

Private Security/Private Investigator Policy Committee Minutes

August 15, 2017

The Private Security/Investigator Policy Committee of the Board on Public Safety Standards and Training held a meeting on Tuesday, August 15, 2017, in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. Ray Byrd called the meeting to order at 1:35 p.m.

Committee Members:

Raymond Byrd, Chair, Private Security Industry
Donovan Beard, Armed Security Representative
Drew Sharpe, Unarmed Industry
Dwayne Fund, Health Care Industry
Dan Lenzen, Hospitality Industry
Steven Swenson, Private Investigator
Fred Kuest, Private Business/Governmental Entity
Jeremy Grahn, Retail Industry (phone)
Jimmie Edmonds, Alarm Monitor Industry (phone)
Eric Morse, Manufacturing Industry (phone)

Members Absent:

Chris Bloom, Investigator, OSB Appointed

DPSST Staff:

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

Guests:

Rebecca Woolington, The Oregonian
Carli Brosseau, The Oregonian
Mark Mercer, Eclipse Security Professionals
Elliott Thompson – representing Mark Mercer (phone)
Richard Gray, Private Security Provider (phone)



1. Introductions

Introductions of members, guest and staff were presented.

2. *Minutes of May 16, 2017

Approve meeting minutes from May 16, 2017 Private Security/Private Investigations Policy Committee Meeting.

To see a complete record of the Private Security/Investigator Policy Committee minutes, please go to:

<http://www.oregon.gov/dpsst/BD/pages/psipolicycommitteemeetingminutes.aspx>

- *Donovan Beard moved to approve the minutes from May 16, 2017 Private Security/Investigator Policy Committee meeting. Fred Kuest seconded the motion. The motion carried unanimously.*

3. *Proposed Rule Change for OAR 259-060-0092 – clarifies rule language for accreditation of private security training programs.

Presented by Jennifer Howald

Oregon Revised Statute provides the Board, in consultation with the Department, the ability to establish by rule accreditation standards for required training programs. [181A.870 (3)] this authority was granted through legislative changes in 2005. In 2006, a PSIPC Accreditation Subcommittee developed the framework that was adopted by the Board and the Department as the rules and processes regarding accreditation of an outside training program as meeting the Board established standards for required training for certification as a private security professional.

The following draft rule text reflects DPSST staff recommendations for clarity regarding the administration of the accreditation program. The changes use the terms employer, accreditation program manager and the Department. The other references to executive manager; private security company, business or entity; and individual have been removed.

- *Fred Kuest recommended to the Board filing the proposed language for OAR 259-060-0092 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Steve Swenson seconded the motion. The motion carried with nine ayes and Donovan Beard voting nay.*

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

4. *Proposed Rule change for OARs 259-060-0015, 259-060-0135, 259-060-0450 and adopting a new rule establishes instructor responsibilities

Presented by Jennifer Howald

The Department certifies private security instructors to teach the private security alarm monitor professional basic course and refresher, the private security unarmed professional basic course and refresher, and the private security armed basic course and refresher.

OAR 259-060-0135 contains direction on an instructor's responsibilities for maintaining training records, course remediation or failure, and authorizes certified instructors to deliver private security professional courses based on Board approved curriculums or private security professionals training accredited by the Department.

The concept of an instructor code of ethics has been in discussion and development with DPSST staff and several of the private security subcommittees for some time. The intention of the development of an instructor code of ethics was to address conduct that instructors should adhere to and create an avenue to address undesirable conduct that has been identified during audits and the review of complaints.

As a separate form, an instructor code of ethics cannot stand by itself as a basic for denial or revocation of a private security provider's license or certification. In order to establish specific duties that may be considered for denial or revocation when violated, DPSST staff prepared the conduct that had been drafted in the instructor code of ethics as specific instructor requirements within the administrative rule.

- *Donovan Beard recommended the Board filing the proposed language for OAR 259-060-0015, 259-060-0135, 259-060-0450 and the adoption of a new rule with the Secretary of State as a proposed rule and as a permanent rule if no comments are received with the proposed amendments to include the photo and valid aspect of the rule. Fred Kuest seconded the motion. The motion carried unanimously.*

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

5. *Proposed Rule change for OAR 259-060-0300 Establishes Emotional Standards for Armed Private Security Professionals and Private Security Firearms Instructor

Presented by Jennifer Howald

The term private security provider includes armed private security professionals and private security firearms instructors. By definition, armed private security professionals may possess or have access to a firearm while providing private security services. Private security firearms instructors provide the basic armed course and refresher in order to become certified as an armed private security professional and to renew that certification.

OAR 259-060-0020 defines the minimum standards for applicants for certification as an armed private security professional or a private security firearms instructor and expressly states that these two categories of private security providers must not have been committed to

the Mental Health and Development Disability Services Division, found mentally ill in a court of law, or be otherwise prohibited by law from purchasing, owning or possessing a firearm.

Even with these provisions, the Department lacks administrative direction on how to address situations in which information is received that calls into question the emotional state of an applicant, a certified armed private security professional or a certified private security firearms instructor. A serious risk to public health and safety is created by certifying individuals to possess or have access to a firearm while providing private security services or instructing the firearms course when the Department has received information that the individual has demonstrated a lack of emotional fitness to another public agency.

On June 23, 2017, DPSST staff presented this issue to the Executive Committee and the Committee unanimously approved filing a temporary rule change. This temporary rule is effective for a 180 day period from June 23, 2017 through December 19, 2017.

DPSST staff recommends that the Private Security and Investigators Policy Committee (PSIPC) and the Board consider the adoption of emotional standards for certification of armed private security professionals and private security firearms instructed as a multi-phased process that addresses of a long term goal to review the current minimum standards for licensure and certification of private security providers.

- *Steve Swenson recommended the Board adopt the addition of the emotional standards for private security providers as defined in the proposed changes to OAR 259-060-0300 and that the Board approve filing the changes to OAR 259-060-0300 as a permanent rule with the Secretary of State if no comments are received. Fred Kuest seconded the motion. The motion carried unanimously.*

The majority of the consensus from the committee found no fiscal impact to small businesses. Fred Kuest expressed his concern in that it would be a fiscal impact on small businesses.

6. *Mercer, Mark PSID 33075, Eclipse Security Professionals; Executive Manager License, Armed/Unarmed Professional Certification

Presented by Carissa White

At the May 16, 2017 Private Security/Investigator Policy Committee (PSIPC) meeting, members recommended DPSST staff begin the process of revocation of all certifications and licenses held by Mark W. Mercer for engaging in discretionary disqualifying misconduct established in the case presented for the proposed assessment of civil penalties.

On May 16, 2017, Carissa White, compliance investigator for Private Security/Investigator Program presented to the PSIPC a case for review of proposed assessment of civil penalties against Mercer for violation of Oregon Administrative Rule OAR 259-060-0130 (3) for employing individuals to provide armed private security services while not certified to do so

and violation of OAR 259-060-0130 (10) for providing armed private security services while not certified to do so and violation of OAR 259-060 0130(10) for providing armed private security services while not certified to do so, himself.

Donovan Beard moved to adopt the staff report and exhibits as the record upon which its recommendations are based. Steve Swenson seconded the motion. The motion carried unanimously.

By discussion and consensus, the PSIPC determined that Mark Mercer's behavior did not involve **Mistreatment of Others** as defined in Administrative Rule.

By discussion and consensus, the PSIPC determined that Mark Mercer's behavior did not involve **Lack of Respect for the Laws of this State or Nation** as defined in Administrative Rule.

By discussion and consensus, the PSIPC determined that Mark Mercer's behavior did involve **Dishonesty** as defined in Administrative Rule based on Mercer employed armed individuals to perform a duty that could easily invite conflict, knowing that the individuals were not certified to be armed or properly trained or certified shows dishonesty. There was a level of dishonesty to the client that contracted the company for a specific performance of functions. Additionally, Mercer billed the client for armed services when the individual was in fact not certified armed.

Donovan Beard moved that the Private Security/Investigator Policy Committee find that Mark Mercer's **Dishonesty** does rise to the level to warrant revocation of Mercer's executive manager license and armed/unarmed professional certification. Eric Morse seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee determined that Mercer's behavior did involve **Lack of Good Character** as defined in Administrative Rule by misleading an employee to be able to work in armed security position with only a concealed handgun license and who had not received the required 24 hours training. Additionally, **Lack of Good Character** by the process of which it was handled with the client and having the potential to be a liability issue for the client if something had gone in a negative direction.

Steve Swenson moved that the Private Security/Investigator Policy Committee find that Mark Mercer's **Lack of Good Character** does rise to the level to warrant revocation of Mercer's executive manager license and armed/unarmed professional certification. Donovan Beard seconded the motion. The motion carried unanimously.

By discussion and consensus, the committee determined that Mercer's behavior did involve **Lack of Public Trust** as defined in Administrative Rule by jeopardizing the public's trust. The public has expectations of an individual that is an owner, operator, executive manager of a private security company. There is an expectation by the public that the individuals running the organizations are compliant with rules and that they hold their people accountable for following the rules.

Donovan Beard moved that the Private Security/Investigator Policy Committee find that Mark Mercer's **Lack of Public Trust** does rise to the level to warrant revocation of Mercer's executive manager license and armed/unarmed professional certification.

By discussion and consensus, the committee determined that Mercer's behavior did involve **Aggravating Circumstances** based upon the standards which were not met, as the client whom contracted with Mercer, specifically employed him to provide individuals that would provide armed private security services and would be properly trained. The actions taken by Mercer were intentional, deliberate and provided a potentially dangerous situation.

By discussion and consensus, the committee determined that Mercer's behavior did not involve any **Mitigating Circumstances**.

- *After considering the totality of the case, Donovan Beard recommends to the Board the revocation of Mercer's executive manager license and armed/unarmed professional certification. Steve Swenson seconded the motion. The motion carried unanimously.*

7. Department Update:

Suzy Herring presented:

The Department had a failed recruitment for the OS2 position which has since been reposted. Interviews will take place shortly.

House Bill 39 passed and staff is working on some OAR revisions that will be presented at the next PSIPC meeting in November.

There are currently vacancies on the Unarmed Subcommittee and Event & Entertainment Subcommittee. Recruitments have begun to fill those positions.

The workshop that was held here in May was a success and the Department received positive feedback. We are looking at potentially holding a workshop annually.

An updated version of the unarmed curriculum will be coming out soon. Rob Meeks will be conversing with instructors monthly via WebEx on any concerns, feedback, and tips.

We are working with our information technology department to have the opportunity to host webinars allowing a larger attendance and advancement with online training opportunities.

Lindsay Hale Presented:

Just to reiterate what Suzy presented, Senate HB 39 did pass which was the Board approved legislature concept that would give DPSST the authority to emergency suspend armed private security certification holders who fail to maintain their annual training and requalification as required and private security firearms instructors who do not annually requalify.

The other two Board approved bills that passed include; the addition of public members to participate in the capacity of a voting member at the policy committee meetings and the bill that involves the clarification to the fingerprinting authority.

As a Department we continue to review and establish more transparency initiatives with the information we have. We are currently testing the ability for these meeting to be broadcast over the web. Everyone is invited to watch as the meetings are considered public meetings. Individuals would be able to log on to watch the meetings which would grant greater access to the conversations that take place during the meetings. We are looking at publishing of all of the meeting documents online before the meeting.

Lindsay stated that the process for filing proposed rule changes for public comment will be done prior to the Board review, which will allow for a faster processing time.

Lindsay wanted to recognize that there have been some recent situations that involve a few case laws that are coming out of the administrative hearings courts as well as the circuit courts that requiring DPSST to re-evaluate what the moral fitness standards are for private security providers across the board.

Subcommittee reports:

Armed Subcommittee –

Donovan Beard reported that the armed subcommittee has been working on the development and the private security firearms instructor course. The course is being viewed as 44 hour program which will be broken into a total of four modules. The benefit of the course would be to allow individuals to stay within the state of Oregon to take a private security firearms instructor development course and also increase the amount of industry specific information that an instructor teaching this program needs to know. Currently the subcommittee is at the developing and review stage. The next topic of discussion will include a review of what module will look like.

Private Investigator –

Steve Swenson reported that the members just met last month. The subcommittee has a couple new members. There appears to be new enthusiasm and excitement and the members are looking at professional conduct that is related to expectations around client confidentiality. The subcommittee will be identifying what the legal standards are regarding client confidentiality expectation and articulate best practices, procedures and standards around the topic.

Events & Entertainment

Dan Lenzen reported that this subcommittee changed the name to Event & Entertainment Subcommittee. The members are working on identifying the two disciplines and recognizing the differences. There is currently no meeting scheduled as of this date.

Unarmed Subcommittee

Fred Kuest stated the chair position has not been filled and the members have not met in some time. The subcommittee will be meeting soon.

Alarm Monitor

Jimmie Edmonds reported that the subcommittee met on July 24th and looked at the possibility of the industry creating continued education learning courses that would be in partnership with DPSST. The development could include accessible online training for the required continuing education hours required for an instructor's renewal. A request was sent to many of the alarm instructors to see if they would like to take part in creating the trainings. So far there has only been just a few individuals that have provided feedback. The interested industry parties are scheduled to meet again on August 22nd.

Eric Morse wanted to express his gratitude after attending an instructor course recently; he wanted to share how professional the DPSST staff is. Eric stated that the course was taught by Rob Meeks and he felt like that the information that was provided was very thorough and the knowledgeable that was presented about the industry and the overall standards were very much appreciated.

8. Next Regularly Scheduled Meeting – November 21, 2017 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.*