

**MOTOR VEHICLE DEALER BOARD
MINUTES
April 19, 2016**

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

BOARD MEMBERS:	Anthony Brownlee Robert Endter Justin Franks Joseph Gebhardt Michael Jorgensen Chris Langley Stan Martin Deborah Thompson
MEMBERS ABSENT:	Jason Wagner
SENIOR DIRECTOR OF ENFORCEMENT:	Ron Kammerzell
SR. DEPUTY DIRECTOR OF ENFORCEMENT:	Lewis Koski
EXECUTIVE SECRETARY:	Bruce Zulauf
LEGAL ASSISTANT:	Leland Bebee
DEPT OF REVENUE, AID, ENFORCEMENT DIVISION STAFF:	Chris Rouze Matt Heap Martin Kenney Gloria Breeden Cheryl Morrison John Opeka Erika Garcia Joshua Dexter Melissa DeBruin Arleen Criddell Tapanen
ATTORNEY GENERAL'S OFFICE:	Y.E. Scott Skip Spear
BUDGET:	Amanda Karger Jill Vaughn Curtis Tremble
VISITORS:	Michael Dommermuth, CADA Eric Hartsough, Dealer Services Todd O'Connell, CIADA Rick Wynkoop, Wynkoop Law Tammi McCoy, CADA Saul Larsen, DORA Art Erwin, Christopher's Dodge World Mike McKinnon Kevin Eugene Allerton Travis James Dallenbach David Anthony Ferrer

Vice-president, Joseph Gebhardt, opened the meeting of April 19, 2016 at 9:04 a.m. Mr. Gebhardt turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf informed the Board there were no corrections to the agenda as posted. Mr. Wagner will not be in attendance today. The Board will discuss fee setting today. There will be a Board discussion of Form 2434. Conflicts Counsel, Skip Spear, will advise the Board on three cases and assist the Board during the scheduled hearing. The disclosure rules related to Material Particulars were effective April 15, 2016 and have been posted on the Division website.

MINUTES

The minutes of the February 25, 2016 Rulemaking Hearing were tabled until next meeting for clarification of the fourth “arrow bullet” on page 4 – approved unanimously.

The minutes of the March 15, 2016 meeting were approved unanimously with a correction made to add “and decision” after “findings” to the sentence.

BUDGET REPORT & FEE SETTING

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 cannot exceed 16.5% of the amount expended from the cash fund during the fiscal year. Ms. Vaughn referenced the power point presentation provided to the Board, which outlined the following:

- **FY2015-2016 Cash Flow and Year-End Fund Balance Projection;**
- **FY2016-17 Proposed Budget;**
- **FY2016-2017 Revenue Projections; and**
- **FY2016-2017 Two Fee Setting Scenarios**

Current projections show FY2016 revenue projections of \$3,002,702 and projected expenditures of \$3,275,660. The result is a projected ending fund balance of \$537,806 which is \$2,600 below the maximum allowable balance. Spending authority is the total the division is authorized to spend during a fiscal year. The budget for FY2017 is \$3,433,696, which is a 2.3% increase. This increase is primarily due to increased personnel services cost to the Division.

Ms. Vaughn referred to the power point slide and handout outlining calculations for the revenue target figure and cash flow scenarios prepared in support of the revenue target and suggested fee adjustments.

The first scenario suggests no change to fee structure and the second scenario suggests a 14% increase in fees across the board. This suggested fee adjustment includes all fees.

There was a general discussion of the fee scenarios and industry growth.

Mr. Franks made a motion to accept the recommended increase of 14% across the board – approved 6-1 (Jorgensen opposed).

Mr. Franks made a motion to keep the Late fee and Reprint fee the same – approved unanimously.

BACKGROUND INVESTIGATIONS TEAM

Ms. Breeden presented the following to the Board:

Dealer Applications:

- **Colorado Automotive Group #43513** – Motion to grant the license – approved 6-1 (Martin opposed).

Salesperson Applications:

- **Allerton, Kevin Eugene #155747** – Motion to grant the license – approved unanimously.
- **Archuleta, Andrew Noah #565331** – Motion to grant conditional license based on payment in full of fine – approved 6-1 (Thompson opposed).
- **Bowers, Michael Wesley #27772** – Motion to deny the license based on unfitness of licensing character, unfitness of criminal character, material misstatement and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Dallenbach, Travis James #192727** – Motion to grant the license – approved unanimously.
- **Ferrer, David Anthony #191653** – Motion to grant the license – approved unanimously.
- **Myers, Christopher Lee #159622** – Motion to grant the license – approved unanimously.
- **Renteria, Joel A. #190693** – Motion to grant the license – approved unanimously.

INVESTIGATIONS REPORT

Mr. Heap presented the following to the Board:

Statistical Reporting – Mr. Heap informed the Board that we started with 396 cases, 178 new cases were opened and 187 cases were closed for the month, giving the Division a balance of 387 open cases. There were 183 background inquiries performed.

Affidavits of Probable Cause:

- **Manheim Denver, DL #41442** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Manheim Denver, Dealer #41442; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits. – approved unanimously.
- **Loyal Automotive, LLC, DL #43036** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Loyal Automotive, LLC, Dealer #43036; and 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.
- **Mercedes-Benz of Colorado Springs, DL #38468** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Mercedes-Benz of Colorado Springs, Dealer #38468; and 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.

- **Kirk Edward Schnurr, SL #181034** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Kirk Edward Schnurr, Salesperson #181034; and that the case be assigned to the Colorado Department of Revenue, Hearings Division for a hearing on the merits – approved unanimously.

Board took a 10 minute break.

There was a general discussion of auction houses disclosing what they know about vehicles to dealers.

OPEN DISCUSSION – *Form 2434 – Final Disposition*

Mike Dommermuth, CADA, presented red line changes to form 2434 excluding paragraph E2. Ms. Tammi McCoy stated that the backup option is to keep first portion of E2 and eliminating the remainder. Mr. Rick Wynkoop stated that he concurs with eliminating E2 but he is not agreeable to keeping the first portion of E2. Mr. Mike McKinnon, CIADA, recommends disposing of Form 2434 altogether. Mr. O’Connell, CIADA, would like the form to be fair to both sides.

Motion was made to accept the redlined version presented by CADA and delete paragraph E2 of form 2434 – approved 6-1 (Thompson opposed).

Mr. Zulauf informed the Board that he is unable to provide a definite turnaround time for Graphics to reprint the updated form.

ATTORNEY GENERAL’S REPORT

Ms. Scott presented the following to the Board:

- Motion to approve USA Enterprises, LLC Business plan – approved unanimously.
- **Proposed Stipulation and Final Agency Order – USA Enterprises, LLC Motor Vehicle Dealer License #42141**– Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – Masini Motors, LLC Motor Vehicle Dealer License #3028** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

EXECUTIVE SECRETARY’S REPORT

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation and Final Agency Order – Medved Chevrolet Cadillac, Dealer #209** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – Alpine Buick GMC, LLC, Dealer #38754,**– Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – A.C.E.S., Dealer #36375** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

- **Proposed Stipulation and Final Agency Order – Dye Enterprises, Dealer #2575** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

Ms. Scott recused herself and left the room.

- **Initial Decision – Cain, Beau G., Salesperson License #184446** – Motion was made to enter Executive Session at this time to receive legal advice from Assistant Attorney General, Skip Spear, acting as Conflicts Counsel regarding the matter of Beau G. Cain pursuant to C.R.S 24-6-402(3)(a)(II) – passed unanimously.

The Board went into Executive Session at 12:05 p.m. and Resumed Open Session at 12:16 p.m.

- **Initial Decision – Cain, Beau G., Salesperson License #184446** – Motion to accept the Findings of Fact, Conclusions of Law and accept the recommendation of hearing officer and revoke the license – approved unanimously.
- **Motion for Entry of Default Judgment – G. S. Motors, Motor Vehicle Dealer License #37201** – Motion to grant default judgment and authorize Executive Secretary to sign form provided by Conflicts Counsel – passed unanimously.
- **Motion for Entry of Default Judgment – Pro Performance Auto, LLC, Motor Vehicle Dealer License #41507** – Motion to grant default judgment and authorize Executive Secretary to sign form provided by Conflicts Counsel – passed unanimously.

Motion was made to have Mr. Spear generate a form for future use by the Division in regards to Default Judgment cases and designate signing authority to the Executive Secretary – approved unanimously.

Ms. Scott returned to the room. Board took a lunch break.

Public Comment – Mr. O’Connell suggested the Board reevaluate the fines assessed by them in regards to unlicensed sales. He specifically requested they reconsider the amount when the violation is the result of clerical error.

DISCUSSION OF PROPOSED LEGISLATION

There was a short discussion on proposed legislation related to industry matters. Mr. Zulauf informed the Board that only one bill remained that impacted the industry. This was the title bill that would allow extended time to facilitate registration and/or delivery of title.

New Business – No new business.

DISCIPLINARY HEARING

Case #BD15-1484

Impex Automotive, LLC d/b/a Impex Automotive, LLC #41617 – Licensee/Respondent

Hamid Murad, Owner, Impex Automotive, LLC, appearing on behalf of Licensee/Respondent

Y.E. Scott, Esq., Sr. Assistant Attorney General, appearing on behalf of the State

At the conclusion of the hearing, the Board deliberated in open session. After deliberations, the Board went into Executive Session to receive legal advice from Conflicts Counsel related to fining authority.

When the Board returned from Execution Session a motion was made to revoke the license, impose a fine of \$43,000, and expressly make a finding of fraud – approved unanimously.

The Board also asked the Attorney General’s Office to prepare a final written order for discussion/approval at the next Board meeting.

The meeting of the Motor Vehicle Dealer Board was adjourned at 6:00 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