

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 97

PRIVATE DETECTIVES AND GUARDS

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-97-1 Objective. This chapter is intended to clarify and implement chapter 463, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively protected. [Eff 3/9/64; am 3/9/72; am and ren §16-97-1, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-2 Definitions. As used in this chapter:

"Board" means the board of private detectives and guards.

"Detective" means a person licensed under chapter 463, HRS, and this chapter and who for any compensation or consideration obtains information and evidence not readily or publicly accessible with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed by the same person for fee, hire, or reward:

- (1) Crime or wrong done or threatened or assumed to have been done or threatened against the government of the United States of America, or any of its states, territories, or possessions;
- (2) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any person, association, organization, society, or groups of persons, firms, or corporations;
- (3) The credibility of witnesses or other persons;
- (4) The whereabouts of missing persons;
- (5) The location, disposition, or recovery of lost or stolen property;
- (6) The causes and origin of, or responsibility for, fires, accidents, damage, injuries, or losses to persons, firms, associations, or corporations, or to real or personal property;
- (7) The affiliation, connection, or relation of any person, firm, or corporation with any organization, society, association, or with any official member or representative thereof;

- (8) The conduct, honesty, efficiency, loyalty, or activities of employees, agents, contractors, and subcontractors; or
- (9) The securing of evidence to be used before any investigating committee, board of award, board of arbitration, or in any civil or criminal trial.

The terms do not include any lawful activity of any board, body, commission, agency, state, territory, or possession of the United States, or any political subdivision thereof, or any officer or employee employed solely, exclusively, and singly by an attorney or law firm when engaged in the employer's business; or any person, firm, association, or corporation conducting any investigation solely for its own account.

"Firm" means a sole proprietor, corporation, joint venture, limited liability partnership, limited liability corporation, partnership, association, or any other legal business entity.

"Guard" means a uniformed or nonuniformed person who for compensation, reward, or by employment, is responsible for the safekeeping of a client's person and property within contractually prescribed boundaries, and for observation and reporting relative to the safekeeping of that person or property. This includes companies that respond to alarms by sending out employees or assistants to physically safeguard and secure the premise or property. "Guard" includes individuals, persons, corporations, partnerships, or agencies who provide guard services to associations of apartment owners, provided an employer-employee relationship does not exist between the association of apartment owners and the individual guarding the property. Association of apartment owners means all of the apartment owners acting in accordance with the association's bylaws and declaration.

The term does not include a person employed solely by an employer in connection with the affairs of the employer; nor does it include any lawful activity of any board, body, commission, agency, state, territory or possession of the United States, or any political subdivision thereof.

"Principal detective" means the licensed private detective designated as the detective agency's primary licensee who is fully responsible for the direct management and control of the agency and the agency's employees, and for insuring compliance with chapter 463, HRS, and this chapter.

"Principal guard" means the licensed guard designated as the guard agency's primary licensee who is fully responsible for the direct management and control of the agency and the agency's employees, and for insuring compliance with chapter 463, HRS, and this chapter.

"Private detective or guard agency" or "agency" means a licensed firm engaged in the private detective, investigation, or guard business. [Eff 3/9/64; am

3/9/72; am and ren §16-97-2, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-1, 463-3)

§16-97-3 Notification and filing of names, addresses, and changes. (a) Any person holding a license shall file that person's business address with the board and shall notify the board in writing within fifteen days of any and all changes of the person's business address.

(b) The holder of a license to operate a private detective or guard agency shall file with the board the name and address of the business, the name and license number of the principal licensee and, in the case of a duly registered business entity in good standing with the department's business registration division, the names and addresses of the sole owner, partners, officers, members, managers, and directors, as the case may be, and shall notify the board in writing of any change of the names, addresses, and license number as the case may be, within fifteen days of the change. [Eff 3/9/64; am and ren §16-97-3, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §§463-3, 463-10) (Imp: HRS §§463-3, 463-10)

§16-97-4 Display of certificate and license. A certificate evidencing that a license has been issued by the board, together with a copy of the currently valid license, shall be conspicuously displayed in the licensee's place of business. [Eff 3/9/64; am 3/9/72; am and ren §16-97-4, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-5 Renewal of license. Renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of June 30 or earlier of each even-numbered year. In addition to the renewal fees, each licensee shall submit, on a form prepared by the board, information relative to conviction of the licensee in any jurisdiction, of a crime which reflects unfavorably on the fitness of the licensee to engage in the profession; any psychiatric or psychological treatment the licensee has or is undergoing, and whether any psychiatric or psychological treatment has been recommended to the licensee. [Eff 3/9/64; am and ren §16-97-5, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-10)

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§16-97-6 Bond. Each applicant shall provide a bond by a surety or sureties licensed by the state insurance commissioner which shall include a provision that the bonding agent shall notify the board in writing at least thirty days prior to any termination of the bond. Termination of the bond shall result in immediate and concurrent suspension of the license and it shall be suspended until a successor bond is filed; provided that the failure to obtain a new bond within the current biennium shall result in the automatic forfeiture of the license at the end of the current biennium, and a new application shall be required to be filed. [Eff 3/9/64; am 3/9/72; am and ren §16-97-6, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-12)

§16-97-7 Responsible and subordinate principals for agency license. (a) No license shall be issued to an agency unless the business thereof and the agency's employees are under the direct management and control of a principal guard or principal detective who has been issued a license.

(b) An agency may have in its employ more than one principal; provided that the agency shall designate a responsible principal who shall be primarily responsible for the direct management of the detective or guard agency business and who shall be:

- (1) In a position to secure full compliance with the laws governing private detectives or guards, including but not limited to chapter 463, HRS, and this chapter;
- (2) Familiar with all contracts the detective or guard agency enters into, sees that all contracts provisions are carried out, and signs or initials all contracts;
- (3) Familiar with all projects or services the detective or guard agency undertakes and sees that records are kept on the projects or services, including but not limited to the amount of time spent by employees and payroll records on each project or service;
- (4) Responsible for the acts of employees while the employees are acting within the scope and purpose of the detective or guard agency's business;
- (5) Responsible for conducting pre employment and periodic post hire employment criminal history record checks of county, state, and federal agencies to insure that the detective or guard agency does not employ, or continue to employ, any person who has been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the person to engage in the profession unless there

has been an order annulling or expunging that convicted person's sentence;

- (6) Responsible for insuring that the detective or guard agency does not employ, or continue to employ, any person who is suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession;
- (7) Responsible for the mandatory documentation of and the training of detective and guard employees. The principal shall insure that records of the names of employees, dates of training, and subject matter be kept on file indefinitely for all current employees, and at least two years from the date of separation for all former employees. The training shall include but not be limited to the following:
 - (A) For detective employees: case investigation and documentation, laws and rules, ethics, privacy issues, review of criminal and civil history records, interview techniques, collection and handling of evidence, court testimony, use of force options (chapter 703, HRS), CPR/first aid, and surveillance techniques and activities.
 - (B) For guard employees: laws and rules, fire procedures, evacuation procedures, arrest and evidence procedures, patrol techniques, incident investigation, incident documentation, court testimony, screening of individuals entering the premise, and use of force options (chapter 703, HRS).
- (8) Responsible for immediately informing the chief of police of the appropriate county of any conviction that would make it illegal under state or federal law to possess a firearm and ammunition for those employees who have written authorization from the chief of police to use a firearm; and
- (9) Fully responsible for the direct management and control of the detective or guard agency and the agency's employees when detective or guard services are being provided.
 - (c) Other principals employed but not designated by the firm as the responsible principal shall be referred to as subordinate principals and shall be responsible for specified activities related to the license held by the subordinate principal.
 - (d) A principal shall not be considered a detective or guard agency, and shall be considered to be engaging in unlicensed activity if the principal enters into a contract on behalf of any entity other than the detective or guard agency that

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employs the principal. [Eff 3/9/64; am 3/9/72; am and ren §16-97-7, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-5, 463-6, 463-7, 463-8)

§16-97-7.1 Notice due board on death, incapacity, or dissociation of sole proprietor or responsible principal; forfeiture of license. (a) A detective or guard agency owned and operated by a sole proprietor shall within sixty days after the death or incapacity of the sole proprietor make arrangements to close the business and notify the board of the death or incapacity of the sole proprietor. Upon notification, the license for the detective or guard agency owned and operated by the sole proprietor shall be automatically terminated.

(b) A detective or guard agency who qualified for licensure by employment of a responsible principal detective or guard shall within sixty days after the death, incapacity, or dissociation of the responsible principal detective or guard, notify the board of the death, incapacity, or dissociation of the responsible principal detective or guard. The detective or guard agency shall submit an application to qualify a new responsible principal detective or guard or place its license on inactive status within ninety-days of the death, incapacity, or dissociation of the responsible principal detective or guard. The detective or guard agency may continue to operate until the board makes a final determination upon its timely application to qualify a new responsible principal detective or guard; provided that the detective or guard agency may not bid upon or enter into new contracts until the board's determination is made.

(c) "Incapacity" includes any situation in which the direct management of the licensed detective or guard agency's business is no longer under the control of the responsible principal detective or guard, or when a subordinate principal is unable to be responsible for all projects or services relating to the license held.

(d) The failure of the detective or guard agency to notify the board of the death, incapacity, or dissociation of the responsible principal detective or guard within the sixty-day period shall result in the immediate and concurrent suspension of the license. The license shall be suspended until a successor responsible principal detective or guard is appointed and registered with the board. If a successor responsible principal detective or guard is not appointed and registered with the board prior to the end of the current biennium, the license shall be automatically terminated and a new application shall be required to be filed. [Eff and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-5, 463-7)

§16-97-7.2 Responsible principal for more than one agency. An individual may be a responsible principal for more than one agency, but not more than two, if:

- (1) There is a common ownership of at least fifty-one percent of the equity of each entity for which the individual acts as the responsible principal; or
- (2) An entity applying for an agency license is a subsidiary of or joint venture with another licensed firm; or
- (3) There is an immediate and direct family relationship between the responsible principal and the officers, directors, members, managers, or partners of the other licensed firm for which the individual acts as the responsible principal; or
- (4) There is an immediate and direct family relationship between the officers, directors, members, managers, and partners of all detective or guard entities for which the individual acts as the responsible principal; and
- (5) The board is satisfied that it is in the public's interest and that the individual is competent, able, and qualified to be a responsible principal for more than one agency. [Eff and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-5, 463-6, 463-7, 463-8)

§16-97-8 Conflict of interest. (a) A licensee shall not accept employment adverse to a client relating to a matter with respect to which the licensee has obtained confidential information by reason of or in the course of the licensee's employment by the client.

(b) An employee or a reserve officer of any law enforcement agency shall not maintain or be eligible for any license issued under chapter 463, HRS. [Eff 3/9/64; am 3/9/72; am and ren §16-97-8, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-9 Doing business as. A licensee shall not solicit or transact business using a name other than the name appearing on the licensee's license. Any trade name used by a licensee shall have been previously registered with the department's business registration division and shall be filed with and approved by the board. A licensee shall notify the board of any name change within fifteen days of the change. [Eff 3/9/64; am 3/9/72; am and ren §16-97-9, 7/30/81; am

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and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-10 Unethical conduct. A licensee shall not solicit business for an attorney-at-law or law firm. [Eff 3/9/64; am 3/9/72; am and ren §16-97-10, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-11 Suppression of evidence. A licensee, or a licensee's employee, shall not knowingly suppress any evidence in the investigation of a criminal or civil matter with intent to cause delay, interference, obstruction, or hindrance to the progress of a law enforcement investigation. [Eff 3/9/64; am 3/9/72; am and ren §16-97-11, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-12 Permanent place of business. (a) Each licensee shall be required to maintain a permanent place of business in the state where the firm, principal guard or detective may receive service of process. For purposes of this section "permanent place of business" means a physical address, not a post office box number. A permanent place of business shall comply with the zoning requirements of the applicable county.

(b) Attorney's offices or other similar business offices in the State may be listed as the place of business for out-of-state licensees not conducting detective or guard services in the State provided that an individual within the office is or acts as an agent or representative of the licensee who:

- (1) Can be served with notice and legal process;
- (2) Shall receive all inquires and other correspondence in this State on behalf of the licensee; and
- (3) Shall be responsible to see that the inquiries and other correspondence are responded to or addressed in a timely manner.

If an attorney's office or other similar office in the State is listed as the place of business for an out-of-state licensee, information regarding the name of the agent or representative, and a telephone number where the agent or representative can be contacted shall be provided to the board and made available to the public.

(c) A licensee may use the licensee's residence address as the business address provided that the licensee is in compliance with the respective county

zoning requirements. Using a personal residential address shall make that address a public record and therefore, disclosable to the public.

(d) Out of state addresses may be used as the place of business for out-of-state licensee; provided that the license of the out-of-state licensee is on inactive status. Inactive status is provided for in section 463-10, HRS. [Eff 3/9/64; am 3/9/72; am and ren §16-97-12, 7/30/81; am and comp 2/18/86; comp 8/25/88; am and comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-10)

§16-97-13 Identification. A licensee shall not use or permit any employee to use a vehicle in the performance of the licensee's duties that is painted in a manner or bears any emblem, insignia, or design that may be mistaken for, or resembles that of any law enforcement vehicle. Each licensee shall include the licensee's license number on any advertising. Advertising shall include, but is not limited to the issuance of any card, sign, or device to any person, or any printed or visual communication which includes but is not limited to advertisements contained in newspapers, telephone directories, pamphlets, direct public mailings, and television or radio communications. [Eff 3/9/64; am 3/9/72; am and ren §16-97-13, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-11)

§16-97-14 Uniforms, badges, identification, emblems. (a) No licensee shall use or adopt for use any uniform, badge, identification, or emblem unless the uniforms, badges, identifications, or emblems have been approved by the board and the chief of police in the county or counties in which the licensee intends to transact business.

(b) No licensee shall wear or permit any employee to wear any uniform, badge, identification, or emblem similar in design as that of any government law enforcement agency.

(c) Each licensee shall submit to the board the following:

- (1) An eight inch by ten inch photograph showing the full length front view of the uniform with cap worn by the licensee's employees; and
- (2) A three inch by five inch photograph, sufficient to show detail, of the emblem, badge, and identification card, if any, used to identify the licensee's employees.

Every licensee shall submit to the board one photograph of each of the above for board records in addition to a sufficient number of photographs for each of the

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county police departments in which the licensee plans to do or is doing business. The board shall forward the photographs to the appropriate county police department. [Eff 3/9/72; am and ren §16-97-14, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-11)

§16-97-15 Employee Registration. (a) An agency may employ as many agents, operatives, assistants, guards, and employees as necessary for the conduct of business; provided that the principal guard or principal detective of the agency shall be held responsible for the acts of those employees while the employees are acting within the scope and purpose of the licensee's business.

(b) An agency shall not employ any person who has been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the person to engage in the profession, unless there has been an order annulling or expunging that convicted person's sentence.

(c) Every agency shall file, on a form prescribed by the board, semiannual lists of employees hired or terminated during the semiannual period doing any type of investigative or guard work. For the semiannual periods of January to June; and July to December; lists shall be due on or before July 31st and January 31st respectively. The lists shall contain the names, addresses, dates of birth, and dates of hire or termination and any other information required by the board of all employees hired or terminated during the semiannual period.

(1) If an employee engaging in investigative or guard work is terminated during the semiannual period, the terminated employee's name and the date of termination shall be indicated on the list.

(2) Every agency by and through its responsible principal shall attest on the list that each of these newly hired employee's educational, criminal, psychiatric, and psychological histories have been verified in accordance with the requirements of this chapter and chapter 463, HRS, prior to being hired. [Eff 3/9/72; am and ren §16-97-15, 7/30/81; am and comp 2/18/86; comp 8/25/88; am and comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-6, 463-8)

§16-97-16 Powers and duties of private detectives and guards; standards of conduct. (a) Arrest. In accordance with section 803-3, HRS, private detectives

or guards shall have the authority to arrest, without a warrant, anyone in the act of committing a crime.

(b) Stop and frisk. A private detective or guard, for good cause, may stop and frisk any person found on the premises which are being guarded if based on the private detective or guard's observation of the person to be frisked, or other reliable information, the private detective or guard suspects that a crime has been or is about to be committed.

(c) Interrogation. No private detective or guard shall interrogate, question, or in any way abuse the civil rights of a person arrested, detained, or found on the premises which are being guarded. Any person properly arrested shall be immediately turned over to the appropriate governmental authorities.

(d) Use of force. A private detective or guard shall comply with the use of force provisions in chapter 703, HRS. [Eff 3/9/72; am and ren §16-97-16, 7/30/81; am and comp 2/18/86; comp 8/25/88; am and comp 10/23/00; am and comp 3/14/11] (Auth: HRS §§463-3, 803-3, 803-4) (Imp: HRS §463-3)

§16-97-17 Carrying of weapons prohibited. Private detectives or guards shall not carry firearms, blackjacks, batons, night sticks, chemical sprays, stun devices, or other weapons unless specifically authorized in writing by the appropriate state agency or chief of police in the county or counties in which the private detective or guard is doing business. [Eff 3/9/72; am and ren §16-97-17, 7/30/81; am and comp 2/18/86; am and comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-18 Payment for services. An agency shall not collect a fee without providing private detective or guard services, as applicable; provided that the agency may charge and collect a retainer fee prior to providing detective or guard services, as applicable. [Eff and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

SUBCHAPTER 2

APPLICATIONS

§16-97-25 Forms and instructions. An application filed with the board shall be prepared in accordance with and contain the information called for in the application form(s) provided by the board and any instructions which may be required by the board with respect to the filing.

The form(s) may be modified from time to time as required. [Eff 3/9/64; am 3/9/72; am and ren §16-97-25, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-9)

§16-97-26 Applications for examination and oral review for private detective, guard, or agency license. (a) A completed application for examination and license shall be submitted at least thirty days prior to the next regularly scheduled board meeting and shall be accompanied by the required fees. The executive officer of the board may determine the sufficiency of the preliminary qualifications of applicants for admission to examination.

(b) Each application for an individual principal private detective or principal guard license shall include the following:

- (1) Name;
- (2) Social security number;
- (3) Date of birth;
- (4) Current residence and former residences over the last ten years;
- (5) Present and prior occupational history covering ten years including reason for job changes and dates of employment;
- (6) Education;
- (7) Trade name registration from the business registration division, if applicable;
- (8) Arrest and conviction history;
- (9) Psychiatric history;
- (10) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States; and
- (11) Any other information the board may reasonably require to process the application.

(c) Each agency application, except a sole proprietor, shall identify the duly registered business entity seeking the license and shall include the following information and supporting documentation:

- (1) In the case of an applicant who is:
 - (A) A corporation or limited liability company organized and existing under the law of the State, a file-stamped copy of the articles of incorporation or articles of organization, respectively on file with the department's business registration division or a certificate of good standing or certificate of qualification issued not more than one year prior to date of the application;
 - (B) A foreign corporation, a file-stamped copy of the certificate of authority on file with the department's business registration division; and
 - (C) A domestic or foreign partnership, a copy of the registration statement on file with the department's business registration division.
- (2) Each member of a joint venture, partner of a partnership, manager or member of a limited liability company, and each officer of a corporate entity shall provide:
 - (A) Identifying information, including name, social security number, date of birth, current and former residence addresses over the last ten years;
 - (B) Employment information, including business or occupations engaged in for ten years immediately preceding the date of filing of the application, names and addresses of employers, dates of employment, and reasons for change of employment, business, or occupation; and
 - (C) Arrest and conviction history.

(d) The applicant for a private detective or guard license shall take and pass an examination and personally appear before the board for an oral review concerning the applicant's application. The principal for any agency shall appear before the board for an oral review concerning the agency's application which is under consideration for a license. Based upon the oral review and other information which is before the board, the board may grant or deny the application for license.

(e) The general partner, at least one corporate officer, a member of a joint venture, or a manager or member of a limited liability company listed on the agency application shall personally appear before the board for an oral review concerning the application. This requirement may be waived in cases where the partner, member, manager, or corporate officer has previously appeared before the board or where their appearance is a hardship due to travel from out-of-state.

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(f) The board may approve an application subject to requirements the applicant shall meet before a license is issued.

(g) Nothing in this section shall limit the board's authority to investigate an applicant's character, background, competency, integrity, experience, and past and future method of doing business as may be deemed necessary in order to pass upon the applicant's qualifications.

(h) The applicant shall submit the required bond before a license is issued. [Eff 3/9/64; am 3/9/72; am and ren §16-97-26, 7/30/81; am and comp 2/18/86; am and comp 8/25/88; am and comp 10/23/00; am and comp 3/14/11] (Auth: 42 U.S.C.A. SS 666, HRS §§463-3, 436B-10, 576D-13) (Imp: HRS §§436B-10, 463-3, 463-9)

§16-97-27 Application for reexamination. An application for reexamination shall be filed at least thirty days before the examination. [Eff 3/9/64; am 3/9/72; am and ren §16-97-27, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-28 Application for agency license; joint venture. (a) An application for private detective or guard agency license shall be accompanied by the required fee which shall not be refunded.

(b) Each agency shall maintain a permanent place of business in the State of Hawaii which shall be under the direct management and control of a licensed principal detective or licensed principal guard.

(c) Each agency branch office shall be required to have a responsible full-time manager.

(d) A licensed private detective, guard, or agency may associate with another licensee by forming a joint venture. The joint venture shall apply for an agency license and shall file with the board a certified copy of the joint venture agreement.

(e) A corporation, partnership, or joint venture shall be allowed not more than one private detective or guard agency license.

(f) An applicant shall submit the required bond before a license is issued. [Eff 3/9/64; am and ren §16-97-28, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-9)

§16-97-28.3 Application for restoration of a forfeited license. A forfeited license may be restored within one year after the date of expiration by filing a renewal application along with any arrest or conviction information and any information on any psychiatric or psychological disorder for which treatment is being received, and paying the renewal fees plus a penalty fee. A person who fails to restore a forfeited license within one year of the date of expiration shall be considered a new applicant and shall satisfy all requirements for licensure in effect at the time the person reapplies for a license. [Eff and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-10)

§16-97-28.5 Application for reactivation. (a) An inactive licensee who has been on an inactive status for six months or less within the current biennium may reactivate the license as a principal, sole proprietor, detective agency, or guard agency by submitting an application and the appropriate fee.

(b) An inactive licensee who has been on an inactive status for more than six months may reactivate the license as a principal or sole proprietor by submitting an application, reactivation and any other appropriate fee, a criminal history record check from all locations in which the licensee has resided since placing the license on inactive status, a national criminal history record check from the FBI, information on any psychiatric or psychological treatment recommended since placing the license on inactive status, and any other information the board may reasonably require to process the application.

(c) An inactive agency licensee who has been on an inactive status for more than six months may reactivate the license by submitting an application, reactivation and any other appropriate fee, and a criminal history record check from all locations in which each partner of a partnership, member of a joint venture, manager or member of a limited liability company, and each officer of a corporate entity has resided since placing the license on inactive status. [Eff and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-10)

§16-97-29 Denial of application. (a) In the event the board denies an application for the issuance of a license or for the reinstatement of a license, the board shall notify the applicant by letter of the board's action which shall include a concise statement of the reasons for denial or refusal to reinstate and a statement informing the applicant of the applicant's right to a hearing if the applicant so desires.

(b) Inaccurate or false information submitted by an applicant shall be sufficient grounds for denial of a license.

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(c) Conviction in any jurisdiction of a crime which reflects unfavorably on the fitness of the applicant to engage in the profession; provided that the conviction has not been annulled or expunged by court order, shall be sufficient grounds for denial of a license. An applicant, however, may, be permitted to present evidence to the board as to why such conviction should not be the basis for denial of a license such as the age of the conviction, exceptional circumstances surrounding the crime, or the completion of a course of rehabilitation which substantially diminishes the likelihood of further criminal behavior.

(d) No license shall be granted to applicants who have engaged in or who are engaging in any illegal or unlawful conduct which reflects unfavorably on the fitness of the applicant to engage in the profession.

(e) The board may deny issuance of a license if, after investigation, the applicant's background, character, competency, and integrity is found to be detrimental to the profession or to the best interest of the public.

(f) The board may deny issuance of a license if the applicant is found to have undergone psychiatric or psychological treatment or if any treatment has been recommended for any psychiatric or psychological disorder which may be detrimental to the profession. An applicant may, however, be permitted to present to the board a statement signed by the attending physician, psychologist, or psychiatrist attesting to the applicant's mental and emotional fitness to engage in the profession.

(g) The board may deny issuance of a license when the applicant is known to have committed any of the acts for which a license may be suspended or revoked under section 16-97-46. [Eff 3/9/64; am and ren §16-97-29, 7/30/81; am and comp 2/18/86; am and comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-6, 463-8)

§16-97-30 Demand for hearing. Any person whose application for a license or reinstatement of a license has been denied by the board, shall be entitled to a hearing pursuant to chapter 16-201, provided that a demand for hearing is filed with the board within sixty days of the date of mailing of the letter informing the applicant of the denial of the application. [Eff 3/9/64; am and ren §16-97-30, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-31 Abandonment of application. If an applicant fails to obtain a license within one year after filing the application, or fails to take the examination within a one-year period after becoming eligible to take the examination, the application shall be considered abandoned and all fees shall be forfeited. An application submitted subsequent to the abandonment shall be considered as a new application. [Eff and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-9)

§16-97-32 License required for bids. A license is required for any individual or entity who submits bids in order to secure a contract which involves providing guard or private detective services. [Eff and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-33 License not transferable. No license issued under chapter 463, HRS, shall be transferred, assigned, or loaned. [Eff and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

SUBCHAPTER 3

VALIDATION REQUIREMENTS

§16-97-34 Educational requirements. The board may accept any of the following:

- (1) Certified copy of high school diploma or certificate of graduation;
- (2) Certified transcript of high school record;
- (3) A statement from the department of education that the applicant possesses the equivalent of a high school education; or
- (4) Certified copy of an associates, bachelor's, masters, or doctorate degree. [Eff 3/9/64; am and ren §16-97-34, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-6, 463-8)

§16-97-35 Experience requirements. (a) Applicants for a private detective license shall have had experience reasonably equivalent to at least four years of full-time investigational work.

- (1) The board shall require training and experience in the following areas:
 - (A) Case investigation and documentation;
 - (B) Laws and rules;
 - (C) Ethics;
 - (D) Privacy issues;
 - (E) Review of criminal and civil history records;
 - (F) Interview techniques;
 - (G) Collection and handling of evidence;
 - (H) Court testimony;
 - (I) Use of force options (chapter 703, HRS);
 - (J) CPR/first aid; and
 - (K) Surveillance techniques and activities.

- (2) The board may accept the following types of experience for persons applying to be private detectives, employment:
 - (A) Under the supervision of a licensed private detective;
 - (B) As a police officer with a police department of a state or political subdivision thereof with at least one year of full-time investigative work;
 - (C) As an investigator with any federal, state, county, or municipal government agency; or
 - (D) As an investigator employed by an attorney-at-law or law firm.

(b) Applicants for a guard license shall have had experience reasonably equivalent to at least four years of full-time guard work.

- (1) The board shall require training and experience in the following areas:
 - (A) Laws and rules;
 - (B) Fire procedures;
 - (C) Evacuation procedures;
 - (D) Arrest and evidence procedures;
 - (E) Patrol techniques;
 - (F) Incident investigation;
 - (G) Incident documentation;
 - (H) Court testimony;
 - (I) Screening of individuals entering the premise; and
 - (J) Use of force options (chapter 703, HRS).

- (2) The board may accept the following types of experience for persons applying to be guards, employment:
- (A) Under the supervision of a licensed guard;
 - (B) As a guard by a private employer;
 - (C) As a police officer with a police department of a state of political subdivision thereof; or
 - (D) As a guard with any federal, state, county, or municipal government agency. [Eff 3/9/64; am and ren §16-97-35, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-6, 463-8)

§16-97-36 Identification. Applicants shall provide a recent photograph of themselves, showing only their head and shoulders, and being approximately two-and-a-half inches square. [Eff 3/9/64; am and ren §16-97-36, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-9)

§16-97-37 Fingerprint checks, cards and criminal history background. (a) An applicant for a private detective or guard license shall be subject to a national criminal history record check, and shall submit:

- (1) Electronic fingerprints directly to the Hawaii criminal justice data center ("HCJDC") for processing to the FBI; or
- (2) A completed fingerprint card with the application which shall be forwarded to the HCJDC for processing to the FBI.

The applicant shall bear the cost of the fingerprint processing. The application shall not be considered complete until the results of the criminal history record check has been received by the Board.

(b) An applicant for a private detective or guard agency license shall submit with the application for each owner, partner, officer, member, manager and director of any duly registered business entity a criminal history background covering the last ten years immediately preceding the date of the application, completed by the police, sheriff's department, criminal justice data center or appropriate county or state agency of where any unlicensed member of the private detective or guard agency resided during that ten year period. The criminal history background shall include all arrests or convictions other than for traffic violations. [Eff and comp 2/18/86; am and comp 8/25/88; comp 10/23/00; am

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and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-6, 463-8, 463-9)

§16-97-38 Psychiatric or psychological disorders. Applicants for a private detective or guard license shall provide the board with:

- (1) A signed medical release which authorizes the board to check into the applicant's psychiatric or psychological background;
- (2) The names of at least two personal physicians, psychologists, or psychiatrists that have seen the applicant within the past five years;
- (3) Any information concerning the applicant's treatment for any psychiatric or psychological disorder; and
- (4) Information describing any treatment for a psychiatric or psychological disorder that was recommended, but not completed. [Eff and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-6, 463-8)

§16-97-39 Occupational and employment history; notarization. Each applicant for a private detective or guard license and each general partner, member of a joint venture, manager member of a limited liability partnership or company, or corporate officer listed on the agency application shall submit on a form provided by the board, a notarized statement covering the applicant's occupational and employment history for the ten years immediately preceding the date of application. [Eff and comp 2/18/86; am and comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-9)

SUBCHAPTER 4

EXAMINATION

§16-97-40 Written. The written examination for private detective or guard shall include questions on the laws, rules, knowledge, experience and skills, which specifically apply to the holder of a private detective or guard license, as the case may be. [Eff 3/9/64; am and ren §16-97-40, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-40.1 Examination not required. An examination shall not be required when the applicant, within a period of one year prior to application, has previously qualified by written examination, or was licensed in good standing or on an inactive status, provided the applicant applies for a license in the same classification in which the applicant previously qualified by examination or was licensed in good standing or on an inactive status. [Eff and comp 3/14/11] (Auth: HRS §463-3) (Imp: §§463-5, 463-7)

§16-97-41 Passing score. A grade of not less than seventy-five per cent shall be a passing score for the examination. [Eff 3/9/64; am and ren §16-97-41, 7/30/81; am and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-41.1 Failure to pass examination. Applicants failing to obtain a passing score after two consecutive attempts may not sit for reexamination within ninety days of the last failed administration. Applicants failing to obtain a passing score and to secure a license within one year after filing the application for license shall reapply as a new applicant. [Eff and comp 3/14/11] (Auth: HRS §463-3) (Imp: §§463-5, 463-7)

SUBCHAPTER 5

ORAL TESTIMONY

§16-97-42 Oral testimony. (a) The board shall accept oral testimony on any item which is on the agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the board not later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;

- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, immaterial or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearings relief, declaratory relief or rule relief provisions of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §92-3)

SUBCHAPTER 6

LICENSE SUSPENSION AND REVOCATION

§16-97-45 Repealed. [R 2/18/86]

§16-97-46 Grounds for suspension, revocation, and refusal to renew a license. Failure of any licensee to comply with chapter 463, HRS, or this chapter shall be grounds for suspension, revocation, or refusal to renew the license after a hearing, pursuant to chapter 16-201. In addition, the following shall be grounds for suspension, revocation, or refusal to renew the license:

- (1) Any dishonest, fraudulent, or deceitful activity which causes substantial damage to a licensee's client;
- (2) Unfair or deceptive acts or practices as prohibited by section 480-2, HRS;
- (3) The abandonment of a contract or project without a reasonable or legal excuse;

- (4) The diversion, misappropriation, conversion, or concealment of a client's funds or property;
- (5) Conviction in any jurisdiction of a crime which reflects unfavorably on the fitness of the licensee to engage in the profession, provided the sentence has not been annulled or expunged by court order and provided that licensees may present evidence to the board as to why any conviction of a crime should not be the basis for suspension, revocation, or refusal to renew a license;
- (6) Failure to keep proper business records of a client's account or to maintain possession and custody of property entrusted to a licensee by a client;
- (7) Advertising by means of false and deceptive statements or by statements which tend to deceive or defraud;
- (8) Any use by an agency of an unlicensed person to directly manage the agency;
- (9) Impersonation of a police officer or member of any law enforcement agency by the licensee or licensee's employee;
- (10) Misrepresentation of any material fact in connection with the submission of employee registration information to the board;
- (11) Failure to maintain a current surety bond as required under section 463-12, HRS;
- (12) Misrepresentation of a material fact by an applicant in obtaining a license;
- (13) Providing false information to a client with respect to any surveillance or security project;
- (14) Misrepresenting a material fact, on any investigative, surveillance, or security report;
- (15) Soliciting business for an attorney or law firm;
- (16) Failure to submit a completed license renewal application form when due;
- (17) Engaging in any illegal or unlawful conduct which reflects unfavorably on the fitness of the licensee to engage in the profession;
- (18) Found to have undergone psychiatric or psychological treatment or if any treatment has been recommended for any psychiatric or psychological disorder which may be detrimental to the profession, provided that licensees may present statements signed by the attending physician, psychologist, or psychiatrist attesting to the licensee's mental and emotional fitness to engage in the profession;

- (19) Failing to include the license number on any advertising;
- (20) Violation of any law or rule of the federal, State, or any county relating to the carrying of weapons, safety, or labor where the law or rule has a rational relationship to the qualifications, functions, duties, or responsibilities of any guard or detective licensee; or
- (21) Failure in any material respect to comply with chapter 463, HRS, or this chapter. [Eff and comp 2/18/86; comp 8/25/88; comp 10/23/00; am and comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-15)

§16-97-47 Board jurisdiction to proceed. The lapsing or suspension of a license by operation of law, or by order or decision by the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license. [Eff and comp 2/18/86; comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §463-3) (Imp: HRS §463-3)

SUBCHAPTER 7

PRACTICE AND PROCEDURE

§16-97-50 Administrative practice and procedure. The rules of practice and procedures for private detectives and guards shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs which are incorporated by reference and made a part of this chapter. [Eff and comp 2/18/86; am and comp 8/25/88; comp 10/23/00; comp 3/14/11] (Auth: HRS §91-2) (Imp: HRS §91-2)

Amendments to and compilation of chapter 16-97, Hawaii Administrative Rules, on the Summary Page dated January 20, 2011, were adopted on January 20, 2011, following a public hearing held on January 20, 2011, after public notice was given in the Pacific Business News, The Garden Island, Hawaii Tribune-Herald, West Hawaii Today, and The Maui News on December 10, 2010, and December 12, 2010.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Warren Ferreira
Warren Ferreira, Chairperson
Board of Private Detectives & Guards

APPROVED AS TO FORM: Date: 2/14/11

/s/ Rodney J. Tam
Deputy Attorney General

APPROVED: Date: 2/17/11

/s/ Keali`i S. Lopez
KEALI`I S. LOPEZ, Director
Commerce and Consumer Affairs

APPROVED: Date: 3/3/11

/s/ Neil Abercrombie
NEIL ABERCROMBIE
Governor
State of Hawaii

March 4, 2011
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments and Compilation of Chapter 16-97
Hawaii Administrative Rules

January 20, 2011

SUMMARY

1. §§16-97-2 and 16-97-3 are amended.
2. §§16-97-6 and 16-97-7 are amended.
3. New §§16-97-7.1 and 16-97-7.2 are added.
4. §§16-97-8 and 16-97-9 are amended.
5. §16-97-12 is amended.
6. §§16-97-14 through 16-97-18 are amended.
7. §§16-97-25 and 16-97-26 are amended.
8. §16-97-28 is amended.
9. New §§16-97-28.3 and 16-97-28.5 are added.
10. §16-97-29 is amended.
11. §16-97-31 is amended.
12. §§16-97-34 and 16-97-35 are amended.
13. §16-97-37 is amended.
14. §§16-97-39 and 16-97-40 are amended.
15. A new §16-97-40.1 is added.
16. A new §16-97-41.1 is added.

This material can be made available for individuals with special needs. Please call the Program Specialist, Professional and Vocational Licensing Division, DCCA, at 586-2692 to submit your request.

Effective 03/14/11

17. §16-97-46 is amended.
18. Chapter 97 is compiled.