

HB 2594-A6  
(LC 1588-1)  
7/16/03 (VV/ps)

**PROPOSED CONFERENCE COMMITTEE AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2594**

- 1 On page 7 of the printed A-engrossed bill, after line 8, insert:
- 2 **"SECTION 10. The licensing requirement of ORS 703.405 does not**
- 3 **apply to a person who:**
- 4 **"(1) Provides testimony in a court as an expert under ORS 40.410;**
- 5 **or**
- 6 **"(2) Conducts investigations or reviews or engages in other activ-**
- 7 **ities in preparation for providing testimony in a court as an expert**
- 8 **under ORS 40.410."**
- 9 In line 9, delete "10" and insert "11".
- 10

**CHARLIE RINGO**  
**State Senator**  
 DISTRICT 17

RECEIVED JUL 02 2003



COMMITTEES:  
 Vice-Chair:  
 Water and Land Use  
 Member  
 Judiciary  
 Revenue

PLY TO ADDRESS INDICATED:

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**OREGON STATE SENATE**  
 900 COURT ST NE  
 SALEM, OREGON 97301

27 June 2003

Kelly Paige, Executive Director  
 Oregon Board of Investigators  
 445 State Office Building  
 800 NE Oregon Street, No. 33  
 Portland, Oregon 97232

To Ms. Paige:

Recently, a letter was brought to my attention which dealt with the conduct of John Myers of Corvallis. The Board of Investigators seems to take issue with the idea that Mr. Myers may be serving as an investigator without being licensed in violation of ORS 703, etc.

I have a concern regarding the Board's interpretation of the relevant statutes. Section 703, given the strict reading you have applied to it, is alarmingly broad. One might read the statute as an investigator being defined as any person who "accepts employment to ... furnish information about: ... Evidence to be used before any court."

It sounds to me like this means that *any* expert witness brought before *any* court would have to be a licensed investigator. The exceptions laid out in subsection 411 deal more with excepting those whose profession would otherwise explicitly deal with investigative matters than protecting those who are experts in a particular field. A doctor or psychiatrist, for example, would have to be a licensed investigator if they were to serve as an expert witness. Is this true?

It seems that something is askew somewhere along the line, and I think it best to correct the situation. I would like to investigate the statutes and their application, and was wondering if the Board could answer a few exploratory questions.

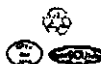
Where, exactly, does the Board draw the line between an expert witness and an investigator? If an individual takes publicly available information and applies publicly available knowledge and expertise to that information, does that constitute an investigation (and thusly require a license)? What, exactly, were Mr. Myers' actions that drew the Board's attention to him -- as opposed to thousands of other expert witnesses?

Thanks very much for looking into this matter. I look forward to hearing from you shortly.

Very truly yours,

Charlie Ringo

Cc: John Myers





# Oregon

John A. Kitzhaber, M.D., Governor

## Board of Investigators

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July 16, 2003

Senator Charlie Ringo  
Oregon State Senate  
900 Court St. NE  
Salem, OR 97301

RE: Your letter of June 27, 2003, concerning John Myers

Dear Senator Ringo:

The Oregon Board of Investigators was created during the 1997 legislative session for the purpose of licensing and regulating private investigators. At that time, the definition of what constitutes investigatory work was set forth in ORS 703.401(3), and exceptions to the licensure requirement were listed in ORS 703.411.

As you are aware, the engineering profession was not included in the exceptions. As a result, there have been several licensed engineers who have also become licensed investigators since the agency began operations in 1998. OBI does not gather or keep statistics on investigative "specialties", but it is my impression that those engineers who have become licensed Private Investigators did so because the main focus of their business was forensic engineering investigations such as accident reconstruction, as opposed to (for example) structural engineering.

Likewise, there are Certified Public Accountants who have also become licensed Private Investigators if the bulk of their work is concerned with financial fraud investigations. If they specialize in tax preparation, they do not become Private Investigators.

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Even when a profession is specifically exempted (such as that of attorney, or insurance adjuster), there are members of those professions who have decided to become licensed as Private Investigators due to the nature of their work.

When the Board receives an inquiry about whether a particular person is licensed to practice as a Private Investigator, we contact that person by phone or letter in order to determine whether his or her work meets the statutory definition of an Investigator, *or* whether the person is exempted from licensure. For example, the Board received an inquiry last year about another engineer. That person turned out to be a bona fide employee of an engineering firm, so he was exempted under ORS 703.411(1). The firm's owner, however, was both a licensed engineer *and* a licensed Private Investigator.

The Board's interpretation of the statute in these cases has been as follows: if a person performs investigative work as described by ORS 703.401(3), and if that person does not fall into any of the sixteen categories of exceptions outlined in ORS 703.411, that person should obtain a license to practice as a Private Investigator.

The Board certainly does not interpret the statute to require all "expert witnesses" to be licensed. For example, if an engineer is primarily involved in building bridges, the focus of his/her business would be structural in nature, rather than investigative. If that person were called to testify about a bridge collapse, it would be appropriate for that person to serve as an expert witness, and present his or her findings about the structural problems of the bridge in question without the need to be a licensed investigator.

However, if the engineer is significantly involved in accident investigations, and is frequently called as an expert witness due to both his engineering *and* investigative experience, it is the Board's feeling that that person should be licensed as an investigator. It is the actual *practice* of the witness that is considered, not simply the fact that evidence is presented.

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Finally, the Board's investigations are almost exclusively prompted from outside inquiries. In the case of Mr. Myers, the Board was asked by the Oregon State Police (in the course of another inquiry about another engineer) to determine whether or not Mr. Myers should be licensed. Our recent letter to him was written to ascertain the nature of his business.

The Board has already decided to work on statutory revisions for the 2005 legislative session. The definition of investigatory work and the exception categories are among the sections of statute that will be carefully considered for proposed revision in order to more clearly present the intended effect of the agency's mission.

Ultimately, the Board's purpose is to protect the public welfare by ensuring that only qualified persons are licensed as investigators, and that appropriate standards of competency and practice are established and enforced.

Senator Ringo, I hope this answers your questions. Please feel free call me, or write again, if you wish to discuss this further.

Sincerely,



Kelly Paige  
Executive Director

CC: John Myers