



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)

Date: April 8, 2015

Time: Noon

Place: East Building, Copper Room

Board Members

xBrad Jenkins (Chair)	xRyan Cooper
xCraig Crawford (Co-Chair)	xGordon Wright
xLt. Kati Booth	xPeter Stevens
xStephen Aina	xBrett Barratt (Non-voting Member)

Staff

xTodd Kiser, <i>Insurance Commissioner</i>	xPerri Babalis	xSuzette Green-Wright
xCathy Burton	xSteve Gooch	xGary Josephson

Public

Todd Pontes	Tracy R. Raliett	Jim Clark
Clay Carlos	Kitty Rasmussen	Shayna Hoyt

MINUTES

- **General Session (Open to the Public)**
 - **Welcome** (12:03pm)
 - Adoption of Minutes for Jan. 14, 2014 / Chair
 - **Motion by Gordon to adopt minutes. Seconded by Craig. Motion passes 7-0.**
- **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 January through March** / Cathy
 - Licenses look consistent. Pay particular attention to the reinstated licenses — re-associations don't happen automatically, so the company association must be manually reinstated when the license is.
 - **Summary of Enforcement Reports** / Cathy
 - Proposed Penalties for Board's Review: None
 - Agency Audit Update / Cathy
 - Cathy is in the process of completing two audits that have been started. Brad asks how long it takes to complete an audit. Cathy says generally it's about 3-4 weeks per audit, mostly on the backend. She gives 2 weeks notice that she will be visiting, so they can gather the information. Sometimes the date needs to be rescheduled. There can be a lot of back-and-forth to clarify things during the audit itself.
 - All bail bond producers are subject to 31A-23a (insurance) and also 31A-35 (bail).
 - Brad asks about an investigation into a company's failure to file forms: Is it that new forms that were never approved or changes on a form. Cathy says it could be either. Whatever happened, those forms weren't filed appropriately with the P&C division.

- There are 2 open enforcement cases in the last 90 days that are with the attorney. Craig asks what "failure to respond" means. Cathy says it means that she has requested information under the authority of the commissioner and they haven't responded in the appropriate amount of time.
- The overview page shows whether agencies have had other investigations and what the cases were. Brett asks if these are repeat offenders for unpaid judgements to court. Cathy says yes. Sometimes there are people who haven't shown up on the report for a while, then they resurface. She says they all have eventually paid, just not timely. If they are paid in the time frame required, Cathy closes the case.
- **New Business**
 - Investigations & Due Process / Cathy & Gary Josephson
 - Investigations / Cathy
 - Cathy explains how complaints/investigations get started and how they progress. She contacts the complainant to get more information. Then she researches to find out if there are rule or code violations that apply, not just bail codes but also codes that govern the producer.
 - Then she prepares a letter to the person being investigated to let them know a case has been opened and that she needs info from them. Cases with a forfeiture judgement require that the money is paid within 5 working days. Other types of investigation require 10 working days. In some cases it takes longer for them to gather and turn in the required information.
 - Brad asks if suspensions are immediate on an unpaid judgement. Cathy says that after the 5 working days, she starts the process and sends the information to our AG to start the suspension process. The time frame from investigation to suspension is unclear, because Cathy has never had to do one. If an investigation involves a court case, what happens in court can stop the investigation for some time.
 - Contractual violations are court matters, not department matters because they are not rule or code violations.
 - Once the paperwork is in, it is reviewed to determine next steps. If there is an administrative action, a letter of recommendation is sent to the respondent. If the respondent wants to give additional information, they can present it at the time for review. They can also agree to a stipulation and order. Or they can request a hearing.
 - Due Process / Gary
 - In a regulated industry, it's not uncommon to have a board member who thinks bad actors should be taken care of immediately. The reason it can't is because of due process. The 5th Amendment of the Constitution has to do with Federal actions, while the 14th Amendment deals with State actions. It says no person will be deprived of life, liberty or property without due process of law. An insurance license is considered a property interest. Once someone has acquired a license, taking an action on that license requires following due process. It's important to note that any regulatory industry must follow due process.
 - Due process requires that people must be notified of alleged violations, they must understand the allegations, are entitled to face the evidence, have a right to be

heard and that there is a decision made and a basis for that decision in a regulatory action.

- The Utah Administrative Procedures Act mandates certain procedures be followed in the event of an administrative action. There can be a formal proceeding or an informal proceeding. Informal has fewer restrictions and requirements, while formal takes more time, is more restrictive and has more requirements.
- Due process in a regulatory industry takes time and it's not something that any board, commission or commissioner would want to recklessly move ahead with and then face lawsuits or other actions. It needs to be measured and the process followed. In most cases the truth comes out and the right decision is followed administratively.
- There is a provision for emergency proceedings, but it requires an immediate and significant danger to the public's health, safety and welfare. But that is a high standard to meet.
- Pre-Trial Release Practices & Alternative Committee Update / Brett & Gary Walton
 - Brett and Gary attended the first meeting of the Pre-Trial Release Practices & Alternatives Working Group, which was at the Salt Lake County Courthouse. The goal of the council is to assess existing pre-trial release practices in SL County courts and determine alternatives that could be considered. It must determine best practices, inventory current practices, determine how to improve information given to judges, review statutory history of release and bail legislation, and evaluate alternatives.
 - It discussed a survey sent to judges in various counties and courts, and the results run the spectrum of experience. They discussed how SL County, which has a fairly robust pretrial release program that gives judges more information than is given to judges in other systems. A U of U professor presented about the ABA's best practices for pretrial release programs.
 - Bail was mentioned extensively, but not always positively. Brett and Gary pointed out that a few of her examples would be illegal in Utah. Brett said the reason for the 10% bail bond floor amount is to prevent a race to the bottom.
 - The next meeting is in May, and the UID will be presenting with the help of the AG's office. They will give a history of bail legislation and general background on Utah's laws.
 - Committee membership is diverse, and includes: district court judge, a juvenile court judge, two justice court judges, a prosecutor, Sim Gill, a defense attorney, a sheriff, Sen. Lyle Hilliard, Rep. Hutchings, county government, Gary Walton, and Brett.
 - The result of the committee will be a recommendation to the Judicial Council at its November 2015 Judicial Council Meeting, which will help them determine what legislation they would like to propose, if any. If they determine legislation is warranted, it would be advanced in 2016.
 - Gordon asks why that meeting was closed to the public. Gary Josephson says he doesn't know. Brett says he doesn't know either, but will look into it.
- Courts & List Cleanup / Cathy
 - Cathy talked to Kim Allred, who is the court service director, about attending their next meeting. She can then talk to them about issues the industry is having with exonerations. There is still a fair amount of list cleanup.

- The association mentioned that with the undertaking of bonds, some people are using the full SSN on the undertaking of bond. You can use the last 4 SSN as the ID, not the whole number. Gordon says some counties want DOB instead of SSN. Cathy says she doesn't remember Kim mentioning DOB, but she did mention a driver license number or a couple of other numbers.
- Cathy believes the next meeting is sometime in May. Going to the association meetings will let her talk to all courts and jails at once, which is good because it will help her work on different aspects to fix things.
- She says industry feedback is necessary because she can then help fix problems in certain courts or jails. Brad says that Cathy can often be more effective than the bail bondsmen themselves.
- National Bail Association Meeting / Brad
 - At the meeting, Brad talked to a bunch of different bondsmen across the country, and thought that Oklahoma's system stood out. He showed off a handbook that they use as a quick guide that new licensees can reference when they're starting out. He thinks Utah could make a similar product. It wouldn't override the codebook, but it would be a quick reference guide that will give people a head start and access to information.
 - Suzette asks how Oklahoma makes their handbooks available. Brad says they're mailed out any time someone receives a new license. He says if Utah had one, it could be made available at meetings or on the website.
 - Suzette asks about statute changes, and notes that the handbook would have to be reprinted every year. Brad thinks it would be worth it. He can't speak to department finances, but he thinks it would be a good thing. Brett would like to review it with the department and get back to the committee. Brad suggests that potentially the UID could host it on the website, while the association prints it.
 - Commissioner Kiser asks how many new licensees there are a year. Cathy estimates maybe 25 maximum. The commissioner doesn't expect a huge printing cost, and thinks it might be an expense the department could handle. If it could prevent 5 or 10 people from appearing in front of the committee for violations, he would applaud the commission's efforts for education.
 - Brad says the industry would rather have the knowledge out there so it doesn't get to complaints, forfeitures, penalties and fines. Brett asks if it would be useful for courts and jails. Kati doesn't think it would be advantageous for the jails.
 - Brad thinks a lot of the industry's problems aren't people trying to circumvent the law, but people who don't understand the rules or forget them.
 - Stephen thinks a lot of the information would be better placed ahead of the licensing process, and asks what kind of procedures are in place prior to getting a license. Cathy says for a limited-line producer license, you only have to pay your fee, get fingerprinted and fill out an application. It's the agency's responsibility to train the agents that are associated with them. Stephen clarifies that knowledge is the responsibility of the agency, and asks if agencies have any initial knowledge requirements.
 - Brad says to be an agency requires 2,000 hours of experience in the bail bond industry. Stephen notes that there are many agencies that could have 2,000 hours of doing bail the wrong way, and suggests that the department might want to look at the licensing process down the road. Brad asks if he thinks there should be a test or

something prior to getting a license. Stephen says yes, or at least have someone at the agency who has been certified as having bail bond knowledge. He agrees that it's mostly people who aren't trying to circumvent, but they're not trying to find out the right way either. Brad says he wouldn't be opposed to a test.

- Commissioner Kiser thinks Stephen's point is very good. On our reports, we list the name of the violator, but not the agency that they're associated with. He wonders if there are some agencies that have more bad actors than others, and maybe it would be a good idea to help people understand the code a little better. If we have a frequency issue, it might be a good idea to sit down with the owners of the agency to discuss negative trends.
- Suzette notes that the new report does show repeat offenders, which was at the request of the board.
- **Old Business**
 - 2015 Legislation / Brad & Brett
 - HB445: Bail Bond Surety Amendments
 - The bill made it through the House overwhelmingly, but didn't make it through the Senate. There was good support from Rep. Hutchinson, who was pretty aggressive.
 - Bail Bond for Mental Health Treatment?
 - This is an idea that's come up as a pre-trial release option. The concept is releasing drug offenders into counseling or addiction treatment plan, with a requirement to move into substance abuse treatment to allow them to post a bond. Either they complete the treatment plan or go back to court. It was discussed during the legislative session, but no law was passed. The question was whether it is possible to use a bond to integrate into such a treatment program.
 - There would be actual obligations to check progress and make reports. Clay Carlos says bondsmen are appearance people who can get people to go to the appointments they need to go to. The bail bond industry would like to be an integral part of that. It would help people make sure they're in their treatment programs and out of jail.
 - Kati says it would put bondsmen in a supervisory role like a parole officer. Commissioner Kiser asks if it's something the industry is interested in. Brad says they're interested in looking at it, but couldn't make a decision without more details. Kati notes that it's a huge task, and Brad says that's what legislators were thinking because it's an overwhelming job and a huge expense to the state.
 - The Commissioner asks how many meetings would be required per offender. Brad estimates probably 6 each, but Kati says it depends on how they're assessed during their court date. Clay notes that it's taxpayer free because the user pays.
 - Brad notes that it's more focused on rehabilitation than being in jail. The Commissioner says the value is getting people back into the job market and reducing recidivism. Brett asks about how jails and prisons pay for treatment. Kati says it's a sliding scale, and each county's health department has to contribute some funds to the program.
 - **Other Business**
 - **Adjourned** (1:01pm)
 - **Next Meeting:** July 14, 2015, Copper Room, East Building

2015 Meetings (Noon to 1:30pm)

~~Jan 14, 2015~~ Apr 8, 2015 July 14, 2015 Oct 14, 2015