

**STATE OF MINNESOTA
BOARD OF PEACE OFFICER
STANDARDS AND TRAINING**

**In the Matter of the Proposed
Adoption of Amendments to the
Rules of the Minnesota Board of
Peace Officer Standards and
Training, Governing Standards
of Conduct for Peace Officers,
and Deadly Force Training**

**STATEMENT OF NEED
AND REASONABLENESS**

GENERAL STATEMENT

The Minnesota Board of Peace Officer Standards and Training (POST) was established as an independent regulatory board by the legislature in 1977 to replace the Police Officers Training Advisory Board. Duties of the POST Board include adoption of rules governing standards of conduct for those engaged in the practice of law enforcement and establishment of minimum training requirements for all peace officers. Current POST rules (Minnesota Rules, Chapter 6700) list seven areas of conduct as grounds for revocation, suspension, or nonrenewal of a license. The decision to amend POST standards of conduct rules came as the result of concern about the adequacy of the current standards of conduct for peace officers. This concern grew out of several highly publicized cases of misconduct on the part of specific peace officers, which raised public concern about the Board's ability to take action against an officer's license in non-felony matters and about the adequacy of the standards of conduct rules in general.

The Board by motion formally recognized the inadequacy of the current standards of conduct. Notice of solicitation of outside information was published in the state register on April 11, 1994. The Board directed its standards committee to schedule meetings around the state in order to solicit outside opinion on peace officer standards of conduct. Over the following nine months, the Board's standards committee and its staff met with numerous interested parties to discuss development of the rules. Attached is a list of the public hearings held including date, location, and a list of those who testified before the Board. In addition to considering the testimony received at the eleven public hearings, the Board examined standards of conduct for other licensed professions. The proposed rules amendment would expand the standards of conduct rules to include areas not previously covered by the Board. The rules amendment was approved by the full Board on January 6, 1995.

STATUTORY AUTHORITY

The proposed rules are specifically authorized by Minnesota Statutes, section 626.843, subdivision 1(e). This statute requires the Board to adopt rules with respect to the "minimum standards of conduct which would affect the individual's performance of duties as a peace officer."

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115, requires that the Board consider the impact of the rules on small business. The proposed rules will have no direct impact on small business.

DEPARTMENTAL CHARGES IMPOSED BY THE RULES

Minnesota Statutes, section 16A.1285, does not apply because the proposed rules amendments do not set fees.

FISCAL IMPACT

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of the rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

IMPACT ON AGRICULTURAL LAND

Minnesota Statutes, section 14.11, subdivision 2, requires the agency to follow the requirements of sections 17.80 to 17.84, if the proposed rules have a direct and substantial impact on agricultural land. The rules proposed by the Board have no such effect.

WITNESSES

The witnesses listed below may testify on behalf of the Board in support of the Statement of Need and Reasonableness of the rules and will be available to answer questions about the development or content of the rules:

- George Wetzel, Deputy Executive Director of the POST Board, will provide background information on the history of the POST Board and process that was followed in amending the proposed rules.
- Rodney Nyenhuis, POST Board Standards Chair, will explain the proposed rule amendments

The following individuals will be available to answer questions on the proposed rules:

- John Laux, Executive Director of the POST Board
- David Flowers, Assistant Attorney General
- Hope Jensen, Rules Coordinator, Department of Public Safety

SPECIFIC RULE PROVISION ANALYSIS

6700.0900 CONTINUING EDUCATION

Subp. 18. Deadly force training. The proposed rule provides that at least once each year peace officers and part-time peace officers must complete the use of force learning objectives prescribed by the Board. This rule is necessary to give effect to Minn. Stat. 626.8452, subd. 2 and 3, which require annual training for peace officers and part-time peace officers in use of force and deadly force. The rule is also necessary to avoid confusion as to which training programs or instructional materials are required by the Board for peace officer and part-time peace officer licensure. The proposed rule is reasonable because it is consistent with the legislative intent to have officers train annually in the areas of use of force and deadly force. Furthermore, the rule is reasonable because although the specific learning objectives or outcomes are prescribed, the agency providing the training may implement any curriculum it deems appropriate in meeting these learning objectives.

6700.1600 VIOLATION OF STANDARDS OF CONDUCT

This rule was expanded to include additional grounds for revocation, suspension or nonrenewal of a license:

A. The proposed rule places conduct prohibited by, or listed as grounds for disciplinary action under Minn. Stat. Chap. 214 and Chap. 626.84 to 626.90, or any conduct which violates any statute or rule enforced by the board within the Board's jurisdiction over licensees who violate the rules. These statutes establish and regulate the Board; Minn. Stat. Chap. 214 regulates all licensing boards, and Minn. Stat. Chap. 626. 84 to 626.90 regulates the POST Board in particular. Since numerous requirements for board actions exist under the provisions of section 214, and because the Board is required to abide by and is responsible for enforcement of the statutory requirements which are set forth within its enabling legislation, it is both necessary and reasonable that the Board have jurisdiction over violations of these statutes.

B. The proposed rule makes clear that "obtaining a license by fraud or cheating, or attempting to subvert the examination process" can be considered as a violation of standards of conduct by the Board. This is both reasonable and necessary because it enables the Board to protect the integrity of its licensing process. This language is needed so that the Board can act against those who attempt to obtain a license by fraud, or who cheat on the licensing exam. Peace officers occupy a position of unique trust and authority in our society. In Minnesota, the licensing process is used to ensure 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 Board's 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. An individual who would seek to obtain a license by fraud or cheating or who would

attempt to subvert the licensing examination should be barred from the profession, because such an individual could not be expected to responsibly administer the duties of office.

C. The proposed rule adds gross misdemeanor to the current rule which covers only convictions of a felony. This amendment is necessary to allow the Board to review cases where a peace officer has been convicted of a gross misdemeanor. Because there currently is no rule allowing the Board to discipline an individual for conviction of a gross misdemeanor the Board has no jurisdiction to intervene in these matters. This rule is reasonable because conviction of a gross misdemeanor is a matter of serious professional concern and because licensees are peace officers charged with the duty and responsibility of enforcing criminal laws. Further, certain gross misdemeanors involve behaviors which raise serious questions as to a person's competence for performing peace officer duties. Recently, there have been several high profile cases involving Minnesota peace officers who have been convicted of gross misdemeanors. In several of these cases, the officers returned to duty after serving short disciplinary suspension periods imposed by the department. However, no avenue for review by the state licensing authority currently exists. The public, the profession and the legislature have indicated that a conviction off a gross misdemeanor by a peace officer is a matter of serious concern. The Board concurs and believes that a licensee convicted of a gross misdemeanor should be subject to review and discipline by the Board where it is appropriate. In addition the amendment clarifies that a conviction includes a finding or verdict of guilt whether or not the adjudication of guilt is withheld or not entered. This is both reasonable and necessary so that the Board can consider all convictions whatever the final disposition of the case may be.

D. The proposed rule is necessary to allow the Board to review license applicants who have been disciplined for professional misconduct by peace officer regulatory boards in other states and possibly prevent them from obtaining licensure in Minnesota. Individuals employed as peace officers are required to be licensed or certified in 49 of the 50 states. In addition to establishing minimum qualifications for practice, these states also provide for discipline of individuals who fail to conform to the standards of conduct established in that state. Since some individuals who apply for licensure in Minnesota are or have been licensed in another state, it is essential that the Board examine their status within that state, prior to granting a Minnesota license. The proposed rules is reasonable because the Board is charged with regulating the peace officer profession in Minnesota for the benefit of the public's health, safety and welfare. This is a reasonable area of inquiry for the Board since Minn. Stat. 626.84, subd. 1(a) charges the Board with adopting rules regarding minimum standards of conduct which would affect an individuals performance of peace officer duties. Disciplinary action against a peace officer licensee or certificate holder in another state indicates a possible condition which could affect the public's health, safety and welfare or the performance of peace officer duties, and thus it is reasonable to establish a rule which allows the Board to act to prevent or limit such individuals from obtaining a peace officer license in Minnesota. This is reasonable because the Board should not be precluded from considering an individual's behavior simply because it occurred in another jurisdiction.

E. The proposed rule requires reporting of adverse licensing action imposed by a peace officer regulatory board in Minnesota or another state, including the refusal to grant a license or certificate. This rule is necessary so that licensees know they are under a duty to report those instances which could give rise to Board action under proposed rule 6700.1600, subpart 4. Further, this language is necessary because it allows the Board to take action against persons who fail to report that they have been the subject of revocation, suspension, or surrender of a license or certificate. Individuals who apply for a Minnesota peace officer license are relied upon to disclose background information. Individuals holding a Minnesota peace officer license may also hold a peace officer license or certificate in another state. A rule requiring reporting of adverse licensing action in another state is necessary to alert the Minnesota Board to any action taken against a peace officer's license in another state which may also constitute a violation of a Minnesota peace officer standard of conduct. This rule is reasonable because if an individual was disciplined for breaking a rule in another state, it is possible that conduct could constitute a violation of a Minnesota standard of conduct. Requiring the reporting of such action enables the Board to make an informed decision on licensure.

F. The proposed rule gives the Board jurisdiction over a licensee who is convicted of a controlled substance or narcotics violation. The proposed rule is necessary because Peace officers are charged with enforcing drug laws. The public views this as an important law enforcement function. Moreover, it is important for the public to have confidence that peace officers will remain free from drugs which could inhibit their ability to perform effectively in critical situations. The proposed rule is reasonable because use of a controlled substance or narcotic could arguably affect peace officer performance. This rule is needed to ensure public faith in the police, whose duty it is to arrest drug users and dealers, and who are also charged with the responsibility of processing and securing confiscated drugs as evidence. The proposed rule is also reasonable because it gives the Board jurisdiction only if the individual is convicted of the crime. This will ensure that individuals who are accused of using drugs, or who seek drug treatment absent a conviction, would not be covered by the rule. This language is necessary because it allows the POST Board to consider conviction of a state or federal narcotics or controlled substance law irrespective of the final disposition of the case. This is reasonable because peace officers are charged with upholding the law and the Board should be allowed to consider the fact that an individual has violated narcotics or controlled substance laws even where the court chooses not to enter an adjudication of guilt under Minn. Stat. 152.18.

G. The proposed rule is necessary to give the Board the authority to examine the fitness of licensees who have been adjudicated mentally incapacitated or otherwise mentally impaired. The performance of peace officer duties requires, among other things, the ability to reason, to think quickly, and to make sound decisions. Any psychological or physical condition which would impair an officer's ability to make decisions or think clearly would impair that officer's performance. The proposed rule would allow the Board to take licensing action in those instances when an individual has been adjudicated by a court as incapacitated, mentally incompetent, chemically dependant, mentally ill and dangerous to the public, or as having a psychopathic personality. This rule is necessary to remove from the profession those individuals who are so

adjudicated, who may not be competent to perform peace officer duties and who may pose a danger to the public. This rule is reasonable because the Board is charged with the responsibility of establishing minimum standards of physical and mental fitness for peace officers. Finally, the rule is reasonable because it requires not mere suspicion or conjecture regarding mental capacity, but a finding by a court that an individual is thus afflicted and incompetent.

H. The proposed rule provides that a violation of any order issued by the Board would constitute a violation of standards of conduct, and thus provides the Board with an action against the licensee, independent of the action underlying the order. The rule is necessary to place licensees on notice of their obligation to obey Board orders and to allow the Board 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. An individual aggrieved by a final decision or order in a contested case is entitled to judicial review. However, until relief is granted by the reviewing court, the individual is bound by the Board's order. The proposed rule is reasonable because the Board is required, in the interest of the public's health, safety and welfare, to establish standards of conduct for peace officers. When the Board decides that certain action is necessary to protect the public's interest, it may, after a contested case hearing, issue an order. Licensees are expected to obey orders issued by the Board. Where licensees fail to do so, it is reasonable to give the Board an independent cause of action against the licensee, because the licensee's disregard of the order raises substantial doubt of the licensee's ability to adequately perform peace officer duties. This language is both reasonable and necessary because it allows the Board to take action against individuals who violate any order issued by the Board.

I. The proposed rule is both reasonable and necessary because it allows the board to take action against an individual for unauthorized practice of law enforcement as defined in Minn. Stat. 626.863. The statute provides that an individual who is not a peace officer or part-time peace officer may not make the 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 proposed rule is necessary to provide the Board with 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, therefore it is necessary that the Board have some way of controlling these individuals for the benefit of the public health, safety and welfare. Providing the Board with authority to discipline these individuals is reasonable because the unregulated practice of the profession by individuals not appointed by local governments presents a danger to the public.

J. The proposed rule provide's that making a false statement or misrepresentation to the Board violates a standard of conduct. The proposed rule is necessary because 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 appearing before the Board will treat the matter with appropriate decorum and that all statements made will be truthful. The proposed rule is reasonable because the Board believes that licensees who demonstrate an inability to tell the truth

before a tribunal such as the Board should not be peace officers, since the integrity and trustworthiness of the individual, characteristics essential to a peace officer, would be questionable. This language is both reasonable and necessary because it allows the Board to take action against an individual who intentionally makes a false statement or misrepresentation to the Board.

K. The proposed rule prohibits sexual penetration or contact without consent, or engaging in indecent exposure. Non-consensual sexual contact in addition to being illegal, constitutes conduct which would adversely affect an individual's performance of duties as a peace officer, as well as being an abuse of authority. The Board believes it necessary to establish a rule prohibiting non-consensual sexual conduct, except where part of standard police procedure. The rule is reasonable because the conduct prescribed by the rule is essentially criminal. It is the Board's belief that the public has a right to expect that those individuals sworn to uphold the law will not violate the law. The rule is reasonable because it establishes that certain contact during the course of standard police procedures would not constitute a violation of this rule. This language is necessary to allow the Board to take action against an individual who is guilty of sexual penetration or contact without consent or indecent exposure.

L. The proposed rule essentially adds four crimes to the list of currently existing crimes, which may, upon conviction, result in Board discipline. The crimes added to the list are violation of an order for protection, Minn. Stat. 518.801, subd. 14; criminal sexual conduct in the fifth degree, Minn. Stat. 609.465; possession of stolen property, Minn. Stat. 609.53; violation of a harassment restraining order, Minn. Stat. 609.784; solicitation, inducement or promotion of prostitution, Minn. Stat. 609.322; and hiring or offering to hire a prostitute, Minn. Stat. 609.342. The inclusion of these statutes provides clarity so that there will be no question that the board will enforce these statutes. Each of these items will be discussed below.

1) Violation of an order for protection. This rule is necessary to ensure that peace officers who are the subject of orders for protection respect the court's order and follow the law. It is reasonable for the Board to expect such compliance, since peace officers are called on to enforce orders for protection. As with all laws and court orders, the Board expects that peace officers will comply were directed to do so. It is reasonable to expect peace officers to comply with the law since they are charged with the responsibility of upholding it. The Board believes that failure to comply with an order for protection could affect an officer's ability to perform with regard to enforcement of other orders for protection and deal with order for protection violators or domestic assault victims.

2) Criminal sexual conduct in the fifth degree. This rule is necessary because criminal sexual conduct is a serious crime. Peace officers are often called to investigate criminal sexual conduct and require the confidence of both the public and victim in dealing with these crimes. It is the Board's position that an individual convicted of criminal sexual conduct would likely lose the confidence and trust of

the public and victim in handling such calls. The commission of such a crime reflects negatively on the officer's character. Conviction of criminal sexual conduct in the fifth degree would thus have an adverse effect on a peace officer's ability to perform required duties. This rule is reasonable because peace officers like all citizens must be expected to comply with the law. Where there is a finding by a court that an individual has not complied with the law and has been convicted, the Board should have the authority to act to protect the public's health, safety and welfare.

3) Possession of stolen property. The Board views theft as a serious violation of law, and currently provides for licensing sanction upon conviction of theft. Since possession of stolen property is a similar crime, the Board believes it is necessary to include it within the standards of conduct. This rule is reasonable because the public has high expectations of and trust in the police with regard to protection of property. Peace officers often deal with evidence and other property which they are required to safeguard. The Board expects that officers will do so, and that they will obey the law with regard to possession of stolen property. The Board believes that failure to obey the law and conviction of possession of stolen property would seriously affect the individual's performance of duties as a peace officer. Thus, it is reasonable for the Board to have the authority to sanction officers who engage in the possession of stolen property.

4) Violation of harassment restraining order. This rule is necessary to ensure that peace officers who are the subject of restraining orders respect the court's order and follow the law. It is reasonable for the Board to expect such compliance, since peace officers are often called on to enforce restraining orders. As with all laws and court order, the Board expects that peace officers will comply where directed to do so. It is reasonable to expect peace officers to comply with the law, since they are charged with the responsibility of upholding it. Failure to comply with a restraining order could affect an officer's ability to perform with regard to enforcement of other restraining orders.

M. The proposed rule makes failing to cooperate with an investigation of the Board a violation of standards of conduct. This rule is necessary because the Board is charged with the duty to investigate and adjudicate licensing complaints. It is necessary that licensees be required to cooperate with investigations so that the Board can obtain full and complete information regarding allegations. Cooperation with Board investigations are important because it leads to the discovery of pertinent facts surrounding an allegation, and also results in more efficient processing of complaints. The Board may impose conditions upon the granting of a license. One of the conditions that generally applies to such a grant of privilege is that individuals undertake the responsibility to cooperate with the licensing authority in investigating complaints. Furthermore, since the Board has the authority to make and enforce administrative rules regarding standards of

conduct, it is reasonable for the Board to expect and require individuals to cooperate with investigations.

N. The proposed rule makes engaging in sexual harassment, as defined by Minn. Stat. 363.01, a violation of standards of conduct. This rule is necessary because the Board believes that sexual harassment by peace officers should not be tolerated. To ensure that peace officers refrain from engaging in such conduct, the Board must have a rule specifically prohibiting sexual harassment. The proposed rule is also necessary as a means of allowing citizens an avenue of complaint when they believe they have been sexually harassed by peace officer. The rule is reasonable as it sets forth the Board's policy in plain terms. Furthermore, the rule is reasonable because it imposes no greater duty on licensees than that which currently exists under Minn. Stat. Chapter 363, which prohibits sexual harassment in the work place.

O. The proposed rule, which prohibits the use of deadly force when not authorized by Minn. Stat. 609.066, is part of current POST rules. Therefore, its need and reasonableness has already been established.

P. The proposed rule gives the Board jurisdiction over a licensee who is convicted of solicitation, inducement, or promotion of prostitution. The Board views the patronage of prostitutes by peace officers as a matter of serious public concern. Peace officers are charged with enforcing prostitution laws. Peace officers who solicit, hire or engage a prostitute jeopardize the integrity of the profession and the effectiveness of law enforcement efforts. This rule is necessary to ensure that peace officers who are convicted of such crimes are subject to discipline by the Board for the aforementioned reasons. The rule is reasonable because the public has the expectation that peace officers will comply with the law. The Board believes that failure to comply with the law, as shown by conviction, would affect an individual's performance of duties as a peace officer.

6700.1610 REPORTING OBLIGATIONS AND COOPERATION

Subpart 1. Reporting conduct violation. The proposed rule provides that any person with knowledge of conduct which would be grounds for Board action may report the violation to the Board. This rule is necessary to make explicit the Board's policy that any person may file a complaint with the Board. The proposed rule is reasonable because it simply makes clear that the public may utilize the Board in scrutinizing the conduct of peace officers.

Subp. 2. Licensee reporting requirement. The proposed rule requires a licensee to report actions which would constitute grounds for disciplinary action under POST rules. It requires that if an individual violates a Board rule and knows of the violation, the individual must report that violation to the Board. This rule is necessary because self reporting is the only method by which the Board can learn of many violations. The proposed rule is reasonable because a 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. The rule is also reasonable

because individuals who hold licenses do so subject to the rules of the Board. Therefore, license holders consent to follow the Board's rules.

Subp. 3. Report submittal requirement. The proposed rule requires that licensees who are required to self report violations must do so no later than 90 days after learning of the reportable event. This is necessary to ensure that the Board receives notice of violations in a timely manner. Timely notice is important so that the Board may initiate an investigation and adjudicate the case before evidence becomes stale or witnesses disappear. The 90 day reporting requirement is reasonable because it provides the individual with a substantial amount of time after learning the reportable event to seek advice and counsel. It is also reasonable to establish some time frame for reporting events, so that an individual who has violated the license has some notice as to when the self reporting requirement must be met.

Subp. 4. Cooperation by licensee. The proposed rule requires the licensee who is the subject of an investigation to cooperate with the investigation. See item A. 13 for justification of need and reasonableness.

6700.1710 DISCIPLINARY ACTIONS FOR VIOLATIONS OF ADMINISTRATIVE RULES

Subpart 1. Temporary restraining order. The proposed rule allows the Board to petition the District Court for a temporary restraining order upon a finding by the Complaint Investigation Committee that a licensee has violated a rule or statute which the board enforces, where that violation would create an imminent risk of harm to others. This rule is necessary to allow the Board 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. Such a rule is important because it allows the Board to act affirmatively in the protection of the public's health, safety and welfare. The proposed rule is reasonable because dangerous acts, committed by licensees, need to be addressed in a swift fashion to prevent harm. Further, this rule is reasonable because the Complaint Investigation Committee provides an opportunity for the licensee to present his/her side of the case.

Subp. 2. Grounds. The proposed rule provides the Board with several options for imposing disciplinary action upon licensees. This rule is necessary to make explicit the fact that the Board may select from a menu of licensing sanctions. The rule is reasonable because it is the Board's responsibility to adjudicate cases and to discipline licensees. Therefore, the Board must be provided the opportunity to tailor the discipline to the particular facts of the case.

Subp. 3. Settlement agreement. The proposed rule provides that the Executive Director may enter into a settlement agreement with a licensee for corrective action. The rule further sets forth some options the Executive Director may employ in negotiation a settlement agreement. The rule is necessary to allow settlement of cases where the board and the licensee can come to some consensus about the outcome of the matter. The rule is also necessary because it allows the Board, with the consent of licensee, to remedy a particular situation without litigating the matter.

The rule is reasonable because it requires the consent of both parties to enter into a settlement agreement. Where two parties can agree as to the outcome of a matter, it is sensible that they be allowed to enter into a settlement and dispose of the matter.

Subp. 4. Reinstatement fee. The proposed rule provides that upon granting or reinstating a license the Board may at its discretion impose a reinstatement fee. The rule is necessary because reinstatement of a license costs the Board money in the form of time and other resources. Because these costs are incurred due to some action on the part of the licensee which resulted in the loss of license, it is reasonable to require that the licensee pay the cost of reinstating the license.

Subp. 5. Cease and desist order. The proposed rule allows the Board to issue a cease and desist order or to seek a temporary restraining order from the District Court to prevent persons from violating or threatening to violate a statute, rule or order which the Board is empowered to enforce. The rule is necessary because it allows the Board, in the form of issuing a cease and desist order, to take some formal administrative action short of actually petitioning the court for relief. Such action is reasonable because it saves both the Board, the court system, and tax payers money that might otherwise be spent in litigation. It is necessary that the Board be allowed to seek a temporary restraining order from an appropriate District Court where the cease and desist order fails to stop the individual from violating a rule. Allowing such action by the Board is reasonable since the violation of a statute or rule would, by definition cause some detriment to the public's health, safety or welfare. Therefore, it is reasonable to provide the Board with the means to obtain a court order to prevent such dangers to the public.

CONCLUSION

Based on the foregoing, the Board's proposed rule amendments are both necessary and reasonable.

March 1st, 1995
Date

John J. Lang
Executive Director