

Hearing Officer Report

Date of Hearings: November 26, 2007 in La Grande, November 29, 2007 in Eugene and December 7, 2007 in Portland

Purpose of Hearing: To receive testimony regarding the Department's proposed adoption of OAR 333-265-0012, 333-265-0014, 333-265-0016, 333-265-0018, 333-265-0022, 333-265-0023, 333-265-0180, 333-265-0190; proposed amendment of OAR 333-265-0000, 333-265-0010, 333-265-0020, 333-265-0025, 333-265-0030, 333-265-0040, 333-265-0050, 333-265-0060, 333-265-0070, 333-265-0080, 333-265-0090, 333-265-0100, 333-265-0110, 333-265-0140, 333-265-0150, 333-265-0160, 333-265-0170; and proposed repeal of OAR 333-265-0120 and 333-265-0130. The purpose of the proposed changes is to: streamline and clarify rules; address requirements for training and certification of Certified First Responders and Emergency Medical Technicians ("EMTs"); and propose changes in fees effective on January 1, 2008.

Hearing Officer: Jana Fussell (Robert Leopold conducted the November 26, 2007 hearing in La Grande.)

Oral Testimony Received at the November 26, 2007 Hearing in La Grande: Four individuals provided oral testimony at the hearing with two of these individuals also providing written testimony.

Jeanne Plummer, Tillamook Hospital Ambulance

Ms. Plummer identified herself as a paramedic representing Tillamook Hospital Ambulance. She testified that the issue that she raised in her written testimony concerning the proposed change date was resolved prior to the hearing and that she now understands that the new continuing education requirements for EMTs will be for the recertification period starting in 2009. [Hearing Officer note: This is correct. Please see proposed OAR 333-265-0110(14)(b).]

Ms. Plummer took exception to the notion that "required hours for Paramedics and Intermediates 'increased substantially' but the First Responders and Basic hours decreased." She opined that this gives the impression that the basics of Emergency Medical Services ("EMS") are not as important as the advanced. Ms. Plummer questioned the Department's description of the fiscal impact and the need for the rules as set out in the Statement of Need and Fiscal Impact. She opined that: "Giving Oregon's EMTs more classes to sit through will not automatically make them better medics." She also suggested alternative language for the definition of

“Continuing Education” which appears in proposed OAR 333-265-0000(6). Ms Plummer stated that the Oregon State Board of Nursing requires only that nurses have employer-required competencies/education and that trust should be placed in the supervising physicians to make sure that their medics are competent. Ms. Plummer also questioned proposed OAR 333-265-0110(6)(b) and recommended that the instructor’s credit should be at least the same amount that is given to the students and that the department should “consider increasing it to 1.25% in order to provide an incentive for Paramedics to obtain and maintain instructor status.”

Ms. Plummer’s written testimony is attached to this report as “Exhibit #1.”

Marty Carlson, Tillamook Hospital Ambulance

Ms. Carlson also questioned the fiscal impact of the proposed rules and pointed to legislation directing state agencies to avoid placing unnecessary burdens on small businesses. She opined that “education for paramedics alone will be doubled” and that there are “at least 47 licensed ambulances in the state that are private and/or volunteer that this will significantly impact.”

Ms. Carlson’s written testimony is substantially identical to that submitted by Ms. Plummer and is attached to this report as “Exhibit #2.”

Larry Foley, La Grande Rural FPO

Mr. Foley stated his “personal observation” that several aspects of the proposed rules will greatly affect the volunteer services. He opined that requiring certification for all first responders will increase cost to volunteer agencies as most first responders are volunteers and that this cost will ultimately be borne by the volunteers themselves. He suggested that proposed OAR 333-265-0030(8) which allows an EMS agency or rescue service to request a waiver of the EMT or First Responder recertification fees for its volunteers be modified because most volunteer agencies do not have scheduled shifts and that this is “for agencies that do not necessarily have EMTs or paramedics on board as strictly first responders.” Mr. Foley also explained his “mixed emotions” and the need for First Responder certification.

Rita Warner

Ms. Warner identified herself as an EMT Intermediate and as an instructor and addressed the issue of continuing education for recertification for Intermediates. [Please see proposed OAR 333-265-0110(3).] She stated that she would like to see more skill verification and additional hours required. Ms. Warner suggested a

minimum of 48 hours instead of 36 hours in two years for continuing education. She opined that: “There are skills that are done by Intermediates in the state where paramedics are not available that are not done often, but if they are not practiced on a regular basis and those skills verified, then we cannot really assure that the people are going to be competent in doing those.”

Oral Testimony Received at the November 29, 2007 Hearing in Eugene: One individual provided both oral and written testimony at the hearing. This testimony is briefly summarized as follows:

Shawn Baird, Oregon State Ambulance Association (“OSAA”) and the owner of Woodburn Ambulance Service

Mr. Baird first presented oral comments as a representative of OSAA and also submitted written testimony on its behalf. This written testimony is attached to this report as “Exhibit #3.” He explained that the proposed rule revisions resulted from an extensive process in which OSAA and its members worked with Public Health Division EMS staff and other stakeholders. Mr. Baird stated that: “We are pleased that the effort has culminated in proposed rules which will make progress toward improving access and delivery of excellent pre-hospital medical care and transportation in Oregon. There are no sections of the proposed rules that we object to.” He also opined that significant issues surrounding EMT education, certification and reciprocity will require vigorous attention to determine whether the proposed rules will be effective in meeting the needs of ambulance service providers and characterized the proposed rules, as first step, as a welcome change.

Speaking as the owner of Woodburn Ambulance Service, Mr. Baird stated his belief that: “both as a working field paramedic now and as an owner who is ultimately responsible for the actions of over 50 EMTs working for the company, that the added continuing education hours are much needed and going to be extremely helpful for those of us who have to assure that EMTs are providing good care on the street.” He also opined that “the changes at the paramedic level broadening a degree requirement are going to be really helpful as an employer for me to be able to attract good, qualified paramedics that may have a different breadth of experience that we can apply to this field and add to our capacity as organizations to serve the public.”

Oral Testimony Received at the December 7, 2007 Hearing in Portland: Four individuals provided oral testimony at the hearing with two of these individuals also providing written testimony at that time. Three of these individuals also submitted additional written testimony during the public comment period.

Kenny McGinnis, Division Chief, Winston-Dillard Fire District

Mr. McGinnis identified himself as an EMT Paramedic as well as holding a master's degree and executive fire officer. He stated that while he concurs with "modernization and language clarifications contained in these proposed administrative rules," he does not concur with "the substantive changes proposed." Mr. McGinnis testified that he does not concur with changes to the EMT recertification requirements and that the implementation dates for the proposed rules are inappropriate and inconsistent with the recertification period. He voiced his support for the current levels and methodology for continuing education for EMTs. Mr. McGinnis questioned the fiscal impact of the proposed rule changes and opined that the hardships imposed will decrease service levels of pre-hospital care in rural Oregon. He stated in belief that the proposed rules will have a detrimental effect on EMTs' ability to obtain higher education because "education dollars that would be spent to obtain higher educations will be spent on doing recurrent training of items that have not been yet documented to need addressing." Mr. McGinnis also stated that, despite receiving notice, many paramedics in his area did not realize that this rule change was occurring and that small agencies, especially in rural Oregon, will find the "doubling of the educational requirements" to be detrimental.

The written testimony that Mr. McGinnis submitted at the hearing is attached to this report as "Exhibit #4."

Brannen Bates, Deputy Chief, Portland Fire and Rescue

Mr. Bates testified that his organization has nearly 700 EMTs that need to remain certified by the state. He identified the two issues that they have the largest objection to as: (1) the rule about the video education and that it has been limited to 25% of the hours for continuing education [Please see OAR 333-265-0110(6)] and (2) that it is not clear when the recertification standards are going to be enacted. In relation to the first issue, Mr. Bates opined that: "limiting the number of video hours that an organization our size uses is extremely detrimental to us." Instead, he suggested that proposed OAR 333-265-0110(6) be changed to allow up to 50% of the hours of continuing education credits be obtained by the methods listed in the rule. He estimated that without this change, his organization would

need to add one full-time person in order to accommodate the increased training requirement. Mr. Bates' written testimony explains how they use a closed-circuit television studio to provide training. In relation to his second issue, Mr. Bates testified that they would like to see it plainly stated that the educational requirements will be enacted for EMT-Basics, Intermediates, Paramedics applying for recertification for the 2011/2013 period because if they are required to bring on another full-time trainer in order to do the training, it may take several years to work through his city council in order to get it established and approval obtained to hire such a person. He also estimated that increased fees could have as much as a \$24,000 impact on their budget.

Mr. Bates' written testimony is attached to this report as "Exhibit #5."

Scott Lewis, Fire Chief, City of Gresham Fire & Emergency Services

Mr. Lewis opined that the "the perceived abbreviated time line to provide comments" and the comprehensive nature of the proposed changes resulted in individual agencies' and associations' comments being primarily related "to implementation dates in an attempt to forestall the impacts on the organization." He characterized these comments as valuable but not addressing the "more significant issues of the proposed changes and the true hardship it places on the EMS organizationally, and the citizens of their community." Mr. Lewis took issue with the Department's description of the fiscal impact and the need for the rules as set out in the Statement of Need and Fiscal Impact. He opined that the program "made no real effort to determine" what the impact will occur to providers who are contractually obligated to provide the continuing education to their staff to meet certification requirements. He testified that rough estimates from his department indicate the continuing education costs alone could exceed \$1,500 for each paramedic. Mr. Lewis stated that: "The proposed rules make the certification and recertification of the EMT-I and EMT-B overly burdensome on the individuals and the agencies." He went on to detail his concerns with acquiring paramedic internship experience "strictly on an ambulance" and opined that allowing students to acquire pre-hospital clinical experience with non-transport agencies will likely provide an effective alternative. Mr. Lewis also expressed concern about video training. He stated that the change in limiting on-line video training to 25% will require a complete change in how EMS training is delivered in many organizations; that there is not identified capacity to provide necessary courses; and that the proposed rule represents an unfunded mandate which is prohibited by the Oregon Constitution.

Mark Stevens, Oregon Fire Medical Administrators Association (“OFMAA”)

Mr. Stevens testified that his organization is generally in support of the rule changes and that they have been following and giving input throughout the process. He put forth three items that they would like clarified: (1) the effective date of the new recertification hours. Mr. Stevens opposed it being current period; (2) whether the associate degree in applied science requirement for EMT-Paramedic certification includes an AA degree. Mr. Stevens supported allowing any associate degree from an accredited institution; and (3) video concerns. He stated that OFMAA is not so concerned with the percentage. He opined that: “Distributive education has come a long way and we parallel with National Registry’s doing and allowing some of the really good computer-based and different ways to do training that’s not considered video. If we can use that, it would ease the impact tremendously.”

Other Comments: Sixteen additional written comments were submitted to the Department within the time period allotted for public comment. These comments are briefly summarized as follows:

Kenny McGinnis, Division Chief, Winston-Dillard Fire District

Mr. McGinnis’ written comments restated and expanded on his previous testimony. Mr. McGinnis questioned the Department’s description of the fiscal impact and the need for the rules as set out in the Statement of Need and Fiscal Impact. He opined that the proposed rules lacked input from small business and that the proposed rules result in an unfunded state mandate. Mr. Lewis explained his concern that: “These proposed rule changes, scheduled to take effect January 1, 2008, are mid-cycle rule changes.” He wrote that, in addition to their mid-budget cycle fiscal effect, they adversely affect every emergency medical technician. He opined that should these proposed rule changes be adopted, an appropriate implementation date would coincide with a recertification cycle such as July 2011, not a mid-cycle change. Mr. McGinnis reiterated his concern that the purposed rule changes will lessen EMTs ability and desire to obtain higher education and “are not consistent with continuing education requirements changes with other medical disciplines.” Mr. McGinnis’ written comments also identify “technical” issues in regard to OAR 333-265-0020, 0022, and 0100.

Mr. McGinnis’ additional written testimony is attached to this report as “Exhibit #6.”

Scott Lewis, Fire Chief, City of Gresham Fire & Emergency Services

Mr. Lewis's written comments supplement the oral testimony he provided at the Portland hearing. He also noted that his organization is in full agreement with the written comments provided by Mr. Sprando. He opined that while the proposed rules are intended to improve the level of training, there is not a documented link between the amount of training proposed, or limits placed on the training method, to patient outcomes. Mr. Lewis identified the following issues as of the greatest concern for the City of Gresham and its Fire & Emergency Services: changes to the standards for EMT Intermediate recertification served only to reduce the level of service available; the continued requirement for an Associates Degree to be eligible for EMT-Paramedic certification has led to a recognizable shortage of paramedics in the Portland metro area; the proposed requirement to limit the clinical experience on non-transport EMS providers; increased training requirements will place an undue burden on the ability to train employees and does not consider how training is going to be obtained; reduction in the ability to use video or other distributive training; the implementation date of January 2008; and that the proposed rules represent an unfunded mandate. Mr. Lewis did write that his organization "would support the proposed changes in the fee structure identified in 333-265-0030 at this time."

Mr. Lewis' written testimony is attached to this report as "Exhibit #7."

Scott Shepherd, President, OFMMA

Mr. Shepherd wrote to express the OFMMA's support for the proposed rules as they contain "many changes which will continue to improve the caliber of First Responders and EMT's throughout the state, which ultimately ensures the best delivery of emergency medical services possible to the citizens we all serve." He did, however, request that clarification be provided on the start date for the new recertification requirements as he believes it is unclear. Consequently, he requested that this matter be resolved either by a published letter or by adding July 1 to the dates appearing in proposed OAR 333-265-0110(14).

Mr. Shepherd's written testimony is attached to this report as "Exhibit #8."

Skip Smith, Fire Chief, Halsey-Shedd Rural Fire Protection District, Mike Nokes, Staff Captain/Training Officer

Mr. Smith and Mr. Nokes opined that the notices sent out regarding the rulemaking action were "very vague in describing the possibilities of changes in the OAR's." They also explained their belief that "changing the EMT Intermediate recertification hours from 14 to 36 is a dramatic jump!" They expressed concern

that the increase in required hours could lead to agencies losing volunteers. These gentlemen wrote that the financial impact is “scary” and that the “benefit the EMT Intermediate will receive from this dramatic change of recertification hours is not worth the cost it will take to deliver the training.” They opined that the proposed rules will greatly diminish the possibilities of encouraging anyone to take the EMT Intermediate course and requested that the current First Responder system be left alone because many believe that it is fine the way it is now.

Mr. Smith’s and Mr. Nokes’ written testimony is attached to this report as “Exhibit #9.”

Mark Torrence

Mr. Torrence is a paramedic supervisor, CCEMTP. He questioned the Department’s description of the need for the rules as set out in the Statement of Need and Fiscal Impact and wrote that the change to the education budget for paramedics alone “will have such a harsh increase in training budgets for small volunteer and paid services alike that it will become very difficult for them to provide any service at all.” Mr. Torrence echoed the comments heard from Ms. Plummer in relation to OAR 333-265-0110(6)(b), stating that the instructor’s credit should be at least the same amount that is given to the students and that the department should “consider increasing it to 1.25% in order to provide an incentive for Paramedics to obtain and maintain instructor status.” He also echoed Mr. Plummer’s concern that required hours for Paramedics and Intermediates “increased substantially” but the First Responders and Basic hours decreased and that this gives the impression that the basics of EMS are not as important as the advanced pieces of EMS. Mr. Torrence also expressed concern with the proposed change date and wrote that neither any increases in recertification hours nor “such a large increase in recertification fees” is warranted.

Mr. Torrence’s written testimony is attached to this report as “Exhibit #10.”

Jeffrey Machina

Mr. Machina is an EMT-P. Mr. Machina expressed many of the same concerns expressed by Mr. Torrence; pointed out that the Oregon State Board of Nursing does not require registered nurses to have continuing education hours; and suggested the same alternative language as did Ms. Plummer for the definition of “Continuing Education” which appears in proposed OAR 333-265-0000(6).

Mr. Machina’s written testimony is attached to this report as “Exhibit #11.”

Brannen Bates, EMS Deputy Chief, Portland Fire & Rescue, Rob Hawks, Captain/EMS Coordinator, Portland Fire & Rescue, Doug Banry, Captain/Paramedic Manager, Airport Fire Department, and Rick Williams, Paramedic Coordinator, Airport Fire Department

These individuals wrote to express their belief that the proposed rules “contain many changes that will continue to improve the caliber of First Responders and EMT’s throughout the state, which ultimately ensures the best delivery of emergency medical services possible to the citizens we all serve.” They wrote that while they agree that change to the continuing education requirements for EMT recertification is needed and overdue, to avoid “an extreme hardship for both EMT’s and their employers throughout the state,” the language of OAR 333-256-0110(14) should be modified to read: “The continuing education requirements in this rule apply to: (b) EMT-Basics, Intermediates and Paramedics applying for recertification after July 1, 2009.”

This written testimony is attached to this report as “Exhibit #12.”

David Sprando, Chief, Portland Fire & Rescue

Mr. Sprando wrote on behalf of Portland Fire & Rescue. He noted that the proposed rule changes contain many improvements but expressed concerned with proposed OAR 333-265-0110(6) and (14). These comments mirror those given by Brannen Bates at the Portland hearing on December 7, 2007.

Mr. Sprando’s written comments are attached to this report as “Exhibit #13.”

David Sprando, Chief, Multnomah County Fire Defense Board and Portland Fire & Rescue

Mr. Sprando also submitted written comments on behalf of the Multnomah County Fire Defense Board whom he described as strong advocates of quality emergency services for the public. This testimony largely mirrors the oral testimony given by Scott Lewis, Fire Chief, City of Gresham Fire & Emergency Services at the Portland hearing. Mr. Sprando requested that all changes in the proposed rules be “postponed to allow the open and complete dialogue this subject needs and deserves.”

Mr. Sprando’s written comments are attached to this report as “Exhibit #14.”

Gregg Lander, Chair State EMT Consortium

In a letter dated November 26, 2007, Mr. Lander expressed concerns regarding the EMT-Intermediate course.

Mr. Lander's written testimony is attached to this report as "Exhibit #15."

Gregg Lander, EMT Program Chair, Chemeketa Community College

Mr. Lander also submitted an email dated December 11, 2007. In this email, Mr. Lander writes that other than a couple of issues, he believes that most everything else has been answered and that: "The process, although painful at times, was done well and for the most part most of the major issues were dealt with." Mr. Lander wrote that the "current proposal that video, etc. should be limited to 25% should remain." He opined that it may make sense to stipulate that this is referring to "passive learning" vs. "active learning" but that 50% is way too much. He also recommended that the proposed changes on internships on ambulances compared to ALS Engines should stand and not be modified.

Mr. Lander's written testimony is attached to this report as "Exhibit #16."

Randy Jackson, Deputy Chief, Kaiser Fire District

Mr. Jackson wrote that the Keizer Fire Department is generally supportive of the proposed changes to OAR 333-265 with the exception of the limitation for video-based recertification hours which they would like to see increased to a limit of 50% video-based presentations.

Mr. Jackson's written testimony is attached to this report as "Exhibit #17."

Lawson Stuart, President/Chief Executive Officer, College of Emergency Services

Mr. Stuart identified his most significant comments as pertaining to "the currently proposed description and references to that which defines an appropriate teaching institution for EMS certification programs within the State of Oregon." He stated that in various rule sections multiple references are made to two-year community colleges, four-year degree-granting colleges and licensed vocational schools but that there is no reference that describes a private college as qualified to conduct EMS training and/or confer degrees and that this issue is important to his organization and any other private college that might in the future make application to engage in the training of EMTs and/or paramedics in Oregon. Mr. Stuart wrote that the "operative word we object to is 'community' inserted in the middle of the reference term, 'two-year community colleges.'" Mr. Stuart also made a number of detailed, technical comments regarding the proposed rules.

Mr. Stuart's written testimony is attached to this report as "Exhibit #18."

Alan L. Contreras, Administrator, Office of Degree Authorization, Oregon Student Assistance Commission

Mr. Contreras wrote in relation to the definition of "Teaching Institution" found in proposed OAR 333-265-0000(32). He opined that the definition should be revised because it does not list nonpublic degree-granting institutions and that Oregon has at least one such accredited school that trains EMS/EMTs. Mr. Contreras stated that ideally the definition should simply refer to accredited providers.

Mr. Contreras' written testimony is attached to this report as "Exhibit #19."

Gregory Willeford, Deputy Superintendent, Oregon State Police ("OSP")

Mr. Willeford wrote that the proposed rule changes will adversely impact the OSP because a \$15.00 recertification fee must be paid by June 30, 2008 for each of the OSP's current First Responders and it will be required to pay a \$30.00 initial certification fee for each new sworn employee that is hired after January 1, 2008. He estimates these costs to total over \$10,000.00, none of which has been budgeted by the agency for this biennium. Mr. Willeford wrote that of even more concern is the requirement for a background check and fingerprinting of the agency's new sworn Recruit Troopers at a cost of \$49.00 each. He estimates this unbudgeted expense to total \$7995.00. Mr. Willeford opined that the required "Electronic Background Check" for these new sworn employees is redundant, costly and unnecessary because the OSP will have just completed extensive background investigation of these individuals which includes an "Electronic" check. He pointed out that OSP is the agency that will actually perform the "Electronic" checks for the Department and that the Department will pay them to have this work done, resulting in a process that "appears to be a waste of resources, money and time." He also stated that the Department of Public Safety Standards and Training ("DPSST") runs the "Electronic" and fingerprint check on all newly certified police officers in this state. Mr. Willeford recommended that the Department "rely on the background investigations and criminal history checks that have already been conducted by the Oregon State Police and DPSST and waive this requirement in the rule for all sworn law enforcement personnel." He stated that OSP is concerned that some agencies might opt not to re-certify their First Responders in order to avoid the increased costs and recommends that the proposed fees be waived for OSP and all other law enforcement agencies or, in the alternative, the new fees should be postponed until the costs can be budgeted for in the biennium.

Mr. Willeford's written testimony is attached to this report as "Exhibit #20."

Gary McLean, President, Oregon State Paramedic Association

Mr. McLean questioned the adequacy of the Statement of Need and Fiscal Impact. He also made a number of other detailed comments concerning the proposed rule including a question of how Length of Service Awards Programs which are offered by some volunteer fire services affect an individual's status as a "Volunteer" as defined in proposed OAR 333-265-0000(34).

Mr. McLean's written testimony is attached to this report as "Exhibit #21."

Besides a letter from Mr. McLean this testimony includes a number of email discussions of the EMT-Intermediate issue and a copy of a letter from the Clatsop County Fire Defense Board and a memo from the Gaston Rural Fire District on this same subject.

Recommendations: I suggest that you consider the following recommendations concerning the proposed rules:

1. Seek legal advice from the Division's Assistant Attorney General on the adequacy of the Notice of Statement of Need and Fiscal Impact in light of the record of this proceeding. Also seek legal advice concerning the "unfunded mandate" issue that was raised by several commentators.
2. Clarify proposed OAR 333-265-0110(14) to avoid confusion about the effective date of the new continuing education requirements.
3. Evaluate the issue raised by Mr. Foley in relation to fee waivers for volunteers, proposed OAR 333-265-0030(8), and scheduled shifts.
4. Consider amending proposed OAR 333-265-0025(3)(f) to allow this requirement to be considered to have been met for all sworn law enforcement personnel for whom a criminal background check has already been completed by the OSP or DPSST.

5. Consider amending the definition of “Teaching Institution,” proposed OAR 333-265-000(32), to incorporate Mr. Contreras’ suggestion related to nonpublic degree-granting institutions.

6. Consider amending proposed OAR 333-265-0110(6)(a) to allow up to 50 percent of the hours of continuing education credits to be obtained by the methods listed in that subsection (watching a video, CD-ROM, or by other visual media).