



COLORADO

Department of Revenue

Enforcement Division – Motor Vehicle Dealer Board

EXPLANATION OF THE HEARING RIGHTS AND THE HEARINGS PROCESS FOR AN APPEAL

Specific to a Denial of a Salesperson’s License Application

INTRODUCTION

This information is provided as a courtesy. It is not intended to be legal advice. If you choose to represent yourself, you are presumed to have knowledge of the applicable statutes and rules and must be prepared to accept the consequences of any mistaken understandings, even if the case is not litigated. Also, you will be bound by the same rules of procedure and evidence as attorneys who are licensed to practice law.

The staff of the Auto Industry Division (hereafter “AID”) is prohibited by law from giving legal advice. Staff members may provide information about a procedure, but they are not permitted to advise you as to how to proceed.

Additionally, members of the Motor Vehicle Dealer Board are appointed by the Governor, and make decisions collectively at public Board meetings. Regarding your case, they are not permitted to confer with you individually or with any other person acting on your behalf.

If you would like to consult with an attorney, you may contact any attorney of your choosing.

I. WHAT THE DENIAL OF THE APPLICATION MEANS TO YOU

A. The Colorado Motor Vehicle Dealer Board (hereafter, the “Board”) did not issue a permanent license to you.

B. Any “Temporary License” previously issued to you has been terminated. It is now null and void and no longer permits you to exercise the rights and privileges as a salesperson.

II. YOUR OPTIONS FOLLOWING THE BOARD’S DENIAL OF YOUR APPLICATION

A. TAKE NO ACTION. If you choose to take no action on the Board’s denial of your license application, the Board’s denial will be final 60 days after the date on the certificate of service on the Notice of Denial. After that time, you will no longer be permitted to appeal the Board’s denial.

B. APPEAL THE DENIAL. You may choose to appeal the Board’s denial of your license application by requesting a hearing. You may request a hearing by completing and submitting the “Request for Hearing to Appeal Denial of a Salesperson Application” form (hereafter, the “Hearing Request Form”) attached to this document or by a letter containing the information set forth in the form.

Your written request for a hearing must be received within 60 days after the date on the “Certificate of Service” found at the end of the Board’s Notice of Denial of your license application.

Your request for a hearing must be received by the AID no later than the close of business (5:00 PM, Mountain Time) on the 60th day. If the 60th day falls on a weekend or on a Colorado State holiday, you will have until the next business day to submit your hearing request. If your request is “late,” your request for a hearing will be denied as a matter of law.

C. ASSISTANCE IN CHOOSING HOW TO RESPOND TO THE BOARD’S DENIAL. AID staff and Board members are prohibited by law from giving you legal advice.

If you need assistance beyond the explanations provided in this document to make an informed decision on how to respond to the Board’s denial of your license application, you may consult, relatives, friends, co-workers, bosses, professionals in other capacities, or persons employed by one of the Associations that serve the Motor Vehicle and Power-Sports Dealers communities in Colorado or an attorney.

D. REPRESENTATION BY A COLORADO-LICENSED ATTORNEY. If you decide to hire an attorney to represent you in the hearing on the denial of your license application, he or she must file an Entry of Appearance, either simultaneously with filing a Hearing Request or shortly thereafter.

III. HOW TO REQUEST A HEARING ON THE DENIAL OF YOUR LICENSE APPLICATION

A. THE HEARING REQUEST FORM. You may use a copy of the Hearing Request Form attached to this document to request a hearing. If you use that Form, you must fill it out entirely. The AID must receive the form within the allowed time period.

B. A LETTER REQUESTING A HEARING. You may use a personal letter to request a hearing. In that letter you need to provide all of the information requested on the Hearing Request Form. You must specifically state that you request a hearing on the denial of your application. Your letter must also a) have a date, b) set out your full, legal name, typed or printed, and, c) be signed by you. The AID must receive the letter within the allowed time period.

C. TIME PERIOD FOR FILING A HEARING REQUEST. At the end of the Notice of Denial of your License Application is a "Certificate of Service." You have sixty (60) calendar days from the date on the certificate of service to submit your request for a hearing. Your request for a hearing must arrive and be recorded at the AID office no later than the close of business (5:00 PM, Mountain Time) on the 60th day or it will be counted as "late." If the 60th day falls on a weekend or on a Colorado State holiday, you will have until the next business day. If your request is "late," your request for a hearing will be denied as a matter of law.

D. HOW TO FILE A HEARING REQUEST. You may use any of the methods below to submit your written request for a hearing.

- **By US Mail, FEDEX, or UPS to the following address:**

Attn: Licensing Appeals
Motor Vehicle Dealer Board
Offices of the Auto Industry Division
P.O. Box 17087
Denver, CO 80217-0087

- **By FAX to the following FAX number:**

303-866-2598 [Include Cover Page --- Attn: Licensing Appeals]

- **By Email to the following Email address:**

dor_mvdb@state.co.us

- **In Person at the following street address:**

Offices of the Auto Industry Division
1697 Cole Boulevard; Suite 200A
Lakewood, CO 80401

IV. THE HEARING PROCESS

A. WHAT HAPPENS WHEN YOU APPEAL YOUR APPLICATION DENIAL. After you file a written request for a hearing to contest the denial of your application, your case will be heard by a Hearing Officer in the Colorado Department of Revenue's Hearings Division (hereafter, the "Hearings Division"). After the hearing, the Hearings Division sends the case back to the Board in the form of a ruling entitled "Initial Decision for the Motor Vehicle Dealer Board" (hereafter the "Initial Decision").

B. THE HEARING PROCESS. The Hearings Division employs a number Hearing Officers to handle the full range of the Department of Revenue's cases from a variety of divisions and programs within the Department of Revenue. Hearing Officers act as judges in the cases assigned to them, performing their duties as set out in applicable law and regulation.

C. TIMING OF THE HEARING. After you request a hearing, the Hearings Division must fit your case into its existing docket. The Hearings Division's docket fills with appeal cases on a first-come, first-served basis. You will receive a Notice of Hearing setting a specific hearing date at least 30 days prior to the date of your hearing.

D. THE NATURE AND COURSE OF THE HEARING BEFORE A HEARING OFFICER. A hearing before a Hearing Officer is an electronically-recorded evidentiary hearing taking place in a conference room. It is fact-finding in nature. You and a representative for the Board are the opposing parties. Hearing Officers, like all judges, monitor and protect the rights of the parties before them.

Hearing Officers are independent fact-finders. They follow the law, regulations, and judicial ethics. The Hearing Officer maintains an orderly process without prejudice or favoritism toward any party, and applies the law appropriately and fairly, reaching a reasoned decision.

You may present your own evidence and make your own arguments or you may hire an attorney to represent you. The Board employs an attorney from the Colorado Attorney General's Office to represent it (hereafter, the "AG"). The hearing has definable stages and features, as follows:

1. Opening Statements. After everyone in attendance has identified themselves for the record, the Hearing Officer will give both you and the AG the opportunity to make Opening Statements. A party's Opening Statement is usually a summary of the case that party intends to present through evidence and argument during the hearing. It is your choice whether to make an Opening Statement.

2. Presentation of Evidence. Each side is given the opportunity to introduce evidence and argument in the hearing. Usually the Hearing Officer asks the Board to proceed first so that the reasons for the denial of your application frame the issues for the hearing. The parties introduce evidence into the hearing by means of

witnesses and exhibits. You may be a witness for yourself and you may also be called as a witness by the Board. Both you and the AG can bring other witnesses to present evidence and introduce exhibits.

The Hearing Officer will administer an oath to all witnesses before they can testify. You and the AG are responsible to organize your own presentations and to call witnesses and introduce exhibits in the order you desire. You and the AG can object to the introduction of exhibits or certain testimony and the Hearing Officer will rule on any objection. You and the AG can cross-examine each other's witnesses. The Hearing Officer will occasionally ask questions of witnesses if the Hearing Officer needs further clarification or explanation in order to understand the facts and properly rule in the case.

3. Burden of Proof / Preponderance of the Evidence. By law, because you are applying for a license, you have the burden of proof to establish that the Board should issue you a license. You must prove that you are entitled to a license by a preponderance of the evidence. The Hearing Officer will determine whether you have met your burden and issue a written ruling several weeks after the hearing.

4. Closing Arguments. After both you and the AG have introduced all of the evidence in your case, the Hearing Officer will give each of you the opportunity to make a Closing Argument. A Closing Argument provides an opportunity to argue facts and law to the Hearing Officer. It is your choice whether to make a Closing Argument.

5. The Conclusion of the Hearing. The Hearing Officer officially notes the end of the hearing on the record. The Hearing Officer does not rule on the case on the day of hearing, and will not give the parties any "preview" of his or her thoughts. The Hearing Officer must carefully sort through the testimony and exhibits to ascertain all of the relevant facts, make determinations of the credibility of witnesses, apply the relevant facts to the correct laws and regulations, and reach the appropriate, conclusions.

E. SPECIAL CONSIDERATIONS.

1. Mandatory Disqualifiers. The Board is required by law to deny an application for licensure for any person who has been convicted of certain felonies. If the reasons stated in the Board's Notice of Denial of your application include §44-20-118(a)(I) or (II), C.R.S., or §44-20-420(8)(a)(I) or (II), C.R.S., for a felony conviction within the ten (10) years prior to the date of your application, that means the Board has alleged that you have a conviction for which the Board is required by law to deny licensure ("Mandatory Disqualifier").

If it is established that you have been convicted of a Mandatory Disqualifier, neither the Board nor a Hearing Officer has any choice but to deny or to uphold the denial of a license application.

2. Deferred Sentences. If you received a deferred sentence in a criminal case, this sentence will be treated in the same manner as a conviction, until you have successfully completed all of the terms of the sentence and have had the case dismissed by court order.

3. Identity Issues. If the Board denied your license application based upon a criminal record that pertains wholly or partially to someone other than you, or upon an apparent discrepancy or multiplicity of Social Security numbers, you have an “identity issue.”

The responsibility to resolve any identity issue is yours, alone. You may need to contact the relevant court(s), law enforcement and/or governmental agency(ies), (i.e. the Federal Bureau of Investigation (FBI), Colorado Bureau of Investigation (CBI), the Social Security Administration (SSA), or the Immigration and Naturalization Service (INS)) to clear your record. Whenever identity issues exist, you must produce sufficient evidence in writing to establish your identity.

You may find the following websites helpful:

<http://www.fbi.gov/about-us/cjis/background-checks>

<https://www.cbirecordscheck.com/>

4. Interpreters for Hearings. You have the right to bring a foreign-language interpreter with you to the hearing, but you are responsible to hire a certified interpreter solely at your expense. An interpreter must be able to interpret whatever any person expresses in that hearing, completely and accurately, in both your preferred language and in English. An interpreter cannot guess at the meaning of words and phrases, cannot “fill in the blanks” for you, and cannot extend the meaning of your expressions or make inferences from what you have said in order to respond to questions that you may not have understood. For these reasons, the Colorado Courts have developed a certification program for interpreters who will appear in Court or other legal proceedings.

You will need to acquire and pay a Language Interpreter certified in your preferred language through the Colorado State Interpreter Program of the Office of the State Court Administrator.

5. Accommodations for Disabilities. If you require special access to the building and/or to the hearing room or require some other form of accommodation for an existing disability, please enclose a separate letter with your Hearing Request Form, indicating what accommodations are needed. Be sure to include a valid contact phone number. The Hearings Office staff will communicate with you regarding reasonable accommodations.

F. THE RESULT OF THE HEARING / THE HEARING OFFICER’S INITIAL DECISION. Following the hearing, the Hearing Officer will issue an Initial Decision. There is no specific deadline within which the Hearing Officer must release the Initial Decision to the Board. The Initial Decision will contain the following:

The “Findings of Fact.” The Hearing Officer recites the relevant facts that he or she has determined were brought out in the hearing.

The “Conclusions of Law.” The Hearing Officer recites the relevant provisions of the law and regulations and, applying the relevant facts under the burden of proof, decides the merits of the case. The Hearing Officer weighs the evidence with the “preponderance of the evidence” standard in mind, placing the burden on the appropriate party.

The “Recommended Ruling of the Hearing Officer.” This section reflects the Hearing Officer’s reasoned opinion on the appropriate result of the appeal. The Hearing Officer lacks the authority to speak for the Board. The Hearing Officer only has the authority to recommend to the Board what action the Board should take, based upon the Findings of Fact and Conclusions of Law. Typically, a Hearing Officer will recommend either that a License be: 1) Granted, 2) Granted subject to specific conditions, or 3) Denied.

G. AFTER THE HEARING OFFICER ISSUES THE INITIAL DECISION. The Hearing Officer provides the Initial Decision to the Board. The Board then sends the Initial Decision to you and to the AG, together with a detailed explanation the next stage of review of the case, a stage called the “Exceptions Process.”

The “Exceptions Process” provides the parties the opportunity to request that the Board modify the Hearing Officer’s Initial Decision. Even if the parties do not file Exceptions, the Board may review the Initial Decision on its own motion.

After deliberation on the facts and the law, the Board will issue a Final Order, which may adopt, modify or reverse the Initial Decision. The Board’s Final Order in your case may be either more or less favorable than the Initial Decision.

V. YOUR HEARING PROCESS RIGHTS

You have the following rights with respect to the Hearing process:

A. BE PRESENT. You have the right to be present at the Hearing and to testify under oath in your own behalf.

B. HAVE REPRESENTATION. You have the right to be represented by legal counsel of your choosing.

C. SEE AND HEAR EVIDENCE. You have the right to see and hear the Board's evidence and arguments.

D. ENGAGE IN CROSS-EXAMINATION. You have the right to cross-examine all of the Board's witnesses.

E. PRESENT EVIDENCE. You have the right to present relevant and admissible evidence, including the introduction of exhibits, to examine your own witnesses, and to make arguments on your behalf. (*Note: If you plan to introduce written exhibits on your behalf, you are responsible in advance to label each exhibit with a letter, in series (i.e., "Exhibit A," "Exhibit B," "Exhibit C," etc.). You must have at least four (4) photocopies of each labeled exhibit to pass out to the Hearing Officer and to others present.*)

F. ISSUE SUBPOENAS. You have the right to have subpoenas issued on your behalf by the assigned Hearing Officer to appear at the Hearing and produce evidence. (*Note: You are responsible to serve the subpoenas on your witnesses, and you are responsible to pay both the costs to serve those subpoenas and any expenses required for any witness.*)

VI. FAILURE TO APPEAR AT THE HEARING

If you request a Hearing and then you fail to appear at the scheduled Hearing without having obtained a continuance from the Hearing Officer, the Hearing Officer may proceed with the hearing in your absence, and may issue an Initial Decision to the Board without input from you. The Board in turn may reach a Final Decision regarding your license without further notice.

