



# Insurance Department

State of Utah

GARY R. HERBERT  
Governor  
SPENCER J. COX  
Lieutenant Governor  
TODD E. KISER  
Commissioner

## Bail Bond Oversight Board Meeting

([http://www.insurance.utah.gov/producers/bailbond\\_board.html](http://www.insurance.utah.gov/producers/bailbond_board.html))

**Date:** January 13, 2016

**Time:** Noon

**Place:** East Building, Copper Room

### *Board Members*

xBrad Jenkins (Chair)	Ryan Cooper
xGordon Wright (Co-Chair)	xPeter Stevens
xLt. Kati Booth	xClay Carlos
Stephen Aina	xBrett Barratt (Non-Voting)

### *Staff*

xTodd Kiser, <i>Ins. Commissioner</i>	Suzette Green-Wright, <i>MC Director</i>	xCathy Burton, <i>Examiner</i>
xPerri Babalis, <i>AG Counsel</i>	xSteve Gooch, <i>PIO Recorder</i>	

### *Public*

Judie McWain	Jim Clark	Kyle Layton
Wayne M. Carlos		

## **MINUTES — Approved**

- **General Session (Open to the Public)**
  - **Welcome** (12:04pm)
  - Swear in new board member Clay Carlos / Cathy
    - Cathy swears in Clay Carlos to the Bail Bond Oversight Board.
    - Commissioner Kiser thanks Clay for his willingness to serve, and thanks the others on the board as well.
    - Clay notes that he has been in the bail bond business for 24 years officially, but has been involved in the industry since he was a kid. He's interested in representing the industry as best he can.
    - Brad says Clay and his father Wayne have both been willing to step up for the bail bond industry when necessary, and he thanks them for it.
  - Adoption of Minutes for October 14, 2015 / Chair
    - **Motion by Gordon to adopt minutes. Seconded by Kati. Motion passes 5-0.**
- **Executive Session - If Needed (Closed to the Public)**
- **General Session (Open to the Public)**
  - **Approve Recommended Actions from Executive Session** – Not needed.
  - **Licensing Report for October through December 2015** / Cathy
    - Two agencies began operations in October. In December, Superior Bail Bonds went inactive via a surrender in lieu of administrative action. This is effective for the company and its designee, Jim Elliott. Cathy says the bonds that they wrote while the agency was active will be sent by the courts to the Office of State Debt Collection if they aren't paid. So far, there is only one judgment forfeiture. Some courts will be putting warrants out on

the individuals that were associated with Superior Bail Bonds. Most of the debt will wind up with the OSDC if the people aren't apprehended.

- Brad is concerned that whatever collateral was put up is not available for the state to collect on when agencies go inactive. Cathy says several payment options and other avenues are always presented when there is a code violation. However, surrender in lieu means the department won't be pursuing any other action against the agent or agency. Because that was the approach taken, there is nothing further the department can do regarding the assets of the agency.
- Brad says he thought the collateral was pledged to the state in case of a forfeiture.
- Perri says her understanding is that once the license is surrendered (in one way or another), the department no longer has jurisdiction. At that point, OSDC comes in. Brett asks if OSDC would go after the collateral that was posted. Perri says she doesn't know, but the department would no longer have jurisdiction. Once the license is surrendered, the outstanding judgment of forfeiture becomes debt.
- Brad says these sorts of things are the reason people have a poor opinion of the bail bond industry. They think bond agencies can just walk away, and the state is left holding the bag. His impression was that the collateral that he put up was there to make the state whole in case his company went inactive. If that isn't the case, maybe they should look at some revisions that would make that possible.
- Perri and Wayne say the courts weren't interested in helping the bail bond industry resolve this issue. However, times may have changed. Brett wonders why we even have collateral if nobody executes on it. Clay suggests forwarding the collateral information to the courts, because they might not even know that there are assets to collect on.
- Brad suggests that there should be a mechanism in place that if someone surrenders their license, the collateral is held until the debt is cleared. Wayne says currently a judgement goes to the OSDC, which assigns it to a collection agency, at which point fees and interest start accumulating. Pete says he thinks it becomes a general obligation to the state that goes into the General Fund. The state assumes the liability.
- Brad says the board is supposed to look out for everyone, not just the industry. But sometimes it feels like they're trying to help someone who doesn't care. The courts say they don't care about the money, but the first time something goes wrong, the first thing they ask about is the money, and then the industry is the bad guy. He'd like to see an adjustment in the system.
- Pete would like to know how much has been collected by OSDC over the years on defaulting bail bonds. Then it can be noted how much money the state has actually collected on. He says that property that has been collateralized should not be able to be pledged anywhere else — it should become property of the state.
- Perri says there are three ways an agency is started: collaterally backed, letter of credit, or surety bond. She asks if, when a company goes out of business, their letter of credit or surety backing automatically goes away. Cathy says with surety, the surety is responsible for any bond that is out as long as it's active. Brad thinks the collateral should be there fulfilling the exact same purpose.
- He says that what often happens, is when a company is going out of business, they write everything they can and take risks they never normally would, and he understands it now, because the collateral isn't an issue.

- Cathy says she and Gary Josephson have been talking about collateral issues. They would like to address them and potentially do a code change.
- Brett says that insurance companies have to post a statutory deposit, which is like collateral, but they can't just withdraw it from the bank — the department has to sign off on it. The same goes with an insurance company's assets when they're insolvent. Bail agencies aren't insurance companies, but the collateral-backed ones are more like insurance companies because they're responsible for their own obligations. He suggests that the board consider asking the department have Cathy do more research about what happens to collateral in the three scenarios: collateral-backed, surety backed and letter of credit. He suspects that there should be an evergreen clause for the line of credit.
- Brad says in this situation, he brings it up because the same company has been reinvented five times and the same thing keeps coming up.
- Cathy says what we're doing is flagging the participants and the bail principals in the system. Then anytime an application comes in, it isn't approved until it goes to the board. If there's a question, licensing contacts market conduct and they go from there. Brett asks if surrender in lieu or other consent orders have provisions about the principals being able to get a license in the future. Cathy says in this case, the principal, Jim Elliott, is unable to get a license for five years. He, and other in such a position, are flagged in the system so in the event they try to get a license again, it will come up.
- Brad says he never understood the animosity against property-backed bail bonds — they should be the easiest to control because they put up liquid assets. But now he understands it because collateral doesn't matter beyond licensing.
- Wayne Carlos asks Cathy if OSDC provides her with any outstanding balances on bail bond companies that have debt. She says no, but she will contact Rob Johnson at OSDC to see if he or a representative can present at the next bail bond meeting.
- Pete notes that a deposit on an insurance company is a triparty agreement, but these aren't — the agency just says they have assets. But the assets aren't really pledged because the agency still has access to it. Cathy says she and Gary Josephson have had many discussions about that. It's a problem that needs to be addressed. Pete says those assets should be secured by the department, with no tether to them. We need to ensure that if an agent is providing cash bonds, that cash must be available in case there's a failure and isn't available to the agency itself. The statute already says that, but there's no mechanism to ensure it.
- Wayne says if he were to open a company and hire someone to manage it, the first thing he'd do is find out regularly how many FTAs they have and how much they are. That's so he could keep track of his potential vulnerability in case of losses. There isn't a system like that, but maybe there should be, and maybe it should be tied to licensing.
- Stephen says one loose end that could happen if an agency closes is what happens with a company's trust account. There's no longer any oversight on it once they close. Brad notes that once the company closes, they could drain the trust account and walk away with the money. Pete notes that the Insurance Department does the jurisdiction, but no department handles the enforcement.
- Commissioner Kiser says he suspects that if a trust account were drained, in this case, we wouldn't have accepted a surrender in lieu. He thinks that Gary Josephson would have pressed for a criminal charge. Pete notes that by the time it gets there, the trust money would already have been wasted.

- Commissioner Kiser notes that with regular producer licensing, there's a system where a committee reviews relicensures and then presents them to him — is there a similar system for bail licenses? Cathy says yes.
- Gordon notes that when Superior initially got their license, the board voted it down but was overturned by the commissioner at the time. In the past, as they did with American or Libertad, Superior just takes their assets and puts them in someone else's name. So it's different names, but the collateral is the same. The commission knew what was coming, but their decision was nullified.
- Brad says if you put up real property, there needs to be something that transfers title or something to stop someone from doing additional liens. Cathy says we need to look at how corporations are codified, as far as assets are concerned.
- Brett says his suspicion is that this is mostly an issue with collateral-backed agencies. With surety and letter-of-credit companies there's a third party that's watching out also. Pete asks if there are more collateral-backed or more surety-backed. Cathy and Wayne say it's 50-50. Pete asks Wayne if collateral-backed keep all the money and don't have to pay any surety. Wayne confirms that it's gross income. Pete thinks there should be an incentive by the department to go after the collateral.
- Pete says we need to come up with a solution or there won't be a bail bond industry anymore.
- Gordon thinks the bail board members have a better feel than the department about other people coming into the business will do to the industry. His hope is that if the board says no, and gives valid reasons, it will carry more weight in the future. He said with Superior, they said no because they clearly had been American and Libertad — even Robert from the department said we knew it had been American — but the board's denial was overturned. Commissioner Kiser notes that there has to be a legal reason for the department to deny it, not just that the bail bond board doesn't want them.
- <<Jump from Agency Audit Update>> Open investigations show designation issues that are coming up, as well as failure to pay judgments. There are currently 2 open, and others will show up in April. Cathy notes the investigations can be slow because of due process.
- **Summary of Enforcement Reports / Cathy**
  - Proposed Penalties for Board's Review: None
  - Agency Audit Update / Cathy
    - She is encouraging agencies to visit the website monthly to search and find out which agents are affiliated with the agency and associated with it.
    - Agents don't show the surety-backed company appointments like agencies do in Agent Search. This is because 31A-23a-111(3) says as long as the agency is affiliated to a surety company, the agents under the agency don't need to be affiliated with the surety.
    - When licenses are reinstated, Cathy contacts the agent and agency to let them know that they need to check their appointments. She encourages agencies to do their due diligence regarding licensing.
    - Wayne asks about agents that may have written a few bonds a year, but then they become unreachable: Should those agents be terminated? Cathy says yes, and they should be sent a letter telling them that they're terminated.

- Brad asks what happens if they write a bond before they receive the letter. Cathy says the agency is responsible for the bond. Brad says maybe “better safe than sorry” means leaving them affiliated to the agency, rather than terminating them.
- Cathy is in the process of completing audits. A lot of times, after she presents the results of the audit, it becomes a negotiation that leads to other avenues. She is currently working on them with a couple of agencies. Gordon asks if audits are an ongoing constant. Cathy says yes. Statute says agencies should be audited every 3 to 5 years. Gordon asks how many a year she will do. Cathy says she tries to do 3 to 5 at all times, and when one closes she sends out a letter to the next agency to start another one. Brad asks Cathy if the number of audits she has going throughout the year will allow all agencies to be audited in that 3-to-5-year span. She says yes.
- <<Cathy jumps back to Licensing Report for October through December 2015.>>
- **New Business**
  - Board duties & responsibilities
    - Duties and responsibilities are spelled out in 31A-35-202. The primary responsibility is to make written recommendations to the commissioner for rules regarding the bail bond industry.
    - Perri discusses the Open and Public Meetings Act (52-4-101). The purpose of the act is to make sure meetings are open and accessible to the public. All Bail Bond Oversight Board meetings are open to the public.
    - If a GRAMA request is made of the body, there are procedures that must be followed. They can ask Perri for guidance in such cases.
    - The board has governmental immunity when they are acting within the scope of the duties set forth in 31A-35-202.
    - Brett notes that members of statutorily created boards and commissions (who aren’t employed by state or local government) are allowed a \$60 per-meeting per diem and mileage reimbursement.
    - Perri points out the ethics and conflict of interest section in the handbook. Board members who may have conflicts of interest relating to a board action may need to recuse themselves during a vote or other actions.
  - Update on form filing
    - When an agency is backed by a surety insurer, the insurer files the forms that the agency should be using. In some cases, the agencies may not be aware of the forms that have been filed by the insurer. She suggests that agencies check SERFF to see which forms their insurer has filed on their behalf. If they’re using unfiled or outdated forms, there are consequences.
    - Brad says the rule seems to be outdated with respect to ankle monitors or check-ins. The way the rule is currently written, agencies cannot re-arrest people if they break the ankle monitor agreement. He says technology has come a long way and there may be things that should be added to the rule. Brett says we could potentially open the rule, but would ask Perri for legal guidance.
    - **“Discussion of R590-196-6” will be added to April agenda.**
  - Discussion of alternatives to accumulation of bond work hours to ensure licensees have requisite knowledge and experience
    - This has been an issue over the past few months.

- Brett notes that the industry and the department instituted a 2,000-hour requirement to prove whether an applicant has the right experience. However, the issue is proving that those hours were spent doing appropriate work, and what constitutes appropriate work; i.e., is it writing bonds, being on call, visiting jails, being in court, etc. The other issue is that the employer would verify the amount of hours. There's an inherent conflict because an employer may not want to verify because of competitive reasons. The board asked Brett to find out how other states are addressing similar concerns. Perri's law clerk helped with discovery.
- The packet includes information about the practices of western states and how they handle this requirement.
- Half of the states have an experience requirement, half don't.
  - WA requires 2,000 hours per year over 3 years, plus an exam.
  - Oregon has no bail bond industry.
- Brad asks if we want everyone on the board to review the information and offer suggestions. Brett says a written exam makes sense, but in the past the issue has been that there aren't many prep courses available. He suggests that the board consider inviting Randy Overstreet to the April meeting to give insight on what an exam might look like.
- Kati likes the idea of having an exam. Notaries have a handbook/study guide and then an exam; there could be something similar for bail.
- Brad recommends that everyone come prepared for suggestions to put together. Brett notes that we would need to make a statutory change to include a test. He would like to have Randy come and discuss whether we can do a test, and where the prep material would come from. **Brad asks that Randy be included on the April agenda.**
- Stephen asks if it would be a possibility to get copies of the exam from other states as examples. Brett says it should be.
- Cathy asks if people who already have a license will be grandfathered, or would everyone need to take the test. Brad asks how other lines have handled it. Brett says we don't usually do retroactive applications, so he recommends new requirements for new licensees, unless a license lapses. Brett thinks a continuing education requirement might be appropriate. The issue again is that it's not commercially viable for the for-profit CE providers to create CE classes. Brad thinks it could be good for the CE or exam requirement to kick in if a licensee has a violation.
- Wayne says an exam taken from the code book makes a lot of sense. The problem they had when they were looking at introducing an exam previously is that there are 40 agencies, and they all do business a little bit differently. It became an issue of sharing proprietary secrets. He thinks they could come up with a test out of code material pretty easily though.
- **Old Business**
  - Update on Sircon renewal notification progress
    - Cathy reports that Sircon is testing the notification letter process. What currently happens is that an agent gets a letter that their license is up for renewal, then they get another when their license lapses. However, the agency doesn't get a notification at either time. This is across the board, not just for bail.

- Randy noted at the January meeting that a help ticket was opened in 2012 to get this fixed. Brett was able recently to have Sircon make it so. The process will go into testing in February, and then will go into production in March.
- Notifications should go out to agencies after March 19. Stephen clarifies that notifications only go out after the lapse has occurred, not before it. Cathy says that's correct. Licenses always must be renewed on the last day of the licensees' birth month. After that last day, Sircon shuts down to finalize books. The earliest a license can be reinstated is 3 days later; that's the earliest an agency can reappoint an agent as well.
- **Other Business**
  - Legislation update
    - Brett submitted the bill that the department worked on with the industry. He followed up with the legislative drafter and was told it was received. He has not yet seen a bill come out, and has not gotten any questions about it.
    - The Supreme Court's Subcommittee on Pretrial Release Services released its report and recommendation. Brett will send a copy to Steve, who will post it on the website. The report is not especially flattering to the bail industry, but it recognizes that the industry serves an important need and that there is a right to bail under the Utah Constitution.
  - Scam discussion
    - Wayne notes that there has been a scam going on where customers have gotten calls in the middle of the night saying that they need to pay the caller money or they will revoke their bond.
    - Kati says they have an individual calling correctional facilities who identifies himself as a law enforcement officer. He's asking for people who are bailing out of jail so he can call them. Officers at the jail won't give out personal phone numbers, but civilian controllers might not understand that they can't give that information. She says they get 3 or 4 calls a month. Gordon says that answers a lot of questions because they've been wondering how they've been getting that information.
    - Gordon asks if Brett or Cathy can send this information to the jails to alert them. Kati says she's sent information to all county jail commanders.
    - Kati says they will give information about who bailed out and the company name because that's public information, but no personal information.
    - Wayne says the sad reality is that people are falling for it and are paying them money.
    - Judie from Pappas Bail Bonds asks if they can let their customers know that these calls aren't legit if they get them. Yes, they should.
- **Adjourned** (1:37pm)
  - **Motion by Gordon to adjourn. Seconded by Kati. Motion passes 5-0.**
- **Next Meeting:** **April 13, 2016** — Copper Room, East Building

**2016 Meetings** (Noon to 1:30pm)

Jan 13, 2016	Apr 13, 2016	July 13, 2016	Oct 12, 2016
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