



Minnesota Board of Peace Officer Standards and Training

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Background

In March, 1994, the Board of Peace Officer Standards and Training (POST), Standards Committee, approved a plan to hold statewide meetings for the purpose of collecting public comment on the standards of conduct for peace officers. On March 25, 1994, the full Board recognized the inadequacy of the current standards of conduct and approved the recommendation of the Standards Committee to enter into the formal rule making process. On April 11, 1994, the state register published the notice of solicitation of outside information. During the next nine months, meetings were held around the state. Information was received in both written and oral form. The Standards Committee heard from a wide, and diverse group of people, from both inside and outside the peace officer profession. On January 6, 1995, the full Board approved the rules amendment. The approved rules were submitted to the revisor of statutes office. On February 16, 1995 the proposed rules were returned from the revisors office. A statement of need and reasonableness (sonar) was prepared. On May 2, 1995, a public hearing was held by the Office of Administrative Hearings. On May 16, 1995, the record was closed. On June 22, 1995, the Office of Administrative Hearings, ruled on the proposed rule changes. The hearing officer submitted some changes to the proposed rules for the purpose of clarity. On July 27, 1995, the Board approved the recommendation of the hearing officer. On September 7, 1995, the Board adopted the proposed rules. The rules were published in the state register on October 9, 1995, and now have the effect of law.

The rules of the Minnesota Board of Peace Officer Standards and Training (POST) are found in Minnesota Rules pt. 6700.0100 through 6700.2704. There are three main areas of change in the rules. The first area is Minn. R. pt. 6700.1600 the standards of conduct for peace officers. The second area is Minn. R. pt. 6700.1610 in the area of self reporting of standards violations. This includes both licensees and chief law enforcement officers. The third area Minn. R pt. 6700.1710 deals with the process whereby some violations of an administrative nature will be handled.

These changes together reflect the most significant change in peace officer licensing since the Board was created. This document will attempt to explain the implications of these changes as they effect every peace officer. **Please share this information with all the licensees of your agency.**

Standards of Conduct

The standards of conduct for peace officers is the basis of the code of conduct for licensees. These standards represent the minimum level of acceptable behavior for peace

officers. These standards do not however prevent an agency for setting additional standards which must be followed by licensees.

6700.1600 VIOLATION of STANDARDS of CONDUCT.

Violation of any of the following standards of conduct by a licensee constitutes grounds for disciplinary action:

- A. *engaging in conduct prohibited by, or listed as, grounds for disciplinary action in this chapter, Minnesota Statutes, chapter 214, or sections 626.84 to 626.90, or engaging in conduct which violates any statute enforced by the board;*

This rule gives the board authority to enforce the regulations established in Minn. Stat. Chap. 214 which regulates licensing boards and Minn. Stat. Chap. 626.84 to 626.90 which regulates the POST Board. It allows for legislative changes in these listed areas to automatically become enforceable by the rule.

- B. *obtaining a license from the board by fraud or cheating, or attempting to subvert the examination process;*

This rule allows the Board to protect the integrity of the licensing process. The licensing process is used to insure that only those with the ethical, educational, psychological and physical ability to perform as a peace officer are granted entry into the profession. It is the Boards position that one who cannot be trusted to truthfully submit information and to abide by examination rules does not meet a minimum threshold of honesty expected of members of the profession. This rule could be applied to individuals that put false information, or omit pertinent information on an application.

- C. *being convicted of a felony or gross misdemeanor in this state, or in any other state or federal jurisdiction of an offense that would constitute a felony or gross misdemeanor if committed in Minnesota including a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered, an admission of guilt, or no contest plea;*

This rule lowers the threshold of Board jurisdiction from the felony level to the level of gross misdemeanor. The rule also broadens the definition of conviction to include a finding or verdict of guilt whether or not the adjudication of guilt is withheld or not entered. This rule was necessary so that the Board can consider all convictions what ever the final disposition of the case might be. This rule would give the Board jurisdiction in some driving violations. It shows the Board's concern that a licensee convicted of a gross misdemeanor should be subject to review and discipline by the Board where appropriate.

- D. *having been the subject of revocation, suspension, or surrender of a peace officer license or certificate in resolution of a complaint or other adverse action relating to licensing or certification in another jurisdiction;*

This rule allows the Board the necessary flexibility to review license applicants who have been the subject of discipline for professional misconduct before applying in Minnesota. The Board can then decide based on the individual situation whether the applicant is qualified for a Minnesota Peace Officer license.

- E. *failing to report the revocation, suspension, or surrender of a license or certificate in resolution of a complaint, or other disciplinary or adverse action taken against a licensee in this or another jurisdiction, or having been refused a license or certificate by any other jurisdiction;*

This rule requires reporting of adverse licensing action imposed by a peace officer regulatory board in Minnesota or another jurisdiction, including the refusal to grant a license or certificate. This rule strengthens the newly expanded reporting requirements as delineated in Minn. R. 6700.1610, subp. 2. The rule allows the Board to make an informed decision on licensure, even when the adverse decision was made in another jurisdiction.

- F. *being convicted of a state or federal narcotics or controlled substance law irrespective of any proceedings under Minnesota Statutes, section 152.18, or any similar law of another state or federal law;*

This rule allows the Board jurisdiction over licensees convicted of a controlled substance or narcotic violation. The Board would retain control even if the licensee were sentenced under Minn. Stat. 152.18. This would also include conviction in any other state or federal jurisdiction, where a similar statute was applied. The rule recognizes the serious nature of this type of offense when committed by a peace officer and how a violation in this area undermines the integrity of the profession. Although the Board would have jurisdiction under Minn. R. 6700.1600, C, the Board decided to call special attention to this particular area of public concern.

- G. *being adjudicated by a court of competent jurisdiction, within or without the state, as incapacitated, mentally incompetent, chemically dependent, mentally ill and dangerous to the public, or as having a psychopathic personality;*

This rule will allow the Board to enforce the minimum standards of physical and mental fitness for peace officers. An officer who has been adjudicated by a court as mentally

incapacitated or otherwise mentally impaired, may have a reduced ability to reason, to think quickly, and to make sound decisions. Any psychological or physical condition which would impair an officers ability to make decisions or think clearly would impair that officer's performance, placing both the officer and the public at unnecessary risk. This rule could allow the Board the ability to review a conviction for DWI, notwithstanding the ADA and the Minnesota Human Rights Act, which both prohibit discrimination by licensing agencies against persons on account of their disabilities. Such laws contain exceptions which allow for situation where the disability makes a person unable to perform the duties of the position or creates a danger to the public. The Board must have the ability to review such situations and make a reasoned judgement as to the appropriate action to be taken. The Board's decision would be subject to due process appeal.

H. violating any order issued by the board;

This rule allows the Board the ability to enforce its orders. The Board is vested with the authority to license peace officers and to discipline licensees. In discharging this disciplinary function the Board may issue orders. A licensee aggrieved by the final decision or order of the Board in a contested case is entitled to judicial review. However, until relief is granted by the reviewing court, the licensee is bound by the Board's order. The rule makes failure to obey a Board order a separate violation of the rules of conduct. The Board can take independent action for this violation regardless of the underlying cause. The Board's orders are limited by the authority granted the Board through statutes.

I. practicing outside the scope of Minnesota Statutes, section 626.863;

This rule allows the Board authority to take action against an individual who is not a peace officer or part-time peace officer from making a representation of being a peace officer or part-time peace officer or perform or attempt to perform an act reserved for licensed peace officers. The rule also gives the Board jurisdiction over licensees who practice beyond the scope of the statute and Minn. Stat. 626.84, subd. 1(c). Individuals who are licensed but are not employed by local units of government, have on occasion attempted to sell their services as those of "contract" peace officers. The unregulated practice of the profession by individuals not appointed by local governments presents a danger to the public. The Board now has the authority to deal with and sanction the license of these individuals.

J. making an intentional false statement or misrepresentation to the board;

This rule makes giving a false statement or misrepresentation to the Board a violation of a standard of conduct. The Board often relies on individuals brought before it to provide the information necessary to evaluate the merits of a case. The Board expects that a licensee before the Board will treat the matter with appropriate decorum and that the

statements will be truthful. The rule affirms the strong belief of the Board that a licensee's inability to tell the truth before a tribunal such as the Board, and bringing into question characteristics such as integrity and trustworthiness, essential to a peace officer, are grounds for removal from the profession.

- K. engaging in sexual penetration or contact without consent, as defined in Minnesota Statutes, section 609.341, or engaging in conduct that violates Minnesota Statutes, section 617.23. Sexual contact does not include contact that is part of standard police procedure such as search and arrest;*

This rule announces to everyone the importance placed on a licensee's conduct by both the Board and the public. The Board believes that the rule is important because it establishes a prohibition against nonconsensual sexual conduct, except where part of a standard police procedure. The rule also prohibits indecent exposure.

- L. being convicted, including a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered, an admission of guilt, or a no contest plea of a violation of Minnesota Statutes, sections 518B.01, subdivision 14; 609.23; 609.231; 609.342; 609.343; 609.344; 609.345; 609.3451; 609.43; 609.465; 609.466; 609.52; 609.53; 609.748, subdivision 6; or 626.557;*

This rule articulates some specific violations that directly affect an officer's fitness for duty. Four new violations have been added to this list. The violations are:

Minnesota Statutes section 518B.01, Subdivision 14, Violation of an Order For Protection; 609.23, Mistreatment of Persons Confined; 609.231, Mistreatment of Residents or Patients; 609.342, Criminal Sexual Conduct in the First Degree; 609.343, Criminal Sexual Conduct in the Second Degree; 609.344, Criminal Sexual Conduct in the Third Degree; 609.345, Criminal Sexual Conduct in the Fourth Degree; 609.3451, Criminal Sexual Conduct in the Fifth Degree; 609.43, Misconduct of a Public Officer or Employee; 609.465, Presenting False Claims to a Public Officer or Body; 609.466, Medical Assistance Fraud; 609.52 Theft; 609.53, Receiving Stolen Property; 609.748, subdivision 6, Violation of Restraining Order; or 626.557, Reporting of Maltreatment of Vulnerable Adults.

The four new rules are, violation of an order for protection, criminal sexual conduct in the fifth degree, receiving stolen property, and violation of restraining order. These rules were added because violation of these statutes by licensees raises serious questions about the officer's fitness when called upon to enforce these statutes. A peace officer in this society is placed in a unique position of responsibility and trust, therefore anything that raises a question of credibility weakens law enforcement.

- M. failing to cooperate with an investigation of the board as required by part 6700.1610, subpart 4;*

This rule makes failing to cooperate with a Board investigation a violation of the standards of conduct. The Board has the responsibility to investigate and adjudicate licensing complaints. There is a distinction here between criminal matters and licensing matters. The Board cannot force a licensee to waive Fifth Amendment privileges, but since licensing is not a criminal matter, adverse inferences can be drawn from a licensee's failure to answer without violating any constitutional rights. This rule enables the Board to obtain full and complete information regarding allegations.

- N. engaging in sexual harassment, as defined by Minnesota Statutes, section 363.01, subdivision 41;*

This rule affirms the Board's belief that sexual harassment by peace officers should not be tolerated. The rule allows citizens an avenue of complaint when they believe they have been sexually harassed by a peace officer. The rule places no greater duty on peace officers than that which exists under Minn. Stat. Chapter 363, which prohibits sexual harassment in the work place.

- O. using deadly force when not authorized by Minnesota Statutes, section 609.66; or*

This rule makes the use of deadly force, when not authorized by Minn. Stat. §609.066, a violation of the standards of conduct.

- P. being convicted of solicitation, inducement, or promotion of prostitution in violation of Minnesota Statutes, section 609.322 or any conviction under Minnesota Statutes, section 609.324, or being convicted of similar offenses in another state or federal jurisdiction.*

This rule makes conviction of solicitation, inducement, or promotion of prostitution a violation of a standard of conduct. It includes a conviction in another state or federal jurisdiction of a violation that would be charged in Minnesota under Minn. Stat. sections 609.322 or 609.324. The rule makes clear the Board's belief that patronage of prostitutes by peace officers is a matter of serious public and professional concern. It jeopardizes the integrity of the profession and the effectiveness of law enforcement efforts.

6700.1610 REPORTING OBLIGATIONS and COOPERATION.

Subpart 1. Reporting conduct violation. A person with knowledge of conduct constituting grounds for action under Minnesota Statutes, chapter 214, or the

board's regulatory provisions in part 6700.1600 may report the violation to the board.

6700.1610 is a new rule for the POST Board. This rule parallels similar rules of other licensing boards. Subpart 1, makes it clear that any person that has knowledge of conduct that would be grounds for Board action, can report that conduct to the Board. The rule does not place an obligation on a citizen with knowledge to report, but, does make clear that the Board can accept and investigate those complaints.

Subpart 2. Licensee reporting requirement. A licensee shall report to the board and chief law enforcement officer any action, inaction, or condition of that licensee which the licensee reasonably believes would constitute grounds for disciplinary action under any of the board's regulatory provisions.

This rule requires that licensee's must notify the POST Board and the Chief Law Enforcement Officer of any condition that may have an impact on their license. If a license is charged in another jurisdiction inside or outside the State of Minnesota, there is a necessity to notify the Board and the Chief Law Enforcement Officer. The licensee has a duty to comply with the rules of the licensing authority, and requiring an individual to report a violation of such rules is not an overburdensome task. This rule recognizes that individuals who hold licenses do so subject to the rules of the Board. Therefore, license holders consent to follow the Board's rules.

Subpart 3. Report submittal requirement. Reports required by this part must be submitted no later than 90 days after learning of the reportable event.

This rule requires that licensees who are required to self report violations, must do so within 90 days after learning of the event. This rule allows the licensee time to consult with legal advise prior to reporting. The rule also allows for timely notice to the Board so the Board can initiate an investigation and adjudicate the case before evidence becomes stale or witnesses disappear.

Subpart 4. Cooperation by licensee. A licensee who is the subject of an investigation, or who is questioned in connection with an investigation, shall cooperate fully with the investigation. Cooperating includes responding fully and promptly to questions raised by or on behalf of the board relating to the subject of the investigation, providing copies of records in the licensee's possession relating to matters under investigation, assisting the board in its investigation which includes executing releases for records requested by the board, and appearing at conferences or hearings scheduled by the board.

This rule makes failing to cooperate with a Board investigation a violation of the standards of conduct. The Board has the responsibility to investigate and adjudicate licensing

complaints. There is a distinction here between criminal matters and licensing matters. The Board cannot force a licensee to waive Fifth Amendment privileges, but since licensing is not a criminal matter, adverse inferences can be drawn from a licensee's failure to answer without violating any constitutional rights. This rule enables the Board to obtain full and complete information regarding allegations.

6700.1700 COMPLAINT PROCEDURES for VIOLATIONS of STANDARDS of CONDUCT.

Subpart 2. Scope. This part shall constitute the code for regulating the management and processing of complaints concerning allegations that a standard of conduct described in part 6700.1600 was violated by a licensee. To the extent the terms of this part are inconsistent with any other rules or agreements, the terms of this part shall be controlling.

This change in the language was required because of the distinction now made between violations of standards of conduct and administrative rules.

6700.1710 DISCIPLINARY ACTIONS for VIOLATIONS of ADMINISTRATIVE RULES.

Subpart 1. Temporary restraining order. In addition to any other remedy provided by law, the board may, acting through the complaint investigation committee and without a hearing, petition a district court for a temporary restraining order if the committee finds that the licensee has violated a rule that the board is empowered to enforce and continued practice by the licensee would create an imminent risk or harm to others.

This rule allows the Board acting through the Complaint Investigation Committee, to obtain a Temporary Restraining Order (TRO). This rule is necessary to allow the Board to act affirmatively in the protection of the public's health, safety and welfare. The Board must be able to act to reduce or eliminate those activities which are within the Board's jurisdiction, and which have been found by the Complaint Investigation Committee to create an imminent risk of harm to others. The rule does allow for the licensee to argue his/her case before the Complaint Investigation Committee, before a decision on a TRO is made.

Subpart 2. Grounds. When grounds exist under any of the provisions set forth in this chapter, the board may take one or more of the following disciplinary actions:

- A. *deny application for a license;*
- B. *revoke the license;*

- C. *suspend the license;*
- D. *impose limitations on the licensee's ability to practice;*
- E. *impose conditions on the licensee; or*
- F. *censure or reprimand the licensee.*

This rule establishes a menu of disciplinary options from which the Board can select the best option. The rule provides the Board with a means of establishing a remedial plan for a licensee, when the facts of the matter do not warrant suspension, revocation or non-renewal of the license.

Subpart 3. Settlement agreement. When grounds exist under the board's regulatory provisions, the executive director may enter into a settlement agreement with the regulated licensee for corrective action which may include requiring the regulated person:

- A. *to complete an educational course or activity;*
- B. *to submit to the executive director a written protocol or reports designed to prevent future violations of the same kind;*
- C. *to meet with the executive director or designee to discuss prevention of future violations;*
- D. *to reimburse the board for its legal and investigative costs; and*
- E. *to perform other action justified by the facts. the listing of these measures in this subpart does not preclude the board from including the measure in any order for disciplinary action.*

This rule allows the Executive Director, or his designee to negotiate a settlement agreement, when authorized by the Complaint Investigation Committee acting on behalf of the Board. This allows for a wider range of solutions to the issue that gave rise to the disciplinary process being started. This rule allows both parties input into the solution, since ultimately both parties must agree on the solution. The rule also allows for a particular situation to be resolved without having to litigate the matter. When the parties agree on the solution it is sensible that they be allowed to voluntarily enter into a settlement agreement and dispose of the matter.

Subpart 4. Reinstatement fee. Upon reinstating a license or granting an applicant's license, the board may, at its discretion, impose a reinstatement fee.

This rule allows the Board to recover costs incurred in an action against a licensee, when that action started as a result of an act or omission by the licensee and the facts of the matter allow for the licensee to have his license reinstated or his application for license granted.

Subpart 5. Cease and desist order. The board may in its own name, acting through the complaint investigation committee, issue a cease and desist order to stop an unlicensed person from engaging in unauthorized practice or violating or threatening to violate a rule or order which the board has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under Minnesota Statutes, sections 14.57 to 14.62. The order shall be effective upon personal service or three days after mailing if served by mail. The board may also, in its own name, seek a temporary restraining order from the appropriate district court to stop an unlicensed person from engaging in unauthorized practice or violating or threatening to violate a rule or order which the board has issued or is empowered to enforce.

This rule allows the Board to issue cease and desist orders where it perceives violations of statute or rules which the Board is empowered to enforce. Violation of statute or rule would by definition cause some detriment to the public's health, safety or welfare. Where the subject of a cease and desist order fails to comply with the order, the Board can apply to the appropriate District Court for a temporary restraining order.