



# 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:** July 14, 2015

**Time:** Noon

**Place:** East Building, Copper Room

### *Board Members*

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

### *Staff*

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

### *Public*

Brent Johnson	Vivian Deems	Wendy Madrill
Clay Carlos	Wayne Carlos	Gary Walton
Annette Jones	Kasey Dodgen	Todd Pontes
LaCoby Phillips		

## MINUTES — Approved

- **General Session (Open to the Public)**
  - **Welcome** (12:08pm)
  - Adoption of Minutes for April 8, 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 April through June** / Cathy
    - The reports show new licenses, renewals, and lapsed/reinstated licenses. Up to now, the reports have just been provided to the board. Starting with July's reports, Cathy will start checking the list to see if producers with reinstated licenses are still working for the agency. It is the agency's responsibility to have their agents designated or associated to them.
    - Brad asks if an agent is working for multiple agencies, will Cathy check them all. She says yes. Agents often think that once their license is reinstated, that they're good to go. However, when a license lapses, SIRCON automatically terminates all associations.
  - **Summary of Enforcement Reports** / Cathy
    - Proposed Penalties for Board's Review: None
    - Agency Audit Update / Cathy

- There are 4 audits scheduled in the next 4 weeks. There are a few open investigations in which the producer is not designated to an agency. They're still working for the agency, they just haven't been designated to it.
  - Brett clarifies that when a producer fails to renew, the system automatically drops affiliations. It's important that they get reappointed when they get relicensed because the system doesn't do it automatically.
  - Brad asks if the affiliation isn't put in place, is the agent or the agency imposed the fine. Cathy says it depends on the circumstances. If an agent has been working with an agency for a long time, they need to be sure that who they're working for gets them associated again. If it's someone who has never been licensed before and they start working for an agency and assume the agency has designated them, Cathy looks at those circumstances. Brad asks if that needs to be defined any clearer or is it working. Cathy says it's working. Following up on the lists will cut down on the ignorance factor as well.
  - Brad wonders if something can be put on SIRCON that would give agents a reminder when they renew or relicense. Cathy says SIRCON sends out an automatic email 75 days prior to renewal. When a license lapses, they get a physical letter that tells them to redesignate. She thinks that agents often just stop reading after they find out they need to renew or relicense.
  - Gordon is surprised at how insecure SIRCON is regarding how easy it would be for someone to disassociate all agents in a competing agency, as long as they know an agent's date of birth and an agency number. Cathy says she will talk to Randy in consumer licensing about it. Brett asks if that's something the board wants the Department to follow up on sooner than three months (the next board meeting). Brad says yes. Cathy says she will talk to producer licensing and SIRCON. Pete says it's surprising that SIRCON wouldn't have any security. There should be something to show that the party signing on has the authority to make changes. Brett says he will work with Cathy to find out the answer, then will talk with Brad to figure out next steps.
- **New Business**
    - Brent Johnson — General Counsel for Administrative Courts
      - The Pre-Trial Services Release Committee ran the number of judgments that are being entered in the district courts compared to the number of forfeitures that are initiated, and the numbers are very low of the bonds that actually go to judgment. They don't know the reasons for that. Court clerks have said that county attorneys won't submit motions for judgment because they have no incentive to do so because the money goes to the state and not the counties. That's only district courts, not justice courts. He notes that this is just hearsay. Brad asks what the percentages. Brent says there are less than 5% that actually go to judgment, while 1-2% of forfeitures do.
      - Gary Walton says the report stated that approximately 25% of the people who failed to appear gave a notice to the surety. Of those that gave a notice to the surety, less than 10% go to judgment. They're saying that 75% are failure to appear, which is astounding.
      - Brent says it's indicative of a breakdown in the process at various stages. One concern is that judges are ordering warrants, but also ordering the clerk not to send out the

forfeiture notice, which is inappropriate. But clerks say they have not experienced that. They're still trying to connect the dots.

- Brent says he's spoken with Gary and others that the bail forfeiture statutes are a mess. He would like to see some effort to clean the statutes up. They were last cleaned up 15 years ago. There's a lot of inconsistency. The whole statute needs to be rewritten in his opinion, especially sections about automatic exonerations and when a bond company must file a motion. Brad says we're in the process of doing that now, and maybe the board can work with Brent on it. Brent is amenable.
- Brent notes that he does training for court clerks, but they often go back to their courts afterwards, but the judge will instruct them a different way based on their own interpretation. He says that he's fine with automatic exonerations in certain circumstances.
- Brett asks if the solution might be a matter of empowering clerks to act, but without taking the discretion that judges should have. Brent says yes, and that clerks must never exercise discretion. Clerks can only act to automatically exonerate if there's complete clarity. All cases that require discretion must go to a judge.
- **New App: Best Bail Bonds**
  - DJE Residential DBA Best Bail Bonds.
  - They have provided their Articles of Organization and Corporation Operating Agreement, dated April 6, 2015. Wendy Madrill, designated producer, is on the corporation. Dean and Jan Erickson have provided a CPA report that clarifies the ownership and property that they're putting up for collateral, which is just over \$1.5 million adjusted value.
  - Wendy Madrill has 2,000 hours and has been licensed since April 14, 2011. Producer licensing had no issues regarding the license or a background check on Wendy.
  - Pete asks if they provided information about personal or real property on Question #13. Cathy says yes.
  - Gary Walton asks if the assets submitted to the DOI are held in title under DJE Residential. Cathy says yes. He then notes that the principals are Dean and Jan, and he wants to know how Wendy can be a principal. Cathy says Wendy under the Corporation Operating Agreement, Wendy is providing the building that Best Bail Bonds will operate from. Gary notes that the State Code says a principal cannot be an employee — they have to be an owner. Brad clarifies that to follow the Code, Wendy would have to be a principal of DJE Residential, not just Best Bail Bonds.
  - Brett says this is the same issue Aladdin had. They made changes to their structure and gave ownership interest to the qualifying individual.
  - Pete notes that there's a big "or" at the end for "members or managers of a limited liability company" which this is.
  - Brett asks if the 2,000 hours is met. Cathy says yes. Brett asks if she's a resident of the state of Utah. Cathy says yes.
  - Cathy says she will get ahold of Jan Erickson to see if she's going to add Wendy as a principal.
  - **Motion by Gordon that the application as presented is denied, with the recommendation that they meet the ownership requirements for the parent company.**
  - Gary Walton asks if they're going to waive the responsibility of Rebel Bail Bonds producing the employment information. Brad says he thought that was given. Gary

says they've only gotten the employment contract, and Cathy says the 1099s also. Gary says Code states they need a letter from a prior employer that verifies the number of hours the applicant worked for the employer. He says he knows there will be a problem with that in this situation because Wendy and her employer have no relationship anymore. He doubts that Darren at Rebel would supply the letter, just as a vindictive point.

- Brad asks if Code requires a letter of verification from a prior employer, if a prior employer won't do that, what's the Department's position on that. Brett says that could be an extenuating circumstance that could be taken into consideration during the board's recommendation. If the board and industry indicate that the requisite 2,000 hours have been met, the commissioner could make that decision under his general powers to move forward.
- Pete says the fact that she has a W2 that shows income and a contract shows that she was employed there, but he doesn't know that it's verification. Brett says that in a special case like this, where the employer has refused to send a verification letter, the board needs to look at other reasonable options to establish the 2,000 hours of experience. Brad says there are two different issues: Gordon's motion and the 2,000 hours.
- **Gordon's motion is seconded by Craig. Passes 5-0.**
- The board recommends that Best Bail Bonds present this to the commissioner with the evidence stated. They feel there is enough evidence to show that Wendy has worked 2,000 hours. They recommend that it pass to the Commissioner to make the final decision.
- Pete asks why the board can't take the evidence as a substitute for verification of her hours. Brett says his recollection of the board's duties is to make recommendations to the commissioner for licensure. Pete says there's no sense in sending things to the Commissioner if they've approved it. Brett says that a key importance of the Board is giving information to the Commissioner so he can make informed decisions.
- Brad says, with a preponderance of evidence, that the board believes Wendy has met the requirements. Pete says the only burden they have at this point is that Wendy has to become a principal in the parent company.
- Kati's concern is why we're relying on a letter from a prior employer to verify 2,000 hours. If she's proved that she has 2,000 hours, we're now relying on a possibly disgruntled person to write a letter. Kati asks if our evidence is proof of 2,000 hours. Cathy says we have 1099s and a contract agreement. Kati asks if the contract is for being licensed and not just a secretary at the front window. Cathy says yes. Pete asks if it's a multiyear contract. Cathy says yes.
- Brett reads the statute, which says an applicant must demonstrate that they have 2,000 hours of experience working as a licensed bail bond agent, and must provide: a) proof of their experience by providing details of the character and nature of the experience on a form provided by the department, b) a statement by each employer verifying the hours the applicant worked, and c) federal income reporting forms documenting wages for hours claimed. The hours may be proved in part by the federal income reporting forms and in part by approval by the insurance commissioner.
- Brett asks if Wendy has requested a verification letter. She says no, because she thought the 1099s would be enough. Cathy can make the request. Brett says the

burden of proof is on the applicant, and he suggests sending a certified letter so she can show Cathy that she sent the request on a specific date, and whether there was a response.

- Kati thinks this requirement puts a lot of weight on a previous employer. Pete says that's especially true since it creates a new competitor. Brad says he believes a 1099 carries more weight than a letter.
- Brett sums up that Wendy will need some skin in the game to go forward (in the form of some percentage ownership of DJE Residential), but in terms of the 2,000 hours the Commissioner can exercise discretion if warranted after reviewing the documentation Cathy has and the recommendation of the bail bond board.
- Craig points out the Question #2 (formation date) is blank. They will need to fix that as well.
- Once Cathy has everything corrected, the board will do a telephonic meeting.
- Wayne Carlos asks about a producer who worked back in the 1970s and 1980s who no longer has 1099s and the agency wouldn't write a letter, what would happen in that case. Brad says that would be the burden of the person coming forward, and the proof likely wouldn't be met. He says the board likely wouldn't accept hours earned in the 70's because things have changed over the past 45 years.
- **New App: Available Bail Bonds**
  - No concerns from producer licensing.
  - Vivian Deems was recently licensed in Utah. She was previously active in Nevada. She is licensed as a business with West Valley, and her qualifying power of attorney is American Surety. Her employment was verified by a 1099 and a letter from her brother, who is her former employer.
  - Gordon asks if she's a resident of Utah. Cathy says yes. Brett asks if she had any issues while she worked in Nevada. Cathy says no.
  - **Motion by Gordon to approve Available Bail Bonds. Seconded by Kati. Motion passes 5-0.**
- Thanks to Craig Crawford for his board service / Brett
  - Commissioner Kiser sends his regrets for not being able to attend. On behalf of Commissioner Kiser, the Department, the State of Utah and the bail industry, Brett presents him a plaque recognizing his six years of service on the board. We appreciate his service and Payless Bail Bonds, and appreciate him making the industry better because of his work.
  - Craig thanks the State for letting him serve and thanks the board members he's served with. He knows the future board will do whatever they can to make the industry viable and an important part of the justice system in the state of Utah.
- Opening on Bail Bond Board / Brett
  - Craig's term expiring leaves an opening on the board.
  - Any members of the bail industry are encouraged to apply. A letter of intent, a background history and reason for applying are sufficient. They can be sent to Steve Gooch by mid-August. Commissioner Kiser will make a decision when applications come in.
  - Brett anticipates the new person will be appointed at the October board meeting.
- Re-appointment of Board Members / Brett

- Pete Stevens, Stephen Aina and Ryan Cooper have agreed to be reappointed for a second four-year term.
- Commissioner Kiser will be sending them a letter. Brett thanks them for continuing to serve.
- Election of New Chair / Brad
  - **Gordon nominates Brad. Kati seconds. Motion passes 4-0.** (Brad abstains)
  - Gordon is unanimously chosen as co-chair.
- **Old Business**
  - Pre-Trial Release Practices & Alternative Committee Update / Brett & Gary
    - The committee has been meeting monthly for the past 2-3 months and have heard from experts in the pre-trial release field. Last month a group from Colorado gave a presentation on best practices, study findings and the history of bail in the US.
    - Gary and Brett are on a subcommittee to look at financial bail matters. They have been gathering data and information on which the committee will base its determination in November.
    - The courts have been gathering information that seems anecdotal to Brett. Cathy has volunteered to reach out to bail licensees to get information and data to provide to the judges and committee as they make their recommendation. Brett encourages the industry to provide the data because it will paint a better picture of the commercial bail industry than the data that is currently available.
    - Gary says the meetings he's been to have dealt with best practices and empirical evidence. According to the meetings, best practices do not include bail bonds. Another meeting was with the pre-trial service group at the U of U, which was informative and helpful.
    - The committee will embrace risk assessment, which will give more information about the inmate before setting bail and authorizing release. He thinks this is great for public safety. However, it's been disheartening to see all of the attacks on commercial bail, which has worked for over a century. He hopes that people like Brent Johnson, who have empathy for the profession, will continue to help out.
    - Brent says initially there won't be many changes to existing laws, because most of them work well with some tinkering. However, there's been a nationwide push to move away from judges imposing financial bail; own recognizance will be pushed because statistics show that most people will appear on their own. Most changes will not be in statute, but will be the individual action of judges.
    - Kati asks if pre-trial is going to go statewide. Brent says that's a huge consideration. Not every county can afford to do pre-trial. The idea is that in counties that can't do pre-trial, they still will have some way to give information to judges. Gary says they're hoping to get money appointed through CCJJ at the state level to initiate pre-trial release programs in some of the larger counties. That would have to pass the legislature.
    - Brad asks if there are ways to track the success of any changes they make. Brent says they would have to, but nothing is set yet. The chair is moving quickly because of the November deadline, but they can't move forward without detailed ways to track data.
    - Brent has been looking at the systems various states use. Each state has a different model. He doesn't think a perfect model exists yet, so they at least need to look at the differences between the existing systems.

- Clay Carlos asks how long it will take for a judge to make a risk assessment and then a decision. Will it take days? Hours? Brent says they don't know. It might be that there's an initial bail-setting and probable cause stage, with a subsequent automatic review within days. Kati says Salt Lake County operates 24/7. Summit County is reviewing it now, but they don't have 24/7. She says there are two kinds of pre-trial release services: one releases prior to seeing a judge based on assessment, the other requires the judge to make the decision.
- Wayne asks what the data is for that Cathy is requesting for the commercial financial bail subcommittee. Brett says the bail industry talks about the public service that they give for free, by picking up skips and no-shows. The statistics that were presented looked really low to Gary in terms of what bail bondsmen are doing. He would like to know if the information presented is correct, which is why he volunteered Department resources to collect in-state stats. Wayne says part of the problem is that they don't always record the correct arresting agency — they record the police agency that assists as the arresting agency. So a lot of the time the bail bondsman never shows up. He says 80% of bail enforcement has nothing to do with an arrest. It's all in the office with phone calls, contract enforcement, and other avenues. He thinks that needs to be considered.
- Brett notes that according to the group from Mesa County, CO found that one of the most effective ways to get someone to show up to court is a simple phone call reminder.
  - Update on Courts Information / Cathy
    - Cathy works with Brent and Kim Allard with questions and concerns. They're moving forward on suggestions. Brad thanks her and says she has made more difference to the industry than anybody in the Department has made in 30 years.
- **Other Business**
  - Legislation for 2016 Session / Brett/Brad
    - The board is working with Brett on next year's bill.
- **Adjourned** (1:33pm)
  - **Next Meeting:** October 14, Copper Room, East Building

**2015 Meetings** (Noon to 1:30pm)

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