

MOTOR VEHICLE DEALER BOARD  
STATE OF COLORADO

CASE NUMBER: 22A002/BD21-1162

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IN THE MATTER OF:

LOUIS CARLOS GUTIERREZ,  
Motor Vehicle Salesperson License No. 201441,

Respondent.

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**FINAL AGENCY ORDER**

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This license discipline matter is before the Colorado Motor Vehicle Dealer Board to review the Initial Decision issued by the Hearing Officer and duly served upon the parties on August 22, 2022. The Initial Decision is attached as Exhibit 1 and is incorporated as set forth herein.

Neither party filed exceptions. Having timely initiated its own review of the Initial Decision in accordance with § 24-4-105(14)(a)(II), C.R.S., the Board considered the Initial Decision and the administrative record. Being fully informed of the premises, the Board now enters this Final Agency Order to impose seven days' suspension and \$2000 administrative fine as final discipline against Respondent's license for unfitness because of criminal character or record, unfitness because of financial character or record, and failure to timely report as required by Board rule.

The Board regulates motor vehicle dealer salespersons and is authorized to impose appropriate discipline upon such licenses. §§ 44-20-101(1)(c), 44-20-104(3)(e)(I), (m), C.R.S. In determining the final sanction after due notice and

hearing, the Board is afforded great discretion to be exercised in accordance with factors prescribed by regulation. *See* § 44-20-104(4); 1 Code Colo. Regs. § 205-1, Regulation 44-20-104(4); *Davis v. Bd. of Psychologist Exam'rs*, 791 P.2d 1198, 1202 (Colo. App. 1989). Unlike hearing officers' limited authority, the Board's disciplinary authority is broad and includes revocation of a license, suspension, probation, and an administrative fine up to \$10,000 per offense. § 44-20-104(3)(e)(I), (m); *cf.* § 44-20-104(3)(m)(I)(A) (setting maximum discipline hearing officers may recommend).

As found by the Hearing Officer, Respondent violated three provisions of the licensing law:

- Failure to timely report a 2021 criminal conviction of misdemeanor criminal mischief as required under Board Regulation 44-20-121, in violation of § 44-20-121(6)(b), C.R.S.;
- Unfitness because of criminal character or record, for three criminal offenses, in violation of § 44-20-121(7)(b), C.R.S.;
- Unfitness because of financial character or record, for delinquency and nonpayment of costs, fines, and fees due to the court, in violation of § 44-20-121(7)(c), C.R.S.

As the disciplinary sanction therefor, the Hearing Officer recommended a 12-month probationary period and a \$500 fine per violation—the maximum allowed by a hearing officer—and revocation upon review by the Board.

Considering the factors under Regulations 44-20-104(4), 44-20-121(7), and applicable law, the Board agrees with the Hearing Officer that the violations are serious and are not attended by mitigating circumstances. *See* Initial Decision, Findings of Fact ¶¶6-8; Analysis, p.7. The Board observes that one of Respondent's

2021 guilty pleas was for an offense against a person, and another was for an offense against property that resulted in damage. *See id.* ¶7. The Board expressly finds that Respondent's pending probation status at the time of the hearing establishes incomplete rehabilitation if any, and that Respondent's noncompliance with multiple sentencing conditions in each of the three cases is an aggravating circumstance. While the offenses individually have limited bearing on Respondent's duties and responsibilities as a licensee, the Board finds that, taken together, the convictions establish a pattern of criminal conduct in less than one year, which were recent, and are further aggravating circumstances. *See id.* ¶¶6-9. Based on these circumstances, for Respondent's violation of § 44-20-121(6)(b), (7)(b)), and (7)(c), the Board upholds the \$500 administrative fine for Respondent's violations of § 44-20-121(7)(b) and (c).

The Board imposes an administrative fine of \$1000 for Respondent's failure to report his criminal conviction in violation of Board Regulation 44-20-121 and § 44-20-121(6)(b). The Board expects all licensees, including Respondent, to heed and comply with reporting requirements to the Board as the regulating body. Instead, here, Respondent's reportable conduct became known to the Division because of Respondent's change of employer. *See id.* ¶¶3-4. Respondent's failure to timely report the misdemeanor criminal mischief conviction has direct bearing on Respondent's accountability to the Board as the licensing authority and impacts the industry, consumers, and the public. Given the close succession and sequence of Respondent's sentencing for offenses that were both subject to and not subject to

mandatory reporting, Respondent's lack of timely report as required is an aggravating circumstance. Thus, in addition to the \$1000 administrative fine imposed, the Board imposes seven consecutive days' suspension.

The Board finds that, for the violations and under the circumstances established in the Findings of Fact and Conclusions of Law,<sup>1</sup> these sanctions protect the public and are proportional to Respondent's conduct. The Board thus declines to order probationary conditions or revocation.<sup>2</sup>

For the reasons stated above and subject to the discussion herein, the Board adopts and incorporates all Findings of Fact and Conclusions of Law, correcting citation to "C.R.S. § 24-2-105" with "§ 24-4-105, C.R.S.," on page 1 of the Initial Decision. In conformity with §§ 24-4-105(15)(b), 44-20-104, 44-20-121, C.R.S., and based on substantial record evidence for Respondent's violation of § 44-20-121(6)(b), (7)(b), and (7)(c), C.R.S., the Board orders as final discipline against Respondent's motor vehicle sales license:

- Administrative fine in the amount of for a total of \$2000, to be paid within thirty (30) days of this Order:
  - \$1000 for Respondent's violation of Board Regulation 44-20-121 and § 44-20-121(6)(b);
  - \$500 for Respondent's violation of § 44-20-121(7)(b); and
  - \$500 for Respondent's violations of § 44-20-121(7)(c).

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<sup>1</sup> Observing that reference to C.R.S. § 24-2-105 is in error, the Board corrects the citation to § 24-4-105, C.R.S. *See* Initial Decision, p.1.

<sup>2</sup> The Board disagrees that revocation for any the convictions at issue here is mandatory under § 44-20-121, C.R.S., and rejects that portion of the ALJ's analysis. *See* Initial Decision, p.8, final paragraph.

- Suspension of Respondent's license for a period of seven (7) days, to be served consecutively within thirty (30) days of this Order. Within thirty (30) days of this Order, Respondent shall submit a document to the Division at DOR\_MVDB@state.co.us:
  - Identifying the dates of the seven consecutive days that Respondent served the suspension; and
  - Affirming that Respondent has served the suspension in compliance with this Order.

DONE and ORDERED this 21<sup>st</sup> day of November, 2022.

MOTOR VEHICLE DEALER BOARD



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Kevin Shaughnessy, First Vice President

This decision becomes final upon mailing. Any party adversely affected or aggrieved by any agency action may commence an action for judicial review before the Court of Appeals within forty-nine (49) days after the date of the service of this order. §§ 44-20-122(5) and 24-4-106(11), C.R.S.

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this FINAL AGENCY ORDER was served on the following parties via United States Mail, first class, postage prepaid, this 23 day of November, 2022, and with courtesy copy by electronic mail to the electronic mail addresses as follows

Respondent:


Louis Carlos Gutierrez  
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JOHN OPEKA  
DEPUTY DIRECTOR