

Draft for Review
Board of Defensive Driving

Arizona State Courts Building
1501 West Washington, Phoenix, AZ 85007
Hearing Room 109
August 18, 2010
10:00 am -1:00 pm

Approved Regular Session Minutes

MEMBER ATTENDANCE

Present:

Robert G. A. Hall
Leonard Montanaro
Elaine Acosta Sweet
Virginia Davis
Paul E. Hallums

Telephonically Present:

Judge Daniel S. Jurkowitz,
Steven Soldis
Lynette Rudow

Absent:

Judge Gary J. LaFleur
Rolland (Ron) E. DeLong
Cecile T. Woodward

OTHER ATTENDEES

AOC Staff:

Kandace French
Kitty Boots
Jennifer Greene
Kimberly Siddall
Nancy Swetnam
Chris DeWitt
Karla Clanton
Susan Hunt

Guests:

W.E. Packowski
Randi Bellassai
Dan Edwanns
Amina Clark
Stephanie Schwarz
Debbie Grado
Larry Clapick
Robert Prevosi
Gregory Harris
Pamela Najera
Mark Meltzer

CALL TO ORDER

Called to Order By: Elaine Sweet, Chair
Time: 10:00 a.m.

1) REVIEW AND APPROVAL OF MINUTES

1-A: *Review, discussion, and possible action regarding the Regular Session Minutes for the meeting of June 16, 2010*

Individuals Addressing the Board: Elaine Sweet

Discussion: None

Motion: Moved to approve Regular Session Minutes for the meeting of June 16, 2010.

Motion Proposals: First: Bob Hall
Second: Leonard Montanaro

Motion Results: Pass

2) PENDING COMPLAINTS

2-A: *Review, discussion and possible action regarding certificate holder complaint number: Complaint Number 09-D010. Arizona Crash Course, Complaint Number 09-D009 Arizona Crash Course, Complaint Number 09-D012 Arizona Crash Course and Harry Ryon.*

Complaint Number 09-D010 Arizona Crash Course

Individuals Addressing the Board: Nancy Swetnam

Discussion: At the June meeting, the Board deferred consideration of these complaints and requested Arizona Crash Course designated principal Larry Clapick be invited to the August meeting. On June 11, 2010, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist in complaint number 09-D010. It was recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 09-D010.

Motion: Moved to accept the finding of the Probably Cause Evaluator and dismiss allegations #1 and #2 in complaint number 09-D010.

Motion Proposals: First: Leonard Montanaro
Second: Virginia Davis
Recusal: Judge Daniel Jurkowitz

Motion Results:

Complaint Number 09-D009 Arizona Crash Course

Individuals Addressing the Board: Nancy Swetnam

Discussion: On June 11, 2010, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist as to Allegations 3 and 4 and does exist as to Allegations 1 and 2 in complaint number 09-D009. It was recommended the Board accept the finding of Probable Cause Evaluator and dismiss Allegations 3 and 4.

Regarding Allegations 1 and 2, it was recommended the Board enter a finding grounds for formal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a), (H)(6)(k)(2), (H)(6)(k)(3) and (H)(6)(k)(7) for acts of misconduct involving ACJA § 7-201(f)(1), ACJA § 7-205(F)(1), (F)(11), (F)(22)(d)(1)(b)(iii), (F)(22)(d)(3)(c), (F)(24)(d) and (F)(25)(h).

It was recommended the Board impose the following sanctions pursuant to ACJA § 7-201(H)(24)(a)(6):

- a) Issue a Letter of Concern to ACC, pursuant to ACJA § 7-201(24)(6)(a);
- b) Access costs associated with the investigation and any related administrative proceedings involving complaint number 09-D009, pursuant to ACJA § 7-201(H)(24)(a)(6)(j), and:
- c) Impose a civil penalty in the amount of \$100.00 per found violation, pursuant to ACJA § 7-201(H)(24)(a)(6)(k).

Mr. Clapick representing Arizona Crash Course was present and discussed what was involved in the complaint. Board discussed the imposition of civil penalties and agreed the civil penalties were not warranted in this case.

Motion: Moved to accept the finding of the Probable Cause Evaluator and accept the findings to dismiss allegations 3 and 4 – Issue a Letter of Concern and impose sanction of administrative costs. Regarding allegations 1 and 2; enter into a consent agreement to be signed with 10 days and impose sanctions (a) and (b) referenced but no civil penalties.

Motion Proposals: First: Leonard Montanaro
Second: Paul Hallums
Motion Results: Recusal: Judge Daniel Jurkowitz

Motion: Moved to enter into a Consent Agreement with Arizona Crash Course to impose sanction of Administrative costs and issue a Letter of Concern and ACC to respond to agreement within ten days.

Motion Proposals: First: Leonard Montanaro
Second: Steve Soldis
Motion Results: Recusal: Judge Daniel Jurkowitz

Complaint Number 09-D012 Arizona Crash Course and Harry Ryon

Individuals Addressing the Board: Nancy Swetnam

Discussion: At the June 11, 2010, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist as to Allegations 1, 2, 3 and 4 and does exist as to Allegations 5 and 6 in complaint number 09-D012. It was recommended the Board accept the finding of the Probable Cause Evaluator and dismiss Allegations 1, 2, 3 and 4. It was further recommended the Board dismiss all allegations relative to instructor Harry Ryon.

Regarding Allegations 5 and 6, it was recommended the Board enter a finding grounds for informal disciplinary action exists pursuant to ACJA § 7-201 (h)(6)(a) and (H)(6)(k)(2) for acts of misconduct involving ACJA § 7-205 (f)(15), (F)(16)(e), (F)(17) and (F)(24)(f) and issue a Letter of Concern to Arizona Crash Course in Traffic Safety.

Mr. Clapick representing Arizona Crash Course discussed the specifics regarding the allegations.

Motion: Moved to accept recommendations of Probable Cause Evaluator and dismiss allegations 1, 2, 3, and 4; to include the dismissal of all allegations relative to the instructor Harry Ryon.

Motion Proposals: First: Leonard Montanaro
Second: Steve Soldis
Recusal: Judge Daniel Jurkowitz
Motion Results: Pass

Motion: Moved to accept recommendation of Probable Cause Evaluator in Allegation 5 and 6 that Arizona Crash Course committed the alleged acts of misconduct and enter a finding grounds for informal disciplinary action exists pursuant to ACJA § 7-201 and 7-205 and issue a Letter of Concern.

Motion Proposals: First: Leonard Montanaro
Second: Bob Hall
Recusal: Judge Daniel Jurkowitz

Motion Results: Pass

2-B: *Review, discussion and possible action regarding certificate holder complaint numbers:*

*Complaint Number 09-D003 – I Drive Safely
Complaint Number 09-D013 – I Drive Safely
Complaint Number 09-D014 – I Drive Safely
Complaint Number 09-D015 – I Drive Safely
Complaint Number 09-D016 – I Drive Safely
Complaint Number 10-D001 – I Drive Safely*

Complaint Number 09-D003 – I Drive Safely

Individuals Addressing the Board: Nancy Swetnam

Discussion: On June 11, 2010, Probable Cause Evaluator Mike Baumstark entered a finding probable cause exists in complaint number 09-D003. It was recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for formal disciplinary action exists pursuant to ACJA § 7-201 (H)(6)(a) and (H)(6)(k)(3) for acts of misconduct involving Arizona Revised Statutes § 28-3396(C), ACJA § 7-205 (F)(5), (F)(17), (F)(18), (F)(20), (F)(22)(a), (F)(22)(b)(3), (F)(22)(d)(5), (F)(25)(e), (F)(25)(f)(1), (F)(25)(f)(2), (F)(26)(d) and (J)(1)(d).

Gregory Harris representing I Drive Safely was present and discussed the complaints.

Complaint Number 09-D013 – I Drive Safely

Individuals Addressing the Board: Nancy Swetnam

Discussion: On June 11, 2010, Probable Cause Evaluator Baumstark entered a finding probable cause does exist in complaint number 09-D013.

Discussed allegations and summary of investigation. It was recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for formal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a), (H) (6)(k)(2), and (H)(6)(k)(3) for acts of misconduct involving ACJA § 7-205(F)(17), (F)(18), (F)(20), (F)(24) and Arizona Revised Statutes § 28-3396 (C). It is recommended the Board consolidate this complaint with any pending complaints involving IDS where the Board has separately determined grounds for formal disciplinary action exists.

Complaint Number 09-D015 – I Drive Safely

Discussion:

On June 11, 2010, Probable Cause Evaluator Baumstark entered a finding probable cause exists in complaint number 09-D015.

Discussed allegations and summary of investigation. It was recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for formal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a), (H) (6)(k)(2), and (H)(6)(k)(3) for acts of misconduct involving ACJA § 7-205(F)(5)(j), (F)(15), (F)(17), (F)(18), (F)(20), (F)(22)(a)(4)(a), (F)(22)(d)(1)(b)(iii), (F)(24) and (J)(1)(c). It is recommended the Board consolidate this complain with any pending complaints involving IDS where the Board has separately determined grounds for formal disciplinary action exists.

Complaint Number 09-D016 – I Drive Safely

Individuals Addressing the Board: Nancy Swetnam

Discussion:

On June 11, 2010, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist as to Allegation 1 and does exist as to Allegations 2, 3 and 4 in complaint number 09-D016.

Discussed case summary. It was recommended the Board accept the finding of the Probable Cause Evaluator and dismiss Allegation 1 of Complaint number 09-D016. It is also recommended the Board consolidate this complaint with any pending complaints involving IDS where the Board has separately determined grounds for formal disciplinary action exists.

All of the above violations occurred in 2009 with public licenses being suspended.

Motion:

Moved to consolidate the above 5 complaints and accept findings of Probable Cause Evaluator. The Board recognizes this as a formal disciplinary proceeding; sanctions include staff recommendation of issuing a consolidated Letter of Concern and imposing Administrative costs, with no civil penalty by staff.

Motion Proposals: First: Judge Daniel Jurkowitz
Second: Leonard Montanaro
Motion Results: Pass

Complaint Number 10-D001 – I Drive Safely

Individuals Addressing the Board: Nancy Swetnam

Discussion: On June 11, 2010, Probable Cause Evaluator Baumstark entered a finding probable cause exists in complaint number 10-D001. It was recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding for grounds for informal disciplinary action exist and issue a letter of concern.

Motion: Moved to accept the findings of the Probable Cause Evaluator and enter a finding for grounds for informal disciplinary action and enter into a Consent Agreement imposing administrative costs with a letter of concern.

Motion Proposals: First: Leonard Montanaro
Second: Bob Hall
Motion Results: Pass

2-C: *Review, discussion and possible action regarding certificate holder complaint number 09-D011 involving TrafficSchoolOnline.com.*

Individuals Addressing the Board: Nancy Swetnam

Discussion: On July 30, 2010, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist in complaint number 09-D011. It was recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint 09-D011.

Motion: Moved to accept findings of Probable Cause Evaluator and to dismiss Complaint 09-D011.

Motion Proposals: First: Paul Hallums
Second: Leonard Montanaro
Recusal: Steve Soldis
Motion Results: Pass

3) ADMINISTRATIVE ISSUES

3-A: *Report, discussion and possible action regarding draft amendments to ACJA § 7-205 by the Defensive Driving Board Rules Subcommittee.*

Individuals Addressing the Board: Kandace French

Discussion: Public comment was posted for recommended changes that were in effect from July 8th through August 6th. The subcommittee met on August 12th to review those public comments. Proposed outlined changes to the recommended amendments and some additional changes were recommended at the August 12th meeting. Based on the public comments, the following changes were proposed. The Board was asked to take an action regarding these proposed amendments at the conclusion of this meeting. On September 1st, there will be LJC committee meeting that is open to the public which again these will be addressed at that meeting. Recommendations and additional amendments will be made at that time.

Motion: Moved to adopt subcommittee's amendments to ACJA § 7-205 and move it forward to the LJC.

Motion Proposals: First: Leonard Montanaro
Second: Virginia Davis

Motion Results: Pass

3B: *Report, discussion and possible action regarding a proposed alternative process for confirming identity of online students by American Safety Council.*

Individuals Addressing the Board: Chris DeWitt

Discussion: Discussed the alternative process. This verification has no impact on the student's credit history. This method will eliminate the need for the student to go to a test site. It was recommended the Board approve this method.

Motion: Moved to accept the recommendation and approve the alternative method for confirming identity of online students by American Safety Council.

Motion Proposals: First: Steve Soldis
Second: Leonard Montanaro

Motion Results: Pass

4) ADMINISTRATIVE ISSUES

4-A: *Review, consideration and possible action regarding pending initial Certification applications of the following Defensive Driving Schools:*

*Brown, Sandra L.
Gammill, Thomas D.
Hurley, Anthonett J.
Lockwood, Julie P.
Dominy, Robert A.
Weaver, Timothy S.*

Individuals Addressing the Board: Kimberly Siddall

Discussion: The following defensive driving instructor applicants have submitted applications for certification. It was recommended certification be granted to the following individuals:

*Brown, Sandra L.
Gammill, Thomas D.
Hurley, Anthonett J.
Lockwood, Julie P.*

Motion: Moved to accept the recommendation and grant certification to the above applicants.

Motion Proposals: First: Virginia Davis
Second: Bob Hall

Motion Results: Pass

Individuals Addressing the Board: Kimberly Siddall

Discussion: The following defensive driving instructor application remains incomplete pending receipt of additional information or proof of passing the examination. It is recommended this applicant be deferred to the October meeting.

Dominy, Robert A.

Motion: Moved to accept the recommendation and defer the above application to the October Board meeting.

Motion Proposals: First: Bob Hall
Second: Virginia Davis

Motion Results: Pass

Motion: Moved to grant certification to the following applicant:

Weaver, Timothy S

Motion Proposals: First: Virginia Davis
Second: Bob Hall

Motion Results: Pass

4-B: *Review, discussion, and possible action regarding initial certification of the following Defensive Driving School:*

Universal Driving School, LLC

Individuals Addressing the Board: Chris DeWitt

Discussion: Staff discussed the new school's application and curriculum. It was recommended the Board deny Universal Driving School's application pursuant to: ACJA § 7-201(E)(2)(c)(2)(b)(iii) for showing the applicant or office, director, partner, member, trustee of manager of the applicant is incompetent or a source of injury and loss to the public; ACJA § 7-201(E)(2)(c)(2)(b)(xv) for failure to disclose information on the certification application subsequently revealed through the background check and ACJA § 7-201(E)(2)(c)(2)(b)(xvi) for failure to respond or furnish information to the division staff or the board when the information is legally requested and is in the applicant's control or is reasonably available to the applicant and pertains to certification or investigative inquiries.

Motion: Moved to accept the recommendation to deny Universal Driving School's application.

Motion Proposals: First: Bob Hall
Second: Lynette Rudow

Motion Results: Pass

CALL TO THE PUBLIC

Randi Bellasai, National Traffic Safety Institute – requested copy of amendments. She was informed they are posted on the website.

ADJOURN

Motion: Moved to adjourn the meeting.

Motion Proposals: First: Paul Hallums
Second: Bob Hall

Motion Results: Pass

Time: 12:59