

**MOTOR VEHICLE DEALER BOARD  
MINUTES  
April 15, 2014**

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

**BOARD MEMBERS:** Joe Gebhardt  
Chris Hefty  
Stan Martin  
Beau Smith  
Deborah Thompson  
Jason Wagner  
Sheriff Fred Wegener  
Levi Yoder

**MEMBERS ABSENT:**

**SENIOR DIRECTOR OF  
ENFORCEMENT:** Ron Kammerzell  
**EXECUTIVE SECRETARY:** Bruce Zulauf

**LEGAL ASSISTANT:** Leland Bebee

**DEPT OF REVENUE,  
AID, ENFORCEMENT  
DIVISION STAFF:** Chris Rouze  
Matt Heap  
John Opeka  
Dave Heinrich  
Cheryl Morrison  
Kaye Kopecky  
Margaret Jungmann  
Erika Garcia  
Arleen Criddell-Tapanen

**ATTORNEY GENERAL'S OFFICE:** Y.E. Scott  
Brendon Reese

**BUDGET OFFICE:** Jill Vaughn  
Curtis Tremble  
Steve Paine

**VISITORS:** Mary Marvin, CAPSS  
Tammi McCoy, CADA  
Todd O'Connell, CIADA  
Jeff Skeen, Affinity Dev. - Costco  
Jerry Abboud, PDAC  
Robert Endter, Ace Design Studio  
Pat Watson, TrueCar, Inc.  
Alejandro Zuniga, Lakewood Happy Motors  
Landis Wheeler, Drive/Again

President, Beau Smith, opened the meeting of April 15, 2014, at 9:10 a.m. Mr. Smith turned the floor over to Executive Secretary, Bruce Zulauf.

## **AGENDA REVIEW AND ANNOUNCEMENTS**

Mr. Zulauf informed the Board there were no additions or corrections. Mr. Zulauf announced that Mr. Schenden resigned from the Board effective immediately and read his resignation letter to the Board. Mr. Zulauf notified Boards and Commissions on Friday, April 11, 2014, and will begin the search for Mr. Schenden's replacement.

Calendar - Mr. Zulauf announced there will be no Rulemaking Workshops in April or May. There are key staff members, involved in the rulemaking process, scheduled to take leave before the end of the fiscal year. Mr. Zulauf will target the month of July to resume formal rulemaking.

## **ELECTRONIC MEDIA TECHNOLOGIES FOCUS GROUP**

President, Beau Smith, welcomed and thanked the focus group for all their hard work over the past 18 months. Mr. Zulauf thanked all members of the focus group for their cooperation and personal sacrifices made to effectively reach their goal. He informed everyone that the report, produced by this focus group, will be forwarded to counterparts in other states. Mr. Zulauf stated that the Division is committed to finding a balance between consumer protection and protecting the integrity of the free market system with issues concerning internet marketing, internet sales, internet advertising and other electronic media trends.

Each member of the focus group introduced themselves and expressed their thanks and appreciation for the ability to contribute their time, commitment and expertise to the group.

Matt Heap briefly thanked the focus group panel for their cooperation and mutual respect. Mr. Heap indicated that dealer and handling issues, selling used cars as new and using false advertising methods are still among the most prevalent violations being committed from the investigative and complaint standpoint.

Chris Rouze briefly thanked the focus group for their commitment and approachability, which resulted in a good work product. Ms. Rouze created a PowerPoint presentation comprised, in total, of seventeen advertising scenarios provided by each member of the focus group.

Leland Bebee stated it was a pleasure to work with all the attorneys and members of the focus group during this process. Mr. Bebee informed the Board that the Federal Trade Commission has posted guidelines governing internet use in advertising on their website. Mr. Bebee stated that the Commission is paying close attention to third-party platforms.

Mr. Zulauf informed the Board that in the near future, drafts of newly developed proposed rules, related to advertising, will be presented to the Board for their review.

The Board took a 15 minute break. The Board resumed at 11:14 a.m.

## MINUTES

The minutes of the March 13, 2014 Board meeting were approved unanimously.

## FEE SETTING

Ms. Vaughn introduced a new team member, Mr. Steve Paine. Mr. Paine will be taking on duties as a Budget Analyst with the Gaming Division. Ms. Vaughn provided the Board with two spreadsheets for fee setting analysis and discussion:

- 1. Auto Industry Division (AID) – Fee Setting FY15**
- 2. Fee Setting FY2014-15 – Projected License Revenue Auto Dealers License Fund**

Ms. Vaughn informed the Board that each year, fees are analyzed based on projected division need as demonstrated by the following years' budget request and present Dealer Board fee setting recommendations to the Executive Director's Office for approval. Per statute C.R.S. 24-75-402(g), the target fund balance reserve should not exceed 16.5% of the amount expended from the cash fund during the fiscal year. The current cash flow analysis for 2014 indicates that the Auto Dealers License fund will exceed this target in FY14, and is projected to be in excess of \$542,000 (18%) over the target of 16.5%.

Mr. Zulauf explained statute C.R.S. 12-6-110 (5). This statute, in part, states that the Board shall propose part of the annual budget, a fee adjustment in an amount that shall reflect the direct and indirect costs of the Division. Mr. Zulauf explained that the Board has the ability to recommend the fees, but the final authority rests with the Executive Director.

Ms. Vaughn further indicated that spending authority for FY2015 has increased over the current year in the amount of \$275,858. The increase is mostly attributable to the 1.0 FTE provided to the Division as a result last year's SB13-280 (Titling Off Highway Vehicles) and the approved decision item for implementation of a licensing system in the Division.

Ms. Vaughn referred to the fiscal year 2015 Fee Setting spreadsheet provided to the Board outlining calculations for the revenue target figure and cash flow scenarios prepared in support of the revenue target and suggested fee adjustments.

The scenarios that have been presented, suggest a 6% decrease in fees allowing for a 2% variance in licensing activity. This suggested fee adjustment includes all fees except the Off-Premise licenses which will remain at the current amount. The proposed fees for each scenario have been rounded to the nearest \$5 dollar increment as has been done consistently in the past.

Mr. Zulauf suggested, and the Board discussed the overall health of the industry and the recommendations before them.

Mr. Martin suggested lowering the salesperson transfer fee. Mr. Zulauf indicated that the transfer fee is a significant stream of revenue. Mr. Hefty felt that since appropriated expenditures did not cover the cost of running the Division, we should reject the fee setting that has been presented and use the overage to provide staff needed in the Division. Mr. Zulauf reminded the Board we had to stay within the 16.5% that has been appropriated for the Division.

Mr. Wagner suggested we get the support of the associations (CADA and CIADA) to assist in lobbying for effective appropriation increases to be available to assist the Division with staff and resources to educate and advocate for the consumer. Mr. Kammerzell reminded the Board that the Colorado Department of Revenue is bound to the statute that says we can only retain 16.5% of the fund balance.

The Board agreed to reconvene via telephone conference on Monday, April 21, 2014 at 2:00 pm to discuss more options and finalize fee setting recommendations.

## **EXECUTIVE SECRETARY'S REPORT**

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation and Final Agency Order – Barbee’s Freeway Ford, Inc., Dealer #2628** – Motion to reject the Proposed Stipulation and Final Agency Order – Executive Secretary will renegotiate to amend stipulation to reflect 10 counts of C.R.S. 12-6-118 – approved unanimously.
- **Proposed Stipulation and Final Agency Order – J & M Auto Sales of the Western Slope, Inc., Dealer #36932** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

Ms. Scott recused herself and left the room.

- **Initial Decision – Zuniga, Alejandro #185771** – Motion to accept the Findings of Fact, Conclusions of Law and the recommendation of the hearing officer and grant a conditional license. The applicant is required to provide the standard letter from the employing dealer which includes the normal terms and conditions and a letter from his parole officer every three months for one year to verify compliance – approved unanimously.

Ms. Scott returned to the room. The Board took a 5 minute break.

## **BACKGROUND INVESTIGATIONS TEAM**

John Opeka presented the following:

### **Dealer Applications:**

- **AAA Raft Trailers, Inc. #42897** – Motion to grant the license – approved unanimously.

### **Salesperson Applications:**

- **Wheeler, Landis #185755** – Motion to deny the license based on unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

- **Del Toro, Reynaldo aka Deltoro, Reynaldo #186287** – Motion to deny the license based on unfitness of criminal character, unfitness of financial character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Estrada, Antonio Sandoval #21511** – Motion to grant the license – approved unanimously.
- **Gibbs, Richard Elmer #167219** – Motion to grant the license – approved unanimously.
- **Herberg, David Duane #186432** – Motion to deny the license based on unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Janezich, Rebecca P. #32087** – Motion to grant the license – approved unanimously.
- **Lacko, Judith Lee #186140** – Motion to grant the license – approved unanimously.
- **McDonnell, Patrick T. #185785** – Motion to grant the license – approved unanimously.
- **Shubert, David Richard #186912** – Motion to table for 30 days – approved unanimously.
- **Toczek, Pawel #186242** – Motion to grant license – approved unanimously.
- **Watson, Claude Oliver #184539** – Motion to grant license – approved 6-1 (Sheriff Wegener opposed).
- **Woslager, Jacob James #186527** – Motion to deny the license based on unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

## **INVESTIGATION REPORT:**

Chief of Investigations Chris Rouze presented the following:

**Statistical Reporting** – Ms. Rouze informed the Board that we started with 487 cases, 189 new cases were opened and 173 cases were closed for the month, giving the Division a balance of 503 open cases. There were 328 background inquiries performed.

### **Affidavits of Probable Cause:**

- **A & B Auto, DL #8255** - Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to A & B Auto, Dealer #8255; and that the case be assigned to the 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.
- **Leila Auto Sales, DL #39571** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Leila Auto Sales, Dealer #39571; and that the Colorado Motor Vehicle Dealer Board summarily suspend their motor vehicle dealer’s license in accordance with C.R.S. 24-4-104 as they have engaged in

deliberate and willful acts and their conduct poses a threat to the public health, safety and welfare – approved unanimously.

- **Dave Solon Kia, DL #39614** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Dave Solon Kia, Dealer #39614; that the case be assigned to the Colorado Motor Vehicle Dealer Board 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.
- **Centennial Chrysler Jeep, DL #41044** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Centennial Chrysler Jeep, Dealer #41044; that the case be assigned to the Colorado Motor Vehicle Dealer Board 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 6-1 (Martin opposed).
- **Ortegas Auto Repair, DL #37756** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Ortegas Auto Repair, Dealer #37756; that the case be assigned to the 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.
- **Super Truck Sales, Inc., WHSLE DL #40123** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Super Truck Sales, Inc., WHSLE Dealer # 40123; that the case be assigned to the 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.

**New Business** – Mr. Zulauf informed the Board that the hearing for Astro Imports, Inc. has been set for May 20, 2014, immediately following the scheduled Board meeting and could last about two days. He further advised the Board that a minimum of six (6) members are required to be in attendance from the beginning until the conclusion of the hearing.

**Public Comment** – There was no public comment.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 1:28 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