



OHIO BOARD OF MOTOR VEHICLE REPAIR SPECIAL MEETING AGENDA

MARCH 16, 2022 10:00 AM

VIRTUAL MEETING VIA MICROSOFT TEAMS

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Janine Burnside HR Manager/ADA Coordinator 614-728-8233 (Voice) 711 (then dial) 614-728-8233
(TTY) janine.burnside@das.ohio.gov

1. CALL TO ORDER. INTRODUCTION OF MEMBERS & GUESTS PRESENT:

Board Members Present:

Keenan B. McKee, Chairman

Christopher K. Speck, Vice-Chair

Michael Giarrizzo

Bruce T. Hale

William H. (Howie) Graf

Board Staff Present:

Executive Director, Michael R. Greene

Program Administrator 1, Paige M. Beavin

Investigator, Jennifer E. Johanson

Investigator, Culburn C. Robinson

Investigator Assistant, Theresa F. Peppers

Board Counsel, AAG, Andrew Rowan, Esq

Guests Present:

Matt Dougher, ASA



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2. REVIEW OF FEBRUARY 9, 2022 MEETING MINUTES:

Motion to Accept: Bruce Hale

Second: Chris Speck

Motion Carried

3. BOARD DISCUSSION ON RULE 119 HEARINGS AND ENFORCEMENT CHANGES: **AAG Andrew Rowan walks the board through hearings process:**

The charge is under 4775.02 no person shall act as a repair operator. Failure to Register.

Must prove that it was related to collision repair. ORC 4775.01c defines as performing on structure, life, safety as result of collision. Must prove that it is an operator ORC 4775.01d (5 or more collision repairs in a **calendar year**). 4775.99 states that if anyone violates this can be fined no more than 1000 for first offense. 4775.08 states that board will deposit to occupational fund (board bills are paid for through that fund).

Process: Section 119 Ohio Administrative Procedures Act. We are tied through our administrative rules 4775.3.01; shall be afforded an opportunity through ORC 119.

Inspector determines 5 collision repairs are completed in calendar year and present to board with dates and/or vehicles. Board reviews and votes on issuing a violation. Notice of Opportunity of Hearing is sent to give them 30 days to respond and let them know that they have failed to register and be in compliance with 4775.02 with dates and vehicles showing that they meet the requirements for violation. Consent agreement may be sent with letters to sign and pay fine amount. Must wait 30 days unless consent agreement sent. If they do not respond within 30 days, we can issue a final order finding them in violation and fining them. Can be appealed to common pleas court, but the court won't hear a case where they did not request a hearing.

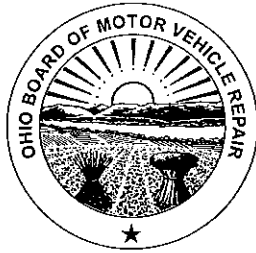
IF hearing is requested in 30 days (must be received in 30 days). We could choose to accept it on 32 days but must be consistent across all requests.

2 possible ways of administrative hearing: full board with administrative session without hiring anyone or we can hire a hearing officer. Cost is unknown currently but assumed that it is expensive. It may be in our interests to sit with full board. If hearing officer is requested, AAG will represent us and call investigator to testify. AAG calls registrant and they can present any evidence they have

"Retire and consider the issue" – in an executive session in a side room that same day
Written decision must be submitted so it can be mailed. They have 15 days to appeal with common pleas (may be only Franklin County since it is in our law, but other boards can be appealed in the home county).

Director Mike Greene asks about cease and desist orders – do we have authority?

AAG nothing stops us, but no purpose if we are moving forward with administrative process.



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Chairman Keenan McKee states the money will be handled by collections of attorney general. How do we handle second violation?

AAG states that violators paying the fine has nothing to do with them receiving a subsequent violation. Another 5 cars will have to be proved and we fine them a minimum of \$1000.

Chairman McKee asks about changing the law to make registrants be in good standing before they have been approved – some people open a new business to get out of paying fines.

AAG: Can add 3rd requirement to law that any member of ownership must be in good standing with this board in relation to any prior businesses or corporations

Chairman McKee asks board opinions.

Director Greene wants to add another meeting in 30 days to discuss.

Matt Dougher ASA: (regarding upsetting the applecart) has known in the past we are conservative legislature. They have testified to keep board around. His opinion is that we need to be holding hearings.

Director Greene questioned AAG about holding off on updating rules. Does the board have the authority to add the 3rd requirement in our rules without adding it in our law?

AAG states we are granted the authority to set the parameters. Doesn't think there is anything that can restrict us from doing that. Would check with board. ORC legislator does not like "good moral turpitude" – must be specific at what we want – like being in good standing and the definition of good standing. Fine in history does not make it in good standing.

Director Greene: Could we say no pending board action?

AAG: Yes, or unresolved final orders.

Chairman McKee: late fees and grace periods?

AAG: That sets us up for registrants saying "I'll just pay the late fee instead of the \$500 fine" Cosmetology board did a bunch of hearings for people who didn't register between May and July and if there was a 30 day grace period, they wouldn't have been able to fine them in that 30 days and if there is a late fee on top of that and it would just be extra. We don't want to allow them to be late with late fee. A grace period could be available.

Vice-Chairman, Chris Speck: wanted to know about changing to an annual fee instead of expiration dates throughout the year. Would simplify everything and would have prorated fees throughout the year. Would it simplify things?

Director Greene: Our elicense system is set up differently than other boards because of the previous process and it may take a lot to change that in our system. Not sure how we would change the current registrants? Would we make them pay again on January 1st?

Chairman McKee: I thought that would be easier until I thought about the investigators having to investigate all the expired licenses January 2nd. Is it easier if we have multiple registration dates?



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Investigator Johanson: Accountancy Board was a specific date and a certified letter was sent instead of driving out to that location. It isn't that overwhelming, but whatever is decided is doable with investigators.

Investigator Robinson: Asks AAG about evidence of documentation of 5 cars. How can we secure that data that they are repairing 5 cars? Could use insurance company data and use Facebook.

AAG: I'll take whatever evidence we can get. How do we know it is in fact them on Facebook? Will need to verify – could be a phone call to confirm. Could say that that wasn't posted by the registrant. Some assumptions will be made that a bumper was removed one day and now it was in the shop the next with a new bumper. First couple hearings will be interesting. Are they going to request hearings? They may not and we just issue a final order then be contacted by the OAG for collections. AG will take sufficient action to recoup money if it is up in the thousands. They have the right to testify on their behalf and I am confident that I can get them to respond with the truth.

Investigator Robinson: Would be a large job for us changing expiration dates.

Vice-Chairman Speck: Maybe we focus on one change at a time

Director Greene: Will check with eLicense about cost. Do we need a court reporter?

AAG: A court reporter would be wanted because they will identify everyone and it may get overwhelming with the full board.

Chairman McKee: From outside sources, thought that we should have a hearing officer. Nothing says that we must. If they do appeal it – it is looked down upon. How does the pricing compare of having the whole board available or the hearing officer? If they're going to request a hearing – they will most likely appeal to a common pleas court. Hearing officer is an independent finding.

AAG: Not necessarily. 20 odd administrative hearings a month with BMV – 99% won if not 100% with a hearing officer. Usually, only 1 of 20 will appeal those hearings. Could be because of the hearing officer, but does not agree that it is going to be a great number appealing.

Investigator Robinson: Would we consolidate the hearings for a single day?

AAG: More cost effective to hold more hearings a day. About 5 hearings a day.

Investigator Robinson: With our regular meetings?

Board Member, Bruce Hale: How many unregistered shops do we have?

Director Greene: About 100-150, investigators can attest more to that.

Investigator Robinson: More about 200 hardcore violators

AAG: Once board votes and receives request, board must set a date within 15 days, but can be rescheduled/continued. The date must be within 15 days and that is not enough time. Board typically sends out the letter and sets the hearing for 15 days and says this date is being postponed in the future and either tell them the date or tells them that another letter will be sent notifying that time. 15 days is unrealistic to get everyone together.



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Investigator Johanson: Can the board give Mike discretion to go forward with the violation instead of board meeting so frequently?

AAG: Some boards have administrative review group – staff and in-house counsel make recommendation. Executive director, chairman and in-house counsel and AAG in meeting. They would make a recommendation to the board on 30 cases at a time for review prior to the meeting and board votes to accept the recommendation or not instead of presenting evidence by investigators every case. Investigator will advise board staff and executive director will say ok put it on the list. Issuing the notice for opportunity for hearing – people think that a full decision has already been made. Usually not super in-depth until a hearing is requested. We trust the investigator does their job and makes a reasonable violation.

Director Greene: At what point in this process do we need to notify AAG?

AAG: Depends how we want to handle postponement. Board meets and notifies that there will be notice for opportunity for hearing. AAG will be in that meeting. He will need to be notified about a hearing date needing to be set. Postponement date can be included in letter or date could be set later.

Chairman McKee: In notice of violation – can we state that they have 30 days to get in compliance without fining them?

AAG: Could be done, but motions will need to be set to set policy. Must stick to written policy and maintain consistency.

Investigator Robinson: When do you see this going forward even with administratively?

AAG: Template for NOH, hearing scheduling letter, final order

Director Greene: What needs to be certified mail?

AAG: NOH should be certified mail. Hearing scheduling letter is a plus to be certified mail.

Chairman McKee: We need to talk about what violations will be, grace periods, fine amounts and voting on motions to move forward.

Director Greene: Our fees per year are \$225

Chairman McKee: First violation - double that - \$500 with a 30 day grace period to get in compliance to pay back-owed fees. \$1500 on second violation.

Vice-Chairman Speck: I agree with that as a starting point and maybe revisit yearly

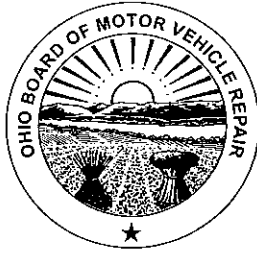
Board Member, Mike Giarrizzo: I agree. Must be significant

Board Member, Bruce Hale: I agree. Should we retroactive those fees or is it going to be within the last year?

Chairman McKee: I think that they should pay what they owe.

AAG: If you are going to require back payment of registration fees, we would have to prove those last 5 years. They could say that they weren't required to be registered those past 5 years. We may not have the evidence for 5 years.

Investigator Robinson: Usually, we were issuing notices of violation and they were open and in business. Since we cannot get into finite, we can't use that?



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AAG: Maybe. That may be enough since there were violations, but it would be difficult to issue the fines. We are going to need proof of the 5 repairs in previous years.

Director Greene: Thinks the board would be surprised at the amount of evidence. 30-day violation notices being issued every 3 months. He doesn't think it would be fair to other businesses.

AAG: Would the investigators feel comfortable testifying that they were actively practicing collision repair? Are there pictures?

Investigator Robinson: I don't take photos every time, but I take pictures and leave a lot of notes. I can give information but cannot give photographs every time. A lot of times guys will say they bought the car for themselves.

Investigator Johanson: Has found affidavits from previous cases for investigators.

AAG: Will be a case-by-case basis. Investigators' words will be taken. Investigators will need to decide if they are comfortable testifying. Must be what we can prove on a case-by-case basis. There is clear allowance to go back for past registration fees. The law allows up to \$5000 for subsequent violations. So, 3rd violation such amount and 4th and every consecutive.

Vice-Chairman Speck: 1st – \$500, 2nd – \$1500, 3rd – \$2500, 4th – \$3500

Director Greene: I think the board should stop at 4th and issue a \$5000 fine

Chairman McKee: 1st – \$500, 2nd – \$1500, 3rd - \$2500, 4th and anything more \$5000. Would the grace period be included on all violations?

AAG: It needs to be in writing. I would suggest not to apply a grace period to the subsequent violations.

Motion to collect for past owed fees due: Chris Speck

Second: Mike Giarrizzo

Motion Carried

AAG: If a new investigation is started and the unregistered shop is completing more than 5 shops in a calendar year, a new violation can be issued.

Motion for violation fee schedule as follows: Keenan McKee

1st violation - \$500 with opportunity of 30-day grace period to come into compliance

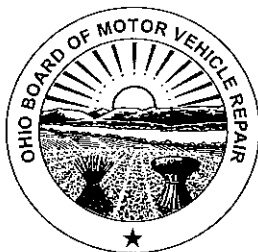
2nd violation - \$1500

3rd violation - \$2500

4th and all subsequent violations - \$5000 each

Second: Chris Speck

Motion Carried



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Motion that Ohio Motor Vehicle Repair Board changes the policy to include a fee schedule and hearings for non-compliant companies and/or individuals of those companies: Keenan McKee

Second: Chris Speck

Motion Carried

Chairman McKee wants to verify with AAG when the time comes what is required and set another meeting. Letters and forms are not required to be approved by the board since it is administrative.

Director Greene: Should the fee schedule be posted somewhere?

AAG: Yes, not only in the minutes.

Chairman McKee: How long will it take for the investigators to gather their cases?

Investigator Robinson: I can have them completed whenever we are ready.

Investigator Johanson agrees.

Conversation about having another meeting April 13th to have letters complete and brief synopsis from investigators to bring to the board so that if a hearing is requested, we are ready. The investigators will bring 10 cases and we will send out notice for opportunity for hearings if the board decides to pursue action.

Cease and desist can be added in a letter or not, whatever we decide.

Motion to adjourn the meeting: Chris Speck

Second: Bruce Hale

Motion Carried

4. **PUBLIC COMMENT:** No Public Comment

5. **ADJOURNMENT: NEXT BOARD MTG. – MAY 11, 2022 LOCATION:**
Vern Riffe Tower, 77 South High Street, 19th Floor, Room 1920, Columbus, 43215.