

# DEFENSIVE DRIVING BOARD

Wednesday, December 19, 2012

Arizona Supreme Court -1501 West Washington Street

Phoenix, Arizona 85007 – 10:00 A.M. – Conference Room 109

General Inquiries Call: (602) 452-3378 (Certification and Licensing Division Line)

Members of the Public May Attend Meeting in Person

## AGENDA

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For any item listed on the agenda, the Board may vote to go into Executive Session for advice of counsel and/or to discuss records and information exempt by law or rule from public inspection, pursuant to the Arizona Code of Judicial Administration, Section § 1-202(C).

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CALL TO ORDER: ..... *Elaine Sweet, Chair*

1) REVIEW AND APPROVAL OF MINUTES:.....*Elaine Sweet, Chair*

1-A: *Review, discussion, and possible action regarding the regular session minutes for the meeting of November 19, 2012.*

2) INITIAL CERTIFICATION APPLICATIONS.....*Wendy Reiter and Chris DeWitt*

2-A: *Review, consideration and possible action regarding pending initial certification applications of the following defensive driving instructors:*

1. *Nikolai Henss*
2. *Adam Maxwell*
3. *Janet Gallup*
4. *Jennifer Adkinson*
5. *Dan Saban*
6. *Bryan Adams*
7. *Katherine Hernandez*

2-B: *Interview with and possible action regarding applicant Hannah Pinner.*

2-C: *Review, consideration and possible action regarding pending initial certification applications of the following defensive driving schools:*

1. *OnlineArizonaDefensiveDriving.com*
2. *AZ 4-Hour Traffic School*
3. *Ticket Dismissal of Arizona*
4. *Traffic Schools of Arizona*
5. *Drop the Ticket Traffic School, LLC*

6. Rush Hour Traffic School

3) ADMINISTRATIVE ISSUES.....*Debbie MacDougall and Chris DeWitt*

3-A: *Review, discussion, and possible action regarding the establishment of the 2013 Board meeting schedule.*

3-B: *Review, discussion, and possible action regarding request for placement on Inactive Status received from certified school Phoenix Traffic School, certification number 49061.*

4) REVIEW OF PENDING COMPLAINTS.....*Mark Wilson and Linda Grau*

4-A: *Review, discussion and possible action regarding the following certificate holder complaints:*

*Complaint Number 09-D020 – DrivingUniversity.com*

*Complaint Number 11-D007 – Dennis Hayes & AZ Defensive Driving School*

4-B: *Update regarding pending complaints.*

4-C: *Discussion regarding Administrative Order No. 2012-83.*

CALL TO THE PUBLIC ..... *Elaine Sweet, Chair*

ADJOURN:..... *Elaine Sweet, Chair*

# **DEFENSIVE DRIVING BOARD**

## **Agenda Summary - Wednesday, December 19, 2012**

### **1) REVIEW AND APPROVAL OF MINUTES**

*1-A: Review, discussion, and possible action regarding the regular session minutes for the meeting of November 19, 2012.*

Attached for Board review and approval are the regular session minutes of the November 19, 2012 meeting.



**Arizona Supreme Court  
Defensive Driving Board**

Arizona State Courts Building  
1501 West Washington Street  
Phoenix, Arizona 85007  
Hearing Room 109

November 19, 2012  
10:00 a.m.

**DRAFT Regular Meeting Minutes**

**MEMBER ATTENDANCE**

<i>Present:</i>	<i>Telephonically Present:</i>	<i>Absent:</i>
Elaine Acosta Sweet	Melissa Caraker	Lynette Rudow
Thomas Davis	Paul Hallums	
Judge Gary LaFleur	Gordon Fox	
Daniel Edwards		
Robert Hall		
William (Patch) Pachnowski		

**OTHER ATTENDEES**

<i>AOC Staff:</i>	<i>Guests:</i>
Mark Wilson	Maria Medina
Jennifer Greene	
Anne Hunter	
Debbie MacDougall	
Kimberly Siddall	
Chris DeWitt	
Afton Foutz	
Michelle Jackson	
Pasquale Fontana	

**CALL TO ORDER**

Called to Order By:  
Time:

Elaine Sweet, Chair  
10:00 a.m.

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1) *REVIEW AND APPROVAL OF MINUTES* Elaine Sweet, Chair

1-A: Review, discussion and possible action regarding the regular session minutes for the meeting of October 17, 2012.

**Discussion:** None

**Motion:** Move to approve the regular session meeting minutes for the meeting of October 17, 2012.

**Motion Proposals:** First Robert Hall  
Second Thomas Davis

**Motion Results:** Pass

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2) *ADMINISTRATIVE ISSUES*

**Individuals Addressing the Board:** Anne Hunter

2-A: Review, discussion and possible action regarding proposed amendments to the Defensive Driving Program, including proposed amendments to the Arizona Code of Judicial Administration § 7-205.

**Discussion:** Anne Hunter presented a summary of the proposed amendments to ACJA § 7-205(E) regarding the establishment of certification and curriculum requirements for a teenage driver school.

**Motion:** The motion to accept the proposed amendments to the ACJA § 7-205(E) regarding the addition of teenage driving schools and all language related to teenage driving schools is defeated.

**Motion Proposals:** First Robert Hall  
Second Daniel Edwards

**Motion Results:** Defeated

**Discussion:** Anne Hunter presented a summary of the proposed amendments to ACJA § 7-205 regarding new language in subsection (l) which is intended to clarify the process ADM schools are utilizing to verify user identity of a student during the ADM course.

**Motion:** Move to accept the proposed language with respect to ACJA § 7-205(E)(l) regarding the clarification process ADM schools are utilizing to verify user identity of a student during the ADM course.

**Motion Proposals:** First Robert Hall  
Second Paul Hallums

**Motion Results:** Passed

**Discussion:** Anne Hunter presented a summary regarding the new language in subsection (1) and in response to a request made by Judge Norman Davis, Presiding Judge of the Superior Court in Maricopa County, for clarification in ACJA § 7-205 regarding the factors that judges should consider when reviewing a request from a police officer who wants to serve as a defensive driving instructor.

**Motion:** The Board approves the recommended proposed amendment regarding the application for wavier for certain law enforcement officers.

**Motion Proposals:** First Daniel Edwards  
Second William (Patch) Pachnowski

**Motion Results:** Passed

**Discussion:** Anne Hunter presented a summary regarding the proposed language in subsections (k) and (l) which was added to clarify how and when school fees as well as court fees are to be made available to students in any and all materials including a school website.

**Motion:** Move to accept the amendments to sections (k) and (l) as stated.

**Motion Proposals:** First Paul Hallums  
Second Daniel Edwards

**Motion Results:** Passed

**Discussion:** Anne Hunter presented a summary regarding AJCA § 7-205(G)(3)(a) which language is stricken because with the increasing use of Internet classes, there are fewer opportunities for an instructor to teach and meet this requirement.

**Motion:** Move to strike the language as stated.

**Motion Proposals:** First Paul Hallums  
Second Daniel Edwards

**Motion Results:** Passed

**Discussion:** Anne Hunter presented a summary regarding AJCA § 7-205(J)(1)(b)(4). The additional language was proposed by school owners in order to clarify advertising requirements and restrictions.

**Motion:** Move to accept the additional language as stated.

**Motion Proposals:** First Robert Hall  
Second William (Patch) Pachnowski

**Motion Results:** Passed

**Discussion:** Anne Hunter presented a summary regarding AJCA § 7-205(J)(1)(e). The additional language was proposed by school owners in order to clarify advertising requirements and restrictions.

**Motion:** Move to accept the additional language as stated.

**Motion Proposals:** First Robert Hall  
Second Daniel Edwards

**Motion Results:** Passed

**Discussion:** Anne Hunter presented a summary regarding AJCA § 7-205(K). Fee changes proposed by Division staff because costs in processing an initial application are the same regardless of the period of time until renewal of the initial certification. In addition, reinstatement application fee is raised.

**Motion:** Move to accept the additional language as stated.

**Motion Proposals:** First Paul Hallums  
Second Robert Hall

**Motion Results:** Passed

**CALL TO THE PUBLIC.....Elaine Sweet, Chair**

None

ADJOURNMENT.....Elaine Sweet, Chair

*Motion:* Motion to adjourn.

*Motion Proposals:* First Robert G. A. Hall  
Second Daniel Edwards

*Motion Results:* Pass

*Time:* 10:45 a.m.

# DEFENSIVE DRIVING BOARD

Agenda Summary - Wednesday, December 19, 2012

## 2) INITIAL CERTIFICATION APPLICATIONS

2-A: *Review, consideration and possible action regarding pending initial certification applications of the following defensive driving instructors:*

*The following applicants have submitted complete applications, demonstrating they meet the minimum eligibility requirements, and no information has been presented during the background check which is contrary to certification being granted. It is recommended the Board grant initial certification to applicants:*

1. *Nikolai Henss*
2. *Adam Maxwell*
3. *Janet Gallup*

*The following applications remain incomplete pending receipt of additional documentation. It is tentatively recommended the following applications be deferred to the next meeting of the Defensive Driving Board. In the event the anticipated information is received prior to the next meeting, an alternative recommendation will be presented to the Board:*

4. *Jennifer Adkinson*

*The following applicant failed to disclose being involved in two civil suits –case numbers CV2005-007294 and CV2009-030927 on his application. Mr. Saban explained his failure to disclose as an “oversight,” He provided an explanation of both of the complaints and judgments from the civil suits when requested. In addition, the applicant failed to disclose a traffic violation from 2009. In explanation of his failure to disclose the violation he stated that he had forgotten about it. The applicant otherwise meets all requirements and it is recommended to grant standard certification and have staff include language regarding non-disclosure on future applications.*

5. *Dan Saban*

*The following applications were received and processed for Board review:*

6. *Bryan Adams -- Applicant disclosed being terminated from Arizona Department of Transportation in 2011 for “supposedly not following dept. guidelines for internet usage.” Staff contacted the Arizona Department of Transportation for a detailed description of the termination. See enclosed email from applicant and letter from the Arizona Department of Transportation.*

It is recommended the Board deny the applicant initial Defensive Driving Instruction Certification pursuant to Arizona Code of Judicial Administration (“AJCA”) § 7-201(E)(2)(c)(2)(b)(viii) *has a termination, suspension, probation or any other disciplinary action regarding past employment if the underlying conduct is relevant to the certification sought.* The purpose for certification of schools and instructors is to ensure performance of responsibilities in a professional and competent manner and code of conduct states an instructor shall exhibit the highest degree of professional conduct and pursuant to ACJA § 7-201(E)(2)(c)(2)(b)(xiv) *has made a false or misleading oral or written statement to division staff or the board* by misrepresenting the reason for his termination with Arizona Department of Transportation.

7. Katherine Hernandez - Applicant filed an application on June 18, 2012. Staff sent correspondences on August 3<sup>rd</sup> and again on October 17<sup>th</sup> asking for a copy of her diploma and letting her know she needed to take and pass the examination. To date applicant has not provided the requested information or has not sat for the examination. Therefore, it is recommended to deny pursuant to ACJA § 7-201 (E)(2)(c)(1) *applicant does not meet the eligibility requirements at the time of the application* as described in ACJA § 7-205 (E)(2)(e) and *has not submitted a complete application with all deficiencies corrected.*

# **DEFENSIVE DRIVING BOARD**

## **Agenda Summary – Monday, December 19, 2012**

### **2) INITIAL CERTIFICATION APPLICATIONS**

*2-B: Interview with and possible action regarding applicant Hanna Pinner.*

Applicant disclosed being convicted of possession or use of marijuana, a class 1 misdemeanor, on September 11, 2005 and again on November 10, 2009. Staff has requested a detailed explanation from the application, as of today the information has not been received from the applicant.

Attached is her application and all documentation received to date.

**Staff recommends the Board address the two convictions and any other information pertaining to her application and determine if the information presented is contrary to certification being granted.**

# DEFENSIVE DRIVING BOARD

Agenda Summary – Wednesday, December 19, 2012

## 2) INITIAL CERTIFICATION APPLICATIONS

2-C: *Review, consideration, and possible action regarding pending initial certification of the following defensive driving schools:*

1. *OnlineArizonaDefensiveDriving.com*
2. *AZ 4-Hour Traffic School*
3. *Ticket Dismissal of Arizona*
4. *Traffic Schools of Arizona*
5. *Drop the Ticket Traffic School, LLC*
6. *Rush Hour Traffic School*

1. OnlineArizonaDefensiveDriving.com, an internet format defensive driving school, applied for certification on August 17, 2012. The school's office is located in Santa Rosa, California. The school's designated principal is Vannette Soldis. The school is also known as The Distance Learning Company and Traffic School Online.

Division staff has performed a review of the new school's application and curriculum.

**It is recommended initial certification be granted to OnlineArizonaDefensiveDriving.com.**

2. AZ 4-Hour Traffic School, a classroom and internet format defensive driving school, applied for certification on August 30, 2012. The school's office is located in Tucson, Arizona. The school's designated principal is Paul Hallums. The school is also known as EZ-AZ Traffic School and 2 Go 2 Traffic School.

Division staff has performed a review of the new school's application and curriculum.

**It is recommended initial certification be granted AZ 4-Hour Traffic School.**

3. Ticket Dismissal of Arizona, a classroom and internet format defensive driving school, applied for certification on November 21, 2012. The school's office is located in Scottsdale, Arizona. The school's designated principal is Michael Truscio. The school is also known as Defensive Driving School of Arizona.

Division staff has performed a review of the new school's application and curriculum.

**It is recommended initial certification be granted Ticket Dismissal of Arizona.**

4. Traffic Schools of Arizona, a classroom and internet format defensive driving school, applied for certification on November 21, 2012. The school's office is located in Scottsdale, Arizona. The school's designated principal is Michael Truscio. The school is also known as Defensive Driving School of Arizona.

Division staff has performed a review of the new school's application and curriculum.

**It is recommended initial certification be granted Traffic Schools of Arizona.**

5. Drop the Ticket Traffic School, LLC, a classroom and internet format defensive driving school, applied for certification on November 19, 2012. The school's office is located in Glendale, Arizona. The school's designated principal is Michael Wright. Division staff has performed a review of the new school's application and curriculum.

**It is recommended initial certification be granted Drop the Ticket Traffic School, LLC.**

6. Rush Hour Traffic School, a classroom and internet format defensive driving school, applied for certification on September 10, 2012. The school's office is located in Phoenix, Arizona. The school's designated principal is William Reidel. The school is also known as Arizona's Best Defensive Driving School and Got a Ticket Defensive Driving School.

Division staff recommends deferral to the next board meeting. Staff recommends going into executive session to provide confidential information regarding application.

**It is recommended Rush Hour Traffic School's certification be deferred to the next defensive driving board meeting.**

# DEFENSIVE DRIVING BOARD

## Agenda Summary – Wednesday, December 19, 2012

### 3) ADMINISTRATIVE ISSUES

3-A: *Review, discussion, and possible action regarding the establishment of the 2013 Board meeting schedule.*

At the October 17, 2012 meeting, the Defensive Driving Board was asked to consider and approve a 2013 meeting calendar. It was recommended the board continue to meet on the third Wednesday of the applicable month at 10:00 A.M. The month of September was added as this is a certification renewal year.

Due to scheduling conflicts in Conference Room 109, it is now recommended that the Defensive Driving Board meet at the previously scheduled dates but move the start time to **2:00 P.M.**

*The 2013 meeting calendar is as follows:*

February 20, 2013  
April 17, 2013  
June 19, 2013  
August 21, 2013  
September 18, 2013  
October 16, 2013  
December 18, 2013

# **DEFENSIVE DRIVING BOARD**

## **Agenda Summary - Wednesday, December 19, 2012**

### **3) ADMINISTRATIVE ISSUES**

*3-B: Review, discussion, and possible action regarding request for placement on Inactive Status received from certified school Phoenix Traffic School, certification number 49061.*

Phoenix Traffic School was granted certification on November 16, 2011. On December 10, 2012, Phoenix Traffic School submitted a request for the certificate to be placed on Inactive Status.

ACJA § 7-201 (E)(8)(a) reads:

*A certificate holder may transfer to inactive status, upon written request to the board. Upon recommendation of division staff the board may accept the transfer of the certificate holder to inactive status and division staff shall note in the certification database the certificate holder in on inactive status, in good standing. The inactive certificate holder shall not engage in the practice of the profession or occupation of certification pro bono or for a fee or other compensation while on inactive status and shall not present themselves as a certificate holder.*

**It is recommended the Board accept Phoenix Traffic School's request to be placed on inactive status.**

# **DEFENSIVE DRIVING BOARD**

## **Agenda Summary - Wednesday, December 19, 2012**

### **4) REVIEW OF PENDING COMPLAINTS**

*4-A: Review, discussion and possible action regarding the following certificate holder complaints:*

*Complaint Number 09-D020 – DrivingUniversity.com*

*Complaint Number 11-D007 – Dennis Hayes & AZ Defensive Driving School*

#### Complaint Number 09-D020 – DrivingUniversity.com:

On November 27, 2012, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist as to Allegation 1 and does exist as to Allegation 2 in complaint number 09-D020. It is recommended the Board accept the finding of the probable cause evaluator and dismiss Allegation 1. Regarding Allegation 2, it is recommended the Board enter a finding grounds for informal disciplinary action exists and issue a Letter of Concern.

#### Complaint Number 11-D007 – Dennis Hayes & AZ Defensive Driving School:

On December 27, 2012, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist in complaint number 11-D007. It is recommended the Board accept the finding of the probable cause evaluator and dismiss complaint number 11-D007.

**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
INVESTIGATION SUMMARY**

<b>CERTIFICATE HOLDER INFORMATION</b>	<b>School Name:</b>	DrivingUniversity.com
	<b>Certification Number:</b>	49009
	<b>Type of Certificate:</b>	Defensive Driving School
<b>COMPLAINANT</b>	<b>Name:</b>	Barbara Potter
<b>INVESTIGATION INFORMATION</b>	<b>Complaint Number:</b>	09-D020
	<b>Investigators:</b>	Jeff Agraviador Alex (Navarro) Vilchis

<b>Complaint Received:</b>	December 16, 2009
<b>Complaint Forwarded to the Certificate Holder:</b>	December 22, 2009
<b>Certificate Holder/Licensee Received Complaint:</b>	January 13, 2010
<b>Response From Certificate Holder:</b>	March 9, 2010
<b>Period of Active Certification/Licensure:</b>	November 7, 2003 - Present
<b>Status of Certification/License:</b>	Active
<b>Availability of Certificate Holder/Licensee:</b>	Available
<b>Availability of Complainant:</b>	Available
<b>Report Date:</b>	November 2, 2012

**ALLEGATION:**

1. DrivingUniversity.com (“Driving University”) failed to refund a fee to two students who did not complete the Defensive Driving ADM class.

**ADDITIONAL ALLEGATIONS:**

2. Driving University failed to submit a timely written response to the complaint as required by ACJA § 7-201(H)(3)(c).

**List of sources for obtaining information: (Investigative, records, outside resources, etc.):**

- Written complaint and documentation submitted by and investigatory interview with complainant Barbara Potter (“Potter”)
- Written response and documentation submitted by and investigatory interview with DrivingUniversity.com, (“Driving University”) designated principal Kelly Popp (“Popp”)
- Review of applicable Certification and Licensing Division (“Division”) records
- Review of applicable sections of Arizona Revised Statutes (“ARS”), Arizona Codes of Judicial Administration (“ACJA”) § 7-201 and § 7-205, and Arizona Supreme Court Rules

**PERSONS INTERVIEWED:**

1. Complainant Barbara Potter (“Potter”)
2. Driving University designated principal Kelly Popp (“Popp”)

3. Student Derek Castenada (“Castenada”)
4. Student Lena Sotnick (“Sotnick”)
5. Specialist Chris DeWitt

**SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:**

On December 16, 2009 Division received the complaint from Potter alleging Driving University’s failed to contact and refund two students who did not complete the Driving University ADM defensive driving course. Potter reported she asked Driving University if the school was going to process “incomplete” reports for the two students and she was told the school had no way of processing such a report. Potter indicated it was possible the students did not know they were owed a refund owed since they were not contacted by the school.

On December 22, 2009, the Division sent Popp and Driving University a copy of the complaint along with a letter notifying them of the ACJA § 7-201(H)(3)(c) requirement they provide a written response to the complaint within thirty (30) days. Division records reflect Driving University received the mailing on January 13, 2010. Division records reflect the school and Popp did not respond in writing within 30 days.

On March 9, 2010, the Division received Driving University and Popp’s written response to the complaint as a letter dated February 8, 2010. Citing ACJA § 7-205(F)(27)(c) and (F)(28)(c), Popp reported the school held the fees paid by Castenada and Sotnick in a non-interest bearing account and held the court diversion fees in trust while the course completions were pending. Popp stated:

Our business policy is to refund upon notification from (1) the student or (2) the citation issuing court or (3) a reject report from the AOC. ADM providers do not have a “scheduled defensive driving course date” to be in compliance with the “30 days after” portion of the rule.

On October 7, 2011, Division Investigator Alex Vilchis (“Investigator Vilchis”) conferred with Specialist DeWitt, who verified all defensive driving schools are required to submit “incomplete” reports to the Division and confirmed schools are obligated to provide all students with notice and instructions regarding fee refunds at the time of registration. Division records reflect Sotnick ultimately completed the Driving University course on January 21, 2010.

On October 6, 2011, October 11, 2011 and November 17, 2011, Investigator Vilchis contacted Popp. When asked about the process for refunds, Popp indicated the schools’ policy is to only refund the monies if the student calls to request a refund. When asked what happens to the money after the school learns the student fails to take the course and the student does not make a request to have the fees refunded, Popp indicated the fees are remain in the non-interest bearing account, or until the court makes a request to have the fees refunded. Popp reiterated it is the student’s responsibility to contact the defensive driving school and request a refund.

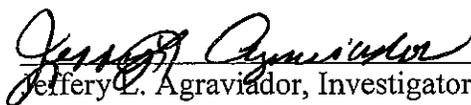
On November 17, 2011, Investigator Vilchis contacted student Castaneda and asked if he was provided with instructions on how to request a refund at the time he registered to take the defensive driving course with Driving University. Castaneda indicated he did not know he could get the refund and did not remember ever being told by the school about their refund policy verbally or in writing. On the same day, Investigator Vilchis contacted student Sotnick and inquired about her receiving instructions on how she could obtain a refund from Driving University. Sotnick stated she did not get any instructions about the refund and was not aware she could get her money back, Sotnick confirmed she did take the course at a later date and, therefore, a refund was not required.

On August 12, 2012, Investigator Jeff Agraviador ("Investigator Agraviador") spoke to Popp and requested (and received) the school's automation generated "electronic footprint" records for students Castaneda and Sotnick. These records reflect the dates and times each student accessed the ADM course. Investigator Agraviador asked and Popp confirmed every registering student is given notice of the schools' refund policy. Popp confirmed the refund policy is posted on the Driving University website. Investigator Agraviador checked Driving University's Arizona homepage website and confirmed the refund policy is posted on the website. The refund policy is also outlined in the terms and conditions portion of the registration page. It is unknown if the refund policy was present in the same manner at the time Sotnick and Castaneda registered in 2009. Investigator Agraviador accessed and reviewed Division compliance and monitoring records from the time of the alleged misconduct and determined no deficiencies were noted pertaining to Driving University.

Investigator Agraviador reviewed the provided electronic footprint for Sotnick and determined she started the ADM course on August 31, 2009. Sotnick appeared to fail the exam and logged out of the course on September 9, 2009. Sotnick then took the class again logging into the course on January 20, 2010. Sotnick passed the exam and completed the course, logging out of the class on January 21, 2010.

Castaneda's electronic footprint reflects he logged into the course on six separate occasions between August 19, 2009 and September 16, 2009. The records reflect Castaneda never logged back into the system and never completed the course. Per the schools refund policy, he is not entitled to a refund, as he started the class but never finished it.

**SUBMITTED BY:**

 11-02-2012  
Jeffery L. Agraviador, Investigator Date  
Certification and Licensing Division

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**ANALYSIS OF ALLEGATIONS:**

*Allegation 1. Driving University failed to refund a fee to two students who did not complete the Defensive Driving ADM class.*



requests division staff to investigate further.

determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

# 1.

determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

# 2.

Mike Baumstark      11/27/12  
Mike Baumstark      Date  
Probable Cause Evaluator

(Driving University/09-D020)

**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
ORDER OF THE BOARD**

**CERTIFICATE  
HOLDER  
INFORMATION**

**School Name:** DrivingUniversity.com  
**Certificate Number:** 49009

**RECOMMENDATION TO THE DEFENSIVE DRIVING BOARD ("BOARD"):**

It is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss Allegation 1 of complaint number 09-D020.

Regarding Allegation 2, it is recommended the Board enter a finding DrivingUniversity.com committed the alleged act of misconduct detailed in the Investigation Summary and Allegation Analysis Report in complaint number 09-D020 and issue a Letter of Concern.

**SUBMITTED BY:**

 12/4/12

Mark Wilson, Director Date  
Certification and Licensing Division

**FINAL DECISION AND ORDER:**

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaint number 09-D020 and DrivingUniversity.com, certificate number 49009, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

requests division staff to investigate further.

refers the complaint to another entity with jurisdiction.

Referral to: \_\_\_\_\_

dismisses the complaint, and:

requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).

requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).

determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:

- enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
- enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).
- requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: \_\_\_\_\_

- adopts the recommendations of the Division Director.
- does not adopt the recommendations of the Division Director and orders:

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\_\_\_\_\_  
 Elaine Acosta Sweet, Chair                      Date  
 Defensive Driving Board

**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
INVESTIGATION SUMMARY and PROBABLE CAUSE ANALYSIS  
and DETERMINATION REPORT**

<b>CERTIFICATE HOLDER INFORMATION</b>	<b>Instructor Name:</b>	Dennis Hayes
	<b>Certificate Number:</b>	40179
	<b>Business Name:</b>	Arizona Defensive Driving School
	<b>Certificate Number:</b>	49058
	<b>Type of Certificate:</b>	Defensive Driving School
<b>COMPLAINANT</b>	<b>Name:</b>	Correne Grady
<b>INVESTIGATION INFORMATION</b>	<b>Complaint Number:</b>	11-D007
	<b>Investigator:</b>	Jeff Agraviador
	<b>Report Date:</b>	November 2, 2012

<b>Complaint Received:</b>	April 5, 2011
<b>Complaint Forwarded to the Certificate Holder:</b>	April 7, 2011
<b>Response From Certificate Holder Received:</b>	April 29, 2011
<b>Status of Certification:</b>	Active
<b>Availability of Certificate Holder:</b>	Available
<b>Availability of Complainant:</b>	Available

The investigation of this complaint included consideration of the following:

- Written complaint and documentation submitted by complainant Correne Grady (“Grady”)
- Written response and documentation submitted by Arizona Defensive Driving School (“AZDDS”) President Michael Truscio (“Truscio”)
- Written response and documentation submitted by AZDDS Instructor Dennis Hayes (“Hayes”)
- Investigatory interviews with AZDDS students Emmanuel Rivera (“Rivera”), Colleen Whomble (“Whomble”), Mary Muchow (“Muchow”), Ron Karoleski (“Karoleski”), Andre Phillips (“Phillips”) and Vincenza Richards (“Richards”)
- Applicable Certification and Licensing Division (“Division”) records
- Applicable sections of the Arizona Revised Statutes (“ARS”), Arizona Codes of Judicial Administration (“ACJA”) § 7-201 and § 7-205, and Arizona Supreme Court Rules

**ALLEGATIONS:**

1. AZDDS instructor Hayes was rude, disrespectful, unprepared and unprofessional.
2. AZDDS offers no form of privacy when student evaluation forms are completed.

### **SUMMARY OF COMPLAINT:**

Grady's written complaint indicated that during the presentation of a class, instructor Hayes repeatedly referred to the students and other driver's "as brain dead, stupid, idiots and dumb". Grady reported Hayes "continually bad mouthed just about everything related to driving laws, enforcement, and drivers." Grady reported Hayes informed the class they could fill out evaluations forms, but they were not required to do so. Grady asserted Hayes informed the class if they submitted the form anonymous he would not turn it in.

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### **SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:**

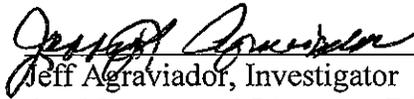
1. Hayes was granted Instructor certification effective January 1, 1992. AZDDS was granted Defensive Driving School certification effective December 15, 2010. Hayes and AZDDS have renewed their certifications without interruption through the current certification period. Truscio is the designated principal for AZDDS.
2. On April 5, 2011 Division received a written complaint from Grady involving AZDDS Instructor Hayes. Grady's complaint reported she attended an AZDDS course presented by Hayes on March 20, 2011. Grady indicated Hayes informed the students they had the option to complete an evaluation form and if they choose to fill out the form but not sign it, he would trash the document and not turn it in. Grady complaint there was no privacy offered for the students to complete or submit evaluations, suggesting the students could be given an option to place their evaluations in an envelope. Grady's written complaint indicated that during the presentation of a class, instructor Hayes repeatedly referred to the students and other drivers "as brain dead, stupid, idiots and dumb". Grady reported Hayes "continually bad mouthed just about everything related to driving laws, enforcement, and drivers." Grady alleged Hayes told the class that if anyone fell asleep he would kick them out and they wouldn't get their money back. Grady asserted Hayes singled out a 16 year old student several times (when a wrong answer was given to a question) with statements like, "See, I told you older people are brain dead that's why you shouldn't listen to them." Grady alleged Hayes was rude, disrespectful, unprepared, and unprofessional.
3. On April 7, 2011, Division sent AZDDS a copy of the complaint along with a letter notifying Truscio and AZDDS of the ACJA § 7-201(H)(3)(c) requirement they provide a written response to the complaint within thirty (30) days. Division records reflect the mailing was signed for on April 8, 2011.
4. On April 29, 2011, the Division received a written response from Truscio and AZDDS. Truscio reported AZDDS conducted an investigation of Grady's complaint, beginning by interviewing Hayes for his recollections of the class. Truscio stated Hayes was unable to recollect anything unusual about this class. Truscio indicated he contacted Grady who reiterated her concerns as presented in the complaint. Truscio reported the call with Grady concluded with the school apologizing for "the incident".

Truscio reported he then randomly selected and contacted four students who attended the same class as Grady. Truscio informed the students they were investigating a complaint against Hayes. Truscio stated that each student, without being prompted, were able to immediately identify which student filed the complaint. Purportedly, these students indicated Grady was somewhat negative and disruptive throughout the class session. Student Fisher reported she had no problem with Hayes and she found the class to be very structured and informative. Fisher recalled another female student was overly dramatic. Student Medina indicated he thought Hayes funny and respectful. Medina reported there were no problems during the class. Student Franz purportedly told Truscio Hayes had a very dry sense of humor but he didn't think Hayes was rude. Franz reported he didn't think Hayes was happy with his job and confirmed Hayes kept picking on one student and called drivers idiots. Student Arvizu noticed one student was very sensitive but he didn't think Hayes was overly rude. Arvizu reported general satisfaction with the course. Truscio reported he has observed Hayes presenting in the past and acknowledged Hayes "...uses a bit of sarcasm in his delivery but it is done with a purpose."

5. Attached to AZDDS' written response was a written response from Hayes. Hayes acknowledged he told the class that if they were not willing to identify themselves on the evaluation, their comments, good or bad, would not be turned in. Hayes indicated it had not occurred to him to provide envelopes for the evaluations. Hayes indicated he never called a student brain dead, stupid, idiots and dumb but offered, "...I have referenced drivers whose behavior fit these labels."
6. Regarding Grady's assertion "He continually bad-mouthed just about everything related to driving laws, enforcement and drivers." Hayes responded, "If stating that laws do not cause us to drive legally or safely, than yes, and if police officers issued us tickets for our actual behavior, we would stop it." Hayes reported he referred the class to the educational links on the [www.service.arizona.com](http://www.service.arizona.com) website. Hayes acknowledged he tells every class they have to stay awake or they have to leave. Hayes admitted he often uses very young drivers in attendance to demonstrate what they see older drivers doing.
7. Pursuant to ACJA § 7-201, Grady was provided a copy of the AZDDS written response. On May 20, 2011, the Division received a follow-up letter from Grady reporting she found Truscio's letter disturbing. Grady raised concerns about the Truscio's assertion the 4 students he contacted were able to identify who filed the complaint and categorized the complainant as having been "somewhat negative and disruptive throughout the entire class session." Grady reported the students did not exchange names and it was not plausible Hayes remembered nothing unusual about the class if someone had been disruptive throughout the session.
8. On October 25, 2012, Investigator Jeff Agraviador ("Investigator Agraviador") contacted AZDDS and obtained a list of attendees (and their phone numbers) from Grady's class. Investigator Agraviador randomly contacted 6 students not previously contacted by Truscio. Student Whomble indicated she remembered nothing unusual

about the class and she remembered Hayes from a defensive driving class she had taken years ago. Student Riveria recalled nothing unusual about the class and indicated he thought Hayes was a good and professional teacher. Student Muchow recalled nothing unusual about the class. Student Karoleski recalled nothing unusual. Student Phillips indicated Hayes was fine as an instructor. Student Richards indicated Hayes was a little sarcastic and recalled Hayes had gotten into a verbal exchange with a female student. Richards indicated she thought the female student was the aggressor in the exchange and said she was "a bit of a drama queen." Investigator attempted to contact the male juvenile who attended the class by leaving a message for the student's mother. Investigator Agraviador did not receive a return call from this attendee.

**SUBMITTED BY:**

 11-02-2012  
Jeff Agraviador, Investigator Date  
Certification and Licensing Division

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**ANALYSIS OF ALLEGATIONS:**

*Allegation 1. AZDDS instructor Hayes was rude, disrespectful, unprepared and unprofessional.*

Arizona Code of Judicial Administration ("ACJA") § 7-201(F)(1) requires all certified holders to adhere to the code of conduct contained in the applicable ACJA section. ACJA § 7-205(J)(2) contains the code of conduct for certified defensive driving school instructors. ACJA § 7-205(J)(2) reads:

Instructors. This code of conduct is adopted by the supreme court to apply to all instructors. The purpose of this code of conduct is to establish minimum standards of conduct for all instructors.

ACJA § 7-205(J)(2)(b)(1) provides:

An instructor shall be aware at all time the instructor represents the supreme court and the instructor's employing school.

ACJA § 7-205(J)(2)(b)(2) states:

An instructor shall not act disagreeably or permit personal feelings, prejudices, animosities, or friendships to influence the student, classroom conduct or delivery of the defensive driving course.

ACJA § 7-205(J)(2)(b)(5)(a) reads:

(5) An instructor shall exhibit the highest degree of professional conduct. The instructor shall:

(a) Act in a professional manner, prior, during and after delivery of a defensive driving course;



determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

  # 1 & 2 .

determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

\_\_\_\_\_

  Mike Baumstark      11/27/12

Mike Baumstark                      Date  
Probable Cause Evaluator

(AZDDS-Hayes/11-D007)

**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
ORDER OF THE BOARD**

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<b><i>CERTIFICATE HOLDER INFORMATION</i></b>	<b>Instructor Name:</b>	Dennis Hayes
	<b>Certification Number:</b>	40179
	<b>Business Name:</b>	Arizona Defensive Driving School
	<b>Certificate Number:</b>	49058

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**RECOMMENDATION TO THE DEFENSIVE DRIVING BOARD ("BOARD"):**

It is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 11-D007.

**SUBMITTED BY:**

 12/4/12  
Mark Wilson, Director                      Date  
Certification and Licensing Division

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**FINAL DECISION AND ORDER:**

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaint number 11-D007 and Dennis Hayes, certificate number 40179, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

- requests division staff to investigate further.
- refers the complaint to another entity with jurisdiction.

Referral to: \_\_\_\_\_

- dismisses the complaint, and:
  - requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).
  - requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).
- determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:

- enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
- enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).
- requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: \_\_\_\_\_

- adopts the recommendations of the Division Director.
- does not adopt the recommendations of the Division Director and orders:

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Elaine Acosta Sweet, Chair	Date
Defensive Driving Board	

# DEFENSIVE DRIVING BOARD

## Agenda Summary - Wednesday, December 19, 2012

### 4) REVIEW OF PENDING COMPLAINTS

4-B: *Update regarding pending complaints.*

As of November 30, 2012, there are a total of 6 pending complaints, all involving actively certified school and/or instructors. Two of these complaints are recommended for dispositive action in Agenda Item 4-A.

### DEFENSIVE DRIVING COMPLAINTS COURTOOLS MEASURE 4 AGE OF PENDING CASELOAD

Shaded Areas Indicate Cases within Time Standard of 22 Months

Age (Months)	Number Cases	Percent	Cumulative Percent
0-4	1	17%	17%
5-9	0	0%	17%
10-14	0	0%	17%
15-19	1	17%	34%
20-22	3	50%	84%
23-35	0	0%	84%
36-50	1	16%	100%
Over 50			
<b>Total</b>	<b>6</b>	<b>100%</b>	<b>100%</b>

**DEFENSIVE DRIVING BOARD**  
**Agenda Summary - Wednesday, December 19, 2012**

**4) REVIEW OF PENDING COMPLAINTS**

*4-C: Discussion regarding Administrative Order No. 2012-83.*

Division staff will provide an overview of the Administrative Order at the meeting.