



OHIO BOARD OF MOTOR VEHICLE REPAIR BOARD MEETING MINUTES

AUGUST 15, 2018 10:00 AM

Vern Riffe Tower
77 South High Street
19th Floor, Rm. 1914
Columbus, Ohio 43215

1. **THE MEETING WAS CALLED TO ORDER AT 10:00 AM.**
2. **INTRODUCTION OF MEMBERS & GUESTS PRESENT:** Christopher Sterwerf, Donald Rife, Keenan Mckee, Earl Dohner, Mary Katris, Jeff Wagner, Giles Allen (AAG), Michael Greene, Kimberly Peppers, Jennifer Johansen, Craig Robinson.
3. **REVIEW OF MAY 16, 2018 MEETING MINUTES:**

WAGNER: The minutes didn't have me present at the last meeting.

K. PEPPERS: I'm sorry. That's right you came in late.

MOTION TO ACCEPT MINUTES AS AMENDED: WAGNER
SECOND: MCKEE
VOTE: MOTION CARRIED
4. **BOARD REVIEW AND DETERMINATION RE: PENDING REGISTRATION APPLICATIONS:**

A. Vote by Board on regular registrations pending from May 1, 2018 through July 31, 2018.

MOTION TO ACCEPT: DOHNER
SECOND: RIFE
VOTE: MOTION CARRIED

5. OTHER BUSINESS:

A. Investigator's Reports – Craig Robinson / Jennifer Johanson

	Totals
January 01, 2018 through August 15, 2018	
Shop Visits	896
Renewal Reminders	208
NOV's	372
New Shop Applications	67
Complaints Investigated	68 (Involving 68 Shops)
Shop's Located "Out of Business"	55
Total Counties Visited to Date	44 out of 44

January 01, 2018 through August 15, 2018	
Shop Visits	732
Renewal Reminders	225
NOV's	243
New Shop Applications	72
Complaints Investigated	61
Shop's Located "Out of Business"	61
Total Counties Visited to Date	44 out of 44

RIFE: On the complaints that you have, do you break those up at all in two specifics like quality complaint; a complaint by a neighbor of the that business? Do you have like a breakdown on what the complaints are?

GREENE: They keep a recap, so we can always go to the recap look at them.

RIFE: Yeah, like look at individuals?

GREENE: Yes, look them up and see what it's about.

RIFE: Is there a trend on what they are about?

ROBINSON: Most of them, and I speak for Jenny, is usually it's a peer, it's another vendor/auto body shop who is aware that this guy is operating and he's operating unregistered.

RIFE: Ok.

ROBINSON: In fact, the comment that I get when I walk in is “hey, if it’s good for me then it’s good for him, too.” It’s routinely a (inaudible) from everybody.

JOHANSEN: Same

STERWERF: Any other questions?

GREENE: I might have misspoken on the new system, the recap is different, so I don’t know if it breaks it down. Does it?

JOHANSEN: We have the ability to break it down by any information we enter into it. There’s the capability now with the new system of running a report based on any perimeter that we’re entering in information. If it’s a consumer driven, if it’s internal driven, if it’s a board member driven we can search and sort in a report.

RIFE: So when you go to that box and there’s five choices and you pick one of those five so it’s not so broad.

JOHANSEN: Exactly

RIFE: If it’s a consumer complaint, if it’s a peer complaint. Ok

B. Attorney General’s Report – (Executive Session if Needed) – AAG Giles Allen

ALLEN: I guess I do have the Michael Griffin cases if we want to go into Executive Session since technically it’s pending litigation. Someone has to move for that.

MOTION TO ENTER INTO EXECUTIVE SESSION: WAGNER

SECOND: RIFE

VOTE: MOTION CARRIED

EXECUTIVE SESSION

EXECUTIVE SESSION ENDED.

C. Legislation Updates – ASA Ohio Rep. Matt Dougher

STERWERF: There’s an opinion letter from a law firm that came out that ASA sent around to its members in regard to the Williams vs. Sharon Woods Collision Center. Is anybody aware of that case law at all? It’s going to have groundbreaking – in my layman’s terms and opinion, it’s going to have some groundbreaking consequences for the body shop business and insurance companies. There some language in the case that is going to affect the fair claims practices act and the consumer sales practices act. The case was the local case in Cincinnati where the body shop decided to not pay attention to the repair procedures for Nissan and fix the vehicle the way they deemed fit and the customer found that there were some issues with that vehicle repair and had experts look at it. They did some more digging and found that Nissan want you to weld the rear body panel on and it was just glued. Nobody was injured in the case, it was just strictly going after the body shop for bad repair. They ended up getting an attorney and going to court. It’s very rare that these actually play out in court. It’s kind of like the Texas case that we had discussed earlier where you rarely get it to go to the jury and

play out where you see the public documents. This went to a local jury and they found in favor of the plaintiff and they got triple damages and attorneys' fees. It was roughly around a \$7000 repair, ended up costing the body shop well over \$100,000 and that's not including their attorneys' fees.

They were actually found to be fraudulent – pricing fraud, committing fraud. The way it plays out, it's unlikely that their liability insurance covered their attorneys' fees. It's a huge case for body shops not doing things correctly. We could be in the same situation as this company. The company is actually no longer in business. The new company is operating in the same place with a very similar name, unfortunately. This actually went to the Ohio Appeals Court and I just got a text while we were in this meeting that the Ohio Supreme Court is not picking it up and the appeals court even strengthened the case more so. They nailed this body shop. Some language in the way the jury and in the way the case played out was the "workman like manner" on a lot of DRP contracts; the insurance fair claims practices says "workman like manner" in the way this case played out it was like "workman like manner" means following the OEM procedures. There are questions as to do insurance adjusters need to reference OEM procedures to pay out claims fairly to make the claimant whole? When a customer doesn't want to fix a vehicle within OEM repair standards because they want to save the vehicle from being totaled; customize the vehicle. That puts the shops in precarious positions. Shops are doing things right and by the book and don't flinch from OEM procedures are going to be in a good place, this is a gift for them. Shops that do not pay attention to repair procedures and just do as they see fit, it's going to be a nightmare scenario for them. The insurance companies and adjusters it's going to be a changing battlefield or fertile ground for making the situation for consumers and everybody involved. We need to see ASA and the Automotive Trade Association work together and figure out a way that we can fix more vehicles and do it properly but notify the consumer that the vehicle has been repaired properly or has been altered in some way that may not be up to OEM standards so that way more vehicles can be fixed. If there's ever a time for ASA and the future of this board as these issues come out and more shops are sued, and more insurance adjusters are sued, the Consumer Practices Act basically with triple damages and with attorneys' fees being paid – attorneys across the state are going to be licking their chops bring some shops up and some insurance adjusters up.

RIFE: When did that suit start? What year?

STERWERF: Two years ago.

MCKEE: Was the insurance company found and liability whatsoever?

STERWERF: No

RIFE: The truth is, though, back in 2014 or whenever this car was repaired, for your benefit I guess, I don't know of anybody's shop that was following OEM repair recommendations. This has really just come up in the last year. We did follow material maker recommendations on how to fix a car. But I can tell you we, in 2014, weren't pulling OEM repair recommendations to fix a car. So in defense of that shop, they obviously did the wrong thing repairing the car, but you probably could take 9 out of 10 cars at that point in time and say the same thing. It's not changed, you still got 85% of the shops basically not looking to repair recommendations or there's no recommendations available by the OEM, then you have to go to the next step, what would be the best practice. So there's a lot of grey area there. I'm more pessimistic about it, everything takes so long. Just like we're seeing with case, these cases take a long time. If we do see benefits, I think is going to be a while yet before we see those.

STERWERF: This is case law that you don't need any lobbying firm for, you do not need laws changed. This is case law that was held up strongly by the appeals court. It's going to change things, big time.

ALLEN: Do you know what district it's in?

STERWERF: It was in Hamilton County.

ALLEN: Ok. The 1st District.

STERWERF: So, I can send you the information if you're interested.

ALLEN: I was just wondering if you would see other cases pop up in order to spread it throughout the state.

STERWERF: I can't speak on behalf of ASA or Matt, but I know that they are going to be looking at ways to help protect shops and give shops information to navigate these waters. The shops need to know that we need an association and we need a strong association to be able to deal with this change in dynamics.

RIFE: And that's another issue, too. ASA Nationally is in trouble, locally is in trouble and nationally is in trouble. Most shops don't care about these kinds of association. I hear you but, there are so many things that are going against us. We need this but, also need a lot of support from our industry which typically doesn't happen.

STERWERF: Then their reckoning is coming and they're going to be in court and they're going to be seeing some fines.

RIFE: I mean it's a wakeup call to everybody, really. You better be fixing the cars right or at least documenting while you do stuff.

MCKEE: I was going to say the reason why I asked if the insurance company was because we just got over a major fight with some new arguments on some procedures on these new F-150's and stuff of that nature with an insurance company. I was just wondering if they got involved at all so that way we can start pressing them to make sure that they are writing that stuff correctly as well. You know what I mean, because the problem is our stance is we're going to fix it correctly no matter what.

STERWERF: Pay attention to that e-mail that came out from ASA it directly writes to the law. Those portions that points out both the consumer practices act and the fair claims act.

RIFE: Again, I hate to be a Debbie Downer here, the board at one time helped pass whatever it was on aftermarket parts. Insurance companies have to notify the claimant or insured when they write aftermarket parts and it's supposed to have a signature showing that they notified that customer. I use that with insurance companies because they never ever get the signature. State Auto, local company, like the company they don't care. They don't care that they didn't get the signature.

STERWERF: But, that's law that's got to enforced.

RIFE: But it's not like any other law, this stuff does not get enforced. There's not enough of us raising hell about it.

STERWERF: Well there's going to be an individual case action that has to be take place that will.....

RIFE: I don't have any faith because the AG's office has their hands tied, too it seems through the bureaucracy of our courts. All of the ways you can work the system as the shop owner has done for several years, again, I hope you're right.

ALLEN: With a case like this and, if I'm repeating something you all have already heard or know just tell me to shut up, I think this a very good case for you guys. It is only governing authority in Hamilton County. A district court oversees – so like the 10th District here in Franklin County is only Franklin County. So only courts within that district become binding authority. So, for this to be spread, you would have to have, if you had a case in Cuyahoga County up in the 8th District and they cited this case. Then the 8th district says "Yeah, we agree with the holding of the 1st District; then that means that

this same case law would become binding in the 8th District. I think this is very good and I think you will see other people using it. When you have these initial cases like this until the Ohio Supreme Court takes you, you're going to have to have cases in all of the District Courts going up and I think like you said, you're/ going to have attorneys who will take them. They're going to look at it and say "Worst case scenario, I get nothing best case scenario I get a crap load of money" and they're going to take the case and you're just going to have them all over the state continuing to take it up and trying to get different appellate courts to issue a ruling like this so that way you have more of a blanket. What you will eventually want is you would want one court of appeals to rule against them. Then that way, the Ohio Supreme Court will then take it because you will have conflicting district court opinions and then that would kind of push them to take it. In terms of cases, I think you will see cases – in terms of the outcome, I don't know. This does only apply to Hamilton County, but I think you'll see other attorneys throughout the state trying to use it.

D. Director's Report – Mike Greene SEE ATTACHED

NEW ELICENSING SYSTEM

It's a little harder to keep track of the registrations in the new system; you'll remember before, I could give you a report on all of the non-registered shops in the state. I can't do that anymore with this system because if you're one day late and I run that report, it's going to show you as an illegal shop. There's just no way of separating it in the new system. It automatically rolls people over to "Inactive Expired". It's a little harder to keep track of that but on the other hand, it's much easier to keep track of the actual registrations and separate those in the categories like I did there.

INACTIVE/OUT OF BUSINESS/CLOSED SHOPS

In the future, we may want to look at making a decision on getting rid of the or taking the "Inactive" or the "Out of Business" or "Closed" shops – we may want to look into taking them out of the system. The reason I say that is with this new system, we're paying for each record within the system. If you have a licensed person and they stay licensed for 20 years, you're paying for them. If you have an illegal shop that stays illegal like the one in Cincinnati, for instance, for 10 years; you're paying for that in the system too. But, let's say that this shop has been in the system for 10 years and the guy retires and sells the building and they don't put a collision repair shop or auto shop back in there, we're still paying for that record. We've got some in there we need to probably think about that maybe the reason we did it in the past has always been, so we can track these, and the investigator can track them because 90% of the time it could be another auto shop that moves in there. That still happens. How long do we want to keep records on the old one, I don't know? Something to think about especially with the budget coming up.

WAGNER: How old are some of those you think, Mike? Are you talking some are maybe like 5 years or more?

GREENE: Oh yeah. And, there may be a way – I haven't figured it out yet, that we can divide those and say "ok, when did this one close and never open again." I'm just not positive on how to do that just yet. We're still learning the reports part of this system. Well, I am anyway. But there might be a way we could do some kind of a report in there, generate a report or come up with something. We're still looking at that. Based on just under 5000 records cost us about \$6500 a year. If we cut it in half, so we'll have 2500 records, that's a big chunk of money. In the big picture it may not be, it's money we can put somewhere else.

FY18 AUDIT

Will comes out probably within a couple of weeks. It's not much different audits in the past except for a couple of issues. They've decided that some of the things we were doing two years ago that were ok, they've found better ways of doing it; they want us to change that. Different reporting and keeping track of expenses and non-payroll expenses and things that were never an issue in the past. They've asked Kim and I to create a report for that.

One of the major things, if you'll all remember, I think you were all here when the fees were raised, we voted to raise the fees. I was here when they did that in 2006 and at that time John Cunningham was the Executive Officer, I think your dad was here, I think Dean was still here then. The AG, Ted Klecker, who we had at that point and John Cunningham kind of between everybody interpreted we didn't have to go to the controlling board if we stayed under 50% of an increase. At that time, it was \$150, if we didn't raise it more than \$75, we didn't have to get controlling board approval so, that's what they voted for. They raised it to \$225. Unbeknownst to me, John Cunningham researched that further afterwards and filed his own controlling board request on behalf of the board to ask for that fee increase and never said anything to me or anybody about it. During the audit, they found that we didn't do a controlling board request when raised it from \$225 to \$300. I explained to them that very scenario; we were always under the impression that if we didn't go over 50% and we only went up \$75 that we didn't need (to file a) controlling board file. They said, "well we're going to have our legal people review that and see if that's the way they interpret the law." So, I had Giles do it for me; I asked him to give me a written opinion on it and he did and we're wrong -- that's the bottom line. At least in the audit and CSA felt we needed to file a controlling board request retroactive to the fee increase. We have filed that, and we'll have a controlling board hearing I think, September 20th, I'm not sure. That will be in the audit, they're legal opinion and Giles had the same opinion as the auditor's office.

Bev Martin, who is the person who is doing John Cunningham's job now, spoke with the secretary of the controlling board and explained the situation. They suggested that that is what we do; get the controlling board approval and move on from there and the next time, hopefully there won't be a next time where we would have to raise fees but if there ever is, we'll have it in writing by Giles and the Auditor's office. When I was on the phone with Giles and I read it out loud and I said "You know what? I think we need the controlling board!" The way I read it, I said "We even need controlling board approval to lower it." Didn't you read it that way? If want to lower the fees, I'm pretty sure we would have to get controlling board approval there. Regardless, we're going to get controlling board approval and do that for now on. You will see that in the audit report.

MCKEE: In the increase in revenue going to cover what we were trying to cover? With the eLicensing and the facility charges now; what we were trying to accomplish with the \$75 increase.

GREENE: No, But there's a reason for that. Since then, all DAS charges across the board went up another 10%; 10% don't seem like much but that's about \$80,000 a year. The other thing was the payroll increase, increases went up July 1st. That was kind of a twofold thing; our cost for insurance -- healthcare for everybody, retirement contributions, wages went up July 1st about 2 or 3%. That is a huge amount of money right there. The insurance alone; just to give you an example: 10 years ago when I did the budget, you could take somebody's salary and you could say that 32% above that is what you're going to have to have in there to pay their benefits. Now, it's like almost like 60%; that's a huge increase.

No, our revenue does not cover our expenses but we're doing what we can do with what we have. With that being said, not that it's a good thing, Theresa's been very ill, she's been on temporary disability, and I'm not sure what her status is going to be in another month or so. If she's going to go on permanent disability or if she's going to be able to come back, I don't know. In the event that she is not able to come back, to save us money, I'm probably not going to fill that position. That would probably be close to breaking us even.

STERWERF: What are the consequences should the controlling board not accept our increase?

GREENE: I've never heard of them not accepting one. I don't know. I supposed they would decide on whether we paid the money back or start over again, I don't know.

MCKEE: I would assume by them looking at our expenses and what we're taking, that's why I sort of asked my question, too.

GREENE: I'm not sure if the controlling board even looks at all of the reports. It's a controlling board request and what goes on their agenda is extremely brief. It kind of says "The Department of Administrative Services wants \$1.5 million to buy computers this year" that's about the kind of thing you get. The Motor Vehicle Repair Board needs a Mulligan.

RIFE: Hey Mike, did you say the difference between the unloaded and loaded cost of employees 60%?

GREENE: Yes.

RIFE: That's staggering.

GREENE: It is.

RIFE: In our industry, we use the number 25%.

GREENE: It was 34% or 32% just a few years ago.

RIFE: That's an issue.

STERWERF: But that's a statewide issue.

MCKEE: I think that's all of our issue.

GREENE: That's why you're seeing less and less benefits and more and more 39 hour a week people. Because there's a lot of 39 hour a week people in this building.

6. OLD BUSINESS:

A. New Mission Statement

DISCUSSION

MOTION TO TABLE UNTIL NOVEMBER 14 MEETING: KATRIS

SECOND: RIFE

VOTE: MOTION CARRIED

B. New Agency Goals

DISCUSSION

MOTION TO ACCEPT REVISED AGENCY GOALS: WAGNER

SECOND: RIFE

VOTE: MOTION CARRIED

9. ADJOURNMENT

MOTION TO ADJOURN: MCKEE

SECOND: RIFE

VOTE: MOTION CARRIED

NEXT BOARD MTG. – NOVEMBER 14, 2018, LOCATION:

Vern Riffe Tower, 77 South High Street, 19th Floor, Room 1914, Columbus, 43215.

DIRECTOR'S REPORT

August 15, 2018

I. FY18 Total Revenue = \$509,807

- A. FY17 Total Revenue = \$476,314
- B. Increase = \$33,493

II. 2026 Registrations

- A. 1 Airbag Business
- B. 1546 Collision Shops
- C. 38 Dealerships
- D. 187 Glass Shops
- E. 36 Mechanical Shops
- F. 70 Mobile Businesses
- G. 148 Tint Installers
- H. 207 Pending

(Total Businesses in E-Licensing System = 4643)

III. Complaints Forwarded

<u>AGENCY</u>	<u>2017</u>	<u>2018</u>
OAG	8	3
EPA	5	
TAX	6	2
BWC	3	
NICB	5	
DOI	6	3
IRS	3	
BMV	2	2
OSHP	0	
BBB	25	12

IV. Other News

- A. FY18 Audit is complete.
- B. FY20-21 Budget due September 12th
- C. 2019 Workforce plan due September 28th
- D. Diversity & Inclusion Strategic Plan 2018 – 2020 completed.
- E. FY18 encumbrances = \$18,564
- F. FY18 LSC Annual Report completed July 26th