



OHIO BOARD OF MOTOR VEHICLE COLLISION REPAIR REGISTRATION BOARD MEETING MINUTES

November 7, 2012 10:00 AM

Vern Riffe Tower
77 South High Street
19th Floor, Rm. 1932
Columbus, Ohio 43215

1. **THE MEETING WAS CALLED TO ORDER AT 10:00AM.**

INTRODUCTION OF MEMBERS & GUESTS PRESENT:

BOARD MEMBERS IN ATTENDANCE: Jennifer Justice-Haley, Russell Westfall, William Ogg, Joseph Sanfillipo, Cheryl Hawkinson (AAG), Michael Greene, Dan Gibson, Kimberly Sherfield

BOARD MEMBERS NOT IN ATTENDANCE: Ronald Nagy, Brian Seibert, C.J. Paterniti

GUESTS IN ATTENDANCE: Matt Walleck (Dover, Ohio), John Kirkbride (Nagy's Collision)

2. **REVIEW OF AUGUST 15, 2012 MEETING MINUTES:**

MOTION TO ACCEPT: JOSEPH SANFILLIPO
SECOND: RUSSELL WESTFALL

DIRECTOR GREENE: There was one correction that Cheryl sent to us prior to the meeting that's been placed on the original minutes, it's not on your copy but it's on the original minutes.

OGG: Do we need to have a motion to approve the amended minutes? Probably?

HALEY: It was amended from our copy, what was it?

HAWKINSON: It was on "C" Status Report "Joe is done in Texas" I thought it was "down in Texas". It could have been "done in Texas" too.

DIRECTOR GREENE: That will be on the ones that are posted.

MOTION ON THE APPROVED AMENDED MINUTES: JOSEPH SANFILLIPO
SECOND: WILLIAM OGG
VOTE: MOTION CARRIED



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3. BOARD REVIEW AND DETERMINATION RE: PENDING REGISTRATION APPLICATIONS:

A. Vote by Board on regular registrations pending from July 31, 2012 through October 22, 2012.

MOTION TO ACCEPT: RUSSELL WESTFALL
SECOND: WILLIAM OGG
VOTE: MOTION CARRIED

4. OTHER BUSINESS:

A. Investigator's Report (Inv. Dan Gibson)

Shop Visits	603
Renewals	23
NOV	162
New Shop App	94
Complaints Investigated	92 (Involving 92 Shops)
Shops LOB	51

Investigator Gibson has visited 79 of the 88 counties so far this year.

SANFILLIPO: Would like to see a check list of what you go through to evaluate the potential registration. To see where we're at and are following up on them like we should.

DIRECTOR GREENE: I'll email that to you, it's no problem. It was actually made up and approved the Board. I believe it was in 2006. It was placed on the eLicensing system back then, I think it was 2006. I'll copy it and email it to you.

SANFILLIPO: Ok, we may need to take a look at those and revise them from 2006.

HALEY: Any other comments (Questions) for Dan?

OGG: My question for Dan is, is a mobile business or a glass shop, are they any way counted twice? If a glass shop has a mobile business also, is that two entries or just one.

DIRECTOR GREENE: Well, what it is if they have a stationary location like Zebart, for example, has Speedy Glass. They can have one registration and then



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work as many mobiles out of that location as they want. If you've have a franchise person like Glass Doctor, for instance, he has a guy in Cleveland that's working for him and a guy in Toledo that's working for him then they need to be separate. If they're working out of their homes, they need to be registered separately. But if they have a stationary or what we have in the law as "home base" they can work as many mobile units out of the home base as they want. We have some whose home base is actually out of state and they have mobile units that come in, especially Indiana, they come in after a hail storm or something like that, they send a mobile unit in Ohio to do repairs. Their registration says they're out of Indiana.

B. Status Report on Injunctions (AAG Cheryl Hawkinson)

HAWKINSON: Mike, Dan and I met and we went through this huge list of approximately 397 shops that are not registered and we had a discussion on how to start handling these and so we came up with a little bit of a strategy. I sent out 26 letters, giving people 30 days to come into compliance or we will start filing injunctions; out the 26, it's 25 owners in 10 counties. So what we did was we came up with some of the worst offenders and figured out where they were and anyone else in that county is also being included. The letters went out October 26, so they have until November 26. I received two calls and I forwarded to them to Mike and Dan and they said they were no longer in business. My request was that they let Dan come out and take a look, so we will be doing that. Mike have you received any other calls?

DIRECTOR GREENE: I've received the two you forwarded to us and then a third one, A & M, Anthony Mathews in Cincinnati. He didn't call you first, did he?

HAWKINSON: No.

DIRECTOR GREENE: Ok. He's going to register.

SANFILLIPO: What is our recourse once you send this letter out? If they ignore it, we take them to court, if a fine is imposed prior to that? I understand that you can't approach all 90 but on the other hand you have 90 shops out there that aren't complying...

HAWKINSON: No, we have 397 that aren't complying.

GREENE: Yeah, 397.

SANFILLIPO: Ok, what are we doing with them?



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HAWKINSON: Well actually when we talked we decided that the best strategy was to go to some that have habitually not registered, the biggest problems. Go with them and do everybody in that county, so it doesn't look like we're just picking and what we also talked about was doing waves. We pick a certain group, send letters out. See how many register, file injunctions on the ones that don't comply within 30 days and start looking at the next group and do another letter in areas where we're going to hit.

The 10 counties are all over the state, they're not just located in one specific area. So if we looked at Allen and Ashtabula, we did a couple in Butler, Clark, Crawford, Hamilton, Greene, one in Franklin County and Lorain. So, we're trying to hit different parts of the state all at the same time. Hopefully, we'll have kind of a ripple effect if we can get some press and then just keep working. I can't file 397 at one time, Dan has other things to do because he's going to have to be prepared to go to court with me on all of these, so we're hoping to get about 50% compliance and 13 injunctions. A couple of the ones we picked already had injunctions on them where we got contempt and they're back un-registered. There were a few of those that we just picked and said we're going to do them again, too. The Franklin County one is like the worst offender of Franklin County. The Hamilton ones are the ones that have already had injunctions and I've went on and got the previous cases so when we do file an injunction, I can attach those.

SANFILLIPO: (INAUDIBLE QUESTION ASKED)

GIBSON: They came into compliance and then the next renewal, second renewal or third renewal, whatever, they don't renew. So they're back in non-compliance which basically ...the way it was done in the past and I think Cheryl is changing this, is we'll have to go for another injunction. They're playing the system, that's what they're doing. They realize that all of this takes time and the courts are booked with much more serious things as far as felonies and things like that. If it gets down to where they're at the top of the priority list as far as the court goes, they're going to get in compliance again. They're going to pay all of their back fees and they'll be good for another 12 months to come out of compliance 12 months later.

HAWKINSON: The way it was done before, if they came into compliance, you would dismiss the injunction. I'm not going to dismiss the injunction we're going to do a summary judgment that they are going to stay in compliance. If they, at any point, fall back into a non-compliance status, it will be considered contempt and we will not have to start the injunction process over.



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SANFILLIPO: Are they following all of the other rules besides not being registered? Did they make any attempts to have their licenses, their vendor's license, their sales tax...?

GREENE: We don't know, they haven't turned in any paperwork in to us, most of them.

SANFILLIPO: I guess that's my question, why are we issuing compliances or registrations when they haven't gotten all of the tools to be in business.....

GREENE: No, we're not. What I'm saying is, you asked if they were in compliance with everything else and a lot of these are not. They're not registered with us either. We're not issuing them registrations.

SANFILLIPO: We're talking about someone who is registering today who hasn't paid.

GREENE: Oh no those have to compliance with everything.

SANFILLIPO: Ok, at that point we've got a (INAUDIBLE) they've got their proper licenses

GREENE: Oh, I thought you meant the ones on the list.

SANFILLIPO: No, the blatant violators we've got here.

GREENE: They have to come into compliance with everything before they get a registration.

OGG: The commissions don't have any teeth. I served on the election commission for five years and there are fines over there in those file boxes that go back 20 years that have never been paid, never will be paid. We asked the legislators to legislate anyone who has a fine cannot go to the courthouse and take out a petition (to run) for public office. You can owe state income taxes of \$100,000 and a fine over there for \$100,000 and owe the federal government \$500,000 and go in tomorrow and take out a petition to run for anything you want, doesn't make any difference. You just don't have any teeth to stop what these guys are doing, get into compliance for a year and then back out for 4 or 5 years.

HAWKINSON: We are hoping, by not dismissing, when they come into compliance and having an entry put on saying that they will continue to stay in compliance as long as they operate a business that meets the definition. If they do come out of compliance it's an easier course of action to go in and file



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contempt then it is to do an investigation all over, to file an injunction all over again.

SANFILLIPO: Once we file a contempt charge, where does it go from there? Do we padlock the business?

HAWKINSON: Well, we file contempt, we have to have a hearing on the contempt, and the judge finds them in contempt, padlock the business and they can serve jail time. So, it's a little bit more of a hammer because a regular injunction, you get the injunction if they don't come in you can padlock them. They pay you can un-padlock them then the next year come around and they don't do anything, if we already dismissed the injunction, we don't have a follow-up.

SANFILLIPO: What can this board do to ensure that we don't go backwards and the next AG does decide to dismiss injunctions?

HAWKINSON: Well, I think that's a policy call you that you guys have the ability to make along with my office. You get the option.

SANFILLIPO: So, determine whether you relinquish those or don't.

HAWKINSON: Well, I don't know what you did in the past.

SANFILLIPO: Well, that's the way it should be moving forward.

HAWKINSON: My recommendation is not to dismiss it, Mike agreed. If the Board agrees, that's what I'll do because you do have some say. My office has some say and you have some say on how to settle litigation and injunctions are litigation. My recommendation is we don't dismiss once they come into compliance we get an agreed entry that the court will sign that they agree as long as they meet the definition to stay in compliance and that we have the right to come out and inspection when we want to, to ensure they are.....

HALEY: Is that what we've been doing historically?

GREENE: No, we were never given that option before.

HALEY: But we are now?

HAWKINSON: That's my recommendation.

SANFILLIPO: That's what I'm trying to figure out. What teeth do we have as a board? Can we mandate in our ruling that we can say from this point on, the



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Attorney General, no matter who is sitting in that seat, has to come to us before we dismiss an injunction and we have to approve it?

HAWKINSON: Yes, you can say that.

SANFILLIPO: How can we go about getting that done?

HAWKINSON: Number one, you can do a motion. Number two, you can do a motion between the chair and Mike, in talking with me that you make a decision and then you can bring it back to the board and you can just tell them what your decision is. Now, the thing is, if you do it as a board decision that means I will have to wait until the board meetings in order to settle cases and that's going to make it hard especially since you guys only meet four times a year and injunctions will go. Not unless you want to hold a special meeting for me to come down and present a settlement. You can do that where you give the authority to the chair and your executive director and then they tell me and I explain what the options are.

SANFILLIPO: That's the most feasible way of doing it.

GREENE: The thing you have to understand is, that's the way it's been done in the past. The reason why I say we didn't have that option before is whenever the administration change sometimes the rules change. The next Attorney General may not agree with that. Am I wrong?

SANFILLIPO: I don't think the Attorney General can arbitrarily change the rules that we put in place. Once they are in place from the board.

HAWKINSON: Well let's put it this way, you guys can make up litigation, call my office and my office can disagree with you. My office will trump.

GREENE: They are our legal counsel. The next Attorney General may say well we're not going to let the board tell us what we're going to dismiss or not dismiss, we're going to do this and they're going to have to live with it. It's not set in stone and they are our attorney so we kind of have to go along with them. Now that I know that this option exist and I didn't know that before Cheryl came; I can suggest that anytime we have another Attorney General or Assistant Attorney General, I can say "before we dismiss this is there any way we can have an agreed entry?" and they can tell me either "yes, that's a great idea we'll do it if that's what you want" or they can tell me "sorry, we don't do things that way." I didn't know we had that option before because it's never been presented to me like that.



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SANFILLIPO: It's a little frustrating at the fact that it can be taken out of our hands if the AG is working for us. It's kind of like, if I hire my attorney, who tells my attorney what to do? Who is trumping to cards here? The board or...

GREENE: Well, the Attorney General's office has a lot more authority to make those decisions. Under the statute we're not hiring an attorney, they are appointed to us. They are our legal counsel because we are a state agency.

HAWKINSON: I will tell you that the AG will take what the client wants to do into consideration.

GREENE: They've always been reasonable; I just never knew we had that option. What I was told before in the past was, I would notify our AG and say "this person has paid up and complied. They showed all the paperwork and we've got everything in order" and he or she would say "Ok, I'm going to dismiss the case" and I was never asked if I wanted to dismiss the case or get an agreed entry where they would have to stay in compliance.

SANFILLIPO: It makes a lot more sense what Cheryl was saying.

GREENE: She's actually made it a lot better for us, a great opportunity.

SANFILLIPO: We need to make that motion to allow the chair and the director to work directly with the AG in settling court cases.

MOTION TO ALLOW BOARD CHAIR AND EXECUTIVE DIRECTOR TO SETTLE COURT CASES: SANFILLIPO
SECOND: WESTFALL
VOTE: MOTION CARRIED

SANFILLIPO: What do you feel the time frame is going to be in taking these people to court?

HAWKINSON: They've got 30 days from the date of the letter and if they come in compliance within the 30 days then there won't be an injunction filed. If that, we're going to pick a couple of counties and file them there and then wait a week or two and file some more there because it's going to be hard for Dan and I to go to Ashtabula and then have to go to Butler county within a day. It all depends, too, Dan's going to have to do whatever follow-up we need on the affidavits and stuff like that. It's not going to be immediately after the 30 days but hopefully within the 30 days after that we will have some filed.



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SANFILLIPO: So it's imperative to us as a trade association or people in the industry to get this salvage bill passed that will bring all those court cases to Franklin County.

HAWKINSON: That would be a lot easier. Right now, we're going to be travelling the state.

C. Status Report on Legislation – (ASA) SANFILLIPO

SANFILLIPO: Well I was talking to Joe today before I left, they are waiting for session to come back in and they've got a meeting next week with the people presenting and they're going to kind of see where that goes.

ASA is not taking a position either way, they're still in investigative mode which is pretty much normal for them. They are expected to proceed once they get back in.

HALEY: Is it in committee still?

SANFILLIPO: Yes.

D. Director's Report (Dir. Greene) SEE ATTACHMENT 1

SANFILLIPO: On those complaints that you've forwarded, do we get any kind of response back from those agencies as to what's been done?

GREENE: Yes, I've gotten some responses back from Taxation; we get a lot of feedback from NICB; I've gotten a couple of responses back from the IRS, nothing major. OSHP, I get responses back on all of them and the Better Business Bureau I get responses back on all of them. The rest of the agencies are kind of a hit or miss. Back in 2011, if you look at the BMV on 103 cases, I've received responses back on all of them. Since then, the 6 that I've done this year, I haven't got back any response. The Department of Insurance, we're opening up some new communications with them and it's getting a little better with their investigative people. Mainly thanks to the NICB because they work real close with the Department of Insurance. So, I'm getting some back and forth dialogue with them which before last year, we had absolutely nothing hardly at all but it's getting better. We're getting some good contacts there. We do get some response back from EPA in the regional areas. It's not from the State EPA but it's from the people that are contracted by them, Ohio Air Quality Control. We do get some responses back from them, we don't always get a response whether or not the shop was in violation or not but we'll get a response like "we visited this shop on this date. We followed up on your complaint". We don't always get a definite yes or no whether or not they are in violation but we do get some responses from them.



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SANFILLIPO: Is there any way to, maybe enhance those reports (INAUDIBLE) so that we really know before we issue them a registration (INAUDIBLE)?

GREENE: Well, these are not ones that are getting registrations, these are the ones that are on this list of 397, and they will have a long way to go before compliance. What happens is when we get one like the one we had in Greene County, after several visits by Dan, violation notices served or the process of letters we go through before we send it over to the AG, then in that process somewhere, I have an enforcement list of these agencies that I ship that out to and say "here's a shop that we have been investigating, they are in violation of our laws. If they are violating something as simple as our laws, they're probably violating a bunch of others." So Taxation will open a case on them, EPA will open a case on them. If they have employees, BWC will open a case on them and maybe six months later, I'll get something back from Taxation in an email or sometimes will find it in a court case where they have filed something against the shop owner. That's the way we're turning them over but they're not people that are getting legal with us. Most of these will never be in compliance with us. The majority of the shops that we talked about, they will be shut down or indicted before they ever get a registration.

5. **NEW BUSINESS:**

A. 2013 Board Meeting Dates

MOTION TO ACCEPT DATES: SANFILLIPO

SECOND: WESTFALL

VOTE: ACCEPTED

SANFILLIPO: You had mentioned earlier that you needed additional help and that you have been granted person but nothing to pay them with.

GREENE: I think I sent out everybody a copy, when I sent those reports, I sent you a copy of a staffing report we had to do. In that staffing report I asked for another Investigator and I asked for an additional office person. We got the investigator approved and then went to human resources and got that position description changed to an investigator's assistant to save us getting another car, getting travel the items they'll need and having an investigator in the office all of the time. They can do a lot of the follow-up computer work that Dan does now and have things ready for Dan when he comes in. We get a complaint on a Monday and Dan comes in on Thursday, here's a case waiting for him, ready to go. I got that approved, I thought that I could go to the Controlling Board for the money, I was then I needed to come up with the money for that position before I could post it and hire someone. I told them the idea for the position was to generate more revenue. I can justify the additional revenue with a new person. I guarantee we can bring enough to cover that



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position. You have to have the revenue up front. At the same time my budget gets cut \$15,000, so it's a real difficult time to be doing anything, but to get a position approved was huge. It has been a hiring freeze since January 2007, for them to say I can add a person was great news. For them to say "yeah, you can add a person, now you figure out how you're going to do it" was not good news. What I need to do, and I've already talked to the finance people at Central Service Agency, which kind of oversees our budget process and our finances and everything. They kind of want us to wait until the 2014-2015 budget get passed which we're looking at March before it's put into a bill. Once that is done, I can go back and ask for more money and maybe get the money to fill that position. As it stands right now, while we're still in FY13, I can't do anything until we have another budget bill to work off of. It is, however, very promising. I don't think I'm going to get another road person because that's a lot of money when you're looking at the car, the benefits and everything like that and the extra equipment, but if I can move a person in, I've got the office equipment and a person to handle the call in complaints, everything that Kim and I are doing right now. Getting stuff ready when he comes in, I can have somebody else do the research and all of that work. Plus, I can have that person doing a 30-day following-up on people who were issued a notice of violation and taking care of that case from then and taking it off of Dan's hands. He (Dan) can move on to other things. It's every promising. If that bill passes, I could probably get both of those positions in a heartbeat because I can go in there with new legislation on the table and new legislation means more responsibility.

6. ADJOURNMENT

MOTION TO ADJOURN: OGG
SECOND: SANFILLIPO
VOTE: ACCEPTED

NEXT BOARD MTG. – FEBRUARY 13, 2013, LOCATION:
Vern Riffe Tower, 77 South High Street, 19th Floor, Room 1932, Columbus.