

**MOTOR VEHICLE DEALER BOARD  
MINUTES  
July 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  
Michael Jorgensen  
Stan Martin  
Jason Wagner

**MEMBERS ABSENT:**

Deborah Thompson

**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  
Martin Kenney  
John Opeka  
Gloria Breeden  
Tim Rotter  
Cheryl Morrison  
Erika Garcia  
Hollie Harlan  
Arleen Criddell Tapanen

**ATTORNEY GENERAL'S OFFICE:**

Y.E. Scott

**VISITORS:**

Rick Wynkoop, Wynkoop Law  
Mike McKinnon, CIADA

Jeremy Homan, McCloskey Motors  
Marla Schutte, Sonic/Echo Park Automotive  
Tomas Balciunas, Stevinson Toyota  
Russell Griffiths, Longs Peak Auto Sales  
Tom Griffiths, Longs Peak Auto Sales  
Todd O'Connell, CIADA  
Clint Riser, Sun Ent Honda  
Chuck Halberstadt  
Eric Hartsough, Dealer Services  
Tammi McCoy, CADA  
Art Erwin, Christopher's Dodge World

President, Jason Wagner, opened the meeting of July 21, 2015 at 9:10 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 and two corrections to the agenda. Items 2 and 3 of the agenda are omitted until a future date. Ms. Thompson will not be in attendance today. The Division's database system, Mylo is scheduled to launch September 8, 2015. The Division's database system will be down for approximately two days during the conversion. Mr. Zulauf introduced the Division's new Criminal Investigator, Tim Rotter. There will be open discussions of form 2434 and history of the Mastery Exam.

Mr. Martin made a motion that the following appointments remain the same – passed unanimously.

- President – Jason Wagner
- Vice President – Joe Gebhardt
- 2<sup>nd</sup> Vice President – Deborah Thompson

## **MINUTES**

The minutes of the June 16, 2015 meeting were approved unanimously.

## **ATTORNEY GENERAL'S REPORT**

Ms. Scott presented the following to the Board:

**N.C. State Bd. of Dental Examiners vs. FTC** – Ms. Scott informed the Board about this Supreme Court case and how it may impact Boards that are made up of active market participants. There was a general discussion of how this case relates to the Colorado Motor Vehicle Dealer Board functions in regards to rulemaking, licensing and consumer protection.

Mr. Kammerzell informed the Board that the Auto Industry Division and the Colorado Motor Vehicle Dealer Board will be under Sunset Review beginning the spring (March, April) of 2016. A report of the recommendations will be distributed for review in the fall (August, September) of 2016.

## **EXECUTIVE SECRETARY'S REPORT**

Mr. Zulauf presented the following to the Board:

Ms. Scott recused herself and left the room.

- 1. Proposed Stipulation and Revised Final Order – Eaton, Daniel T., Sr. Motor Vehicle Salesperson License #31573** – Motion to approve the Proposed Stipulation and Revised Final Order – approved unanimously.
- 2. Initial Decision --- McManus, Tracey Darren**

**Motor Vehicle Salesperson License #30535** – Motion was made to accept the Findings of Fact and Conclusions of Law, modify the recommended order striking the first sentence of paragraph 21 and the word “However” in the next sentence.

Ms. Scott returned to the room.

## **BACKGROUND INVESTIGATIONS TEAM**

Ms. Breeden presented the following to the Board:

### **Dealer Applications:**

- **Auto Plus Inc. #43318** – Motion to grant the license – approved unanimously.
- **Autoplex LLC #43341** – Motion to table until outcome of September 2015 hearing – approved unanimously.
- **Longs Peak Auto Sales LLC #43296** – Motion to grant the license – approved unanimously.

### **Salesperson Applications:**

- **Anderson, Kimberly #34771** – Motion to deny the license based on unfitness of licensing character, unfitness of financial character, unfitness of criminal character, and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Balciunas, Tomas #190232** – Motion to grant the license – approved unanimously.
- **Curtis, James #29679** – Motion to grant conditional license based upon applicant providing the standard letter from the employing dealer which includes the normal terms and conditions and proof of payment in full of delinquent taxes – approved unanimously.
- **Evans, Scott #190480** – Motion to grant the license – approved 6-1 (Franks opposed).
- **Heck, Micah #190311** – Motion to deny the license based on unfitness of criminal character and material misstatement and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Homan, Jeremy #190517** – Motion to grant the license – approved unanimously.

Mr. Brownlee recused himself and left the room.

- **Johnson, Jerry #26747** – Motion to deny the license based on unfitness of licensing character, unfitness of criminal character, prior Board action, and having been convicted of a misdemeanor under title 18 – approved unanimously.

Mr. Brownlee returned to the room.

- **Kim, Arnold #190393** – 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.

- **Krutsinger, Amy #159783** – Motion to grant a conditional license based upon applicant providing the standard letter from the employing dealer which includes the normal terms and conditions – passed unanimously.
- **Riser, Clint #171563** – Motion to grant the license – approved unanimously.
- **Smith, Vivian #126466** – Motion to grant the license – approved unanimously.
- **Ybarra, Raymond #33395** – Motion to grant the license – approved unanimously.

**Salesperson Affidavit:**

- Delles, Jared #185180 – Motion was made to summarily suspend the license in accordance with C.R.S. 24-4-104 – approved unanimously.

Board took a 5 minute break.

**INVESTIGATION REPORT**

Mr. Heap presented the following to the Board:

**Statistical Reporting** – Mr. Heap informed the Board that we started with 447 cases, 169 new cases were opened and 178 cases were closed for the month, giving the Division a balance of 438 open cases. There were 279 background inquiries performed.

**Affidavits of Probable Cause:**

- **Brighton Ford Inc., DL #132** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Brighton Ford Inc., Dealer #132; 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.
- **Davidson’s Motors LLC, DL #39961** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Davidson’s Motors LLC, Dealer #39961; 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.
- **Motor Sports, DL #43083** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Motor Sports, Dealer #43083; 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.
- **AutoNation Subaru West, DL #4409** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to AutoNation Subaru West, Dealer #4409; 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.

- **Infiniti of Denver, DL #41240** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Infiniti of Denver, Dealer #41240; 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.

Mr. Brownlee recused himself and left the room.

- **Kuni Lexus of Greenwood Village, DL #40283** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Kuni Lexus of Greenwood Village, Dealer #40283; 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.

Mr. Brownlee returned to the room.

Mr. Endter recused himself and left the room.

- **Mike Naughton Ford, DL #40** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Mike Naughton Ford, Dealer #40; 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.

Mr. Endter returned to the room.

- **Schomp BMW, DL #34** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Schomp BMW, Dealer #34; 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.

#### **OPEN DISCUSSION – FORM 2434 (*Disclosures Required as Part of a Motor Vehicle/Powersports Vehicle Sale*)**

There was a general discussion of removing the VIN number from the form, including interest rate on form and selling trade-ins before financing is approved. The Board agreed to remove the VIN number from the form.

Modifications to the form were proposed by Mr. McKinnon, Ms. McCoy and Mr. Wynkoop.

Ms. Scott reminded the Board that the form needs to parallel the Rule it is attached to and when making modifications, be sure consumer protection is in the forefront.

Mr. Zulauf suggested, for consumer clarification, including inference that finance is “not guaranteed” in the form.

There was a general discussion of the ten calendar day cancellation, delivery, fees, guaranteed financing, down payment and deposit.

The Board agreed to change “finance agreement” with “contract” throughout the form.

The Board agreed to add “damage” and “cost” sentence from the old form to the new form.

Mr. Zulauf recommended that Ms. Scott make the suggested modifications and he will then forward the modified document to Board members and schedule a special telephonic Board meeting for them to adopt or reject the form.

Mr. Martin made a motion to accept Mr. Zulauf’s recommendation – passed unanimously.

The special telephonic Board meeting was scheduled for Tuesday, July 28, 2015 at 2 p.m.

## **SALESPERSON MASTERY EXAMINATION**

Ms. Rouze prepared a PowerPoint presentation for the Board which gave the history of the mastery exam and where the process stands today. Ms. Rouze stated that this information is important to the Board so that they can make informed decisions in relation to the mastery exam and the process. The presentation included the following:

- An overview of SB 07-221 requiring (in part) a psychometrically valid and reliable testing mechanism.
- History of steps taken by the Motor Vehicle Dealer Board to implement the statutory changes, including contracting with the Colorado State University Research & Development Center for the Advancement of Student Learning (headed by Dr. Michael DeMiranda, Ph.D. and Dr. George Morgan, Ph.D.).
- An overview of reports and presentations to the Motor Vehicle Dealer Board by Dr. DeMiranda and Dr. Morgan.
- Recommendations made by the professors regarding structure of exam questions, study materials, and the testing platform (Classmarker), to effectuate an exam which is both psychometrically valid and reliable.

There was a general discussion of continuing education and ethics education of salespersons.

## **OPEN DISCUSSION - Regulation 12-6-104(3) (j) *Board approval for third party examination administrators***

Ms. Marla Schutte of Sonic Automotive made a request to the Board to become a third-party administrator of the mastery exam in Charlotte, NC. They have recently opened three Echo Park Automotive locations in Colorado. Ms. Schutte stated that they are currently transporting call center employees to Denver to take the mastery exam.

There was a general discussion of whether Sonic's call center employees should be licensed as salespeople, which would bring them under the Board's jurisdiction. The discussion was tabled until next month's Board meeting.

**New Business** – Mr. Endter requested all public members of the Board be added to CADA, CIADA and CAPSS email address lists to ensure full disclosure. Mr. Gebhardt stated that consumer protection is the number one goal of the Board, Mr. Wagner concurred.

**Public Comment** – No Public Comment

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 4:20 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