



Plain Dealing

A policy and administrative bulletin for licensed dealers from the Dealer Section of the WisDOT Division of Motor Vehicles.

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“Nothing astonishes men so much as common sense and plain dealing.”

R. W. Emerson

Ever see a colleague’s name in the “Licensing Action” section on the back page of *Plain Dealing* and wonder what a “special order” is? Find the answer in this special edition of *Plain Dealing*, all about the disciplinary action policy for all types of licenses issued by the Dealer Section.

Learn about the terms, the variety of possible disciplinary actions and how the seriousness of a violation relates to the level of disciplinary action.

In a late-breaking story, DMV’s vehicle emission inspection program has some important information for you on enhanced emission tests starting in December. You can tear off the fact sheet and give it to your service department.

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New Emission Test	Tear-off sheet

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Consequences of breaking the rules

Keeping dealers in business—doing business right. That’s Dealer Section’s motto. Our licensing and enforcement policy is to teach—to help those we license comply with laws and rules. Our goal in any disciplinary action is that you conduct your business the right way.

Our enforcement policy is progressive. It starts with the mildest action and moves to the harshest action. Each case is considered on its own merits. The action taken depends on variables such as the seriousness of the violation, past track record, who is responsible, and number and resolution of complaints. We can take this range of possible enforcement actions:

- Do nothing.
- Personal contact or call to explain violation and ask for corrective action.
- Verbal warning noted in report.
- Advisory letter.
- Inspection of dealership. Fifteen-day reply may be requested.
- Warning letter requiring written response.
- Informal conference.
- Corrective plan of action.
- Special order.
- Conditional license; may be in special order or in letter from Dealer Section.
- Civil forfeiture; may be included with a special order.
- Suspension; may include civil forfeitures.
- Revocation, denial or voluntary surrender of license.

Anything from a special order through revocation results in a press release and usually requires action by DOA’s Division of Hearings and Appeals (DOHA). Press releases normally follow the final order of DOHA. In extreme cases, a press release may be issued at the same time a complaint is filed, in order to protect consumers.

Alternatives to enforcement action we may take include:

- Citations (for specific violations only); requires action by the State Patrol or other law enforcement agency.
- Criminal action; requires action by a district attorney, Wisconsin Department of Justice or U.S. Department of Justice.
- Court orders or injunctions.
- Refer cases to other agencies.
- Civil remedies by complainants including attorney fees. (We may provide copies of complaints or be called to testify.)
- Claims against a dealer’s bond or letter of credit.

Although it is possible to enter the discipline process at any step, an orderly progression usually occurs through the levels until there is a final disposition. The following two pages give detailed information on the types of disciplinary actions and examples of the violations that lead to them.

Types of disciplinary action explained

There is a variety of possible licensing actions from the mildest advisory letter to the harshest license revocation. Here are explanations of each type of action:

Advisory Letter

An advisory letter lets you know that a complaint investigation or inspection has uncovered a violation of administrative rule or law. Its purpose is to teach the right way to conduct business. Receiving an advisory letter does not mean you admit any wrongdoing. No action is required of you except to stop engaging in the activity that prompted the advisory letter. You may appeal issuance of an advisory letter to the chief of the dealer section and the alleged violation may be reinvestigated. After the review, the letter is voided if found to be improperly issued. Otherwise, the advisory letter becomes part of your file.

Inspection Reports

Inspection reports are official records of on-site inspections of a business. It's one of the ways we can meet with you face-to-face to explain the right way to conduct sales, handle paperwork and answer any questions you may have. The report records the items you may need to correct. It is up to the investigator's discretion whether to issue an advisory letter or conduct a periodic inspection. If the violations noted in the inspection report are serious or repeated, you may be required to reply in writing, within 15 days, describing what you've done to correct each problem.

Warning Letter

A warning letter is similar to an advisory letter, but is more serious. The letter specifies the violations noted during an investigation and refers to the applicable sections of law or rule. It is signed by the chief of the Dealer Section. A warning letter may follow an advisory letter if the same violation is repeated. For a more serious violation, the warning letter may be the first step with no advisory letter being issued. You must respond in writing to a warning letter assuring us that there will be no future violations of that nature. Receiving a warning letter does not mean you admit any wrongdoing. Warning letters can be appealed to the chief of the Dealer Section. If the allegations contained in the letter can't be proved, it will be withdrawn and no further action taken. Otherwise, the letter and response become a permanent part of your file.

Informal Conference

An informal conference is a meeting to discuss possible remedies and penalties that may apply to alleged violations. Either you or we may request an informal conference. The best use of the informal conference is to

reach an agreement on restitution or remedies instead of starting a formal action to suspend or revoke a license.

The agreement may include your voluntary assurance to stop an illegal practice. Settlements reached at an informal conference don't require approval by the Division of Hearings and Appeals (DOHA) unless a special order is part of the agreement.

Corrective Plan of Action

We may require you to prepare and submit a detailed plan to address problems in complying with laws or rules. Examples that may be included in a corrective plan of action are: hiring someone to specifically monitor compliance, submitting periodic progress reports, or reassigning problem personnel. We may offer the option of filing a plan if you have had several warning letters and continue to violate laws and rules; or in cases where there have been a lot of smaller violations not serious enough for more severe action. A plan is often effective when violations occurred because of lack of knowledge and training in proper procedures. Our accepting your corrective plan of action gives notice that repeat offenses will result in more punitive action. The plan doesn't require approval by DOHA.

Citations

A citation is a summons to appear in court or pay a fine. Citations can only be issued by law enforcement officers for specific violations of the motor vehicle code. You may receive a citation for less serious violations, such as late title applications or unlicensed activity, especially if you fail to respond to repeated warning letters.

Special Order

A special order is issued by the Division of Hearings and Appeals (DOHA) in cases where there is a serious violation. The special order usually reflects a stipulation we've both agreed to and signed, but may also be issued by DOHA after a hearing. Special orders are recommended by DMV's Licensing Committee when they are satisfied that the allegations can be proved. Failure to comply with the conditions of a special order can be grounds for immediate suspension, revocation or denial of a license.

Conditional License

We may issue you a conditional license if you have a history of violations that meet criteria for a special order, or if your license has been previously suspended or revoked. The conditions may be listed in a letter of assurance we both sign or in a special order issued by DOHA. Violating terms of a conditional license backed by a special order may be grounds for the immediate and summary suspension or revocation of the license.

Criminal Actions

We may file a complaint with the District Attorney, Wisconsin Department of Justice or U.S. Department of Justice for criminal prosecution. We are often working with a law enforcement agency when an investigation into the most serious violations leads to criminal prosecution.

Civil Forfeitures

A civil forfeiture is a monetary penalty paid to the county as a result of a complaint filed in civil court. It is usually used instead of suspending, revoking or denying a license. A recommendation to file an action in civil court is made by DMV's Licensing Committee, comprised of the administrator of the Division of Motor

Vehicles, the director of the Bureau of Vehicle Services, and the chief of the Dealer Section. Forfeitures may be part of a stipulation in a consent judgement or may follow a court trial.

Suspension, Revocation, Denial or Voluntary Surrender of a License

Suspension, revocation and denial are the strongest actions that can be taken against a license. They are used in cases of serious violations of consumer rights, such as fraud, or when there is a potential threat to public health or safety. We do consider the dealership's responsiveness to making things right with their
(Continued on page 4)

Examples

Here are some examples of violations that may lead to different licensing actions:

Advisory or Warning Letter

(Usually advisory for first offense and warning for subsequent offenses)

- Failure to inspect for or disclose existing mechanical or structural damage.
- Failure to inspect for, or disclose safety equipment defects.
- Failure to display used vehicle disclosure label.
- Failure to put warning on contract regarding illegal safety equipment.
- Failure to state that purchase contract is subject to buyer obtaining acceptable financing.
- Failure to return deposit in 1 business day.
- Failure to have title or MSO for vehicle offered for sale.
- Most advertising violations.
- Failure to transfer title within 7 business days.
- Failure to obtain prior owner's odometer statement.
- Bird-dogging.

Corrective Plan of Action

Used for numerous or repeat violations of anything that would lead to a warning letter.

Special Order, Civil Forfeitures

In addition to failing to live up to a corrective plan of action, or numerous or repeat violations leading to a warning letter:

- Knowingly misrepresenting significant prior use (e.g. saying a rental car was privately driven).
- Failing to disclose flood damage, salvage history, or other condition subject to title branding.
- Knowingly making false statements on an application for title.
- Failing to record vehicles in the log book.
- Bushing.
- Unlicensed sales locations and salespersons.
- Failing to perform any written agreement with any retail buyer.
- Executing a purchase contract before the vehicle is inspected.

Suspension, Revocation or Denial

In addition to violating a condition of a special order or conditional license, or numerous or repeat violations that would lead to a special order:

- Odometer fraud.
- Felony convictions for bank fraud, money laundering, stolen vehicles or auto parts theft.
- Giving a false odometer statement to a buyer with intent to defraud.

Here are definitions of some terms used in this issue that may be unfamiliar to you.

Glossary

Administrative rule — part of the Wisconsin Administrative Code, a rule interprets a statute (law). Rules go into more detail and may provide specific procedures for carrying out a law. Rules carry the same weight in terms of enforcement as laws. The rules administered by WisDOT all start with “Trans.”

Bird-dogging — when a dealer or salesperson offers a monetary reward (or other consideration) to a customer for bringing in another customer. It’s another way to refer to chain or pyramid sales plans.

Bushing — increasing the selling price of a motor vehicle after a purchase contract has been signed by both the buyer and the dealer.

Denial — refusing to issue a license (either on a first-time application or a renewal). The grounds for denial are listed in Wisconsin statute section 218.01(3)(a).

Revocation — permanently taking away a license.

Special order — (also known as a “cease and desist” order) issued by the Division of Hearings and Appeals usually based on a stipulation agreed to by DMV and the dealer. Usually contains a requirement that the dealer stop one or more specific practices.

Stipulation — a written agreement, signed by all parties, listing facts that are not disputed.

Summary suspension (or denial) — a summary suspension or denial takes effect immediately. It may be appealed to DOHA, but the business is not allowed to operate during the appeal.

Suspension — a period of time during which the license is taken away and the business can’t operate. The length of time usually is from 1-60 days depending on the seriousness of the violation(s).

Voluntary surrender — the holder of the license returns it voluntarily to DMV; it may be to avoid serious licensing action.

(“Types of Disciplinary Action,” continued from page 3.)

customers in deciding what kind of enforcement action to take. With serious violations, we may still take an enforcement action even though the customers have been satisfied. Taking care of the customers doesn’t mean the violation didn’t happen. Some dealers choose to voluntarily surrender their license to avoid licensing action.

A suspension or revocation action begins when the Licensing Committee is satisfied that an allegation is serious enough and can be proved. We file a complaint with the Division of Hearings and Appeals seeking

suspension or revocation of the license and a formal hearing is held. The license is suspended or revoked after a hearing and the DOHA orders it, or you sign a stipulation agreeing to it.

We also have the authority to deny the renewal of a license when serious violations have occurred. The denial is signed by the chief of the Dealer Section following a review by the Licensing Committee and does not require the approval of DOHA. You may appeal the denial to DOHA and continue to operate until a decision is reached if your renewal and appeal are filed on time.

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