Board and Committee Orientation

March 29 and 30, 2010
Agenda

- DPSST/BPSST Overview
  - Enabling statutes

- Professional Standards Overview
  - Establishing standards
  - Enforcing standards

- Other Statutory Bodies
  - Public Safety Memorial Fund Board
  - Polygraph Licensing Advisory Committee
Enabling Statutes for BPSST & DPSST

- State agencies may only do what is permitted by law
- Private entities may do whatever is not prohibited by law
Enabling Statutes for BPSST & DPSST

- ORS 181.610-.714 – public safety personnel –
  - Criminal justice (corrections, EMD, parole & probation, police, telecommunications)
  - Fire service
- ORS 181.870-.991 – private security personnel
- ORS 703.010-.325 – polygraph examiners
- ORS 703.401-.490 – private investigators
- ORS 243.950-.974 – Public Safety Memorial Fund
- ORS 206.015 – Sheriff’s eligibility evaluation
Enabling Statutes for BPSST & DPSST

ORS 181.640 – public safety personnel

- Department recommends, Board establishes by rule:
  - minimum physical, emotional, intellectual & moral fitness standards
  - minimum training for all levels of professional development
Enabling Statutes for BPSST & DPSST

ORS 181.640 – public safety personnel (cont’d)

- Department establishes by rule in consultation with the Board:
  - Procedures to be used by public safety agencies to determine whether individuals meet minimum standards

- Department certifies, denies, revokes, inspects
Enabling Statutes for BPSST & DPSST

ORS 181.878 – private security personnel

-board, in conjunction with PSIPC, establishes by rule minimum physical, emotional, intellectual & moral fitness standards

-board establishes by rule standards for:
  - Issuing, denying, renewing and revoking licenses
  - Reviewing private security services in relation to the standards
Enabling Statutes for BPSST & DPSST

ORS 181.878 – private security personnel (cont’d)

- Board in consultation with Department, establishes by rule accreditation standards for training programs

- Department and PSIPC recommend training content and standards to Board

- Department issues, denies, renews and revokes certifications & licenses
Enabling Statutes for BPSST & DPSST

ORS 703.480 – private investigators

- Board, in collaboration with PSIPC:
  - Establishes by rule minimum standards of physical, emotional, intellectual and moral fitness
  - Prescribes fees
  - Adopts tests
  - Establishes rules of professional conduct
  - Adopts rules specifying mandatory disqualifying crimes & violations
Primary Interactions with Policy Committees and Board

- Establishing Standards:
  - Task forces/subcommittees/workgroups
  - Administrative rules

- Enforcing Standards:
  - Medical waiver requests (criminal justice)
  - Denial or revocation
  - Civil penalties
DPSST Professional Standards Programs

- Criminal Justice Standards & Certification Program
  - Includes Public Safety Memorial Fund
  - Includes Polygraph licensing

- Fire Certification

- Private Security & Investigators Program
Establishing Standards

- Individual program standards vary by discipline
- Process for establishing standards is the same
Establishing Standards

- Accomplished through partnerships among policy committees, Board members, DPSST staff, other constituents
- Often involves task force, subcommittee or workgroup
- Results in Administrative Rule adoption
Primary Interactions with Policy Committees and Board

- Establishing Standards:
  - Task forces/subcommittees/workgroups
  - Administrative rules
Task Forces, Subcommittees & Workgroups

Established to:

- Develop or update standards
- Interpret or apply current standards

Recommend to Policy Committees, which recommend proposed rules to Board

Examples:

- Adoption & updates to fire service and criminal justice denial/revocation standards
- Curriculum advisory committees
- Updated private security armed instructor curriculum
Task Forces, Subcommittees & Workgroups

Be aware of when, or if, these meetings may be subject to public meeting law

- If participants include a quorum of policy committee or Board members, then YES, their meeting IS a “public meeting of a public body.” Public meeting law must be followed and notice given.

- If participants do not include a quorum of policy committee or Board members, then NO, their meeting is NOT a “public meeting of a public body.” No public notice is required.
Administrative Rules

- Rules include “any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy” or describes agency procedure or practice requirements.

- Rules do not include interagency or internal statements or directives that do not “substantially affect the interests of the public.”
Administrative Rules

- “Flesh out” the statutory framework.
- Assist constituents to understand and comply with program requirements.
- Guide DPSST operations & decision-making.
- Help ensure that DPSST interprets and applies program requirements consistently.
Administrative Rules

- Process is under Secretary of State’s authority
- Laws govern rulemaking
- Public notice and involvement are required
  - Actual process often starts with workgroup
  - Formal process starts after Board approval
- Process permits maximum input, review & comment
Administrative Rules

- **Rulemaking is slow**
  - From six months to a year or more (see flow chart).

- **Timing depends on:**
  - complexity of proposed rule;
  - whether workgroup is required;
  - how many policy committees need to review and approve;
  - whether constituents comment on proposed rule. If so, committees and Board reconsider before adopting final rule.
Administrative Rules
Rules, Standards & Certification

- **Board adopts rules** identifying minimum standards for employment, training, and certification

- **Department issues certification or license** when the individual meets the minimum standards
Certification by Discipline

DPSST Certification/licensure:

- Mandatory:
  - criminal justice
  - private security
  - private investigators

- Optional:
  - Fire service
Certification by Discipline

Term of certification or license:

- **Corrections, P & P, Police:**
  - Active for duration of employment.
  - Lapses 90 days after separation from employment.
  - Maintenance training may apply

- **Fire service, Telecommunications, EMD:**
  - Active for duration of employment.
  - Lapses 12 months after separation from employment.
  - Maintenance training applies

- **Private Security & Private Investigators:**
  - Expires every two years
  - Renewal requirements apply
Certification by Discipline

- Types of certification or license

  - Criminal justice:
    - Basic, Intermediate, Advanced, Supervisory, Management, Executive certifications, specific to the discipline
    - Instructor certification
    - Oregon-specific standards for each level

  - Fire service:
    - 60+ task-specific certifications
    - Based on National Fire Protection Association (NFPA) requirements (exception: 4 Oregon-specific or other standards)
Certification by Discipline

- Types of certification or license

  - Private security:
    - Armed & unarmed private security professional certifications
    - Instructor certifications
    - Supervisory & Executive Manager licenses
    - Temporary work permit

  - Private investigators:
    - Private investigator license
    - Provisional investigator license
    - Temporary license
Primary Interactions with Policy Committees and Board

- **Enforcing Standards:**
  - Medical waiver requests *(criminal justice)*
  - Denial and revocation
  - Civil penalties *(private security and investigators)*
Enforcing Standards

- All policy committee and Board decisions to proceed are preliminary.

- Formal due process begins when Department issues Notice of Intent to Deny/Revoke/Issue Civil Penalty.
Medical Waiver Requests

Medical standards are developed for each criminal justice discipline:

- Based on Job Task Analysis (JTA).
- JTA identifies statewide essential tasks for each discipline.
- Medical panel identifies standards based on statewide essential tasks.

Standards are identified in Administrative Rules.

Medical Examination Form reflects standards.
Medical Waiver Requests

- Applicable policy committee and Board reviews requests to waive medical standards (see flowchart).

- Board has authority to waive a standard only if “waiver would not be detrimental to the performance of an officer’s duties, including the protection of the public and the safety of co-workers.”
Medical Waiver Requests

Does employer want to pursue medical waiver?

Staff works with employer or individual to obtain relevant information for presentation to policy committee and Board.

Policy committee hears matter; makes recommendation to Board.

When certification requirements are met, certification will include notation that medical waiver had been granted.

Medical Waiver Request Process

Staff informs employer and individual and closes file.

Does the Board vote to grant the medical waiver?

Staff informs employer and individual, schedules for required training.

Staff informs employer and individual, and schedules for required training.

Vote to return matter to committee for reconsideration (one time only, simple majority vote).

Staff closes file.

Vote to approve committee recommendation.

Vote to disapprove committee recommendation (requires 2/3 vote).

Board reviews and votes on matter.

Parameters for authority to grant waiver: "The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job."

06/12/07
Primary Interactions with Policy Committees and Board

- Enforcing Standards:
  - Medical waiver requests (criminal justice)
  - Denial and revocation
  - Civil penalties (private security and investigators)
Denial and Revocation

- **Criminal justice and fire service**
  - 1.6 DPSST staff members assigned to professional standards enforcement
  - Current average of 180+ open cases

- **Private security and investigators**
  - 2 DPSST staff members assigned to professional standards enforcement
  - Current average of 275 open cases (75 compliance investigations; 200 awaiting criminal background information)
Denial or Revocation Occurs:

- When an individual does not meet the minimum state standards
- Can be initiated by the agency or by DPSST (see flowchart)
- Follows due process
Denial/Revocation Process

Department of Public Safety Standards and Training
2010 DENIAL AND REVOCATION PROCESS

MANDATORY Denial or Revocation
- Discharge for Cause
- Criminal Convictions

Policy Committee review, recommendation to Board
- Allow certifications to be obtained/retained
  - Close Case
- Deny or Revoke Certification
  - Notice of Intent to Deny or Revoke Certification
  - Default Final Order issued if No Hearing Requested
  - Close Case
  - Contested Case Hearing if Requested
    - Forward to Dept. of Justice

DISCRETIONARY Denial or Revocation
- Falsification
- Criminal Convictions
- Moral Fitness

Policy Committee review, recommendation to Board
- Allow certifications to be obtained/retained
  - Close Case
- Deny or Revoke Certification
  - Notice of Intent to Deny or Revoke Certification
  - Default Final Order issued if No Hearing Requested
  - Close Case
  - Contested Case Hearing if Requested
    - Forward to Dept. of Justice

Board review, affirm/overt turn recommendation of Policy Committee
- If Board overturns revocation recommendation, issue Withdrawal of Notice
  - Close Case
- If Board affirms revocation, proceed to hearing
  - Administrative Law Judge issues Proposed Order
    - Final Order issued by Director of DPSST
      - Do Not Deny/Revoke Certification
        - Close Case
      - Deny or Revoke Certification
        - Court of Appeals

Stipulated Order Denying or Revoking Certification
- Close Case

DPSST Management Review
- Close Case

Staff Report Actionable

Staff Report Administrative Closure

Staff Case Review Administrative Investigation

Based on statutory changes made during the 2009 Legislative Session at the request of bargaining units, a Notice of Intent to Revoke Certifications is based on the Policy Committee vote and precedes the Board's review in an effort to expedite the proceedings.
Causes for Denial or Revocation (Criminal Justice):

- **Criminal Convictions:**
  - **Mandatory disqualifiers:**
    - felonies
    - some misdemeanors
    - any offense involving controlled substances
    - DPSST prepares case and Notice
  - **Discretionary disqualifiers:**
    - All other crimes
    - DPSST prepares case for policy committee and Board review
Causes for Denial or Revocation (Criminal Justice cont’d.):

- **Other mandatory disqualifiers:**
  - Discharge for cause
  - DPSST prepares case and Notice

- **Other discretionary disqualifiers:**
  - Falsification of documents
  - Moral Fitness
  - DPSST prepares case for policy committee and Board review.
Causes for Denial or Revocation (Fire Service):

- **Criminal Convictions:**
  - Mandatory disqualifiers:
    - Measure 11 crimes
    - DPSST prepares case and Notice.
  - Discretionary disqualifiers:
    - Certain other crimes related to fire service profession
    - DPSST prepares case for policy committee and Board review
Causes for Denial or Revocation (Fire Service cont’d.):

- Other mandatory disqualifiers:
  - Discharge for cause
  - DPSST prepares case and Notice

- Other discretionary disqualifiers:
  - Falsification of documents
  - DPSST prepares case for policy committee and Board review.
Causes for Denial or Revocation (Private Security):

- **Mandatory disqualifiers:**
  - Specific crimes identified in rule
    - Specific ineligibility periods apply
    - Requests for waiver of mandated denial or revocation come to PSIPC and Board
  - Failure of armed private security officer or instructor to meet standards for armed certification
  - DPSST prepares case and Notice
Causes for Denial or Revocation (Private Security):

- Discretionary disqualifiers:
  - Falsification of documents
  - Moral fitness
  - Violation of temporary work permit provisions
  - DPSST prepares case for policy committee and Board review
Causes for Denial or Revocation (Private Investigators):

- **Mandatory disqualifiers:**
  - Specific crimes identified in rule
  - Specific ineligibility periods apply
  - DPSST prepares case and Notice

- **Discretionary disqualifier:**
  - Moral fitness
  - DPSST prepares case for policy committee and Board review
Primary Interactions with Policy Committees and Board

- Enforcing Standards:
  - Medical waiver requests (criminal justice)
  - Denial and revocation
  - Civil penalties
Civil Penalties (private security & private investigators programs)

- Statutes grant authority to impose civil penalties for violating provisions of either the Private Security Providers Act or Private Investigators Act

- DPSST prepares case for policy committee and Board review
Civil Penalties (criminal justice)

- Statutes grant authority to impose civil penalties for failure to obtain basic certification within time mandated by statute
- Since authorized in 2005, none have been imposed (compliance has increased)
- If required, staff would prepare case for policy committee and Board review
Enabling Statutes for BPSST & DPSST

- ORS 243.950-.974 – Public Safety Memorial Fund
  - Provides benefits for line-of-duty death or permanent and total disability
  - Covers law enforcement and fire service
  - Administered by Public Safety Memorial Fund Board (PSMFB)
Public Safety Memorial Fund Board

- Stand-alone Board
  - Membership from BPSST members
  - Authority vested in PSMFB
  - Adopts rules governing program
- DPSST is staff to Board
- Regular PSMFB meetings follow regular Board meetings
- Special meetings occur when we receive a new application for benefits
Enabling Statutes for BPSST & DPSST

- ORS 703.230 – polygraph examiners
  - Board, or Department with Board’s approval, adopts rules for administration and enforcement of Polygraph Examiners Act
Polygraph Licensing Program

- Fee-based program
- Board approves Polygraph program rules

- Polygraph Licensing Advisory Committee (PLAC) is established in rule:
  - Members appointed by Director, ratified by Board.
  - Provides general oversight.
  - Advises the Director regarding the program.

- Agency has authority to administer program, issue, refuse to issue, suspend or revoke licenses
Questions?