

NEW MEXICO

STATE PERSONNEL OFFICE

Michelle Lujan Grisham
Governor

Dylan K. Lange
Acting Director

State Personnel Board

Laura A. Liswood
Chair

David F. Cunningham
Vice Chair

Cristin M. Heyns-Bousliman
Member

Carol A. Parker
Member

Fred Radosevich
Member

State Personnel Board Meeting and Public Rule Hearing

2600 Cerrillos Road, Santa Fe, NM

Friday, October 13, 2023 – 9:00 AM

Minutes

Procedural Items

- Chair Liswood called the meeting to order at 9:00 a.m.
- Acting Director Lange led the pledge of allegiance and called roll. Present: Chair Liswood, Members Parker, Heyns-Bousliman and Radosevich; Absent: Vice Chair Cunningham. A quorum was confirmed.
- Member Heyns-Bousliman moved to approve the agenda as presented; Member Parker seconded; roll call by Acting Director Lange. Motion carried.
- Member Radosevich moved to approve the minutes of the August 18, 2023 meeting as written, Member Parker seconded. Roll call by Acting Director Lange. Motion carried.

General Public Comment

Ms. Forlizzi advised the board that no requests for public comment had been received either in person or via email.

Public Hearing: Proposed Rule Changes 1.7.8 NMAC Drug and Alcohol Abuse

Chair Liswood moved to appoint AAG Dan Rubin as the Hearing Officer for the rule hearing; Member Heyns-Bousliman seconded. Acting Director Lange called roll; motion carried.

Dan Rubin conducted the hearing which began at 9:04. Rubin read the procedures for the hearing and asked Acting Director Lange for a presentation. Lange reviewed the summary of the rule and why an update was needed and presented Exhibits 1 – 7 for the record. One public comment had been received via email as indicated by the Notice of Rulemaking.

Address:

2600 Cerrillos Road
Santa Fe, NM 87505-3258

Phone:

505-476-7759

Fax:

505-476-7949

Website:

www.spo.state.nm.us



Lange explained the revisions were being proposed to uphold legislative intent, noting the changes were kept as minor as possible as we want to implement the rights of employees and agencies now that marijuana use is legal in New Mexico.

Member Heyns-Bousliman commented that the oral test is as effective and takes less time. Acting Director Lange agreed that an oral test is more responsive than the urine test, adding that every agency must have a drug and alcohol policy and this change gives them flexibility. Heyns-Bousliman pointed to Section 1.7.8.7 F and the definition of “drug”, asking was there any discussion to include opioids in this section? Lange stated no, this change is primarily in response to the legalization of marijuana.

Heyns-Bousliman then asked about Section 1.7.8.8 C (10) and the removal of “reasonable suspicion”. This goes along with 1.7.8.11 E - cannot be tested for reasonable suspicion. Lange clarified that currently, there is no test for impairment for cannabis, therefore, the test would not show impairment, only the presence of cannabis in the system.

Heyns-Bousliman noted the substance abuse policy 1.7.8.10 B removed the coordinator duties of providing drug and alcohol counseling. Lange stated this requires each agency to develop their own policy as required by federal law. SPO will draft a suggested version so each agency can use or modify as needed.

Heyns-Bousliman noted in 1.7.8.16 explanation of positive testing in B1b.– we changed the time from 1 year to 5 years. Lange stated this aligns with records retention rules.

Heyns-Bousliman moved to 1.7.8.18 and confidentiality. Noting that lab results are kept in a locked file – is that still a thing? Lange confirmed the results are still coming back on paper and agencies do rely on paper files.

Heyns-Bousliman stated in 1.7.8.19 rehabilitation – B2. Should be subsection C, not D. Lange agreed and stated we will correct if approved.

Member Radosevich commented on 1.7.8.8 – eliminating reasonable suspicion on all drug and alcohol. Should be only related to cannabis. He then moved to the chart and there being two different charts asking if we’re no longer going to test for cannabis, why do we have that on the charts? Acting Director Lange stated that we could eliminate it, but these are the standards from the federal regulations that would still apply.

Radosevich pointed to 1.7.8.10 and asked why not provide guidance so there is some consistency? Lange stated every agency has to submit their policy to SPO, and each agency is different in terms of make up, so this tracks the consistency of the other rules.

Radosevich asked if Lange is confident if the board adopts as written, no federal money would be jeopardized in any way? Lange replied, yes, he’s confident.



Member Parker asked if it would be helpful to put basic guidelines in the rule? Acting Director Lange replied that every agency already has a drug and alcohol policy. He has committed to providing a draft policy that SPO has to agencies. He hears her comment and concern, and we don't normally put that kind of content in a rule.

Hearing Officer Rubin asked if there were further questions, and confirmed there were no in-person requests for comment. Public comment closed. Rubin closed the hearing which was adjourned at 9:45.

Discussion and Potential Adoption of Rule Changes - 1.7.8 NMAC Drug and Alcohol Abuse

Chair Liswood stated the board is back in general session at 9:46 a.m. and opened the rule change up for board discussion.

Member Heyns-Bousliman commented she doesn't know that it makes sense to go through this process and not include opioids. Overarching concern demonstrate a misunderstanding about Lynn and Erin Compassionate Care Act and the reasonable suspicion testing exists because there are other objective signs of impairment. Within the proposed changes, there are some items that should be removed or changed before approved, which we can review as needed.

AAG Rubin said with the discussion around federal law and opioids, there is a risk that if we progress in this discussion, we would be out of the scope of what was noticed. With respect to the policy, we may want the rule to require SPO approval of the policy with given guidelines.

Heyns-Bousliman reiterated her concern about reasonable suspicion saying if you can test them, objective signs of impairment plus the positive test, you can shore up the disciplinary actions.

Rubin said evidence that will support discipline against an employee, could be argued that it would be bolstered by testing same argument that it would be unfair due to the result. Consider if there is sufficient evidence that should be supportable on its own.

Member Radosevich said he has a better understanding of what we're trying to do and agrees the rule needs to be updated since the last was in 2010. His biggest concern is eliminating reasonable suspicion for testing. He thinks this is not well thought out as a general overall rule for a drug and alcohol policy. He knows there's been work done on this and thinks we should go back to the drawing board to make a rule specifically for cannabis.



If we're going to have a policy, it needs to apply to all state agencies. He would like to see a broad policy that SPO sets and allows the agencies to draft their policies in conformance to that.

Member Parker seconded the concerns about non-uniformity in policy, suggesting policies be generalized. She feels SPO should have final approval of each agency.

Acting Director Lange responded that everyone brings up good points, fundamentally, right now there is no uniformity, in fact, there is no rule on cannabis whatsoever. The Cannabis Act doesn't restrict an agency if employees are not performing job functions. You can take adverse action if an employee is not performing their job function and displays impairment. A test that doesn't tell you about impairment could be used if we don't have this rule in place. If you're in a safety sensitive position, you cannot use marijuana and we reiterate this multiple times. This is an attempt to help the agencies deal with recreational use of marijuana for those who are not in safety sensitive positions, under the omnibus act, or a federal employee. There is no question that this can be look at generally, but this attempt is to address the one matter of cannabis use related to policies already in board rule. Many of the other issues brought up, that we can clean up are fine, ultimately, the cannabis focus was the choice at this time. He appreciates the thoughtfulness of their comments after looking at the rule. He understands there are bigger issues that can be addressed, and we are committed to addressing those with a rule drafting team that includes experts. The other matters are a bigger lift, which is why we focused on cannabis with this rule making.

Chair Liswood asked if this rule should be separated and specifically relate to marijuana?

Lange said today, we are proposing this rule change and when you look at the rules for drug and alcohol, the substances are combined as they have always been combined. We can consider this down the road.

Liswood agreed that we can look at including opioids and fentanyl going forward. She understands this rule change is only on cannabis. She also agreed that definitions can be changed and/or removed.

Lange said we will look at the Lynn and Erin Compassionate Care Act and the Cannabis Act as the key piece is to be consistent. We let agencies craft the policy to best effectuate the results. Limited by federal law and SPO rules. We do look at and provide guidance to other agencies, but we do not approve those policies. When we create statewide policies, agencies cannot deviate such as with telework and inclement weather. With drug and alcohol abuse, you can't have one policy at the state level. Many agencies must have policies union bargained which is why we leave that up to the agencies. Lange further explained that we



don't want to bind agencies' hands. He understands her concern fundamentally, and that's not how we drafted it.

Member Heyns-Bousliman suggested that we include objectives to agencies.

Chair Liswood said she is hearing enough concern with the way the rule is written and is not recommending amendments today.

Heyns-Bousliman added she understands where Acting Director Lange's intent is. What we're looking at is not a final draft.

Member Radosevich feels uncomfortable making amendments and could not vote today with how it's written.

Member Parker agreed, not prepared to go to vote.

Chair Liswood would like to know the options at this point.

AAG Rubin said if the vote is to terminate this rulemaking, we would need to initiate a new rulemaking proceeding, including new notice to the public.

Acting Director Lange state that Mr. Rubin is accurate, if you want to include other drugs at this time, you can do that and that would require a new rulemaking. Based on your comments, another option is to table this and give us time to make changes to the definitions and incorporate the comments made today. However, if you want to include the other items, a new rulemaking needs to be initiated.

AAG Rubin added the logical outcome is well established federally. What we don't want to do is table this and not have closure if we require a new rulemaking notice anyway. Motion to terminate without amendments will begin another round of rulemaking.

Liswood polled the board with the options of tabling or terminating this rulemaking.

Heyns-Bousliman said she is comfortable tabling this with understanding that SPO will begin the process of working toward including fentanyl and opioids on a new rulemaking.

Member Parker said she has mixed feelings because of the timeline of rulemaking we seem to be responding to change in cannabis law which no one looked at for 13 years. In this iteration, there is no push to create a new rule that incorporates it.

Rubin explained there is a 2-year requirement of final decision regarding notice. The concern about opioids and fentanyl can be tackled separately and will not get in the way of what's on the table with this rulemaking.

Member Heyns-Bousliman asked if the board can direct SPO to draft a rule on that issue?

Acting Director Lange said that notice was given for cannabis only. When we rule make, we need to provide the public notice. Most importantly, to the NM Register. Publishing in the



newspaper used to be required, but now it is only required in the NM Register. He then read the rulemaking notice for the board based on a question by Member Radosevich. Member Heyns-Bousliman moved to table discussion for future meeting; Member Radosevich seconded; roll call; rulemaking tabled.

Heyns-Bousliman also asked that a new set of rulemaking commence process to include opioids including fentanyl in the list of drugs.

Acting Director Lange affirmed the direction given by Heyns-Bousliman to add to the agenda for December 8, 2023 for discussion to potentially commence a new set of rulemaking to include opioids and fentanyl in the definitions.

New Scientist Salary Schedule - Request for Approval

Max Cordova SPO, Comp & Class Director requested approval for the New Scientist Salary Schedule.

Mr. Cordova said this is a new strategy they will be implementing, and we are excited about this new direction. This is a unique distinction, and this request provides a framework where someone with limited experience can work their way up. The model lines up with the next agenda item. A worker, a supervisor and director level pay bands. Unique that the pay structures are wide enough to encompass someone who is a beginner to work and move up in the structure without new classifications. No longer need to reclassify to have workers move up with experience. Effective tool to recruit and retain. Cordova then introduced agency representatives from DPS.

Chair Liswood commented that this seems to be more efficient.

Cordova replied yes, this will be viable in other areas where this burdensome issue is streamlined. A great opportunity to revisit, for example, the attorney class. This hinders an agency if they have a vacancy where an applicant does not meet the minimum qualifications.

Agency personnel from DPS came forward to discuss how these changes will help the agency remain competitive and support recruitment and retention efforts throughout the state.

Herman Lovato, Technical Support Deputy Director who has oversight of law enforcement records bureau and the forensic laboratory and introduced colleagues Katharina Babcock, forensic lab bureau chief, Sheila McDonald, HR bureau chief and Kiki Arrellano, interim HR manager.



Mr. Lovato thanked the collaboration with Secretary Jason Bowie, Deputy Secretary Benjamin Baker, and Sylvia Serna ASD Director. He then expressed gratitude for Max, Melanie and Melissa for their foresight and innovation. Soliciting your approval for this monumental proposal and is requesting the board's help with better pay and growth opportunities.

Ms. Babcock, bureau chief of the forensic laboratory stated the labs are critical to the integrity of each item of evidence. This is no small task, and they need people to fill these positions. Babcock reiterated that they are happy to be here for the monumental proposal.

Ms. McDonald, Bureau Chief ASD came forward in support of this initiative that has taken more than a year to craft.

Ms. Arellano, acting HR Director of DPS, emphasized she totally supports the initiative, on board with SPO to do what is needed.

Liswood asked if DPS will just be taking from other departments in the state and out of state as well?

Mr. Lovato stressed that there are a limited number of people, there will be individuals in other locations working in other labs and noted New Mexico and the culture is attractive to applicants and likely, DPS will be pulling from other divisions and states.

Member Heyns-Bousliman thanked the group for their presentation and being well prepared. The board appreciates that and agree, this is a great retention tool.

Member Radosevich commented as an end user of labs for many years and the frustrations in law enforcement, he is glad to see this presentation. We need to make sure that the rest of the state understands we have done a lot of reclassifications and are working towards that and making great strides. Thank you for being well prepared.

Member Parker reiterated that she appreciates the work on this issue.

Liswood asked Mr. Lovato for a reasonable timeframe to return and give us an update and tell the board about the successes. Lovato answered the end of the fiscal year.

Member Heyns-Bousliman moved to approve the new scientist salary schedule; Member Radosevich seconded; roll call; motion carries.



New Mexico Department of Public Safety Forensic Scientist Series Class Study - Request for Approval

Melanie Morgan, SPO, Comp & Class Analyst requested approval for the Criminal Forensic Scientist, supervisor and director class study which, with the approval of the Scientist salary schedule, will create 20 new positions.

Max Cordova referred to the disciplines; in accordance with the previous approval of salary schedule, we are taking the previous classifications and consolidating this from 8 to 3. This helps relieve the burden and opens up the applicant process and reduces barriers for employment. This is a great model that fits in certain professions and with your approval, we will look toward other professions to see how to apply this same approach.

Chair Liswood asked for a follow up report in July 2024.

Member Heyns-Bousliman moved to approve the Forensic Scientist class study; Member Radosevich seconded; roll call; motion carried

New Mexico Office of Superintendent of Insurance Chief Insurance Examiner - Request for Approval

Melanie Morgan, SPO, Comp & Class Analyst; requested approval for Insurance Financial Analysts, adding 4 classifications.

Superintendent Alice Kane addressed the board and shared the Financial Analyst function. When she arrived in June, there was a letter from the NAIC for the NM review team and the report showed no improvement to the Financial Analyst during the review; deficiencies continue to exist, and they are behind on their analysis. OSI has had a significant turnover in staff. Kane is faced with the task of putting in corrective action plans and OSI came to SPO to see what can be done for the plan. Kane said with the board's approval, she will advise the NAIC that one of the critical elements of the plan is being put into effect.

Max Cordova referred the board to the Appendix which included letters from the Governor, and the chair of House and Senate appropriations committees, highlighting the importance of this proposal and the deficiencies to be addressed.

Collin Baio deputy superintendent of insurance said he has been focused on the consumer protection side; Kane stressed that solvency is important, so immediately, this became a focus and he knows it is more and more important that we are covering our bases to ensure



we have solvent companies. With these classifications, we will be taking a positive step forward, so we are prepared and are sophisticated in how we are analyzing. Appreciate the support from Max and Melanie and SPO board.

Chair Liswood understands the importance and sense of urgency. Are you confident that this salary change will remedy these concerns in the timeline?

Superintendent Kane said she's hopeful, if it doesn't, we may have to consider outsourcing. She is focused on building a strong department, and this will add to the credibility of the agency.

Chair Liswood asked for a 6-month report back, including if you have had to outsource.

Member Parker recognizes the importance of salary as a recruitment and retention tool, she looks at minimum requirements and she is hopeful that part of the overall review of how to get to quality analysis, includes a lot of training and certification that will assist the new graduates.

Kane said analysts will be asked to get their certifications, also on-site training, able to do numbers but not qualitative analysis. It is a combination of recruiting for new people and training of those who are currently there.

Max addressed Member Parker and her astute observation as we are in a challenging environment and what we see is the workforce is very different today. Consciously looking at minimum qualifications to give the agencies the best opportunity to those who show possibility in performing those jobs.

Member Radosevich moved to approve NM Office of Superintendent Chief Insurance Examiner; Member Parker seconded; roll call; motion carried.

New Mexico Regulation and Licensing Department, Certified Peace Officer Pharmacist Series Class Study - Request for Approval

Melissa Gutierrez SPO Comp & Class Analyst presented the request for approval for occupational study for Certified Peace Officer Pharmacist Series Class Study.

Max Cordova added more context to the request. This is not an agency request, but a memorandum specifically issued by PERA. Systematically, all classified peace officers are to be housed in the Peace Officer salary Schedule which is how it is indicated to PERA. Some



history and 4 years ago, this was in the classification as a carve-out. What we did today with the systemic changes, we reevaluated those duties and pulled the measure. We feel credit was not given for both categories. Strictly here systematically to recognize these duties as separate.

Chair Liswood asked about the minimum qualification language.

Cordova said it's standard language for certification for peace officers. He can get more information.

Liswood confirmed these are Safety Sensitive positions? Both a sworn officer and pharmacist?

Cordova said yes, there are 3 positions.

Member Radosevich has a bit of concern. He understands they are certified officers, but if you look at the job description, they are doing work as a certified police officer and not a pharmacist.

Cordova explained we're enhancing the classification. These positions are tasked with dealing with illegal drugs. They have the authority to make arrests, etc. Individually, these components would be lower in the pay band, but collectively, the job evaluation requires them to be that high. This is a unique classification. Cordova said they did not include the health care salary schedule for comparison. The pay bands are equivalent to where they are in the health care salary schedule.

Member Heyns-Bousliman moved to approve the class study; Member Parker seconded; roll call; motion carried.

2024 Paid Holiday Schedule – Request for Approval

Dylan Lange, SPO Acting Director presented the Paid Holiday Schedule for 2024, which he noted was missing one, President's Day in February asked to amend. Ms. Forlizzi clarified the calendar and noted that the president's holiday is observed on the Friday following Thanksgiving in November. Radosevich stated his understanding that State employees cannot have a business holiday during legislative session.

Lange asked for approval as presented – motion to approve the 2024 paid holiday schedule made by Member Radosevich; Member Parker seconded; roll call; holiday schedule adopted.



2024 State Personnel Office Board Meeting Dates - Request for Approval

Dylan Lange, SPO Acting Director presented the 2024 proposed board meeting schedule for approval. Member Heyns-Bousliman made sure a quorum will be present as she will miss the October 11, 2024 meeting and Member Parker will miss the August 30, 2024 meeting; Chair Liswood will be out for one meeting as well.

Member Heyns-Bousliman moved to approve the 2024 meeting calendar; Member Radosevich seconded; roll call; calendar adopted.

Director's Report

Dylan Lange, Acting Director gave the following report:

- Given the items reviewed today, you can see the great work our team is performing.
- Exciting news, since our last meeting, Member Radosevich became an official board member during his confirmation process.
- Highlights are 2 pieces of guidance that are important to state employees: 1. Inclement Weather policy and 2. Hiring events trying to help agencies with hard to fill positions, speed recruiting and job fairs, rapid hires. They have been a success and are excited to support agencies in this way.
- LFC report card came out recently and the data shows agencies reduced time to fill positions to 55 days, from 72 the previous quarter. data compa ratio fell to 99% from 105% which indicates people are accepting at or below the mid-point, suggesting those salaries are more competitive.
- LFC received funding during the last session to study the State Personnel Act and selected Deloitte as the third party that will be in charge of that study. We're working with DFA to provide data for the study. We are collecting data on HR processes as well as the classification study and compensation plan. This study should be concluded in April 2024. We will have recommendations and the board will be poised to deal with the findings. We will provide with updates as we go along.
- We have two vacant positions we are actively seeking to fill. Max Cordova's team is hiring a data analyst to check oversight at agency levels. We are also interviewing for deputy general counsel next week.

Chair Liswood thanked Lange for stepping in as Acting Director, the board appreciates that. She then asked Member Radosevich to discuss the questions he received during the confirmation hearing.

Radosevich said a big takeaway is that the legislators don't know what the state personnel board does. How can we better communicate what we do? Maybe we generate a report to the legislature about all the hard work our small crew does and what the board does. Communication primarily.

Acting Director Lange agreed that there's a perception of what SPO used to do and we can see how active Max and his group are, so we are committed to getting these positive messages out. Lange is doing what he can to get the word out. He met with state officials; participated in a panel broadcast on PBS In Focus at KUNM; spoke at an interim legislative committee about vacancy rates. We are actively engaging the legislature and educating them on what we do and what we need from them. Will update the board in December.

Member Heyns-Bousliman since we approved board meeting schedule; requests that we balance the realistic agenda timewise and the calendar and agenda need to be tailored to what that timeframe is.

Lange stated we will be more rigorous, thorough, timely and respect the board commitment when creating the agenda.

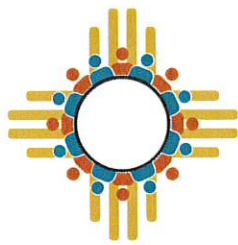
AAG District Court Update

Dan Rubin, Assistant Attorney General reported there are currently 11 cases under appeal; 9 of those handled by risk management. One of those Rubin was involved in is the appeal of Ms. Baca did not show for the hearing. Another of those cases has settled and Rubin will provide an update at the next meeting.

Training Plan Update

Jaime Phillips, SPO Training and Development Manager presented training results and metrics for FY23.

- Distribution of eLearning courses completions: 63 courses and 11,548 completions.
- For the 2 most completed courses of those, there were 1148 completers for 50 agencies (including judicial). Phillips is happy with that distribution and expects that to continue to grow.
- Essentials of Supervision Management launched at the beginning of FY23, we assessed the effectiveness and impact of the program. Assessment made and followed up with a survey at 12-month mark. Responses are overwhelmingly positive



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- Leadership succession planning, we'd like to more target aspiring managers as well as new managers.

Chair Liswood asked if we send out results to each agency with the number of people each agency had participated in the courses/training?

Philips stated we haven't yet, this is the first year so wanted to be sure we have some initial data, we can do more outreach to each agency with the data and emphasize the opportunities. With more data, the department will be doing more outreach to point out the opportunities that exist.

Member Parker agreed it might be useful for the agencies to know who is taking the classes to show employee investment.

Chair Liswood knows we have struggled with certain agencies, and she would like to see those agencies most engaged. She thanked Phillips for the professional presentation and the follow-up.

Next in-person meeting will be December 8, 2023 at 9:00 am.

Member Parker moved to adjourn; Member Heyns-Bousliman seconded; roll call; meeting adjourned at 12:17 pm.

Chair Liswood thanked SPO for the presentations and support as well as AAG Rubin for his contributions.

Approved:


Laura Liswood, Chair
State Personnel Board

Attest:


Dylan Lange, Acting Director
State Personnel Office