- **David Brandon Gribble #179233 –** Motion to approve the salesperson license application – approved unanimously.

- **James Edward Tyson III #126453 –** Motion to deny the salesperson license application on basis of unfitness of criminal character and licensing character, unfitness of licensing character and having been convicted of a misdemeanor under Title 18 or any felony – approved unanimously.

- **Sean Ross Wardrope #161003 –** Motion to approve the salesperson license application – approved 6-1 (Wegener)

- **Sammy H.H. Yu #131900** – Motion to deny the salesperson license application on basis of unfitness of criminal character, unfitness of criminal record, unfitness of financial character, unfitness of licensing character and having been convicted of a misdemeanor under Title 18 or any felony – approved unanimously.

- **Thomas Groves Berry Sr**. #**28536** – Motion to deny the salesperson license application on basis of unfitness of licensing character – approved unanimously.

Backgrounds:

174 completed
26 disclosed
4 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 193 new cases were opened and 123 cases were closed for the month, giving the Division a balance of 678 open cases.

Affidavits of Probable Cause:

- **Autohut #30706 –** Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Autohut #30706; 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 pursuant to C.R.S. 12-6-104 – approved unanimously.

- **Tracie L. Phillips, Salesperson #26739 –** Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today

respective to Tracie L. Phillips #26739; that the case be assigned to Colorado Department of Revenue Hearings Division – approved unanimously.

- **Douglas G. Posey, Salesperson #171545 -** Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Douglas G. Posey, Salesperson #171545; that the case be assigned to the Colorado Department of Revenue Hearings Division – approved unanimously.

Mr. Harris recused himself and left the room.

- **Michael A. Souchek, Salesperson #29020 –**Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Michael A. Souchek, Salesperson #163192; 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 – approved unanimously.

Mr. Harris returned to the room.

- **Car Connection Ltd. #4698 -** Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Car Connection Ltd. #4698; 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 and welfare imperatively requires emergency action; AND, that the Board summarily suspend the Licensee's license, pending proceedings to be promptly instituted before the 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

New Business – Mr. Medved stated Mr. Harris had an issue he wanted to discuss relative to continuity of rulings and positions. Mr. Harris stated his concern was to make sure that everybody, meaning the public, dealers and salespeople, understands that the Board works to be consistent in what they do here. Two meetings ago the Board had no choice but to approve a license based on the language of the stipulation. Mr. Harris wants to advise his fellow Board members to be careful with how we treat these and make sure we are accomplishing what we are trying to do, which is to clean up the industry and the people that are dealing with the public.

Mr. Medved stated a person may have a role in a situation. A lot of times, this person does not change the way they've done business, but will wait for the situation to expire. If the terms imposed by the Board aren't correct; sometimes they will reenter with a very minimal reentrance fee. What we have tried to do during the last 5-6 years is to have a consistent and substantial cost to come back into the industry and to keep a negative individual from coming back. We need to understand that there may be attempts by a negative individual to try to come back into the industry after the current Board members are gone.

Mr. Harris expressed his approval of the personal letters of explanation included with the applications brought to the Board.

Public Comment – A Phil Long General Manager expressed appreciation for the job done by the Board. He stated he was going back to the Phil Long dealerships and stressing how important it is for them train their people to check and verify everything before sending in the application to catch all of the "oh I forgot about that" to try to save the Board some time.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 11:45 a.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