

MOTOR VEHICLE DEALER BOARD

MINUTES

April 21, 2015

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
Chris Hefty
Michael Jorgensen
Stan Martin
Jason Wagner

MEMBERS ABSENT:

Deborah Thompson

**SENIOR DIRECTOR OF
ENFORCEMENT:**

Ron Kammerzell

**EXECUTIVE SECRETARY:
LEGAL ASSISTANT:
DEPT OF REVENUE,
AID, ENFORCEMENT
DIVISION STAFF:**

Bruce Zulauf

Chris Rouze
Matt Heap
Martin Kenney
John Opeka
Gloria Breeden
Cheryl Morrison
Dave Heinrich
Kaye Kopecky
Erika Garcia
Brenda Fredricey
Wendy Spaulding
Arleen Criddell-Tapanen

ATTORNEY GENERAL'S OFFICE:

Y.E. Scott
Skip Spear

BUDGET OFFICE:

Jill Vaughn
Curtis Tremble
Steve Paine

VISITORS:

Jacque Gebhardt
Rabie Z. Alshairi, Jordan Motors LLC
Mike Rogers, Midwest Fleet & Lease
Emelyn Sales, Shortline Hyundai

Lorri Dugan, CFO - OBFS
Amanda Karger, Director – OBFS
Todd O'Connell, CIADA
Tim Jackson, CADA
Mike Dommermuth, Esq., CADA
Art Erwin, Christopher's Dodge World
Eric Hartsough, Dealer Services

President, Jason Wagner, opened the meeting of April 21, 2015 at 9:15 a.m. Mr. Wagner turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf informed the Board there were no additions or corrections to the agenda. Ms. Thompson will not be in attendance today. Matt Heap is the Division's new Agent in Charge and will present the Investigations Report for the next several months. Ms. Rouze is continuing to oversee the implementation of Mylo, the Division's new database system. Skip Spear, conflicts counsel, will advise Board on several cases cited in the Executive Secretary's report.

The Board will discuss the various scenarios for budget and fee structure for next year presented by Jill Vaughn and the Enforcement Business Group Budget team and make recommendations to the Executive Director's office to meet the May deadline.

The agenda, minutes and audio of the Group 1 stakeholder meetings have been posted to the website. The fourth and final meeting agenda, minutes and audio will be forthcoming. The formal Rulemaking hearing will be scheduled some time in June.

MINUTES

The minutes of the March 17, 2015 meeting were approved unanimously.

ATTORNEY GENERAL'S REPORT

Ms. Y.E. Scott presented the following to the Board:

- **Proposed Stipulation and Final Agency Order – Lada Auto Sales Motor Vehicle Dealer License #41171** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

BACKGROUND INVESTIGATIONS TEAM

John Opeka presented the following to the Board:

Dealer Applications:

- **Jordan Motors LLC #43243** – Motion to grant the license – approved unanimously.

Salesperson Applications:

- **Campos-Guerrero, Nahin #189476** – Motion to grant the license – approved unanimously.
- **Darsey, John #188918** – Motion to table until verification of events are clarified by the dealer – approved unanimously.

- **Rogers, Michael #161819** – Motion to grant the license – approved unanimously.
- **Sales, Emelyn, #189567** – Motion to grant the license – approved unanimously.
- **Thompson, Stephanie #189481** – Motion to grant the license – approved 5-2 (Gebhardt and Martin opposed).
- **Ybarra, Raymond #33395** – Motion to table for 30 days for applicant to provide proof of completion of substance abuse counseling class, community service and driving history – approved unanimously.

EXECUTIVE SECRETARY’S REPORT

Mr. Zulauf presented the following to the Board:

1. **Proposed Stipulation and Final Agency Order – Century Auto, Inc., Dealer #40220** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
2. **Proposed Stipulation and Final Agency Order – McManus Motors, Dealer #42901** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

Ms. Scott recused herself and left the room.

3. **Initial Decision – Jones, Timothy, J.
Motor Vehicle Salesperson License #21142**

Skip Spear, conflicts counsel, advised Board to table for 30 days so he can draft a final order for the Board’s review – approved unanimously.

There was a general discussion of hearing officer’s statutory authority. Conflicts counsel advised the Board which options were at their disposal and that these could be discussed in detail during Executive session.

The Board took a 10 minute break.

1. **Proposed Final Board Order --- Fadeyi, Sikiru Alabi
Motor Vehicle Salesperson License #167687**

Motion was made to accept the Findings of Fact and Conclusions of Law – approved unanimously.

Motion was made to revoke the license and have conflicts counsel draft a final order to impose a fine up to the maximum amount allowed due and payable within 60 days – approved unanimously.

2. **Proposed Final Board Order --- Eaton, Daniel
Motor Vehicle Salesperson License #31573**

Motion was made to accept the Findings of Fact and Conclusions of Law – approved unanimously.

Motion was made to suspend the license indefinitely and impose a fine of \$2,000.00 due and payable within 60 days – approved unanimously.

**3. Proposed Final Board Order --- Enriquez, Jr., Daniel Louis
Motor Vehicle Salesperson License #171452**

Motion was made to accept the Findings of Fact and Conclusions of Law – approved unanimously.

Motion was made to indefinitely suspend the license and impose a fine of \$1,000.00 due and payable within 60 days – approved unanimously.

Ms. Scott returned to the room.

INVESTIGATION REPORT

Agent in Charge, Matt Heap, presented the following to the Board:

Statistical Reporting – Mr. Heap informed the Board that we started with 418 cases, 177 new cases were opened and 148 cases were closed for the month, giving the Division a balance of 447 open cases. There were 438 background inquiries performed.

Affidavits of Probable Cause:

- **303 Car Company LLC, DL #42416** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to 303 Car Company LLC, Dealer #42416; 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.
- **Millennium Auto Sales, DL #42567** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Millennium Auto Sales, Dealer #42567; 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.
- **Benjamin Serrano, SL #150152** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Benjamin Serrano, Salesperson #150152; and that the Colorado Motor Vehicle Dealer Board summarily suspend his motor vehicle salesperson’s license in accordance with C.R.S. 24-4-104 as he has engaged in deliberate and willful acts and his conduct poses a threat to the public health, safety and welfare and that the case be assigned to the Colorado Department of Revenue, Hearings Division for a hearing on the merits pursuant to C.R.S. 12-6-104 – approved unanimously.

Motion was made to have the Executive Secretary, Bruce Zulauf, sign on behalf of the Board President, Jason Wagner, to summarily suspend the license – approved unanimously.

BUDGET

Ms. Vaughn introduced Ms. Lorri Dugan, CFO, Ms. Amanda Karger, Budget Director and Messrs. Curtis Tremble and Steve Paine, Budget Analysts of the Enforcement Business Group. Ms. Vaughn distributed FY2016 Cash Flow scenarios and Appropriation documents for the Board's review.

Each year fees are analyzed based on projected Division need as demonstrated by the year's Budget request. Dealer Board fee recommendations are presented to the Executive Director's office for approval and implementation. Per statute §24-75-402(g), the target fund reserve should not exceed 16.5% of the amount expended from the cash fund during the fiscal year. The current cash flow analysis for FY2015 indicates that the Auto Dealers License fund will exceed this target in FY15 and is projected to be approximately 12% or \$391,000 over the allowed reserve amount.

The FY2016 Fee Setting document received today includes the FY2016 spending authority, calculation for the revenue target figure and cash flow scenarios.

Spending authority for FY2016 has decreased over the current year by \$125,000. The decrease is mostly attributable to the licensing system spending authority that expires June 30, 2015 and the annualization of salary survey and merit pay increases in the Division.

The revenue target figure is calculated using total 2016 projected expenditures less the projected 2015 ending fund balance plus the 2016 target fund balance of \$552,461 demonstrating a revenue collection need of \$2.9 million (\$2,964,452).

After the revenue needed to sustain operations of the Division has been identified, fee analysis scenarios are developed using projected licensing activity data for possible fee amounts based on the projected fiscal year expenditures and analyzed to determine the most reasonable cash flow scenario, and subsequent fee recommendation.

Fee adjustments presented in the scenarios include all fees except the Off Premise license, which will remain at \$300. The proposed fees for each scenario have been rounded to the nearest \$1 dollar increment.

There was a general discussion and review of the nine scenarios presented.

Mr. Martin made a motion to recommend a decrease in fees by 5% for FY16 based on 3% licensing variance and Off Premise Permit fee (\$300), Late fee (\$50) and Reprint fee (\$25) will remain the same – approved 6-1 (Mr. Hefty opposed).

LEGISLATIVE UPDATE

HB15 -1089 – Registration of Kei Vehicle for Use on the Public Roadways – Mr. Zulauf gave the Board a general update on the status of this proposed legislation.

There was a general discussion among the Board in regards to their concern about consumer protection should Kei Vehicles be exempt from motor vehicle or powersports vehicle classification.

Mr. Hefty made a motion to adopt a resolution to be presented to the House Transportation and Energy Committee affirming the Colorado Motor Vehicle Dealer Board's opposition to making exemptions for this type of vehicle and not defining them as either a Motor Vehicle or Powersports Vehicle and that the sale of these vehicles should be regulated as a Motor Vehicle or a Powersports Vehicle by licensed dealers and that the resolution incorporate the names of each Board member – passed unanimously.

New Business – Mr. Endter asked if there was any feedback in regards to the D&H advertising memorandum forwarded to all dealers in the state. Some Board members indicated that there has been.

Mr. Wagner expressed a desire to have the Division granted higher appropriation/spending authority in relation to its annual budget and fee structure to accommodate the Division with some staffing challenges.

Public Comment – No Public Comment

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 12:35 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