

# FIREARMS LAW UPDATE

A NEWSLETTER FOR THE MASSACHUSETTS GUN OWNER

## LEGAL SERVICES WHICH ATTORNEY COHEN PROVIDES:

- Legal Services for Ranges & Dealers
- Thorough Preparation of Firearms License Application Packages, to maximize your chance of success and avoid the subtle but serious “traps” in the application process
- Skilled Negotiation and Advocacy on your behalf with the licensing authority (police department)
- Petitions for Judicial Review & Appeals of Firearms License Denials
- Criminal Defense
- Emergency Legal Services
- Defense in Use of Force cases
- Legal Advice & Consultation regarding State & Federal Firearms Laws
- Representation before the Firearms License Review Board
- Sealing & Expungement of Criminal Records
- Pardons & other Post Conviction Relief

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This free monthly publication is designed to educate and inform law abiding Firearms owners and enthusiasts about the complex firearms laws of the Commonwealth of Massachusetts.

If you have a firearms-related legal story or topic which you would like us to include in future issues, please e-mail Attorney Cohen.

## Legal or Illegal? Answers to Frequently Asked Questions



### Is it legal to shoot at “human form targets?”

Generally yes; but in very limited cases it is illegal. Pursuant to [G.L. c. 140 § 131](#), it is illegal to shoot at “human form targets” at clubs or facilities with an on-site range or gallery, where the club or facility holds a “club license.” The majority of clubs & facilities do not hold such licenses.

### Body Armor: legal or illegal?

Body Armor is not illegal except in limited circumstances. It is unlawful to wear body armor while in the commission, or attempted commission, of a felony. See [G.L. c. 269 § 10D](#).



### Crossbows: legal or illegal?

Generally legal. However, crossbows cannot be used for hunting, unless the user is permanently disabled such that he/she cannot operate a conventional bow and arrow, as certified by a licensed physician. See [G.L. c. 131 § 69](#).

### Carrying a firearm at a school, college, or university: legal or illegal?

Carrying firearms “or other dangerous weapons” by civilians in any building or on the grounds of schools, colleges, or universities is illegal. A LTC is no defense to this charge.



## LTC APPLICATION QUESTION #10...

### 10. HAVE YOU EVER APPEARED IN ANY COURT AS A DEFENDANT FOR ANY CRIMINAL OFFENSE (EXCLUDING NONCRIMINAL TRAFFIC OFFENSES)?

This question has tripped up many applicants for LTCs. The question asks basically, have you ever been in court for a criminal offense? It does not matter what happened with your case or whether it was dismissed, sealed, continued without a finding, or otherwise disposed of. The question asks if you were there.

Answering "Question 10" incorrectly is usually grounds for denial of your application and can subject you to criminal prosecution.

Since the question asks "have you ever been in court..." many honest applicants simply forget about a court appearance from long ago. Some licensing authorities are understanding of this, while others less forgiving and view any incorrect answer as dishonest.

G.L. c. 140 § 129B(8) provides that "Any person who knowingly files an application containing false information shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a house of correction, or by both

such fine and imprisonment."

Applicants should think very carefully before answering "Question 10," as well as other far reaching questions such as "Have you ever been the subject of a [G.L.c. 209A](#) restraining order or involved in a domestic violence charge?"

An inactive or "closed" restraining order is not automatically grounds for denying a LTC Application. However, the failure to disclose such an order violates G.L. c. 140 § 129B(8). Although not automatic disqualifiers, A Licensing Authority can consider previous / closed restraining orders when determining your suitability.

A conviction for domestic abuse and/or violating a restraining order is a lifetime disqualifier. Individuals who have active restraining orders issued against them are also statutorily disqualified from holding firearms licenses.

If there is any doubt as to the contents of your criminal record, you should request a copy from the Criminal History Systems Board.

If you would like a copy of your own Massachusetts criminal record, [complete this form](#), sign it in front of a notary public, and mail it, **along with a**

**check or money order made payable to the Commonwealth of Massachusetts in the amount of \$25.00** and a self-addressed stamped envelope to the Criminal History Systems Board. You will receive a certified copy of your criminal record. Note: this will not contain restraining orders, although such records are available to law enforcement through the statewide domestic violence registry.

**Answering "Question 10" incorrectly is usually grounds for denial of your application and can subject you to criminal prosecution.**

Attorney Cohen can assist you with the preparation of your License to Carry Firearms Application Package to maximize your chances of approval.

The information contained in this document is offered for informational purposes only and is not legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not act upon this information without seeking professional counsel.

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## Worcester gun range licenses suspended

### Suicide spurs probe; owner may appeal

By Milton J. Valencia WORCESTER TELEGRAM & GAZETTE STAFF

**WORCESTER**— Police Chief Gary J. Gemme suspended the Boston Gun Range's licenses to sell and rent firearms, sell ammunition and to operate as a gunsmith after a disciplinary hearing yesterday.

A lawyer for the Grafton Street gun range said the suspension would effectively close the business.

Yesterday's hearing followed a recent administrative hearing at which the chief suspended the licenses, but was later ordered by a Superior Court judge to hold a second hearing to take up the penalty question.

The suspension will last until the licenses expire in January 2009. However, the chief said yesterday that he could reinstate them if the gun range follows his interpretation of state law, which is to accept only patrons who have a valid Firearms Identification Card or license to carry. The gun range has allowed patrons to shoot firearms there even if they don't have a license. The gun range asks them to sign an affidavit attesting they have no felony convictions that would ban them from legally using a firearm. The range had followed the practice for years, as has at least one other public gun range in the state.

But in October, a woman from Uxbridge rented a gun at the Boston Gun Range and killed herself. The suicide triggered

a police investigation and police have since argued that the range's practice of letting unlicensed shooters use firearms is a violation of state law.

A lawyer for the gun range has contested the Police Department's interpretation of state law, however, setting up what could be a lengthy court battle over gun rights.

Jonathan Finkelstein, representing the gun range, said that ranges are allowed to accept unlicensed patrons, according to the licenses that allow them to operate as gun ranges. Mr. Finkelstein said banning the practice would ban Boy Scouts from seeking a merit badge, or police recruits from getting gun training.

Last month, the city License Commission suspended the gun range's license to operate for six months, with the balance suspended for one year. The suspension was based on violations police discovered during the suicide investigation. The woman was not supervised at the time; there was no authorized supervisor on duty and the gun range used human silhouettes as targets, in violation of its license.

The Police Department had asked the gun range to voluntarily suspend its practice of allowing unlicensed people to shoot until the issue over state law could be resolved. The gun range refused, saying doing so would essentially put it out of business. Mr. Finkelstein said that some 80 percent of the gun range's customers don't have any permit or license. The License Commission had no authority to order the range to end the practice,

so the board only issued the suspended sentence based on the violations that were discovered during the police investigation.

However, Chief Gemme on the same day of the commission ruling suspended the licenses over which he has authority: the gun range's right to sell and rent firearms, to sell ammunition and to operate as a gunsmith.

The chief said at the time that the suspension was based on the same violations that were brought before the License Commission. Still, he said the timing of the suspension was prudent, so that the differences over state law could be resolved.

Mr. Finkelstein contested the suspension and an administrative hearing was held. Again the chief suspended the license. Mr. Finkelstein successfully obtained a court order to stay the suspension until a penalty hearing could be held. That hearing was held yesterday.

Chief Gemme stressed that the suicide raised new concerns with the business's practices; the woman was a convicted felon with a history of domestic abuse, and wouldn't have qualified for a firearm permit or license. The chief has cited other instances in which known gang members and convicted felons have used the gun range, which he argued is testimony to the business's faulty practices.

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**Attorney Jesse C. Cohen specializes in Firearms Litigation and represents gun owners as well as those seeking Licenses to Carry Firearms in Massachusetts.**

Visit his website at

<http://www.attorneycohen.com>

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INCLUDE THE WORD 'SUBSCRIBE' IN THE SUBJECT FIELD.

### **Worcester gun range licenses suspended (continued from page 3)**

"Public safety has to take precedence," the chief said. "The overriding issue here is this all came to light as the result of a tragedy, and that tragedy was a suicide.

"That gave the Police Department an opportunity to look at the practices and procedures, make an assessment, look at Massachusetts General Laws, look at rules and regulations, and identify areas where there are violations.

"They believe a felon can walk in there on an honor system that they are not a felon, rent a weapon and purchase ammunition and shoot a firearm. Those are some of the issues that need to be addressed."

But Mr. Finkelstein, continuing to contest the chief's interpretation of state law, indicated a court battle looms.

In addition, he called the indefinite suspension an overly harsh penalty, saying it prevents the business from renting to even people who do have a permit or license. He also noted that the ability to operate a gunsmith was penalized, though there were no indications that the gun range violated the terms of that license.

Mr. Finkelstein said he must review a written order, to see the terms of the suspension, and then decide whether to appeal. He also said his client, range owner Mark Tashjian, must consider financial decisions before determining to appeal.

"He has created forfeiture in the guise of a suspension," Mr. Finkelstein said.

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### **Romney Defends Timing of NRA Membership**

*The Associated Press*

BOSTON — Republican presidential candidate Mitt Romney, who presents

himself as a staunch ally of gun owners, said he joined the National Rifle Association just months before announcing his candidacy.

Romney said Sunday during an interview on ABC's "This Week with George Stephanopoulos" that he'd signed up for a lifetime membership with the NRA "within the last year." Romney spokesman Kevin Madden told The Boston Globe the former Massachusetts governor's joined the NRA in August, and that the decision was not a ploy to attract conservative voters.

"He joined the NRA because, like millions of Americans, he supports the group's advocacy of the Second Amendment and its commitment to education programs promoting the safe use of firearms by law-abiding citizens," Madden said. "I would argue not many Americans care when you join, but why you join, and I think I've made that clear."

Romney has publicly opposed NRA-supported measures, including during his unsuccessful run for the Senate in Massachusetts in 1994. Romney then told the Boston Herald he supported tough gun control laws such as the assault rifles ban and the Brady law.

"That's not going to make me the hero of the NRA. I don't line up with a lot of special interest groups," he said at the time.

After forming his presidential campaign exploratory committee in January, Romney toured a hunting and outdoor trade show in Orlando, Fla., with NRA executive vice president Wayne LaPierre. Romney reminisced about shooting rabbits during his boyhood days and said, "I'm proud to be among the many decent, law-abiding men and women who safely use firearms."

Some conservatives already have raised questions about Romney's shift to the right on issues such as abortion and gay rights during the second half of his single term as Massachusetts governor.

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## **About Attorney Cohen & Associates**

### **FIREARMS LITIGATION & ADVOCACY**

Attorney Cohen and associate lawyers concentrate in the areas of firearms law, criminal defense, and civil litigation. Examples of their successes include:

- Obtaining Court Orders in District Court, ORDERING Chiefs of Police to issue Licenses to Carry
- Vacating offenses which are lifetime disqualifiers, so that clients can obtain LTCs
- Firearms Licensing Review Board Cases
- Preparing Convincing Application Packages resulting in the issuance of Class A Licenses to Carry Firearms for All Lawful Purposes
- Negotiating with Police Officials to obtain LTCs for clients without the need for hearings, even where the police department initially denied the client's application.



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### **REAL ESTATE**

The name you've come to trust for firearms legal services is also the name to trust for real estate brokerage.

In his real estate business, Attorney Cohen represents both buyers and sellers. Given his background in firearms law, he is sensitive to the needs of gun owners. He will research the firearms licensing policies of prospective cities and towns before you buy.

