

Department of Public Safety Standards and Training
Memo

Subject: OAR 259-060-0010, 259-060-0015, 259-060-0020, 259-060-0120, 259-060-0130 & 259-060-0300 – Proposed Rules #10
Private Security Moral Fitness

From: Linsay Hale
Rules & Compliance Coordinator
(503) 378-2431
Linsay.Hale@state.or.us

Background: ORS 181.875 and 181.878 authorize the Board on Public Safety Standards and Training, in consultation with the Private Security/Investigator Policy Committee (PSIPC), to develop rules outlining minimum standards of moral fitness to be upheld by certified or licensed private security providers in the State of Oregon. The PSIPC, through the Board, must also develop rules establishing procedures which detail when and how private security certification or licensure may be denied, suspended, or revoked.

A number of years ago, the PSIPC recognized a need to review and update the current minimum moral fitness standards and denial/suspension/revocation procedures found in rule. A Moral Fitness Subcommittee was formed to review the current rules and work to develop new language which would clearly identify moral fitness standards and develop a legally defensible denial/suspension/revocation process.

As a result of their work, updated minimum standards and guidelines for denials, suspensions, and revocations were developed.

- Core values were developed to include honesty, character, the fair treatment of others, public trust, and respect for the laws of this state and nation.
- Certain behavior, including that which results in specific criminal convictions, were identified as being automatic grounds for the denial/suspension/revocation of certification or licensure. Additional behavior/convictions are identified as potentially resulting in denial/suspension/revocation of certification or licensure based on a discretionary review process exercised by the Board, in consultation with the PSIPC.
- An individual becomes ineligible to hold private security certification or licensure for a period of 10 years upon final determination that a provider or applicant fails to meet the minimum moral fitness standards.

- A process was developed to allow for reconsideration by the PSIPC and Board after four years for individuals whose certifications or licenses are denied or revoked.

A chart has been developed to illustrate the recommended process approved by Subcommittee members (Att. A.)

Issue 1: These proposed rule changes implement moral fitness procedures as recommended by the Private Security Moral Fitness Subcommittee on May 10, 2012.

The following revised language for OAR 259-060-0010 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-060-0010

Definitions

(10) "~~Denial~~" or "~~Deny~~" ~~is that action taken by the Department in refusing to issue a license or certificate to an applicant who has not satisfied all requirements for issuance of a license or certificate.~~ **means the Department's refusal to grant private security certification or issue a license to an applicant who fails to meet the minimum standards for certification or licensure as identified in OAR 259-060-0020, including the mandatory and discretionary disqualifying misconduct identified in OAR 259-060-0300.**

(24) "~~Revocation~~" or "~~Revoke~~" ~~is that action taken by the Department after the licensee or certificate holder has had an opportunity for a hearing and the evidence supports allegations that the licensee or certificate holder has violated provisions of these administrative rules resulting in a Department order concluding that the licensee or certificate holder should not be allowed to continue to provide or implement security services.~~ **means action taken by the Department to rescind the certification or licensure of a private security provider who fails to meet the minimum standards for certification or licensure as identified in OAR 259-060-0020, including the mandatory and discretionary disqualifying misconduct identified in OAR 259-060-0300.**

(26) "Surrender" means the voluntary relinquishment of private security certification or licensure to the Department.

(~~26~~ **27**) "Suspension" or "Suspend" ~~is that~~ **means** action taken by the Department in temporarily depriving the holder of a license or certificate that authorizes ~~provision or implementation of~~ **the individual to provide** private security services.

(29) "Withdraw" means action taken by the applicant or private security provider to remove an application from consideration.

The following revised language for OAR 259-060-0015 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-060-0015

Prohibited Acts

~~(2) Conviction for a non-person felony or Class A misdemeanor will result in disqualification or revocation of certification as a private security provider for ten years from date of conviction.~~

The following revised language for OAR 259-060-0020 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-060-0020

Minimum Standards for Certification or Licensure

(3) Moral Fitness (~~Moral Character~~). All private security providers must be of good moral fitness as determined by a criminal background check, ~~or~~ department investigation, **or other reliable sources.**

(a) ~~For purposes of this standard, L~~**lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation. includes, but is not limited to, mandatory or discretionary disqualifying misconduct as described in OAR 259-060-0300.**

(b) The following are indicators of a lack of good moral fitness: **For the purposes of this standard, the Department through the Policy Committee and the Board, has defined core values that are integral to the private security profession. These values are:**

(A) Honesty. Honesty includes integrity, credibility, acting honorable and maintain confidences;

(B) Character. Good character includes being respectful and courteous, being faithful, diligent and loyal to the employer's charge, and using discretion demonstrating compassion and exhibiting courage;

(C) Fair Treatment of Others. Fair treatment of others includes treating others equitably, demonstrating good judgment and not being discriminatory;

(D) Public Trust. Public trust includes maintaining public confidences, being law-abiding and adhering to recognized industry standards.

(E) Respect for the laws of this state and nation.

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a private security provider. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the private security provider's performance on the job which makes the private security provider both inefficient and otherwise unfit to render effective service because of a loss of confidence in the private security provider's ability to perform competently.

(e) If reliable evidence is received by the Board or Department that a private security provider lacks good moral fitness, a rebuttable presumption will be raised that the private security provider does not possess the requisite moral fitness to be a private security provider. The burden will be upon the private security provider to prove good moral fitness.

(4) ~~Criminal History. An applicant for certification or licensure must not:~~

(a) ~~Have been convicted of a person felony, as defined in the rules of the Oregon Criminal Justice Commission: ORS 162.165 (Escape I), 162.185 (Supplying Contraband~~

as defined in Crime Categories 6 and 7 (Appendix 3)), 163.095 (Aggravated Murder), 163.115 (Murder), 163.118 (Manslaughter I), 163.125 (Manslaughter II), 163.145 (Negligent Homicide), 163.160(3) (Assault IV Felony), 163.165 (Assault III), 163.175 (Assault II), 163.185 (Assault I), 163.205 (Criminal Mistreatment I), 163.213 (Use of Stun Gun/Tear Gas/Mace I), 163.225 (Kidnapping II), 163.235 (Kidnapping I), 163.275 (Coercion as defined in Crime Category 7 (Appendix 3)), 163.355 (Rape III), 163.365 (Rape II), 163.375 (Rape I), 163.385 (Sodomy III), 163.395 (Sodomy II), 163.405 (Sodomy I), 163.408 (Sexual Penetration II), 163.411 (Sexual Penetration I), 163.425 (Sexual Abuse II), 163.427 (Sexual Abuse I), 163.525 (Incest), 163.535 (Abandon Child), 163.537 (Buying or Selling a Person Under 18 Years of Age), 163.670 (Using Child in Display of Sexually Explicit Conduct), 163.684 (Encouraging Child Sex Abuse I), 163.686 (Encouraging Child Sex Abuse II), 163.688 and 163.689 (Possession of Materials Depicting Sexually Explicit Conduct of a Child I and II), 163.732 (Stalking), 163.747 (Violation of Officer's Stalking Order), 163.750 (Violation of Court's Stalking Order), 164.075 (Theft by Extortion as defined in Crime Category 7 (Appendix 3)), 164.225 (Burglary I as defined in crime Categories 8 and 9, Appendix 3), 164.325 (Arson I), 164.395 (Robbery III), 164.405 (Robbery II), 164.415 (Robbery I), 164.877(3) (Tree Spiking (Injury)), 166.087 (Abuse of Corpse I), 166.165 (Intimidation I), 166.220 (Unlawful Use of a Weapon), 166.275 (Inmate in Possession of Weapon), 166.385(3) (Felony Possession of a Hoax Destructive Device), 167.012 (Promoting Prostitution), 167.017 (Compelling Prostitution), 468.951 (Environmental Endangerment), 811.705 (Hit and Run Vehicle (Injury)), 830.475 (Hit and Run (Boat)) and attempts or solicitations to commit any Class A or Class B person felonies as defined herein, or an equivalent crime with similar elements in another jurisdiction. Only Class B and Class C felony convictions may be considered by the Policy Committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2). There will be no waivers granted for Class A felony convictions.

(b) Within the 10 year period prior to applying for, or during, certification or licensure, must not:

(A) Have been incarcerated, placed on probation or paroled as the result of conviction of any felony, other than those described in subsection (a) of this section in this, or any other, jurisdiction. Class B and Class C felony convictions may be considered on a limited basis by the Policy Committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2).

(B) Have been convicted of violating ORS 163.435 (Contributing to the Sexual Delinquency of a Minor), 163.672 (1993 Edition) (Possession of Depiction of Sexual Conduct of a Child), 163.673 (1993 Edition) (Dealing in the Depiction of Sexual Conduct of a Child), 167.007 (Prostitution), 167.062 (Sadomasochistic Abuse or Sexual Conduct in a Live Show), 167.065 (Furnishing Obscene Material), 167.070 (Sending Obscene Material to Minors), 167.075 (Exhibiting An Obscene Performance to a Minor), 167.080 (Displaying Obscene Material to Minors), 167.087 (Disseminating Obscene Material) or an equivalent crime with similar elements in another jurisdiction. There will be no waivers granted for these listed convictions.

~~(C) Have been convicted of a person misdemeanor, as defined in the rules of the Oregon Criminal Justice Commission: ORS 161.405(2)(d) Attempt or 161.435(2)(d) Solicitation to Commit any Class C person felony as defined by the Oregon Criminal Justice Commission, 162.315 (Resisting Arrest), 163.160 (Assault IV), 163.190 (Menacing), 163.195 (Recklessly Endangering Another Person), 163.200 (Criminal Mistreatment II), 163.208 (Assaulting a Public Safety Officer), 163.212 (Unlawful Use of an Electrical Stun Gun, Tear Gas or Mace II), 163.545 (Child Neglect II), 163.575 (Endangering the Welfare of a Minor), 163.605 (Criminal Defamation), 163.732(1) (Stalking), 163.750(1) (Violating Court's Stalking Protective Order), 166.065(4) [Harassment (Offensive Sexual Contact)], 166.155 (Intimidation II), 166.385 (Possession of Hoax Destructive Device) or an equivalent crime with similar elements in another jurisdiction;~~

~~(D) Have been convicted of the following misdemeanors: ORS 162.075 (False Swearing), 162.085 (Unsworn Falsification), 162.145 (Escape III), 162.247 (Interfering with a Peace Officer), 162.295 (Tampering with Physical Evidence), 162.335 (Compounding a Felony), 162.365 (Criminal Impersonation), 162.369 (Possession of False Law Enforcement Identification Card), 162.385 (Giving False Information to Police Officer), 163.465 (Public Indecency), 163.709 (Unlawful Directing of Light from a Laser Pointer), 164.045 (Theft II), 164.125(5)(b) (Theft of Services), 164.140 (Criminal Possession of Rented or Leased Personal Property), 164.235 (Possession of Burglar's Tools), 164.255 (Criminal Trespass I), 164.265 (Criminal Trespass while in Possession of a Firearm), 164.335 (Reckless Burning), 164.354 (Criminal Mischief II), 164.369 (Interfering With Police Animal), 164.377(4) (Computer Crime), 165.007 (Forgery II), 165.055(4)(a) (Fraudulent Use of a Credit Card), 165.065 (Negotiating a Bad Check), 166.115 (Interfering With Public Transportation), 166.250 (Unlawful Possession of Firearms), 166.350 (Unlawful Possession of Armor Piercing Ammunition), 166.425 (Unlawful Purchase of Firearm), 167.262 (Adult Using Minor in Commission of Controlled Substance Offense), 471.410 (Providing Liquor to Person under 21 or Intoxicated Person), or an equivalent crime with similar elements in another jurisdiction. Convictions for any of the listed misdemeanors may be considered on a limited basis by the Policy Committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2);~~

~~(e) Have been convicted, within the 10 year period prior to applying for, or during, certification or licensure, of a "misdemeanor crime of domestic violence," in this or any jurisdiction. A "misdemeanor crime of domestic violence" means a misdemeanor under the law of any jurisdiction involving the use or attempted use of physical force, or threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is co-habiting with or has co-habited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or a guardian of the victim. Convictions for any of the listed misdemeanors may be considered on a limited basis by the Policy Committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2);~~

~~(d) Have been convicted, within the 10-year period prior to applying for, or during, certification or licensure, of a misdemeanor or felony involving the unlawful use, possession, delivery or manufacturing of a controlled substance, or a misdemeanor or felony of similar elements, in this or any jurisdiction: 475.525 (Sale of Drug Paraphernalia), 475.991 (Unlawful Delivery of Imitation Controlled Substance), 475.992 (Prohibited Acts, Manufacturing or Delivering of a Controlled Substance within 1,000 feet of School), or an equivalent crime with similar elements in another jurisdiction.~~

~~(e) Have been convicted, within the seven-year period prior to applying for, or during, certification or licensure, of the following misdemeanors, or a misdemeanor of similar elements, in this or any jurisdiction; 164.043 (Theft III), 164.125(5)(a) (Theft of Services), 162.375 (Initiating a False Report), 166.240 (Carrying of Concealed Weapons), or an equivalent crime with similar elements in another jurisdiction. Convictions for any of the listed misdemeanors may be considered on a limited basis by the Policy Committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2);~~

~~(f) Have been required to register or be registered as a sex offender under ORS 181.595, 181.596 or 181.597. There will be no waivers granted for any persons in this category.~~

The following revised language for OAR 259-060-0120 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-060-0120

Private Security Professional Certification

(1) Under ORS 181.873(1)(a), it is unlawful for a person to engage in the business of, or perform any service as, a private security professional, or to offer services in such capacity, unless the person has obtained certification as a professional, in accordance with these rules.

(b) A Department-licensed executive manager or supervisory manager who has completed the manager specific orientation requirement of OAR 259-060-0075 may temporarily assign a person, whose application for certification as a private security professional is being processed, to perform private security services within this state for a period of time not to exceed 120 days under the following conditions:

(H) Upon written notice from the Department to the applicant and the manager who signed the Form PS-20, the permit and authority to provide private security services may be administratively terminated for the following reasons:

(i) The Department has reason to believe that a person with the applicant's name and birth date has been convicted of a disqualifying crime listed in OAR 259-060-00200300.

(5) The application packet for certification as a private security provider must include:

(a) A completed Form PS-1, including a sworn affidavit attesting to the truth and correctness of the information provided by the applicant, and acknowledging the Department's right to terminate a temporary work permit. ~~Falsification of this application can result in a denial of certification for up to ten years, as well as pursuit of criminal charges.~~

(8) Renewal of certification must occur every two years subject to the following conditions:

(c) The renewal documents must be received by the Department not more than 90 days prior to the anniversary date of the certification or licensure to allow for processing of the forms and criminal history check. ~~The background check may determine convictions or other conditions under OAR 259-060-0020 that would disqualify the provider.~~

The following revised language for OAR 259-060-0130 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-060-0130

Licensing of Executive and Supervisory Manager

(2) Each business, employer, or entity with a private security professional staff of at least one person must designate one employee who performs the duties of an "Executive Manager", as described in these rules, to obtain an Executive Manager license. An employer may obtain licensure for more than one executive manager. Any person who has responsibility and authority in supervising persons providing security services, who has not been licensed as an Executive Manager, must obtain a Supervisory Manager

license. This provision applies to any business, employer or entity that provides private security services within this state, regardless of whether the business, employer or entity is located in or out of this state.

(b) Issuance of an executive manager or supervisory manager license requires that the applicant meet the qualifications set forth in OAR 259-060-0020. This license authorizes the holder to distribute temporary work permits to private security professionals. A temporary work permit will not be issued for armed private security applicants. The executive manager or supervisory manager must review each application for completeness and criminal history, prior to mailing. DPSST must deny certification for applicants with certain convictions, as outlined in OAR 259-060-~~0020~~**0300**. Fees are not refundable.

The following revised language for OAR 259-060-0300 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-060-0300

Denial/Suspension/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to ensure the highest level of professionalism and discipline. The Board will uphold these standards at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

Mandatory Grounds for Denying, Suspending or Revoking Private Security Certification or Licensure

~~(1) Grounds for Denying, Suspending or Revoking the Certificate of a Private Security provider; Process for Requesting Board Waiver:~~

(a ~~2~~) The Department may ~~must~~ suspend, revoke or deny ~~or revoke~~ a **certification or license or certificate of any applicant or private security provider** after written notice, and a hearing, if requested, based upon a finding that **the applicant or private security provider:**

(a) Has been convicted of a person felony as defined by the Criminal Justice Commission in OAR 213-003-0001 or any crime with similar elements in any other jurisdiction;

(b) Is required to register as a sex offender under ORS 181.595, 181.596, 181.597 or 181.609; or

(c) Has, within a period of ten years prior to application or during certification or licensure, been convicted of the following:

(A) Any felony other than those described in subsection (a) above in this or any other jurisdiction;

(B) A person misdemeanor as defined by the Criminal Justice Commission in OAR 213-003-0001 or any crime with similar elements in any other jurisdiction;

(C) Any crime involving any act of domestic violence as defined in ORS 135.230 or any crime with similar elements in any other jurisdiction;

(D) Any misdemeanor or felony conviction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic, or dangerous drug in this or any other jurisdiction;

(E) Any misdemeanor arising from conduct while on duty as a private security provider; or

(F) Any of the following misdemeanors:

161.405(2)(d) (Attempt to Commit a Class C Felony or Unclassified Felony)

161.435(2)(d) (Solicitation of a Class C Felony)

161.450(2)(d) (Conspiracy to Commit a Class A misdemeanor)

162.075 (False Swearing)

162.085 (Unsworn Falsification)

162.145 (Escape III)

162.235 (Obstructing Governmental or Judicial Administration)

162.247 (Interfering with a Peace Officer)

162.295 (Tampering with Physical Evidence)

162.335 (Compounding a Felony)

162.365 (Criminal Impersonation)

162.369 (Possession of a False Law Enforcement Identification Card)

162.375 (Initiating a False Report)

162.385 (Giving False Information to Police Officer for a Citation or Arrest on a Warrant)

162.415 (Official Misconduct I)

163.435 (Contributing to the Sexual Delinquency of a Minor)

164.043 (Theft III)

164.045 (Theft II)

164.125 (Theft of Services)

164.140 (Criminal Possession of Rented or Leased Personal Property)

164.235 (Possession of Burglar's Tools)

164.255 (Criminal Trespass I)

164.265 (Criminal Trespass while in Possession of a Firearm)

164.335 (Reckless Burning)

164.354 (Criminal Mischief II)
164.369 (Interfering with Police Animal)
164.377(4) (Computer Crime)
165.007 (Forgery II)
165.055(4)(a) (Fraudulent Use of a Credit Card)
165.065 (Negotiating a Bad Check)
165.750 (Improper Use of Emergency Reporting System)
166.115 (Interfering with Public Transportation)
166.240 (Carrying of Concealed Weapons)
166.250 (Unlawful Possession of Firearms)
166.350 (Unlawful Possession of Armor Piercing Ammunition)
166.425 (Unlawful Purchase of Firearm)
167.007 (Prostitution)
167.062 (Sodomasochistic Abuse or Sexual Conduct in a Live Show)
167.075 (Exhibiting an Obscene Performance to a Minor)
167.080 (Displaying Obscene Material to Minors)
167.262 (Adult Using Minor in Commission of Controlled Substance Offense)
167.320 (Animal Abuse I)
167.330 (Animal Neglect I)
471.410 (Providing Liquor to a Person Under 21 or Intoxicated Person)
807.620 (Giving False Information to a Police Officer/Traffic)
811.540(3)(b) (Fleeing or Attempting to Elude Police Officer)
Any crime with similar elements in any other jurisdiction.

(3) Emergency Suspension Order: The Department may issue an emergency suspension order pursuant to OAR 137-003-0560 immediately suspending a private security provider's certification or licensure upon finding that a person has been charged with any of the mandatory disqualifying crimes listed in section (2) of this rule. The report may be in any form and from any source.

(a) The Department may combine the hearing on the Emergency Suspension Order with any underlying proceeding affecting the license or certificate.

(b) The sole purpose of the emergency suspension hearing will be to determine whether the individual was charged with a mandatory disqualifying crime. Upon showing that an individual was not charged with a mandatory disqualifying crime, the suspension of the individual's certification or licensure will be rescinded, otherwise the suspension will remain in effect until final disposition of the charges.

Discretionary Grounds for Denying, Suspending or Revoking Private Security Certification or Licensure

(4) The Department may deny or revoke the certification or licensure of any applicant or private security provider after written notice and hearing, upon finding that an applicant or private security provider:

(a) Fails to meet the minimum standards for certification or licensure as a private security provider as defined in OAR 259-060-0020;

~~(A b) The applicant or holder of the certificate or license~~ **Has** falsified any information submitted on the application for certification or licensing **licensure** or ~~on any documents submitted to the Department or falsified any documents pertaining to Private Security certification or licensing~~ **licensure**;

~~(B c) The license holder or applicant for licensure h~~**H**as violated **any of** the temporary assignment provisions of OAR 259-060-0120(1);

~~(C d) The applicant or holder of the certificate or license h~~**H**as failed to timely submit properly completed forms; **or** documentation or fees required under these rules **in a time frame as designated by the Department**;

(e) Has failed to pay a civil penalty or fee imposed by the Department when due;

~~(D f) The applicant or holder of the certificate or license has violated the~~ **Has failed to comply with any** provisions of the Private Security Service Providers **found in the** Act or these administrative rules or ~~has failed to perform any acts required by these rules.;~~ **or**

(g) Lacks moral fitness. For the purposes of this standard, the Department, through the Policy Committee and Board, has defined lack of moral fitness as:

(A) Dishonesty. Lack of honesty includes, but is not limited to, untruthfulness, dishonesty by admission or omission, deception, misrepresentation or falsification;

(B) Lack of Good Character. Lack of good character includes, but is not limited to, failure to be faithful and loyal to the employer's charge and failure to use discretion and compassion;

(C) Mistreatment of Others. Mistreatment of others includes, but is not limited to, violating another person's rights and failure to respect others;

(D) Lack of Public Trust. Failure to maintain public trust and confidence includes, but is not limited to, acting in an unlawful manner or not adhering to recognized industry standards; or

(E) Lack of Respect for the Laws of this State or Nation. Lack of respect for the laws of this state and nation includes a pattern of behavior which leads to three or more arrests or convictions within a ten-year period prior to application or during certification or licensure.

~~(b) The Department must revoke or deny a license or certificate after written notice and a hearing, if requested, based upon a finding that:~~

~~(A) The applicant or holder of the license or certificate at any time fails to meet the criminal history requirements of OAR 259-060-0020(4);~~

~~(B) The holder of an armed security officer or firearms instructor certificate, or an applicant for such a certificate, fails to meet the minimum qualifications and requirements set forth in OAR 259-060-0020(5);~~

~~(C) The holder of an armed private security professional or firearms instructor certificate, or an applicant for such a certificate, suffers any disqualification, condition or circumstance which, under federal law or the law of this state, would disqualify the person from owning, possessing or purchasing a firearm; or~~

~~(e) Pursuant to OAR 259-060-0300(2)(f), the Department may suspend a license or certificate based upon a finding that:~~

~~(A) The holder of the certificate or license has been arrested for or charged with any crime listed in OAR 259-060-0020(4);~~

~~(B) The holder of the certificate or license has failed to successfully complete or timely report the annual or biennial refresher training and examination(s) required in OAR 259-060-0080; or~~

~~(C) The holder of the armed private security professional certification has failed to successfully complete or timely report the annual firearms marksmanship requalification required under OAR 259-060-0085.~~

Procedure for Denial or Revocation of Certification or Licensure

(5) Scope of Revocation. Whenever the Department revokes the certification or licensure of a private security provider under the provisions of this rule, the revocation will encompass all private security certificates and licenses the Department has issued to that person.

~~(2)~~ **6** Denial, Suspension and Revocation Procedure:

(a) Employer Request: When the employer of the private security provider requests that the person's certification or licensure be denied, suspended or revoked, the request **employer** must be submitted **submit** in writing to the Department or its designated staff, stating the reason for the requested suspension, revocation or denial **action** and **include** all factual information supporting the request.

(b) Department Initiated Request: Upon receipt of factual **written** information from any source **other than an employer**, and pursuant to ORS 181.878, the Department or its designated staff may request that the **Board deny, revoke or suspend the private security provider's** person's certification or licensure be suspended, revoked or denied.

(c) Department Staff Review:

(A) The When the Department receives information, from any source, that a private security provider may not meet the established standards for Oregon private security providers, the Department or its designated staff will review the request and the supporting factual information to determine if a sufficient factual basis exists to support the request for suspension, revocation or denial, suspension, or revocation of a private security license or certification under the Act or these meets statutory and administrative rules requirements. If the reason for the request does not meet the statutory and administrative rule requirements for suspension, revocation or denial, the Department's designated staff shall so notify the requestor.

(B) If the reason for the suspension, revocation or denial meets statutory and administrative rule requirements, but is not supported by adequate factual information, the Department or its designated staff will request further information or conduct its own investigation of the matter. If the Department determines that a private security provider may have engaged in discretionary disqualifying misconduct, the case may be presented to the Board, through the Policy Committee. The Department will seek input from the affected private security provider by allowing the individual to provide, in writing, information for the Policy Committee and Board's review.

(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (e) of this rule based on discretionary disqualifying misconduct, the Policy Committee and Board will consider mitigating and aggravating circumstances.

(e) Initiation of Proceedings: The Department's designated staff will determine if the reason for suspension, revocation or denial and supporting factual data meet the statutory and administrative rule requirements and so advise the Department or its designated committee. Upon determination that a sufficient factual basis exists to support the request for denial, suspension, or revocation of a private security license or certification under the Act or these administrative rules, the Department will prepare and serve a contested case notice on the private security provider.

(e) Contested Case Notice: The Department or its designated staff will prepare a "Contested Case Notice" All contested case notices will be prepared in accordance with the applicable provisions OAR 137-003-0004 of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department or its designated staff must serve a copy of the "Notice" on the person whose certification or licensure is being affected.

(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the private security provider prior to Board review. If the Board disapproves the Policy Committee's recommendation, the Department will withdraw the contested case notice.

(C) Applicants who choose to withdraw their application forfeit their application fees.

~~(f) Emergency Suspension Order: Notwithstanding subsection (e), the Department may immediately suspend a person upon a report that a person has been arrested for, or charged with, any crime listed in OAR 259-060-0020(4). The report may be received in any form and from any source.~~

~~(g) An Emergency Suspension Order must be in writing. The order may be issued without prior notice to the individual and without a prior opportunity for a contested case hearing. An Emergency Suspension Order must:~~

~~(A) Generally describe the acts of the person and any circumstances that would be grounds for an Emergency Suspension Order under this rule; and~~

~~(B) Identify the person at the Department whom the individual may contact and who is authorized to make recommendations regarding issuance of the order.~~

~~(h) When the Department issues an Emergency Suspension Order, it must be served on the individual either personally or by registered or certified mail and must contain the following information:~~

~~(A) The effective date of the Emergency Suspension Order;~~

~~(B) A statement of findings detailing the specific acts or omissions of the person that violate applicable laws or rules and which serve as the grounds for revocation or suspension;~~

~~(C) A reference to the sections of the statutes and rules involved;~~

~~(D) A statement indicating the individual has the right to request a hearing to contest the Emergency Suspension Order;~~

~~(E) A statement indicating the individual will have waived their right to a hearing regarding the Emergency Suspension Order if the request for a hearing is not received by the Department within 20 calendar days of the date of notice of the Emergency Suspension Order; and~~

~~(F) A statement indicating a hearing will be held as soon as is prudent and practicable if a timely request for a hearing is received.~~

~~(i) If the individual submits a timely request for a hearing, the Department will hold a hearing on the Emergency Suspension Order as soon as is prudent and practicable.~~

~~(A) The Department may combine the hearing on the Emergency Suspension Order with any underlying proceeding affecting the license or certificate.~~

~~(B) The sole purpose of the hearing will be to determine whether the individual was charged with or arrested for a crime listed in OAR 259-060-0020(4). Upon a showing that an individual was not charged with or arrested for a crime in OAR 259-060-0020(4), the suspension of the individual's certificate or license will be immediately lifted; otherwise, the suspension will remain in effect until final disposition of the charges or arrest.~~

~~(j f) Response Time:~~

(A) A party who has been served with an Emergency Suspension Oregon has 90 days from the date of mailing or personal service of the Order in which to file a written request for hearing with the Department.

~~(A B) Revocation or Denial: If the Department is seeking revocation or denial of a license or certificate, a party A party who has been served with the a "Contested Case Notice" of Intent to Deny Certification or Licensure has must submit a written request for a hearing to the Department within 60 calendar days from the date of mailing or personal service of the notice in which to file a written request for hearing or a written request withdrawing their application from consideration with the Department.~~

~~(B) Suspension: If the Department is seeking suspension of a license or certificate, a party who has been served with an Emergency Suspension Order must submit a written request for a hearing to the Department within 20 calendar days from the date of mailing or personal service of the notice. The Department may extend the time allowed for submission of the written request for a hearing for up to 30 calendar days upon request.~~

(C) A party who has been served with a Contested Case Notice of Intent to Revoke Certification or Licensure has 20 days from the date of the mailing or personal service of the notice in which to file a written request for hearing with the Department.

~~(k g) Default Order: If a timely request for a hearing is not received by the Department, the Contested Case Notice or Emergency Suspension Order will become a final order denying or revoking, suspending or denying certification pursuant to OAR 137-003-0075(5)0672.~~

(h) Final Order:

(A) A final order will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015 if a private security provider fails to file exceptions and arguments within 20 days of issuance of the proposed order.

(B) Department-proposed amendments to the proposed order in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order is issued.

(i) Stipulated Order Revoking Certification or Licensure: The Department may enter a stipulated order revoking certification or licensure of a private security provider upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification or license, or to surrender a certification or license, under the terms and conditions provided in the stipulated order.

Appeals, Ineligibility Period, and Reconsideration

(7) Appeal Procedure. Private security applicants and providers aggrieved by the findings and Order of the Department may file an appeal with the Court of Appeals from the Final Order of the Department, as provided in ORS 183.480.

~~(l) When the Department revokes a certification or denies an applicant's license or certificate, an individual is ineligible to reapply for future certification or licensure for a period of four (4) years from the date of final Department action or order. Any applicant reapplying for certification or licensure must reapply in accordance with the provisions of the Private Security Service Act.~~

(8) Notwithstanding section (9) of this rule, any private security applicant or provider whose certification or licensure is denied or revoked will be ineligible to hold any private security certification or licensure for a period of ten years from the date of the final order issued by the Department.

~~(m) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Hearings Officer Panel in accordance with OAR 137-003-0075(5).~~

~~(n) Waiver Request: It is the responsibility of the Board to set the standards, and of the Department to uphold them in such a manner so as to ensure the highest levels of professionalism and discipline. Those standards must be upheld at all times, unless there is a specific finding of substantial and compelling reason that demonstrates that neither the safety of the public nor the respect of the profession will be compromised by a waiver. Certain criminal convictions will not qualify for waiver request, as identified in OAR 259-060-0020(4). In the event that a waiver of denial, suspension or revocation is granted, the Board's decision must be in writing. The waiver request will suspend timelines for a contested case hearing until an order granting or denying the waiver has been issued. The waiver process applies only to the petitioners who have been certified and licensed under the Private Security Service Providers Act of 1995 on or before October 23, 1999.~~

~~(A) The Policy Committee may consider limited waivers to the Department's notice of intent to deny, suspend or revoke certification or licensure, and forward a recommendation to the Board, based upon:~~

~~(i) The petitioner having been licensed or certified under the Private Security Service Providers Act of 1995 on or before October 23, 1999;~~

~~(ii) The length of time that has elapsed between petitioner's disqualifying conviction and application to the Department is substantial and in the case of a lifetime disqualifier, the length of time exceeds 20 years;~~

~~(iii) Letters of reference attesting to good moral and ethical fitness;~~

~~(iv) The petitioner's age at the time of the conviction;~~

~~(v) Absence of other criminal convictions; and~~

~~(vi) A written explanation of any substantial or compelling reasons, including but not limited to mitigating circumstances of the arrest.~~

~~(B) It is the responsibility of the petitioner to request a waiver within 20 calendar days of the Department's notice of denial or revocation.~~

~~(C) It is the responsibility of the petitioner to present to the Policy Committee all information relative to the request for waiver, in writing, not less than 15 days prior to the next regularly scheduled Policy Committee meeting. The Policy Committee will make its recommendation to the Board, following review of those documents.~~

(9) Reconsideration Process. Any individual whose certification or license has been denied or revoked for discretionary grounds may apply for reconsideration of the denial or revocation after a minimum four-year ineligibility period from the date of the final order.

(a) All applicants for reconsideration are required to submit an application requesting reconsideration on a Form PS-XX. The applicant may provide any mitigating information for the consideration of DPSST, Policy Committee, and Board.

(b) In reconsidering the application of an applicant whose certification or licensure was previously denied or revoked for discretionary grounds, DPSST, the Policy Committee and the Board may consider mitigating and aggravating circumstances.

(c) The Board's decision to deny an application for reconsideration will be subject to the contested case procedure described under subsection (6) of this rule.

(d) If an application for reconsideration is denied, the original ineligibility date remains in effect as described in subsection (8) of this rule.

[All referenced forms are available from the agency]

ATTACHMENT A – Proposed Denial/Revocation Procedure Flowchart

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