

Private Security/Private Investigator Policy Committee

Minutes

June 5, 2018

The Private Security/Investigator Policy Committee of the Board on Public Safety Standards and Training held a meeting on Tuesday, June 5, 2018, in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. Chair, Bill Geiger, called the meeting to order at 1:00 p.m.

Committee Members:

Bill Geiger, Chair, Private Security Industry
Donovan Beard, Armed Security
Chris Bloom, Investigator OSB Appointed (phone)
Dwayne Fund, Health Care Industry (phone)
Jeremy Grahn, Retail Industry
Fred Kuest, Private Business/Governmental Entity
Edward Sharpe, Unarmed Industry
Steven Swenson, Private Investigator

DPSST Staff:

Linsay Hale, Professional Standards Division Director
Suzy Herring, Program Manager
Jennifer Howald, Rules Coordinator
Kristine Boatman, Compliance Assistant
Carissa White, Compliance Investigator
Rob Meeks, Training and Development Specialist
Karen Evans, Investigator

Guests:

Deborah Mauld



1. Introductions

Introductions of members, guest and staff were presented.

Geiger announced Ray Byrd, who held the Vice-Chair position, is resigning due to a different position.

2. *Minutes – December 5, 2017

Approve minutes from the December 5, 2017 Private Security/Private Investigator Policy Committee meeting.

- *Fred Kuest moved to approve the minutes from December 5, 2017 Private Security/Private Investigator Policy Committee meeting. Steve Swenson seconded the motion. The motion carried unanimously.*

3. Informational Update: ORS 183.405 – Five-Year Review of Agency Rules Adopted

Presented by Jennifer Howald

ORS 183.405 requires agencies to conduct a review of rules that have been adopted within five years after the adoption of the rule. The review is meant to assess the following:

- Whether the rule has had the intended effect;
- Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- Whether subsequent changes in the law require that the rule be repealed or amended; and
- Whether there is continued need for the rule.

Statute directs the agency to provide a report to the advisory committee that considered the rule for adoption. The reviews must be completed in writing, using information available to the agency.

The review forms will be provided to the Board at their next meeting scheduled for July 26, 2018. Once the process is complete, the document will become part of the official rulemaking record.

4. ***Proposed Rule Change for OAR 259-060-0015 and 259-061-0018 - Clarification for the exemption from certification and licensure related to providing services for a federal employer.**

Presented by Jennifer Howald

Historically, the Department's interpretation of statutory exemptions for government entities and employees did not extend to contracted companies or employees. DPSST required those entities to meet the certification and licensing requirements for private security providers and private investigators.

In 2017, DPSST staff received a challenge of this interpretation and consulted with the Department's legal counsel, the Department of Justice. The question of interpretation and application of the exemption found in Oregon Revised Statute (ORS) focused on the whether or not an individual, or a private security company, who performed private security services under a federal contract could be considered a federal employee and therefore exempt from certification and licensure requirements.

Through consultation it was determined that while the statutes do not expressly include references to federal government contractors within the certification and licensure exemption language that exists for federal employees, contract employment may still be recognized as federal employment.

A state cannot impose regulatory requirements on the federal government and federal law preempts state law requirements. The federal government, like most state agencies, can only award a contract to a bidder that meets certain statutory qualifications set out in its governing procurement code.

DPSST staff developed an administrative rule change to preserve this interpretation and application of the statutory exemption for the future. This exemption applies to both Private Security Providers and Private Investigators.

It should be noted that the exemption from certification and licensure only applies to services performed to fulfill the contract. If the same individual provides services in another capacity they are subject to the certification and licensure requirements.

- *Fred Kuest recommended that the Board adopt with the amended changes that clarify certification requirements for Federal contracts and that the Board approve the proposed rule changes for OARs 259-060-0015 & 259-061-0018 with the Secretary of State as a permanent rule if no comments are received. Drew Sharpe seconded the motion. The motion passed unanimously.*
- *By consensus, the committee found no fiscal impact to small business.*

5. *** Proposed Rule Change for OARs 259-061-0018 and 259-061-0195 - Private Investigator Rules of Professional Conduct and Maintaining Client Confidentiality.**

Presented by Jennifer Howald

Statute requires the Board on Public Safety Standards and Training (Board), in collaboration with the Private Security and Investigator Policy Committee (PSIPC), to establish rules of professional conduct to be followed by investigators. The current administrative rules do not include a specific rule addressing professional conduct.

Statute also requires Oregon's licensed investigators to maintain the confidentiality of each client as required by rules of professional conduct established by the Board. The current administrative rules do not include standards for maintaining client confidentiality.

On January 11, 2018 and May 1, 2018, the PI Subcommittee reviewed and discussed a proposed rule change to provide a rule specific to investigator professional conduct that also addresses maintaining client confidentiality. The subcommittee members voted unanimously to recommend the proposed rule changes to the Private Security and Investigators Policy Committee (PSIPC) for consideration. The PI Subcommittee did not find any fiscal impact for DPSST, licensed investigators, the public or small businesses.

OAR 259-061-0195 would be adopted as a new rule. This rule re-establishes a specific administrative rule for professional conduct. In section (1), the rule simply states that licensed investigators are required to comply with the requirements of conduct that are found in statute and that violating those requirements may result in civil penalty or action taken on their license. Section (2) moves an existing rule requirement for investigator's to include their legal name and license number in any contracts that they provide. Section (3) adds language to address what it means to maintain client confidentiality in accordance with the rules of professional conduct. Section (3) also includes language to clarify DPSST's enforcement ability when complaints are received. This language provides the avenue for DPSST to assist clients with complaints that client confidentiality has been violated.

- *Steven Swenson recommended to the Board filing the proposed language for 259-061-0018 and adopt OAR 259-061-0195 and file with the Secretary of State as a permanent rule if no comments are received. Chris Bloom seconded the motion. The motion carried unanimously.*
- *By consensus, the committee found no fiscal impact to small businesses.*

6. ***Proposed Rule Change for OARs 259-060-0010, 259-060-0060, 259-060-0120, 259-060-0135 and 259-060-0300 – Emergency suspension for failure of annual firearms training or renewal training.**

Presented by Jennifer Howald

ISSUE 1: Oregon Revised Statute directs the Board on Public Safety Standards and Training (Board) to establish the standards for issuing and renewing certification or licensure for private security providers.

The Board determined that a certified armed private security professional and a certified private security firearms instructor must complete annual firearms refresher training in order to maintain the 2-year certification that has been issued and that biennial renewal training must be completed in order to renew the certification for another 2 years.

The purpose of the annual firearms refresher training and the biennial renewal training is to demonstrate that an individual who is certified to utilize a firearm in the course of providing private security services or instruction has the knowledge, skills and abilities to safely handle a firearm while performing armed private security services or instructing private security firearms courses.

When a certified provider fails the minimum training standards for an annual firearms refresher or biennial renewal training, they have failed to demonstrate that they possess the knowledge, skills and abilities to maintain or renew their armed certification.

In recognition that there is an immediate need to address the risk to public health and safety when a certified armed professional or firearms instructor fails to pass their minimum training requirements, DPSST staff prepared a draft rule change to emergency suspend the armed professional certification or firearms instructor certification.

In situations where the individual holds both the armed professional and the firearms instructor certifications, a failure for any armed/firearms course component or qualification would result in the emergency suspension of both certifications.

The emergency suspension would remain in effect until the individual meets the minimum training requirements. The emergency suspension would only impact the armed professional and the private security firearms instructor certifications. An individual with a suspended armed certification would be able to continue to work as an unarmed professional or using other instructor certifications.

ISSUE 2: The current standard requires the annual firearms marksmanship qualification and training to be completed one year before the expiration of the certification and within the 180 days before the due date.

Under this standard, the refresher due date is based upon when the certification expires and does not recognize when the training was last completed. This can lead to extended time gaps between the initial training used to obtain certification and the refresher training required to maintain the certification when considering the amount of time that passes between the completion of training, application for certification and issuance of certification.

In recognition of the intent of the annual training requirement, DPSST staff recommend changing the completion timeline for annual training to follow the anniversary date of the training. Shifting the due date for the annual training to one year from the date of the last training will not only simplify the completion timeline, but also ensure that private security providers with armed or firearms instructor certifications are demonstrating current knowledge, skills and abilities for their armed certifications each year.

For individuals who hold both armed professional and firearms instructor certifications, the requirements for each will be tracked separately. The individual will be required to satisfy the requirements for each certification for the annual requirements and any renewal requirements.

Certified armed professionals and firearms instructors are now familiar with the consequence of emergency suspension for failure to complete their annual requirements by their due date.

Staff recognize that there will be a group of certified armed professionals and firearms instructors who become subject to emergency suspension when the rule change becomes effective because their existing due date was moved forward. There will also be another group who will not yet be subject to emergency

suspension but will be required to complete the requirements much sooner than previously identified because their existing due date was moved forward.

In order to mitigate the impact to those groups, staff plan to begin notifying certified armed professionals and firearms instructors of the date change process prior to the permanent filing of the rule change. Providing notification of the planned date change in advance will allow the individuals the opportunity to complete the training requirements before the rule change becomes effective and prevent emergency suspensions.

- *Motion by Donovan Beard to recommend, that the Board approve filing the proposed rule changes for OARs 259-060-0010, 259-060-0060, 259-060-0120, 259-060-0135 and 259-060-0300 with the Secretary of State as permanent rules if no comments are received. Jeremy Grahn seconded the motion. The motion carried unanimously.*

For the emergency suspension portion of the rule change, there is no cost for compliance with the rule change unless a certified armed private security professional or a certified private security firearms instructor fails to pass an armed training requirement.

For the change related to the annual due date, there may be changes to recordkeeping and administrative activities for individuals or employers. This is based on the change to the tracking date for the annual marksmanship qualification and refresher training requirements.

- *By consensus, the committee found no fiscal impact to small businesses.*

The Department has a prescheduled Administrative Rule Hearing set for July 16, 2018, at the Oregon Public Safety Academy.

7. Department Update

Presented by Linsay Hale

Hale recognized Ray Byrd for his contributions on the Policy Committee and Board and wished him well in his new position with the Oregon Youth Authority.

During the upcoming legislative session, the Department, as approved by the Board will request an additional position for a Curriculum Development Specialist, specifically for technical website resources and on-line curriculum.

The cost of the additional position will require consideration of a minimal fee increase for private security provider's certification and licensure. The process for a fee increase involves Department of Administrative Services and legislative approval.

The Department is not presenting any other legislative concepts on behalf of the Board. However, the Department monitors legislation and participates as a neutral party when legislative concepts may affect the agency.

Presented by Suzy Herring

Email is now being used for deficiency, card issuance, and supply order notifications.

The recruitment for the Compliance Specialist II position is closed and ten candidates are to be interviewed next week.

A color-coded insert will be sent with cards providing information about renewal training requirements for various levels of certification.

A listserv announcement is being sent weekly with a re-cap of key information for constituents. Urgent messages will be sent throughout the week as needed.

Emergency Suspensions are being conducted for those armed private security professionals who do not maintain their required training. Staff is sending 10-20 per week.

The instructor audit program continues to be developed and tested. We may need to update OAR's under 060-136 to compel instructors to respond to staff requests for training dates and incorporate audit program rules.

The instructor resource page now includes the unarmed curriculum, audit information and forms. A PowerPoint presentation that can be used in conjunction with providing the unarmed refresher course should be posted soon.

Rob and Carissa attended "Captive" training. Captivate is an on-line learning program. Rob is currently creating an on-line PI orientation. We would like to move portions of the manager and instructor course, specifically about Board, policy committee, various subcommittees and definitions, into on-line training modules that could be watched prior to attending the course.

Rob provided an instructor seminar; there were 59 attendees.

The June newsletter will be published in the next few weeks.

There is a vacancy on the unarmed subcommittee and recruitment is open until the end of the month.

8. Subcommittee Reports

Events and Entertainment:

Presented by Rob Meeks

They are moving ahead with identifying training needs with modified job task analysis and what the work groups wanted. Rob developed a sample curriculum using captivate; the committee liked this type of training. Possibility of an initial module, that upon completion, allows an individual to be put to work with the condition that they complete a series of subsequent modules in a specified time frame. Nothing has been finalized, this is all still in the development stage. The subcommittee will identify curriculum components required for certification and Rob will create on-line modules for applicants.

Suzy added iLearn training information, currently being used successfully by the State of Oregon.

Armed Subcommittee:

Presented by Donovan Beard

The subcommittee continues to finalize the Private Security Firearms Instructor Course. They are working on developing measurable learning objectives, legal review, formatting and grammatical edits.

Private Investigator Subcommittee:

Presented by Steve Swenson

The Subcommittee has finalized their review and recommendations for client confidentiality presented to the Policy Committee today.

Unarmed Subcommittee:

Presented by Edward Sharpe

The committee has been looking at instructor requirements and considering a 3-day instructor course. The next unarmed subcommittee meeting is on June 28, 2018.

9. Next Regularly Scheduled Meeting – August 21, 2018 at 1:30 p.m.

* All documents reviewed and discussed in this meeting are subject to Oregon Public Records Law (ORS 192.410 to ORS 192.505). These documents can be requested by contacting DPSST at dpsst.records@state.or.us.