

# **Corrections Policy Committee**

## **Minutes**

### **November 12, 2013**

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, November 12, 2013, in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. Chair Lisa Settell called the meeting to order at 1:43 p.m.

#### **Attendees:**

##### **Committee Members:**

Lisa Settell, Parole and Probation Officer, Chair  
Rick Angelozzi, Department of Corrections Superintendent  
Brian Burger, Department of Corrections AFSCME Representative  
Erik Douglass, Non-Management Corrections Officer  
Jeff Hernandez, Non-Management DOC  
Jeanine Hohn, Department of Corrections Training Division  
Tami Jackson, Non-Management DOC  
Andy Long, Oregon State Sheriff's Association  
Jason Myers, Oregon State Sheriff's Association  
Joseph Pishioneri, Non-Management Law Enforcement  
Barbara Shipley, Oregon Sheriff's Jail Command Council  
Jeff Wood, Oregon Association of Community Corrections Directors  
Linda Yankee, Oregon Sheriff's Jail Command Council

##### **Committee Members Absent:**

Michael Gower, Designee for Director of Department of Corrections

##### **DPSST Staff:**

Eriks Gabliks, Director  
Leon Colas, Professional Standards Coordinator/Investigator  
Linsay Hale, Interim Standards & Certification Program Manager  
Kristen Hibberds, Professional Standards Coordinator/Investigator  
Sharon Huck, Interim Rules Coordinator  
Debbie Graves, Administrative Operations Supervisor  
Kristy Witherell, Administrative Support

##### **Guests:**

Lucinda Jackson, Assistant Attorney General  
Craig Johnson, Assistant Attorney General  
Steve Beck, Oregon Council of Police Association



**1. Minutes of August 13, 2013 Meeting**

Approve the minutes of the August 13, 2013 Corrections Policy Committee meeting.

*To see a complete record of the August 13, 2013 Corrections Policy Committee minutes, please go to:*

*[http://www.oregon.gov/dpsst/BD/Policy\\_Committee\\_Minutes/CPC\\_Minutes/CPCminutes081313.pdf](http://www.oregon.gov/dpsst/BD/Policy_Committee_Minutes/CPC_Minutes/CPCminutes081313.pdf)*

- *Jason Myers moved that the committee approve the minutes of the August 13, 2013 Corrections Policy Committee meeting. Joseph Pishioneri seconded the motion. The motion carried unanimously.*

**2. Amended Proposed Order in the Matter of Matthew Lytle – DPSST #43767**

Lucinda Jackson – Assistant Attorney General

Determine whether to approve the Department's issuing an Amended Proposed Order to Matthew Lytle (Executive Session to Consider Confidential Legal Advice)

*See Appendix A for detail*

*Barbara Shipley moved that the Corrections Policy Committee agrees there is not clear and convincing evidence in the record to overturn the Administrative Law Judge's finding that LYTLE was not dishonest but recommends to the Board the amendment of the Proposed Order to reflect the continued CPC contention that dishonesty did occur. Andy Long seconded the motion. The Motion carried in a 11-1 vote with Brian Burger opposed.*

*Brian Burger moved the Corrections Policy Committee recommend to the Board amendment of the proposed order based on the evidence in the record citing misconduct by LYTLE for the meal card incident while attending training at DPSST. The committee finds the conduct does rise to the level to Deny Application for Training and Subsequent Certifications. Joe Pishioneri seconded the motion. The Motion carried in a 10-2 vote with Andy Long and Barbara Shipley opposed.*

*Brian Burger moved that the Corrections Policy Committee set a date of eligibility of January 1, 2014 due to the mitigating factors that LYTLE has been employed since these incidents, the length of time since these incidents, that DPSST has not been made aware of any further misconduct, and the consideration that these incidents appear to be a one-time situation and an anomaly in his life. Linda Yankee seconded the motion. The motion carried unanimously.*

**3. DOJ Contested Case Review**

Craig Johnson – Assistant Attorney General

(Executive Session to Consider Confidential Legal Advice)

*Assistant Attorney General Craig Johnson addressed Committee Members about the contested case process and the denial/revocation of public safety officer certification involving discretionary disqualifying misconduct. The discussion highlighted legal concerns, recent Administrative Law Judge (ALJ) rulings, and some changes to the discretionary process that are being implemented by DPSST Professional Standards staff.*

4. **Academic Proficiency Standard Update & OAR 259-008-0010 – Proposed Rule**  
Presented by Linsay Hale

*See Appendix B for detail*

- *Joseph Pishioneri moved that the Corrections Policy Committee recommends to the Board filing OAR 259-008-0010 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Jeff Wood seconded the motion. The motion carried unanimously.*
- *Joseph Pishioneri moved July 1, 2014 as the implementation date. Brian Burger seconded the motion. The motion carried unanimously*
- *After further discussion, the previous motion was requested to be modified. Joseph Pishioneri moved January 1, 2015 as the implementation date. Brian Burger seconded the motion. The motion carried unanimously.*

*It is the consensus of the committee that there is no fiscal impact on small business.*

5. **Quarterly Review of DOC Basic Corrections Course by the DPSST Audit Team**  
Presented by Linsay Hale

*See Appendix C for detail*

*DOC-BCC program meets the minimum training standard for Basic Certification for Correctional Officers in this state.*

6. **Amended Proposed Order in the Matter of William N. Brotton - DPSST #32156**  
Presented by Leon Colas

*See Appendix D for details.*

- *Brian Burger moved that the Corrections Policy Committee recommend the Board approve the amended proposed order as the record upon which its recommendations are based with the ineligibility period to remain 15 years. Rick Angelozzi seconded the motion. The motion carried unanimously with Jeff Wood abstaining.*

7. **Edwin Valencia, DOC - Eastern Oregon Correctional Institution – DPSST #50921**  
Presented by Leon Colas

*See Appendix E for details.*

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the Staff report as the record upon which its recommendations are based. Jeanine Hohn seconded the motion. The motion carried unanimously.*

- By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case.**

By consensus of the committee, there was misconduct, dishonesty, and gross misconduct. *VALENCIA's Negligent Driving conviction in the State of Washington is equivalent to a DUII conviction in the State of Oregon. VALENCIA was dishonest during the investigation and his violation of the Code of Ethics constitutes misconduct.*

- b. The identified conduct did involve **Dishonesty**. *By consensus of the committee, VALENCIA's untruthfulness with the investigating officer and his agency's internal investigation about how much he had to drink constitutes Dishonesty. VALENCIA did admit he was dishonest to the police officer and to Mr. Imhoff.*

*Brian Burger moved that the Policy Committee recommends that the dishonesty in this case does rise to the level of revocation. Rick Andelozzi seconded the motion. The motion carried unanimously.*

*Based on the identified dishonesty, Andy Long moved that the Corrections Policy Committee recommends the period of ineligibility of lifetime. Tami Jackson seconded the motion. The motion carried unanimously.*

- c. The identified conduct did not involve a **Disregard for the Rights of Others**.
- d. The identified conduct did not involve **Misuse of Authority**.
- e. The identified conduct did involve **Gross Misconduct**.

*By consensus of the committee, VALENCIA's conviction for Negligent Driving (DUII) did involve Gross Misconduct by driving while impaired. The Negligent Driving (DUII) conviction is a presumptive Category IV Gross Misconduct offense.*

*Erik Douglass moved that Negligent Driving (DUII) alone does not warrant revocation in this particular case. Joseph Pishioneri seconded the motion. The motion carried unanimously.*

- f. The identified conduct did involve **Misconduct**. *By consensus of the committee, the criminal conviction for Negligent Driving (DUII) offense constitutes misconduct.*

*Joseph Pishioneri moved that Negligent Driving (DUII) does not rise to the level of revocation. Erik Douglass seconded the motion. The motion carried unanimously.*

g. The identified conduct **did not** involve **Insubordination**.

- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

*The committee noted as aggravating circumstances, while sober, VALENCIA's continued untruthfulness with the Human Resource Manager. VALENCIA's admission to untruthfulness was only brought out because of the interviewer questioning.*

*The committee noted as mitigating circumstances in VALENCIA's initial letter, he states that the charge was now adjudicated to minimize the behavior. At no time did VALENCIA allude to any favoritism or favors in regard to his position as a Correctional Officer. VALENCIA only answered to that when questioned about the possession of a firearm. VALENCIA kept his employer up to date and followed through, even left early one day to seek entry into a program. He's been proactive in trying to correct the issue.*

***SUMMARY: The Policy Committee finds VALENCIA's conduct does rise to the level to warrant the revocation of his certifications, and recommends to the Board that his certifications be revoked with a reapplication ineligibility period of lifetime.***

## **8. Staff Update**

Presented by Eriks Gabliks

HB3194 implementation for DPSST gave us two positions in the Center for Policing Excellence. DPSST will be offering Supervision and Middle Management training again after the first of the year. Steve Winegar has been hired as the Leadership Training Coordinator. Steve has been active in developing the program. Ryan Keck has been hired in the other position to lead the transition in curriculum from PowerPoint to problem-based learning. The Basic Corrections and DOC Basic Corrections classes are already using problem-based learning. The next program to move to problem-based learning is the Parole and Probation Program. That class will be the first class to move to iPads instead of printed books.

With Ryan moving to his new position, this opens his Basic Corrections Coordinator position which we are recruiting for. We will seek stakeholder assistance in the hiring process.

There was miscommunication in the media on Officer Libke. The Public Safety Memorial Fund Board did have an emergency meeting last week and they did approve full state death benefits to his family. The media had reported that reserve officers do not get the same benefits. DPSST has made efforts to correct those reports. Reserves get the same state benefit and the same federal benefit, but there are other benefits, i.e. worker's compensation, that do have different rules.

The Board approved the nomination of Deputy Basye, Jackson County Jailer, to the Memorial Wall.

The dates have been scheduled for the 2014 meetings and you should have received this information. If something comes up, please let us know.

DPSST will be reviewing terms for members and will let you know if your term is close to expiring.

## **9. Next Regularly Scheduled Meeting – February 11, 2014 at 1:30 p.m.**

*With no further business before the committee, the meeting adjourned at 4:54 p.m.*

## *Appendix A*

### **Memorandum**

**Date:** November 12, 2011

**To:** Corrections Policy Committee

**From:** Kristen Hibberds  
Professional Standards Coordinator/Investigator

**Subject:** **Executive Session to Consider Confidential Legal Advice**  
In the Matter of Matthew Lytle, DPSST # 43767

**Note:** This memorandum and attachments will be the subject of an Executive Session to consider the work product of our Department of Justice legal counsel. The documents and discussion are to be discussed only in an executive session of the Corrections Policy Committee, should not be reproduced, and are exempt from disclosure under Oregon Public Records Law.

#### **Background:**

On May 18, 2010, the Corrections Policy Committee (CPC) unanimously voted to recommend the denial of Application for Training and Subsequent Certification of Matthew Lytle.<sup>1</sup> On July 22, 2010 the Board unanimously affirmed the Policy Committee recommendation.<sup>2</sup>

Following issuance of a Notice of Intent to Deny Application for Training and Subsequent Certifications on May 27, 2010<sup>3</sup>, Officer Lytle requested a hearing. On June 4, 2010, the Department of Corrections (DOC) discharged Lytle from his position as a Corrections Officer.

On April 27, 2011, DPSST sent a Withdrawal of Notice and Termination of Proceedings to Lytle, concluding that DOC's discharge of Lytle deprived DPSST of jurisdiction and that a contested case hearing could not be held.<sup>4</sup>

Lytle sought review of DPSST's decision to terminate the contested case proceedings in Marion County Circuit Court. On April 25, 2012, Judge Claudia Burton ruled that Lytle was entitled to a contested case hearing on DPSST's notice on due process grounds.<sup>5</sup> On May 16, 2012, DPSST issued an Order Rescinding the Withdrawal of Notice of Intent to Deny.<sup>6</sup>

---

<sup>1</sup> Attachment A

<sup>2</sup> Attachment B

<sup>3</sup> Attachment C

<sup>4</sup> Attachment D

<sup>5</sup> Attachment E

<sup>6</sup> Attachment F

In June 2012 the Department of Justice (DOJ) referred the hearing request to the Office of Administrative Hearings.

On September 7, 2012, Lytle filed a Motion for Summary Determination in this case. On November 13, 2012, ALJ Barber ruled that substantial questions of fact remain and need to be addressed during a hearing.<sup>7</sup>

A hearing was held in December 2012, Administrative Law Judge (ALJ) Rick Barber issued a Proposed Order. The Proposed Order proposed that the May 27, 2010 Notice of Intent to Deny should be reversed.<sup>8</sup>

In ALJ Barber's Proposed Order he found that Lytle engaged in Misconduct when he allowed his brother to use the meal card.<sup>9</sup>

**Applicable Administrative Rules:**

DPSST Administrative Rule OAR 259-008-0070(9) provides the following:

(9) Denial and Revocation Procedure.

\* \* \*

(k) Final Order:

(B) Department-proposed amendments to the proposed order in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order is issued.

Office of Administrative Hearings Administrative Rule OAR 137-008-0655 provides the following:

\* \* \*

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

\* \* \*

(b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

**Action Requested:**

The Department requests that the Corrections Policy Committee review the Amended Proposed Order that will be provided to the committee during executive session by DOJ legal counsel, and determine whether to approve the Department's issuing the Amended Proposed Order to Matthew Lytle.

*Information only: If there is a decision to issue an Amended Proposed Order reversing the Proposed Order issued by the ALJ, Matthew Lytle will have the opportunity to review it and*

---

<sup>7</sup> Attachment G

<sup>8</sup> Attachment H

<sup>9</sup> Attachment I, pg. 17 of 19

*file exceptions, and to present written argument in support of his exceptions, before a Final Order will be issued in this matter.*

## *Appendix B*

### **Department of Public Safety Standards and Training Memo**

**Date:** November 12, 2013

**To:** Corrections Policy Committee

**From:** Linsay Hale  
Standards & Certification Program Manager

**Subject:** OAR 259-008-0010 – Proposed Rule  
Academic Proficiency Standard

**Background:** Since the implementation of the reading and writing standard, police and telecommunicator/EMD agencies have implemented applicant testing as part of their selection processes with positive results. DPSST has seen a significant drop in academic failures in the basic police and basic telecommunicator/EMD classes, which was the desired result when the standard was implemented in 2001. On June 24, 2013, a rule change was adopted renaming the standard from a reading and writing standard to an academic proficiency standard and eliminating the need for DPSST to approve testing vendors leaving agencies free to choose whichever proficiency test best fits their particular agency's hiring needs and budget. The DPSST Form F-5 is still used for ensuring that a test has been administered prior to being allowed entry into the academy, but has been updated to eliminate the requirement for score reporting.

**Update:** This information was presented to the Corrections Policy Committee at their meeting on August 13, 2013 (ATT B). Committee members were favorable to having the same academic proficiency requirement apply prior to entry into basic corrections and parole and probation courses, but requested input from the Department of Corrections (DOC). Staff has been in contact with DOC Assistant Director of Human Resources, Christine Popoff to discuss the possible implementation of the standard and any potential impact it may have on their agency. Ms. Popoff relayed that DOC would not be opposed to implementing an academic proficiency standard as part of the DOC hiring process.

The following is revised language for OAR 259-008-0010 (Minimum Standards for Employment as a Law Enforcement Officer). This language would require law enforcement proficiency tests or validated written tests designed to evaluate predictors of job-related skills and behaviors to be administered prior to entry into any basic or career officer development course, regardless of discipline.

The text contains additions (**bold and underlined**) and deletions (~~strikethrough text~~).

**259-008-0010**

**Minimum Standards for Employment as a Law Enforcement Officer**

\*\*\*

(c) Academic Proficiency Standard. Before beginning basic police training, challenging basic police training, or beginning the police career officer development course, each applicant must provide evidence to DPSST that the applicant possesses the academic tools necessary to successfully complete basic police training.

(A) The hiring agency is responsible for ensuring a law enforcement proficiency test or validated written test designed to evaluate predictors of job-related skills and behaviors has been administered. The hiring agency must verify the completion of the test and report the date of completion to the Department on a Form F-5 (Application for Training) prior to the applicant being admitted to basic police training.

(B) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by the Department under the provisions of OAR 259-008-0045 are exempt from this testing requirement.

\*\*\*

**ACTION ITEM 1:** Determine whether to recommend filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule.

**ACTION ITEM 2:** Determine whether to recommend filing the proposed language for OAR 259-008-0010 with the Secretary of State as a permanent rule if no comments are received.

**ACTION ITEM 3:** Determine whether there is a significant fiscal impact on small businesses.

**ACTION ITEM 4:** If recommending filing in Action Items 1 & 2, Discuss implementation timeline.

ATTACHMENT A – Form F-5 (Application for Training) – DRAFT  
ATTACHMENT B – Memo, Academic Proficiency

DPSST

APPLICATION FOR TRAINING

F-5

			1. DPSST Number
2. Name of Applicant Last		First	Middle
3. Date Employed			
4. Agency – Division/Branch		5. Rank	6. Date Promoted
<b>7. Discipline:</b> <input type="checkbox"/> Police <input type="checkbox"/> Telecommunicator <input type="checkbox"/> Corrections <input type="checkbox"/> EMD <input type="checkbox"/> Parole & Probation		<b>8. Course Requested:</b> <input type="checkbox"/> *Basic <input type="checkbox"/> P & P Firearms <input type="checkbox"/> *Career Officer Development (COD) <input type="checkbox"/> Other: _____	
<b>9. *The Police, Telecommunications and EMD ALL disciplines</b> require passing a Law Enforcement proficiency test or validated written test designed to evaluate predictors of job-related skills and behaviors prior to being scheduled for Basic or COD training. Applicants with at least a Bachelor level degree from an accredited education institution are exempt from testing. Must submit transcript. Please list which test was used: _____ Date test completed: _____			
<b>10. Course Training Dates Requested:</b> Class # _____ From _____ To _____			
<b>11. Applicant will</b> <input type="checkbox"/> Commute <input type="checkbox"/> Reside in dormitory			
<b>12. Agency Contact</b> (Correspondence regarding training will be directed to this individual) _____ Title _____ Phone _____ Fax _____ Email _____			

**13. A.** I hereby agree to obey the Academy rules and understand I am subject to dismissal from the Academy for any infraction. I understand that any reported criminal violation while enrolled at a course at the Academy will be turned over to the appropriate law enforcement agency for investigation. I certify that I am of good health, physically fit, and of good moral character, and release DPSST and any department associated or connected with the Academy from liability in case of illness or accident. It is understood that for any illness or injury not covered by employer-provided worker's compensation insurance, I will only be covered to the extent that I would be covered while at my own agency under personal or agency medical insurance. **I understand that falsification of this document makes my certification(s) subject to denial or revocation under ORS 181.662 and OAR 259-008-0070.**

**B.** Have you ever been convicted of a crime, including traffic crimes in ANY jurisdiction, including local, state, federal, or tribal?  
 Yes     No (Under ORS 161.515, a crime is defined as either a **felony** or a **misdemeanor** offense.)

**C.** Have you ever been convicted of unlawful possession of less than one ounce of Marijuana?     Yes     No

**D.** Have you **ever** been discharged for cause from a public safety agency?     Yes     No

**If answer is yes to B, C or D, show date, place, disposition, reason and which agency on the back of this form.**

**Applicant's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**14.** The applicant named in this application is a  certifiable public safety officer, meets the minimum standards for employment pursuant to OAR 259-008-0010 or 259-008-0011 and is approved by me for attendance at the Academy. Fingerprints of the applicant are on file with the Oregon State Police Identification Services Section. Applicant will be considered on active duty status with our agency during this training period. Applicant, while attending this course, is covered by the agency for any on-the-job injury. I understand, and I have explained to the applicant, that for any illness or injury not covered by worker's compensation insurance, s/he will only be covered to the extent that s/he would be covered while at his/her own agency. **I understand that falsification of this document makes my certification(s) subject to denial or revocation under ORS 181.662 and OAR 259-008-0070.**

**Signature** \_\_\_\_\_ **Title** \_\_\_\_\_ **Date** \_\_\_\_\_  
 Agency Head or Authorized Representative

**Printed Name** \_\_\_\_\_ **Phone** \_\_\_\_\_

<b>DPSST Use Only</b>
Class Number

**RETURN APPLICATION TO:**  
 Department of Public Safety Standards and Training  
 4190 Aumsville Hwy SE; Salem, OR 97317  
 Phone: 503-378-2353 Fax: 503-378-4600

Name: \_\_\_\_\_

DPSST # \_\_\_\_\_

Class # \_\_\_\_\_

**IMPORTANT**

You must answer all questions truthfully. Oregon law allows the Department of Public Safety Standards and Training to deny or revoke the certification(s) of any public safety officer who falsifies any information submitted on any document submitted to DPSST. **I understand that falsification of this document makes my certification(s) subject to denial or revocation under ORS 181.662 and OAR 259-008-0070.**

**ADDITIONAL INFORMATION OR COMMENTS FROM BOX 13**

**Required information for students attending Basic Police, Corrections, Parole & Probation and Telecommunication classes**

**BDU Pant Size:** *Waist size is in parenthesis*

*Regular length = 29 1/2 - 32 1/2*

*Long length = 32 1/2 - 35 1/2*

- Small Regular (27 – 31)
- Small Long (27 – 31)
- Medium Regular (31 – 35)
- Medium Long (31 – 35)
- Large Regular ( 35 – 39)
- Large Long (35 – 39)

- X-Large Regular (39 – 43)
- X-Large Long (39 – 43)
- XX-Large Regular (43 – 47)
- XXX-Large Regular (47 – 51)
- XXXX-Large Regular (51 – 55)

**BDU Shirt Size:** *Regular Length = 67 – 71*

*Long Length = 71 – 75*

- Medium Regular
- Medium Long
- Large Regular
- Large Long

- X-Large Regular
- X-Large Long
- XX-Large Regular
- XXX-Large Regular

**Sweatshirt Size:**

- Medium
- Large
- X-Large

- XX-Large
- XXX-Large

**Department of Public Safety Standards and Training  
Memo**

**Date:** August 13, 2013

**To:** Corrections Policy Committee

**From:** Linsay Hale  
Standards & Certification Program Manager

**Subject:** Academic Proficiency Standard – Information Only

**Background:** On August 22, 2001, based on a curriculum readability level determination conducted by Western Oregon University in 2000, DPSST adopted a 12<sup>th</sup> grade reading and writing standard to address the high level of academic failure of students enrolled in the basic police course. This standard required basic police applicants to provide evidence to DPSST that the applicant has attained a minimum of a 12<sup>th</sup> grade reading and writing level in the English language. On February 6, 2002, a standard was adopted requiring telecommunicators and emergency medical dispatchers (EMD) to demonstrate a 12<sup>th</sup> grade reading level only.

The adoption of this standard drastically reduced the number of academic failures of basic police and basic telecommunicator/EMD students attending the Academy. This standard also allowed local agencies to identify applicants with reading and writing challenges during the selection process.

DPSST researched and approved tests which allowed applicants to demonstrate they meet these requirements. These standards made the hiring agency responsible for ensuring a DPSST-approved reading and writing test had been administered and the results forwarded to DPSST on a Form F-5 (Application for Training) prior to an applicant being allowed entry into a basic police or telecommunicator/EMD course at the academy. A later rule update exempted applicants with a four-year college degree from this requirement.

**Update:** A recent question raised by a constituent led to the reevaluation of the requirements of this standard as well as the tests that have been approved for use in meeting the standard. It quickly became apparent that, with the exception of Clackamas Community College, the DPSST-approved tests didn't measure reading and writing grade levels, but were actually proficiency tests, measuring the probability of the applicant's success in the field of law enforcement or telecommunications/emergency medical dispatch.

Since the implementation of the reading and writing standard, police and telecommunicator/EMD agencies have implemented applicant testing as part of their selection processes with positive results. DPSST has seen a significant drop in academic

failures in the basic police and basic telecommunicator/EMD classes, which was the desired result when the standard was implemented in 2001. However, this drop in the failure rate was not completely the result of ensuring that applicants can read and write at a 12<sup>th</sup> grade level, it was because hiring agencies were utilizing pre-employment proficiency tests. As a result, a rule change was adopted renaming the standard from a reading and writing standard to an academic proficiency standard.

DPSST is no longer involved in approving testing vendors. Agencies are free to choose whichever proficiency test best fits their particular agency's hiring needs and budget in consultation with their human resources staff. The DPSST Form F-5 will continue to be used for ensuring that a test has been administered, but will be updated to eliminate the requirement for score reporting.

**Issue:** At the time of the initial readability level determination conducted by WOU in 2000, the readability level of the corrections curriculum was determined to be at a grade level of 9.7 and the parole and probation curriculum determined to be at a 10.5 grade level. Consequently, a reading/writing standard was not adopted as a prerequisite for admittance to basic corrections or basic parole and probation academy classes.

Currently, there is no academic proficiency standard for the corrections and parole and probation disciplines.

**ACTION ITEM 1:** Provide direction to staff with regards to implementing an academic proficiency standard for the corrections and parole and probation disciplines.

## *Appendix C*

### **Department of Public Safety Standards and Training**

**DATE:** November 12, 2013

**TO:** Eriks Gabliks, Director

**FROM:** Theresa M. King  
DOC BCC Audits Unit Coordinator

**SUBJECT:** Quarterly Review of DOC BCC by DPSST Audit Team

**Issue:**

Is the DOC BCC meeting the established standards for Basic Corrections Training?

**Background:**

In 2009 the Legislature approved the Oregon Department of Corrections (DOC) to provide its own training as an alternative to the DPSST Basic Corrections Course, provided DPSST audited their to ensure equivalency to the state standards. DOC developed their Basic Corrections Course (BCC) and began delivering it. In 2013, the Legislative reviewed the BCC program and approval was granted for the BCC to continue with a review in 2026.

The Audit Team provides the Corrections Policy Committee with quarterly updates of the DOC BCC. Within these updates, the Audit Team identifies areas in which the DOC BCC has met the minimum standards and in cases where the DOC BCC has not met the minimum standards, the Audit Team identifies the areas of non-compliance and the required remedy.

During this reporting period, **July 2013 through September 2013**, the Audit Team conducted a series of audits of the BCC.<sup>10</sup> One compliance issue remained outstanding, the BCC Test 2. In April 2013 a non-compliance letter was issued to the Department of Corrections Professional Development Unit (PDU) requiring state standards compliance of Test 2 (Final Exam) by October 15, 2013. The PDU provided the Audit Team with an amended Test 2 on October 4, 2013. The Audit Team reviewed this test specifically for issues cited in the compliance letter; that Test 2 be a cumulative of the knowledge students learned throughout the BCC and that the test questions relate to the BCC. The amended Test 2 meets these compliance requirements and this compliance matter is considered resolved. Test 2 will be required to be administered to classes starting with BCC 075 which began on September 30, 2013.

---

<sup>10</sup> Exhibits 19 - 113

## **Audit Program Overview**

### **DOC BCC Training**

During this reporting period, DOC BCC began five new classes<sup>11</sup> using the 2012 DOC BCC curriculum. Four classes<sup>12</sup> were still in a phase of the 2012 BCC training.

**Audit Team Concern:** In September 2013, one class, BCC 067, was divided into two groups for Skills Week and Firearms Week due to its size. Until a few days prior to the training, the Audit Team had no knowledge of the pending training for the first group. The Audit Team contacted PDU who confirmed the training had been scheduled; they then provided the Audit Team an updated Master Calendar. This late notice caused schedule changes and unanticipated travel plans by the Audit Team.<sup>13</sup> In September 2010, PDU conducted BCC training without notifying the Audit Team and this resulted in a Non-compliance letter being issued. The Audit Team then advised PDU that BCC training in which the Audit Team was not notified of would not be considered valid training for purposes of basic corrections certification.

### **DOC COD**

During this reporting period, DOC submitted no applications for Career Officer Development (COD) to DPSST.

### **DOC BCC Testing Results**

During this reporting period, the cumulative average for Test #1 was 86% and the cumulative average for Test #2 was 90%.<sup>14</sup>

### **DOC Training Failures requiring remediation**

During this reporting period, there were four academic failures, one firearms failure, no defensive tactics and four Reality Based Training failures. These failures either have been successfully remediated or are scheduled to be remediated.<sup>15</sup>

### **Firearms**

During this reporting period DOC's firearms failure rate continued to decrease.<sup>16</sup>

---

<sup>11</sup> BCC 072, 073, 074, 075 and 076

<sup>12</sup> BCC 064, 067, 068 and 069; Skills Week and Firearms Week

<sup>13</sup> Ex 114

<sup>14</sup> Ex 13

<sup>15</sup> Exhibit 12 DOC Corrective Action Classes

<sup>16</sup> Exhibit 16 Audit Team analysis

## **Basic Corrections Certifications**

### **DOC BCC Basic Corrections certifications issued**

During this reporting period, DOC PDU submitted 38 new applications for certification; these are pending review of the class notebooks BCC 059 and BCC 060 which were not received in time to review and release for certification<sup>17</sup>. There were nine basic corrections certifications granted from applications submitted prior to July 2013.

## **Curriculum**

### **2012 DOC BCC Curriculum**

In late 2011, the Corrections Policy Committee approved a new Basic Corrections Course which increased the course hours from 200 to 240, and which structurally update the training methodology which required demonstration of prior learned concepts through scenarios. DOC PDU was allowed six months to update their curriculum. PDU received an extension and in August 2012, the CPC reviewed and approved the new six-week 2012 DOC BCC. This new program was subsequently approved by the Executive Committee. In January 2013, PDU began the delivery of the new state standard.

## **Instructor Training and Certification**

### **Instructor Development Courses**

DOC PDU delivered three Instructor Development classes within this reporting period.

### **Instructor Applications**

During this reporting period, 36 BCC instructors were certified for the 2012 BCC program, for total of 290 BCC instructors.

## **Audits**

### **Training On-Site Audits**

During this reporting period, the Audit Team conducted multiple on-site audits of training. These included observation of the training, review of the lesson plans, student handout materials, instructor presentation, student participation, scenario-based training, online courses and student surveys.<sup>18</sup>

---

<sup>17</sup> BCC 059 was submitted to DPSST on 09/13/13; certification was required by 10/08/13. BCC 060 was submitted to DPSST on 09/20/13; certification was required by 10/01/13. DPSST requires 30 days to review and evaluate class notebooks and schedule approved classes for certification.

<sup>18</sup> Exhibits 17

## **Administrative Records Audits**

During this reporting period, the Audit Team conducted no administrative records audit.

## **CORPAT Data Collection:**

During this reporting period, nine CORPAT were delivered and the data collected.

## **Findings**

In general, the 2012 DOC BCC *meets* the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than the Department of Corrections.

### **Attachments:**

- Ex 1 DOC BCC Student Training [Report]
- Ex 2 DOC BCC [Student Progress Report] 063
- Ex 3 DOC BCC [Student Progress Report] 064
- Ex 4 DOC BCC [Student Progress Report] 067
- Ex 5 DOC BCC [Student Progress Report] 068
- Ex 6 DOC BCC [Student Progress Report] 069
- Ex 7 DOC BCC [Student Progress Report] 070
- Ex 8 DOC BCC [Student Progress Report] 071
- Ex 9 DOC BCC [Student Progress Report] 072
- Ex 10 DOC BCC [Student Progress Report] 073
- Ex 11 DOC BCC [Student Progress Report] 074
- Ex 12 DOC BCC 2013 3rd Quarter Corrective Action Classes
- Ex 13 DOC BCC High and Low Academic Scores by Class
- Ex 14 DOC BCC Instructor Development Courses
- Ex 15 Audit Team – Audit Tracking
- Ex 16 Firearms Overview
- Ex 17 Student Survey
- Ex 19 BCC 072 CORPAT Post
- Ex 20 BCC 071 RBT 2
- Ex 21 BCC 072 OAM
- Ex 22 BCC 072 Ethics and Professionalism

Ex 23 BCC 072 CCM  
Ex 24 BCC 072 Respectful Workplace  
Ex 25 BCC 072 PREA  
Ex 26 BCC 072 IPC 1  
Ex 27 BCC 072 Blood Borne Pathogen  
Ex 28 BCC 072 Communicable Disease  
Ex 29 BCC 072 Prohibited Inmate Conduct  
Ex 30 BCC 072 Report Writing  
Ex 31 BCC 072 Basic Security Practices  
Ex 32 BCC 072 Supervision of Inmates  
Ex 33 BCC 072 Boundaries  
Ex 34 BCC 072 IPC 2  
Ex 35 BCC 072 Mental Health  
Ex 36 BCC 072 Legal Issues  
Ex 37 BCC 072 Suicide Awareness  
Ex 38 BCC 072 STM  
Ex 39 BCC 072 Health and Fitness  
Ex 40 BCC 072 Defensive Tactics 2  
Ex 41 BCC 072 OC  
Ex 42 BCC 072 Defensive Tactics 3  
Ex 43 BCC 072 RBT 1  
Ex 44 BCC 072 RBS Security Procedures  
Ex 45 BCC 072 Medical Escorts and Restraints  
Ex 46 BCC 072 Ethics and Professionalism  
Ex 47 BCC 072 RBS Inmate Health Care  
Ex 48 BCC 072 Problem Based Learning  
Ex 49 BCC 072 RBS Decision Making  
Ex 50 BCC 072 RBS Security Procedures  
Ex 51 BCC 064 Health and Fitness  
Ex 52 BCC 064 Medical Escorts and Restraints

Ex 53 BCC 064 Employee Wellness 2  
Ex 54 BCC 064 Defensive Tactics 5  
Ex 55 BCC 064 Firearms Series  
Ex 56 BCC 064 IPC 3  
Ex 57 BCC 064 CORPAT Post  
Ex 58 BCC 064 Cell Extraction  
Ex 59 BCC 064 RBT 3  
Ex 60 BCC 064 RBS Security Procedures  
Ex 61 BCC 064 Problem Based Learning  
Ex 62 BCC 064 RBT 4  
Ex 63 BCC 074 Use of Force  
Ex 64 BCC 074 DT 1  
Ex 65 BCC 074 Use of Force  
Ex 66 BCC 073 Mental Health  
Ex 67 BCC 073 IPC 2  
Ex 68 BCC 073 Suicide Awareness  
Ex 69 BCC 073 Legal Issues  
Ex 70 BCC 073 Security Threat Management  
Ex 71 BCC 074 OC  
Ex 72 BCC 074 DT 2  
Ex 73 BCC 074 Health and Fitness 3  
Ex 74 BCC 073 DT 2  
Ex 75 BCC 074 Online Training  
Ex 76 BCC 074 Health and Fitness 4  
Ex 77 BCC 074 DT 3  
Ex 78 BCC 074 RBT  
Ex 79 BCC 073 DT 3  
Ex 80 BCC 073 RBT 1  
Ex 81 BCC 074 RBS  
Ex 82 BCC 074 Decision Making

Ex 83 BCC 074 Problem Based Learning  
Ex 84 BCC 074 RBS Security Procedures  
Ex 85 BCC 073 Problem Based Learning  
Ex 86 BCC 073 Decision Making  
Ex 87 BCC 073 RBS Inmate Health Care  
Ex 88 BCC 074 RBS Security Procedures  
Ex 89 BCC 073 RBS Security Procedures  
Ex 90 BCC 073 RBS Security Procedures  
Ex 91 BCC 073 RBS Inmate Health Care  
Ex 92 BCC 073 RBS Security Procedures  
Ex 93 BCC 073 RBS Inmate Supervision  
Ex 94 BCC 073 DT 4  
Ex 95 BCC 073 RBT 2  
Ex 96 BCC 068/069 Medical Escorts and Restraints  
Ex 97 BCC 068/069 Health and Fitness 6  
Ex 98 BCC 068/069 DT 5  
Ex 99 BCC 068/069 Firearms Series  
Ex 100 BCC 068/069 CORPAT Post  
Ex 101 BCC 068/069 IPC 3  
Ex 102 BCC 068/069 Cell Extraction  
Ex 103 BCC 068/069 RBT 4  
Ex 104 BCC 068/069 Problem Based Learning  
Ex 105 BCC 067 Cell Extraction  
Ex 105 BCC 067 DT 5  
Ex 106 BCC 067 Employee Wellness 2  
Ex 107 BCC 067 Firearms Series  
Ex 108 BCC 067 Medical Escorts and Restraints  
Ex 109 BCC 067 CORPAT Post  
Ex 110 BCC 067 IPC 3  
Ex 111 BCC 067 RBT 3

Ex 112 BCC 067 RBT 4

Ex 113 BCC 067 Problem Based Learning

## ***Appendix D***

### **Department of Public Safety Standards & Training**

#### **Memorandum**

**Date:** November 12, 2013

**To:** Corrections Policy Committee

**From:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**Subject:** Amended Proposed Order in the Matter of William N. Brotton, DPSST # 32156

#### **Background:**

On November 12, 2012, the Corrections Policy Committee (CPC) unanimously voted to recommend the revocation of the Basic, Intermediate and Advanced Corrections certifications and the Basic, Intermediate and Advanced Parole & Probation certifications of William Brotton. On January 24, 2013 the Board unanimously affirmed the Policy Committee recommendation. Following issuance of a Notice of Intent to Deny and Revoke Certifications, Mr. Brotton requested a hearing. In December 2012, the Department of Justice (DOJ) referred the hearing request to the Office of Administrative Hearings. A hearing was held on August 27, 2013, and on September 16, 2013, Administrative Law Judge (ALJ) Dove Gutman issued a Proposed Order. A copy of that Order is provided as “**Attachment A.**” The Proposed Order proposed affirming the Notice of Intent to Revoke but recommended that the initial period of ineligibility to reapply for certification be reduced to five years from the Committee and Board determination of 15 years.

The CPC determined that Brotton’s conduct involved Disregard for the Rights of Others, Gross Misconduct, Misconduct and Insubordination. ALJ Gutman agreed, but did not agree with all of the bases for the CPC’s determinations. The ALJ found that Brotton proved that he had a high caseload, had requested assistance and not received it, and that he had continued to work and had reduced his caseload, although he had told his supervisor that he had “stopped working for two months.” ALJ Gutman determined that Brotton had proved these contentions by logical, consistent and reliable testimony. He provided no documentary evidence of these claims. ALJ Gutman also found that the allegations of improper internet usage were not proven, since there was no distinction in the records between personal use and agency use.

DPSST’s position is that the Corrections Policy Committee and the Board have the sole discretion to determine the length of time of the initial period of ineligibility to reapply for

certification once the underlying factors supporting the revocation have been established. The initial period of ineligibility should remain 15 years.

A copy of DPSST's Amended Proposed Order is provided as "**Attachment B.**"

**Applicable Administrative Rules:**

DPSST Administrative Rule OAR 259-008-0070(9) provides the following:

(9) Denial and Revocation Procedure.

\* \* \*

(j) Proposed and Final Orders:

\* \* \*

(B) Department-proposed amendments to the proposed order in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order is issued.

\* \* \*

Office of Administrative Hearings Administrative Rule OAR 137-008-0655 provides the following:

\* \* \*

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

\* \* \*

(b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

**Action Requested:**

The Department requests that the Corrections Policy Committee review the Amended Proposed Order that has been prepared by the Department, and determine whether to approve the Department's issuing the Amended Proposed Order to William N. Brotton.

*Information only: Because the Amended Proposed Order amends the Proposed Order issued by the ALJ, Mr. Brotton will have the opportunity to review it and file exceptions, and to present written argument in support of his exceptions, before a Final Order will be issued in this matter.*

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING**

IN THE MATTER OF: ) **PROPOSED ORDER**  
 )  
**WILLIAM N. BROTTON,** ) OAH Case No.: 1203069  
**Respondent** ) Agency Case No.: 32156

**HISTORY OF THE CASE**

On November 20, 2012, the Department of Public Safety Standards and Training (Department or DPSST) issued a Contested Case Notice of Intent to Revoke, Opportunity to be Heard, and Final Order Revoking Certifications if No Request for Hearing is Received (Notice) to William N. Brotton (Respondent). On November 26, 2012, Respondent requested a hearing to contest the Notice.

On December 13, 2012, the Department referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) Dove L. Gutman was assigned to preside at hearing.

On February 21, 2013, a pre-hearing telephone conference was held. ALJ Gutman presided. Respondent represented himself. Assistant Attorney General (AAG) Craig Johnson represented the Department. Leon Colas appeared on behalf of the Department. Hearing was scheduled for June 18, 2013.

On March 13, 2013, Mr. Johnson, on behalf of the Department, requested postponement of the hearing. Respondent had no objection. On March 15, 2013, ALJ Gutman granted the request. Hearing was rescheduled for August 27, 2013.

On August 27, 2013, a hearing was held in Salem, Oregon. Respondent represented himself. Senior AAG Frank Hammond represented the Department. The following individuals provided testimony: Respondent, Sergeant Jay Bergmann, Commander Jeff Wood, Sergeant Jayson Greer, Robert Stai, Lieutenant Kevin Karvandi, Officer Brian Kohlmeier, Leon Colas, and Lisa Settell. The record closed on August 27, 2013.

**ISSUES**

1. Whether Respondent lacks the minimum standards necessary for employment as a law enforcement officer.
2. Whether Respondent's certifications may be revoked.

## EVIDENTIARY RULING

Exhibits A1 through A19, offered by the Department, were admitted into the record without objection.

### FINDINGS OF FACT

#### Background

1. On June 6, 1994, William Brotton (Respondent) was hired by Marion County Corrections (MCC) as a Corrections Officer. (Ex. A1.)

2. On August 6, 1996, Respondent signed the Criminal Justice Code of Ethics, which states, in material part:

AS A CRIMINAL JUSTICE OFFICER, my fundamental duty is to serve mankind; to safeguard lives and property; to protect all persons against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all people to liberty, equality and justice.

I WILL keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity, will be kept ever secret unless revelation is necessary in the performance of my duty.

I WILL never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. Without compromise and with relentlessness, I will uphold the laws affecting the duties of my profession courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence, and never accepting gratuities.

I RECOGNIZE my position as a symbol of public faith, and I accept it, as a public trust to be held so long as I am true to the ethics of The Criminal Justice System.

(Ex. A2 at 1.)

3. Respondent subsequently received his Basic, Intermediate, and Advanced

Corrections Certifications.<sup>19</sup> (Ex. A1 at 2.)

4. Respondent worked at MCC until September 1, 1998. (Ex. A1 at 1-2.)

5. On September 2, 1998, Respondent was hired by Marion County Sheriff's Office (MCSO) as a Deputy Sheriff. Respondent was a good employee. (Ex. A1 at 1-2; test. of Stai.)

6. On or about June 15, 2008, Respondent transferred into the Parole and Probation Department of MCSO. (Ex. A1 at 1-2.)

7. Respondent subsequently received his Basic, Intermediate, and Advanced Parole and Probation Officer Certifications. (Ex. A1 at 1.)

8. Respondent worked at MCSO until he resigned on January 6, 2012. (Test. of Bergmann, Brotton; Ex. A1.)

### **MCSO Policy**

9. **General Order 26.1.1 – Standards of Conduct** provides, in pertinent part:

#### **Conduct**

A. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect favorably on the Marion County Sheriff's Office. Conduct unbecoming an employee shall include that which brings the Sheriff's Office into disrepute, reflects discredit upon the employee or the Department, or that which impairs the operation or efficiency of the Department or employee.

B. Employees shall maintain a level of moral conduct in their personal and business affairs which is in keeping with the highest standards of the law enforcement profession. Employees shall not participate in any incident involving moral turpitude or which impairs their ability to perform as Law Enforcement Personnel or causes the Department to be brought into disrepute.

#### **Conformance to Laws**

A. Employees shall obey all laws of the United States, state and local jurisdiction in which the employees are present.

B. A conviction for any violation of law, other than a minor traffic violation, shall be prima facie evidence of a violation

---

<sup>19</sup> Respondent's Corrections Certifications have since lapsed. (Ex. A1 at 2.)

of this section.

(Ex. A19 at 7-13; emphasis in original.)

10. **Policy 4110 – Priority of Assignments** provides, in relevant part:

This policy applies to all deputies, temporary hire deputies, case aides and interns assigned to manage caseloads.

1. Staff will prioritize work assignments in accordance with Evidence Based Practices when time does not permit the accomplishment of all segments of the workload due to emergencies, crisis, or when other events occur.

2. Staff will adhere to the following priority order of work duties:

- Emergencies, which may include, but are not limited to:
  - Incidents in which an offender presents an imminent risk to public safety.
  - Arrests, crisis intervention and reports pertaining to any emergency.
- Court appearance as required.
- Violation reports.
- Case management of offenders:
  - Driven by offender risk level as determined by risk, need, responsivity and offense type.
- Staff will prioritize tasks with the offenders who pose the highest risk of re-offending.
  - Cases classified as High or New.
  - Cases classified as Medium.
  - Cases classified as Low/Limited.
- Mandatory training, such as:
  - Firearms
  - Taser
  - Defensive Tactics/Confrontational Simulation
  - First Aid/CPR
- Committees/Community events

3. Staff will adhere to the following priority order of tasks:

- Assessments
- Change Contracts
- Notifications
- Treatment referrals
- Monitoring (per “Audit Checklist Requirements”)
- All other case work as needed.

4. Staff will obtain supervisor approval to depart from the above-listed priorities.

(Ex. A19 at 5-6; emphasis in original.)

11. **Marion County Administrative Policy 701 – Use of Telephones, Computer, and Data Communication Equipment, E-mail and Internet** provides, in material part:

### **1. Purpose**

The proper use of county offices and telecommunication equipment, e-mail and the Internet is an important method of effectively carrying out the mission of Marion County. Office and telecommunication equipment includes telephones, computers, personal digital assistants, facsimile machines, mobile data systems, modems, copy machines and other office equipment. In addition to the hardware components, information processing systems also include software components that make this equipment operate effectively.

These systems are tools to help county employees and volunteers carry out their job responsibilities efficiently. E-mail and the Internet are tools used to expedite communication within the county, with other agencies and with the public. These tools should be used appropriately.

### **2. General Policy**

(a) Office equipment and data communication hardware and software acquired by the county are to be used for official county business functions. Brief and infrequent personal use of these items is permitted consistent with this policy and department guidelines. Employees shall not use county equipment, hardware and software for private business activities.

\*\*\*\*\*

### **5. Internet**

Internet access is provided as a resource and tool for assisting in the conduct of official county business. Incidental personal use of county equipment to access Internet sites outside of work hours is permitted if it is conducted in a manner consistent with these policies and the standards of the Oregon Government Standards and Practices Commission. Personal

use of county Internet access to sites devoted to racist, violent or sexual content is strictly prohibited.

\*\*\*\*\*

Elected officials and department heads may establish more restrictive Internet use policies for their department. An elected official or department head may request the Information Technology department to implement software to limit, restrict and/or monitor employee Internet access at any time and without notice.

\*\*\*\*\*

## **10. Summary**

The proper use of county office and telecommunications equipment enhances productivity and allows the county to meet increased service needs. It is the responsibility of each county employee to use this equipment properly. Violation of the policies or procedures set forth in this policy may be grounds for disciplinary action up to and including termination of county employment.

(Ex. A19 at 14-19; emphasis in original.)

### **12. Policy 1445 – Use of System Resources provides, in part:**

This policy applies to all Sheriff's Office employees.

1. Employees will use this policy as a supplement to Marion County Information Technology Policy 701: Use of Telephones, Computer and Data Communication Equipment, E-Mail and Internet.

2. Employees will use system resources for Sheriff's Office business.

3. Employees with supervisory approval may use county owned computers, software, and internet access for personal use only before or after scheduled work hours and during rest or meal periods. Personal use does not constitute compensable time or overtime.

- Allowed personal use shall not interfere with Sheriff's Office business and must be virtually at no cost to the county.

\*\*\*\*\*

9. Employees will use system resources in an ethical, legal, appropriate, and professional manner. Uses of system resources must not be false, unethical, unlawful, offensive, lewd or disruptive. \*\*\*.

\*\*\*\*\*

17. The Sheriff's Office may withdraw permission for any or all uses of its system resources at any time without cause or explanation.

(Ex. A19 at 1-4; emphasis in original.)

13. MCSO policy requires its employees to carry their badges and/or identification cards on their persons at all times except when impractical or dangerous to their safety or to an investigation. (Test. of Stai, Brotton; Ex. A19 at 11.)

### **Respondent's behavior while employed at MCSO**

#### ***Smelling of alcohol***

14. On February 23, 2009, at 0900 hours, Sergeant Jayson Greer with MCSO entered Respondent's office at Marion County Parole and Probation, and was overcome by a strong odor of an alcoholic beverage. The sergeant asked Respondent if he had just used hand sanitizer and Respondent said, "Yes."

Sergeant Greer reported his observation to Sergeant Jay Bergmann and Office Manager Christina McCarty and requested that they follow-up regarding the smell. Sergeant Bergmann and Ms. McCarty could not detect an odor of an alcoholic beverage on Respondent's person.

Sergeant Greer then contacted Lieutenant Jeff Wood and Commander Troy Clausen regarding his observation. Sergeant Greer was directed to speak with Respondent about the odor and allow Respondent to go home for the day.

At 1035 hours, Sergeant Greer requested Respondent come to his office. Ms. McCarty was present as a witness. The sergeant asked Respondent if he had drunk alcohol the previous night. Respondent admitted that he had but stated he was in bed by midnight. Sergeant Greer advised Respondent that he could detect an odor of an alcoholic beverage coming from his breath and person. Respondent explained that his pores emit the smell of what he has eaten or drank, including alcohol and garlic. The sergeant advised Respondent that, given the nature of his job (conducting intakes with newly sentenced offenders), he should take the rest of the day off. Respondent did as requested. (Test. of Greer; Ex. A5 at 7-9.)

15. On December 22, 2010, Respondent attended a high profile sentencing hearing at Marion County courthouse. Respondent was not on duty, was not wearing a uniform,

and was not carrying a firearm. Pursuant to MCSO policy, Respondent was displaying his identification badge. Law enforcement personnel from other agencies were also in attendance.

At 1225 hours, while in the courtroom, Captain Jason Alexander with the Woodburn Police Department spoke with Lieutenant Robert Stai with MCSO and reported that Respondent was reeking of an alcoholic beverage. Lieutenant Stai approached Respondent and asked to speak with him outside of the courtroom. The lieutenant observed an odor of an alcoholic beverage coming from Respondent. The lieutenant also observed that Respondent had bloodshot and watery eyes.

Lieutenant Stai advised Respondent that someone had reported that he smelled like he had been drinking. The lieutenant also told Respondent that he could smell the odor of an alcoholic beverage on his person. Lieutenant Stai asked Respondent if he had been drinking that day, and Respondent said, "No." Respondent reported that he had been out partying the night before. Respondent also confirmed that he was not working. The lieutenant asked Respondent if he was able to get home safely, and Respondent indicated that he could. Respondent was cooperative with the lieutenant.

Shortly thereafter, Lieutenant Stai reported the incident to Commander Kevin Schultz with MCSO. At 1300 hours, Commander Schultz reported the matter to Lieutenant Kevin Karvandi with MCSO. Lieutenant Karvandi subsequently reported the matter to Commander Jeffrey Wood with MCSO. Commander Wood ordered Lieutenant Karvandi to investigate the incident. (Test. of Stai, Karvandi, Wood; Ex. A5 at 11, 53-55.)

16. On December 23, 2010, Lieutenant Karvandi interviewed Respondent regarding the courthouse incident. Respondent was cooperative with the lieutenant during the investigation. (Test. of Karvandi; Ex. A5 at 51, 53-55.)

17. On January 3, 2011, Commander Wood notified Respondent that MCSO was investigating the alleged violations of General Order 26.1.1 – Standard of Conduct, and Marion County Administrative Policy 515 – Court Facilities Security. (Exs. A5 at 40.)

18. On January 10, 2011, Lieutenant Karvandi submitted a report to Commander Wood, which stated, in part:

Re: Conclusion/Recommendation regarding incident involving Dep. William Brotton on December 22<sup>nd</sup>, 2010 at the Marion County Courthouse

Dep. Brotton was hired by the Marion County Sheriff's Office as a temporary hire Corrections Officer with the Institutions Division on June 7<sup>th</sup>, 1994 and hired on a full-time status on March 1<sup>st</sup>, 1996. On June 15<sup>th</sup>, 2008 Dep. Brotton transferred from the Institutions Division to the Parole and Probation Division as a Parole/Probation Deputy. Since Dep. Brotton's transfer to the Parole and Probation Division it is evident from his work performance that he takes

pride in his work, is very organized, quick to grasp new concepts/tasks and overall has done a good job managing his caseload.

As noted in my investigation there has been one prior incident, on February 23<sup>rd</sup>, 2009, involving Dep. Brotton smelling of alcohol in the work place. Dep. Brotton received coaching and counseling regarding this incident and was ultimately sent home for the rest of the day.

The seriousness of the current alleged violation (General Order 26.1.1 – Standard of Conduct) is not to be taken lightly. Dep. Brotton's actions reflect unfavorably to the Sheriff's Office and bring disrepute on the reputation or public image of the Sheriff's Office. I will note that the Court hearing Dep. Brotton attended on December 22<sup>nd</sup>, 2010 was high profile with many supporting law enforcement agencies in attendance. As noted in my investigation it was Capt. Alexander of Woodburn PD who brought his observations to the attention of Lt. Stai, who also indicated there had been several other people who had made comments about smelling the odor of an alcoholic beverage on Dep. Brotton while wearing his Sheriff's Office identification. It will be noted again that Capt. Alexander had been with other members of the Woodburn PD to include Chief Scott Russell.

Regarding Marion County Administrative Policy 515 – Court Facilities Security, I found this policy allows for the Sheriff and his/her designee (staff) to have 24-hour access to the Marion County Courthouse on or off-duty. This was confirmed by the Judicial Security Unit supervisor Lt. Dan Connor. Therefore, Dep. Brotton had authorization to use his Sheriff's Office identification card to gain entrance into the Courthouse on December 22<sup>nd</sup>, 2010.

As part of my investigation, I met with Dep. Brotton on December 23<sup>rd</sup>, 2010 and January 6<sup>th</sup>, 2011. On both occasions Dep. Brotton was cooperative.

Alleged Violation Sustained:

In review of the investigation reports concerning the incident involving Dep. Brotton on December 22<sup>nd</sup>, 2010 at the Marion County Courthouse, I conclude that Dep. Brotton violated the following Office policy:

- General Order 26.1.1 – Standard of Conduct: On December 22<sup>nd</sup>, 2010, Dep. Brotton attended a high

profile/high visibility hearing at the Marion County Courthouse smelling of alcohol while wearing a Sheriff's Office identification card. Although Dep. Brotton reports being off duty, he was wearing his Sheriff's Office identification card smelling of alcohol and any reasonable citizen would think he was on duty. By definition these acts reflect unfavorably and bring disrepute on the reputation or public image of the Sheriff's Office. Further, Dep. Brotton had previously been directed by Sgt. Jake Greer to be cognizant of the issue of him smelling of alcohol at the work place.

There is no clear case precedent for corrective action. Based on similar behavioral instances, I would recommend an appropriate corrective action range from a written reprimand up to and including a suspension.

(Ex. A5 at 51-52; emphasis in original.)

19. On February 15, 2011, Sheriff Jason Myers with MCSO notified Respondent that he would receive a one-day suspension for violating the Standards of Conduct General Order 26.1.1. Respondent was suspended effective February 28, 2011. (Ex. A5 at 56.)

### ***DUII***

20. On January 1, 2011, Respondent was arrested for DUII. On that date, at 0335 hours, Deputy Brian Dunkin with MCSO initiated a stop of Respondent's vehicle after observing the vehicle stopped in the middle of an intersection and then crossing over the center line on Skyline Road and again on Davis Road.

Deputy Dunkin contacted Respondent and explained the reason for the stop. The deputy asked Respondent why he had been stopped in the middle of the intersection. Respondent stated he had dropped his cigarette in the door pocket and had stopped to get it out before it caught fire.

While talking to Respondent, Deputy Dunkin observed a strong odor of an alcoholic beverage coming from Respondent. The deputy also observed that Respondent's eyes were bloodshot, watery and droopy. Deputy Dunkin asked Respondent if he had consumed any alcoholic beverages that evening. Respondent stated that he had three vodka drinks at "Melgard's" and was almost home.

After learning that Respondent worked for MCSO, Deputy Dunkin contacted Sergeant Burnham regarding the situation. Sergeant Burnham advised that he would request Salem Police Department (SPD) to conduct the remainder of the investigation.

At or around 0350 hours, Officer Brian Kohlmeyer with SPD arrived on scene to conduct the DUII investigation. Deputy Dunkin relayed his observations to Officer Kohlmeyer, as well as the reason for the stop.

Officer Kohlmeyer made contact with Respondent, who was seated in the driver's seat of the stopped vehicle. The officer observed a strong odor of an alcoholic beverage coming from the vehicle. The officer also observed that Respondent's eyes were bloodshot and glassy, and his speech was slightly slurred.

Officer Kohlmeyer asked Respondent if he was willing to perform field sobriety tests (FSTs), and Respondent said, "Sure, but I will fail, I always do." The officer asked Respondent why he always fails. Respondent explained that he could only see out of his left eye, which affects his balance. Respondent further explained that when he was two-years-old he had a medical issue that made him virtually blind in his right eye.

Officer Kohlmeyer read Respondent his *Miranda* rights from a prepared card. Respondent indicated he understood his rights. Officer Kohlmeyer administered the HGN, Nine Step Walk and Turn, and the One Leg Stand. At the conclusion of the tests, the officer advised Respondent that he was under arrest for DUII.

Officer Kohlmeyer transported Respondent to the police station. Upon arrival, Respondent agreed to take a breath test. The results of the breath test indicated that Respondent's BAC was .20%. Respondent was polite and cooperative throughout the investigation. (Test. of Kohlmeyer; Ex. A5 at 13-38.)

21. On January 3, 2011, Commander Wood notified Respondent that MCSO was investigating the alleged violation of General Order 26.1.1 – Standard of Conduct. Commander Wood also notified Respondent that he was being placed on administrative leave. Commander Wood ordered Lieutenant Karvandi to conduct the investigation. (Test. of Wood; Ex. A5 at 39.)

22. On March 1, 2011, Lieutenant Karvandi interviewed Respondent regarding the status of the DUII charge. Respondent reported the following: He had pled guilty to DUII on February 24, 2011 and been placed on DUII diversion; his driver license was suspended for 90 days; he had applied for a hardship permit; he had attended the Victim Impact Panel; he had completed his ADES assessment; and he had enrolled in counseling. (Ex. A5 at 129-130.)

23. On March 7, 2011, Lieutenant Karvandi submitted a report to Commander Wood, which stated, in part:

Re: Conclusion/Recommendation regarding incident involving Dep. William Brotton being arrested on Saturday January 1, 2011 on a new charge of Driving Under the Influence of Intoxicants (DUII).

Dep. Brotton was hired by the Marion County Sheriff's Office as a temporary hire Corrections Officer with the Institutions Division on June 7<sup>th</sup>, 1994 and hired on a full-time status on March 1<sup>st</sup>, 1996. On June 15<sup>th</sup>, 2008 Dep. Brotton transferred from the Institutions Division to the

Parole and Probation Division as a Parole/Probation Deputy. Since Dep. Brotton's transfer to the Parole and Probation Division it is evident from his work performance that he takes pride in his work, is very organized, quick to grasp new concepts/tasks and overall has done a good job managing his caseload.

With regard to the current alleged policy violations, initially when I began my investigation General Order 26.1.1 – Standard of Conduct was the only alleged policy violation. As I conclude my investigation I will also be alleging that Dep. Brotton has violated the Code of Ethics – vowing to obey the very laws he was sworn to uphold.

Regarding General Order 26.1.1 – Standard of Conduct, Dep. Brotton's actions on January 1, 2011 resulted in him being arrested and formally charged with a new crime of DUII. Based on the information contained in the police reports it was determined that Dep. Brotton was too intoxicated to be driving. Dep. Brotton failed the field sobriety tests and the result of his breath sample was a .20 BAC. Dep. Brotton entered a plea of guilty on February 24, 2011 and was consequently placed on DUII Diversion for 12 months. Dep. Brotton's actions has [sic] brought discredit towards himself and reflect unfavorably upon the Sheriff's Office, fellow officers, and the criminal justice profession. Additionally, Dep. Brotton's actions bring disrepute on the reputation and public image of the Sheriff's Office. Further, by definition of this offense, Dep. Brotton failed to obey all laws of the State of Oregon.

Regarding our Code of Ethics, all sworn staff (including Dep. Brotton) have vowed to obey the very laws that they are sworn to uphold. By the very nature of Dep. Brotton's actions (DUII arrest & placed on DUII Diversion) he has failed to obey all laws that he was sworn to uphold. I will also note that the Code of Ethics form located in Dep. Brotton's personnel file bears his signature.

#### Mitigating Circumstances:

As part of Dep. Brotton's DUII Diversion, he was ordered to complete the Victim Impact Panel (VIP), and complete an ADES assessment and follow treatment recommendations. Thus far, Deputy Brotton completed the VIP on February 14, 2011 and completed his ADES assessment at M & W Services on January 7, 2011. Dep. Brotton also attended his scheduled alcohol evaluation at Creekside Counseling on

January 24, 2011 and is currently enrolled in their program.

Aggravating Circumstances:

As noted in my investigation there has [sic] been two prior incidents involving Dep. Brotton having issues with alcohol. The first incident was on February 23<sup>rd</sup>, 2009 involving Dep. Brotton smelling of alcohol in the work place. Although there was no evidence to suggest that Dep. Brotton was physically intoxicated, it was not acceptable for Dep. Brotton to meet with clients or work with other staff due to him smelling of alcohol. Dep. Brotton received coaching and counseling regarding this incident and was ultimately sent home for the rest of the day. Further, Dep. Brotton was directed by Sgt. Jake Greer to be cognizant of the issue of him smelling of alcohol at the work place. The second incident was on December 22, 2010 involving Dep. Brotton who attended a high profile/high visibility hearing at the Marion County Courthouse (on personal business) smelling of alcohol while wearing a Sheriff's Office identification card. In this incident Dep. Brotton had bloodshot eyes and smelled of alcohol, however, he did not have any signs of impairment or intoxication such as slurred speech or difficulty walking. Dep. Brotton was found in violation of General Order 26.1.1 – Standard of Conduct, based on his actions reflecting unfavorably and bringing disrepute on the reputation and public image of the Sheriff's Office. Consequently, Dep. Brotton received formal discipline on February 15, 2011 resulting in a 1 day suspension of employment (instituted on February 28, 2011).

It is also important to point out the short time-frame between the incident on December 22, 2010 involving Dep. Brotton smelling of alcohol at the Marion County Courthouse, and his DUII arrest on January 1, 2011. Taking into consideration Dep. Brotton was already put on notice that his actions on December 22, 2010 at the Courthouse could result in discipline, it is concerning that he committed additional policy violations less than ten days later by being arrested for DUII on January 1, 2011.

With regard to Dep. Brotton's attitude I would like to point out some comments that he made at the last due process meeting held on February 10, 2011 (regarding the Courthouse incident on December 22, 2010). During this meeting Dep. Brotton made comments assigning blame to a prior administration which departed several years ago for his actions, as well as blame towards his previous supervisor Sgt.

Jake Greer. Based on his blaming comments it lends to the impression that he is not taking accountability for his actions.

Finally, as a result of Dep. Brotton's DUII arrest, his driver's license is suspended for 90 days as of January 30, 2011 at 1700 hours. According to my calculations, a 90 day license suspension would be through April 30, 2011 and reinstated on May 1, 2011. Unfortunately, Dep. Brotton is unable to apply for a hardship license for his employment with the Sheriff's Office at this time based on his administrative leave status. As mentioned in my investigation report dated March 7, 2011 in order for Dep. Brotton to be able to apply for a hardship license for the purpose of his employment with the Sheriff's Office, it would involve a letter from the Sheriff's Office on letterhead signed by an administrator outlining what his obligations to drive would be. Further, Dep. Brotton would also have to be off of administrative leave status. At this time, Dep. Brotton is unable to meet the standards of his Essential Job Functions of this position based on his inability to operate a motor vehicle.

Alleged Violations Sustained:

In review of the investigation reports concerning the incident involving Dep. Brotton's arrest for DUII on January 1, 2011, I conclude that Dep. Brotton violated the following:

- General Order 26.1.1 – Standard of Conduct: On January 1, 2011 Dep. Brotton's actions resulted in him being arrested and formally charged with a new crime of DUII. Dep. Brotton entered a plea of guilty on February 24, 2011 and was consequently placed on DUII Diversion for 12 months. Dep. Brotton's actions has [sic] brought on discredit towards himself and reflect unfavorably upon the Sheriff's Office, fellow officers, and the criminal justice profession. Additionally, Dep. Brotton's actions bring disrepute on the reputation and public image of the Sheriff's Office. Further, by definition of this offense, Dep. Brotton failed to obey all laws of the State of Oregon.
- Code of Ethics: As a sworn deputy, Dep. Brotton vowed to obey the very laws that they are sworn to uphold. By the very nature of Dep. Brotton's actions (DUII arrest & placed on DUII Diversion) he has failed to obey all laws that he was sworn to uphold. The Code of Ethics form outlining clear expectations is located in Dep. Brotton's personnel file bearing his signature.

Based on the totality of the circumstances, weighing all mitigating and aggravating factors, I am recommending an appropriate corrective action range from a 30 day suspension of employment up to and including termination of employment.

(Ex. A5 at 131-133; emphasis in original.)

24. On April 13, 2011, Respondent signed a Last Chance Agreement with MCSO that stated, in pertinent part:

1. Brotton will receive a suspension without pay of thirty (30) calendar days in connection with his violations of County policies.

2. Brotton must complete all terms and conditions of his diversion requirements, including but not limited to all education, evaluation and/or the successful completion of drug and alcohol counseling and/or counseling as may be recommended in the diversion process or by the substance abuse professional. Brotton shall provide access to all treatment provider(s) and records related to his progress in completing any and all aspects of the recommendations made by the substance abuse professional. As part of this Agreement, Brotton agrees to sign the included authorization (and any other authorization that may become necessary) to determine if Brotton has completed all requirements and that failure to provide or revoke such releases will be considered breach of agreement and grounds for termination.

3. Brotton will be subject to random drug and alcohol testing up to and including 6 times per year for the next 36 months. Any non-negative result will be grounds for immediate dismissal without recourse.

4. If Brotton engages in any misconduct in the next 36 months in violation of the code of ethics, code of conduct, the criminal laws of the state or the United States, such misconduct will be considered just cause for termination of Brotton's employment with the Sheriff's Office, Brotton's employment with the Sheriff's Office will be terminated, and neither Brotton nor FOPPO will file or pursue any grievance under the collective bargaining agreement regarding Brotton's discharge.

(Ex. A4 at 8-9.)

25. On April 15, 2011, Sheriff Jason Myers with MCSO notified Respondent that he would receive a 30 day suspension for violating the Standards of Conduct General Order 26.1.1 and the Code of Conduct General Order 72.1.9. Respondent was suspended effective April 17, 2011 through May 16, 2011. (Ex. A5 at 156.)

***Work performance issues***

26. While employed at MCSO as a Parole and Probation Officer (PO), Respondent worked in the Wolverine office. Respondent was assigned a medium risk caseload, which comprised of approximately 100 clients to supervise. Respondent was required to meet the following general requirements:<sup>20</sup>

- Meet each client face-to-face 7 times every 180 days, roughly one contact every month and document those meetings.<sup>21</sup>
- Complete a Level of Service Case Management Inventory (LSCMI) risk assessment on each client every 180 days.
- Complete an Oregon Case Management System (OCMS) risk assessment on each client every 180 days.
- Monitor each client for violations and report those violations to the releasing authority in a timely manner.
- Maintain contact with each client and request warrants for those that make themselves unavailable for supervision.

(Test. of Bergmann.) A LSCMI risk assessment provides the PO with the offender's risk to commit crimes in the community within the next few years. An OCMS risk assessment provides the PO with the offender's overall risk to reoffend. (*Id.*)

27. On May 31, 2011, Respondent returned to work at MCSO. Respondent's caseload had increased to approximately 135 clients. As of the date of his return, Respondent needed to perform risk assessments on all of his clients. Sergeant Bergmann met with Respondent and went over his expectations of Respondent, as well as Respondent's Last Chance Agreement with MCSO. The sergeant also instructed Respondent to meet the general requirements of his caseload, including the contact requirements. (Test. of Bergmann.)

28. On the date of his return, several of Respondent's co-workers told him that they did not want him there and that he should be fired. The work environment at MCSO was hostile towards Respondent. (Test. of Brotton.)

29. On May 31, 2011, Respondent opened an email from Sergeant Matt Meier that instructed all employees in the Wolverine office to refrain from using streaming music on MCSO's computers. (Ex. A18 at 4.) Respondent does not recall reading the email. (Test.

---

<sup>20</sup> The general requirements are derived from the Audit Checklist Requirements, which are set forth in policy. Every Parole and Probation Officer is required to know the Audit Checklist Requirements. (Test. of Bergmann.)

<sup>21</sup> Every significant contact or detail must be documented in the chronological record (or data base).

of Brotton.)

30. Sometime in August of 2011, Respondent received training in Effective Practice in Community Supervision (EPICS), a new model of supervision. EPICS required the PO to sit down with each client, identify goals for the client to reach while on parole or probation, go over all of the goals with the client, and identify things in the client's life that could be supportive and non-supportive of the client achieving the goals. (Test. of Bergmann.)

31. Following the three-day training, Respondent was required to meet the general requirements as well as utilize the EPICS model of supervision with each client and to document that use in the chronological records. (Test. of Bergmann; Ex. A4 at 4.)

32. Respondent did not fully understand EPICS. He asked Sergeant Bergmann for assistance with his large caseload and with the use of EPICS on at least four occasions (once a month). Sergeant Bergmann did not provide any assistance to Respondent. The sergeant believed Respondent could do his job without assistance. (Test. Bergmann, Brotton.)

33. When Respondent used EPICS, it took him 45 minutes per client. Respondent did not have enough time in the day to complete EPICS and the other requirements for every client on his caseload. Respondent got behind on meeting the general requirements. (Test. of Brotton.)

34. Respondent used EPICS on at least 30 percent of his caseload. He failed to document the use in the chronological records. (Test. of Brotton.)

35. On or about October 27, 2011, one of Respondent's co-workers at MCSO complained to Sergeant Bergmann that Respondent was not supervising his caseload correctly. Sergeant Bergmann subsequently informed Commander Wood and began an investigation. (Test. of Bergmann.)

36. During the time period that Respondent was struggling with his large caseload, two other PO's in the Wolverine office were struggling with their caseloads. (Test. of Bergmann, Brotton.)

37. On December 14, 2011, Sergeant Bergmann submitted an investigation report to Commander Wood, which stated, in part:

Re: Investigation involving Deputy William Brotton

On 10-27-11, I received information indicating that Brotton had not been supervising his clients appropriately and had been spending an inordinate amount of time on his computer accessing Facebook. I subsequently checked the chronological records (chronos) and noted that Brotton did not appear to be complying with contact standards on many of his clients.

On 11-03-11, I notified you of the above information and you ordered me to look into the matter in more detail.

I contacted Stella Bouldin from Human Resources and requested an internet usage report for the months of September and October 2011. I also requested internet usage reports for several other Parole and Probation Deputies (POs), during the same time frame. The reports I received indicated that Brotton's internet usage was roughly 6 times more than the other POs.<sup>22</sup> The reports also indicated that Brotton was accessing streaming music on his computer as well as Facebook and other social networking sites. I briefly checked the chronos for each of the clients on Brotton's caseload and learned he was not meeting the contact standards with approximately 40 of the clients on his caseload. I also checked Level of Service Case Management Inventory (LSCMI) and Oregon Case Management System (OCMS) risk assessments for Brotton's caseload and learned that he was past due on 46 LSCMI assessments and 38 OCMS assessments. This inquiry indicated that Brotton was potentially in violation of the following policies:

- General Order 26.1.1 – Standard of Conduct
- Policy 4110 – Priority of Assignments
- Marion County Administrative Policy 701 – Use of Telephones, Computer and Data Communication Equipment, E-mail and Internet
- Policy 1445 – Use of System Resources

#### Notice of Investigation (11-16-11)

On 11-16-11, I met with Brotton in my office at 3867 Wolverine Street N.E. Ste #1 Bldg F. I advised him that he had the right to union representation. He declined to have union representation. I served him with the Notice of Investigation and gave him time to read it. Brotton read the Notice of Investigation and began talking to me. I told Brotton that this was not an interview and that I was not asking him questions. Brotton told me that he had been using Pandora and that everyone uses it. He then told me that his caseload was somewhat in disarray because he was angry about the disproportionate workload. He went on to say that many of the PO's around the office don't work very hard and that he was tired of working harder than they were. He then

---

<sup>22</sup> The internet usage reports actually indicated that Respondent clicked his mouse 6 more times than other PO's. (Test. of Bergmann.)

stated that he became angry about the workload issues and basically stopped working for two months. I suggested to him that he stop talking to me and consult with his union representati[ve]. He stated that he did not want to talk to his union representative. I then suggested that he consult with his union attorney. He stated that he did not want to consult the union attorney. I then suggested he may want to consult with his own attorney. Brotton signed the Notice of Investigation f[orm].

On 11-18-11, I received detailed internet usage reports from Human Resources. Those reports indicate that Brotton used the internet more than 6 times as much as his peers and spent between 2 and 8 hours browsing the internet each day.<sup>23</sup> The reports also indicated that Brotton listened to Pandora, a streaming music website, every day for several hours. The reports also indicated that Brotton accessed Facebook and other social networking websites every day; often for more than 30 minutes and on multiple occasions for several hours. It should be noted here that staff in this office have been directed not to use streamlining music websites as it slows down the internet connection and interferes with the entire network for this office.

On 11-29-11 and 12-01-11, I completed an in depth review of Brotton's caseload. I reviewed all of the chrono entries from May 2011 to the present. I also reviewed all of Brotton's caseload files.

Brotton is currently assigned to supervise a caseload of about 100 medium risk clients. The general requirements of this caseload are as follows:

- Meet with each client face to face 7 times each 180 days, roughly one contact every month and document those meetings.
- Utilize the EPICS model of supervision with each client and document in chrono's and Change Contracts.
- Complete an LSCMI risk assessment on each client every 180 days.
- Complete an OCMS risk assessment on each client every 180 days.
- Monitor each client for violations and report those

---

<sup>23</sup> The internet usage reports indicated that Respondent clicked his mouse 6 more times than other PO's. The internet usage reports did not distinguish between work and personal time. Sergeant Bergmann had no way of knowing what amount of time Respondent spent on the internet that was work-related versus not work-related. (Test. of Bergmann.)

violations to the releasing authority in a timely manor [sic].

- Maintain contact with each client and request warrants for those that make themselves unavailable for supervision.

The in depth review revealed the following:

- 46 of the cases did not have an LSCMI completed in the last 180 days.
- 38 of the cases did not have an OCMS completed in the last 180 days.
- 38 of the cases appear to be lacking the required contacts:
  - All of those cases had no contact with the PO in over 30 days.
  - 30 of those cases had no contact with the PO in over 60 days.
  - 16 of those cases did not have a current appointment scheduled.
  - 7 of those cases should have had a warrant as they had absconded supervision.
- There were only 7 documented attempts to utilize the EPICS model with this caseload. It should be noted here that Brotton was trained in the EPICS model in August of 2011 and was given directives to begin using the model with all of his clients. Through the months of September, October, and November there should be approximately 300 documented attempts to utilize the EPICS model.

On 12-02-11, I spoke with Brotton and scheduled an interview with him for 12-05-11 at 2:00PM.

On 12-05-11, at approximately 11:30AM, I tried to contact Brotton in an effort to give him reports for his review prior to the interview. I was unable to locate him, so I gave the reports to the FOPPO president who agreed to give the reports to Brotton as soon as he returned to the office.

#### Interview with Deputy William Brotton (12-05-11)

On 12-05-11, at approximately 2:10PM I met with Brotton, Wendy Bales – FOPPO president, and Lt. Karvandi. I asked Brotton if he had received the reports and if he had time to review them. He stated that he did. I asked him if he had any questions regarding the reports. He indicated that he did not. I gave him a copy of the “Advice of Employee Rights.” Brotton read the form and signed it. I asked him if he had any questions. He stated that he did not.

I asked Brotton if he remembered the E-mail, sent by Sgt. Meier on 02-28-11, which directed staff to discontinue using streaming media websites. Brotton stated that he did not. I showed him a copy of the E-mail properties which indicated that he opened the E-mail on 05-31-11. Brotton stated that he did not contest that, but did not remember reading the E-mail. I informed Brotton that the internet usage report indicated that he had accessed streamlining music on numerous occasions and asked him to explain. Brotton stated that he used streamlining music almost every day in between meeting with clients. I asked him how long he had been doing that. He stated that he thought he began using streaming music around September of 2008.

I reminded Brotton about the internet usage policies that allowed for brief and infrequent use of the internet for personal use while on breaks and lunch periods. I advised him that his internet usage was well over the acceptable level and asked him what he was doing on the internet. Brotton stated that he uses the internet to search for resources for his clients, such as parenting classes, housing resources, treatment resources, and food banks. Brotton also stated that he used the internet to search for cars and housing for himself. Brotton also stated that in order to fully answer the question he would need to see a detailed report of his usage for each day so he could explain exactly what he was doing. I referenced the internet usage report that showed numerous hours of internet browsing each day and asking him what percentage of that was work related. Brotton stated that some days he may have had internet pages open on his computer while he was working on other things and some days he spends a large amount of time accessing a number of internet based programs that are all work related. I asked Brotton what he was doing on Facebook. He stated that it depended on the day and time, but he did use his personal Facebook account to monitor his client's activity on Facebook and contact them. I asked him if there was documentation of this activity, Brotton stated that there were sanctions that documented the use of Facebook to substantiate violations, but he could not remember the names of the clients. Brotton also stated that he had transferred two clients to gang caseloads and the gang association was verified through Facebook. Again he could not remember the names. I asked Brotton why that information wasn't documented in the chronos. Brotton then sited [sic] one case and mentioned an event about a year ago where he documented information received from Facebook.

I advised Brotton that the chronos indicated he was not meeting the contact standards on about 40 of his cases. I asked him to explain. He stated that he recently created an intake calendar because his prior system for tracking cases had not been working and he had lost track of some. He also indicated that some of his clients had failed to report and that he had lost track of them due to the number of cases on his caseload. I asked him if he had anything to say about other contacts on his caseload. He stated that he was not doing home visits because he though[t] I had previously told him not to do home visits and to focus on office visits. He went on to say that he had not been in the field for three months and assumed that someone would have noticed and would have said something if that was a problem.

I advised him that ISIS indicated he was overdue on 46 LSCMI assessments and 38 OCMS assessments. I asked him to explain. He stated it was due to caseload turnover and that was about normal for everyone in the office.

I advised him there was very little evidence that he was using EPICS. I then asked him if he was using EPICS. He stated that he was using EPICS with 30 to 50 percent of the people that he sees. I asked him how often he used EPICS. He stated the last time he utilized EPICS it took 50 minutes and he chose not to use EPICS on the next 5 people so he could catch up. I then asked him why he wasn't documenting his use of EPICS as required. He stated that he was trying to work EPICs into his conversations with his clients, but he was having a hard time considering the numbers on his caseload. I advised him that there were only 7 documented instances of EPICS. He stated that he forgets to chrono contacts on a regular basis and just because information is not documented does not mean the work is not getting done. He mentioned that I have talked to him several times about this issue and that he is working on it now, but cannot change the past.

At the end of the interview, Brotton provided several documents that he had created which gave explanations for the lack of contacts and LSCMI's for his caseload. He then submitted LSCMI listings for several other caseloads and stated that his LSCMI assessments are about normal for the office. He went on to say that he came to work the day after he was notified of the investigation and did this research on the other caseloads. He also submitted several letters of reference that he had solicited.

### Additional Information

It should be noted here that Brotton's number of LSCMI's overdue is not the norm for the office. The caseloads that he referenced are High risk caseloads with much higher rates of abscond, or specialty caseloads which require difference risk assessments than the LSCMI, with one exception – and that PO is still in the Field Training and Evaluation Program and has been counseled about the importance of completing assessments. Brotton failed to reference the other similar caseload to his, which has only 9 overdue LSCMI assessments.

### Findings

#### General Order 26.1.1 – Standard of Conduct: **Sustained**

After reviewing all of the information gathered, I find that Brotton did use streaming music from the internet despite receiving an E-mail from a supervisor directing all staff to cease.

After reviewing all of the information gathered, I find that Brotton failed to utilize EPICS with his caseload as required. In the three months since his EPICS training, he should have approximately 300 instances of EPICS. The fact that there are only 7 documented instances of EPICS is compelling. I do not find Brotton's claim of utilizing EPICS on 30 to 50 percent of his clients, despite the fact that none of that is documented, to be credible. Even if it were, utilizing EPICS on only 30 to 50 percent of his caseload would be unacceptable, and failing to document it would be unacceptable.

#### Policy 4110 – Priority of Assignments: **Sustained**

After reviewing all of the information gathered, I find that Brotton has failed to manage his caseload in a manor [sic] consistent with the Audit Checklist Requirements. He has failed to complete OCMS assessments as required. He has failed to complete LSCMI assessments as required. He has failed to maintain contact standards with about 40 percent of his caseload. He has failed to utilize EPICS with his caseload. Brotton has claimed that he has had more contacts with his clients than the record reflects because he has forgotten to properly document them. Proper documentation is also a part of case management.

Marion County Administrative Policy 701 – Use of  
Telephones, Computer and Date Communication Equipment,

### E-mail and Internet: **Sustained**

I find that Brotton's use of the internet is excessive. The internet usage reports are both clear and compelling. His total requests, which indicates the number of times he clicks on a link, is 6 times that of his peers. His total browsing time exceeds 248 hours for the months of September and October which averages out to more than 6 hours per work day. His use of streaming music accounts for about 1/3 of that time. He uses the computer to access Facebook every day. On 12 occasions he was on Facebook for more than 1 hour. On 3 occasions he was on Facebook for more than 2 hours. On one occasion he was on Facebook for more than 8 hours.

The policy states that brief and infrequent use of the internet for personal use on breaks and lunch periods is permitted as long as it does not interfere with normal work. Brotton's use is neither brief nor infrequent and I believe it is clear from the above violations that it is interfering with normal work.

Brotton's claim that the majority of the internet usage is work related cannot be verified as he has not documented any of this activity in the official records.

### Policy 1445 – Use of System Resources: **Sustained**

This policy is congruent with Marion County Administrative Policy 701. It orders that computers and the internet are to be used for work purposes with brief and infrequent personal use allowed. As mentioned above, Brotton's use of the internet is neither brief nor infrequent.

### Aggravating Factors

- Brotton is currently on a Last Chance Agreement.
- Brotton received formal discipline on 04-15-11 for violating General Order 26.1.1 – Standard of Conduct and General Order 72.1.9 – Code of Conduct. Brotton committed the crime of Driving Under the Influence of Intoxicants. Brotton was arrested for this crime and subsequently entered into a Diversion Program with the Courts. Brotton received a 30 day suspension of employment and also entered into the Last Chance Agreement.
- Brotton received formal discipline on 02-15-11 for violating General Order 26.1.1 – Standard of Conduct: On 1-22-10, Brotton attended a high profile/high visibility hearing at the Marion County Courthouse smelling of alcohol while wearing his Sheriff's Office identification card. Brotton did not conduct himself in a manner favorable to the MCSO and brought disrepute on the

reputation or public image of the Sheriff's Office.  
Brotton received a 1 day suspension of employment (on 02-28-11).

- There was a very short time-frame between the incident on 12-22-10 involving Brotton smelling of alcohol at the Marion County Courthouse, and his DUII arrest on 01-01-11.
- On 05-31-11, Brotton returned to work following his 30 day suspension. On that day, I advised him that while he was out of the office, several of his peers had found cases on his caseload that did not meet contact standards. I advised him that this office had reestablished contact with those cases and that he needed to maintain contact standards with his caseload.
- Brotton's attitude is not favorable. He takes very little responsibility for his actions. He blames high workload and miscommunication for the performance issues. Instead of accepting responsibility for his caseload and working to correct the errors, he spends his time investigating other caseloads in an attempt to justify his work. There is a very clear discrepancy between his statements to me on the day he was notified of this investigation and the day he was interviewed.

#### Mitigating Factors

- Brotton has fully complied with all of the requirements of his Diversion Program.
- Brotton opened the E-mail, which directed him not to use streaming music on his computer, on the first day he returned to work following his suspension. He would have undoubtedly opened a large number of E-mails on that day.

#### Recommendation

Based on the totality of the circumstances outlined in this report, considering all of the mitigating and aggravating factors as well as Brotton's attitude, I am recommending termination of employment.

(Ex. A4 at 3-7; emphasis in original.)

38. The PO's at MSCO were allowed to use the internet for work-related matters. The internet usage reports that Sergeant Bergmann received from the Human Resources Department, did not distinguish between work and personal time. Sergeant Bergmann had no way of knowing what amount of time Respondent spent on the internet that was work-related versus not work-related. (Test. of Bergmann, Brotton.)

39. Although Respondent told Sergeant Bergmann that he had “basically stopped working for two months,” he did not stop working for two months. During the period at issue, Respondent was receiving, on average, one new client every day. Respondent had to work to reduce his caseload. As of the date of December 14, 2011, Respondent had reduced his caseload from 135 to 110. (Test. of Brotton; Exs. A15, A16.)

40. Respondent did not perform his job in a satisfactory manner. Respondent did not meet the general requirements of his caseload. (Test. of Brotton.)

41. Respondent’s actions of failing to meet the general requirements on his caseload, placed the public in danger, affected the efficient operation of the MSCO, violated the standards and practices of the public safety profession, violated his supervisor’s directives, and violated his Last Chance Agreement. (Test. of Bergmann; Exs. A4, A9.)

42. On December 15, 2011, Commander Wood notified Respondent that MCSO was investigating the following alleged violations:

- General Order 26.1.1 – Standard of Conduct
- Policy 4110 – Priority of Assignments
- Marion County Administrative Policy 701 – Use of Telephones, Computer and Data Communication Equipment, E-mail and Internet
- Policy 1445 – Use of System Resources

(Ex. A4 at 11.) Commander Wood also notified Respondent that he was being placed on administrative leave. (*Id.*)

43. On January 6, 2012, Respondent submitted his resignation to MCSO. (Ex. A4 at 16.)

### **Actions by DPSST**

44. On January 13, 2012, MCSO notified DPSST that Respondent had resigned in lieu of termination. (Ex. A3.)

45. On January 24, 2012, Kristen Turley, Standards & Compliance Coordinator with DPSST, sent a letter to Sheriff Jason Myers with MCSO, requesting copies of the underlying investigation that led to Respondent’s resignation. (Ex. A4 at 1.)

46. On September 12, 2012, Leon Colas, Professional Standards Investigator and Coordinator with DPSST, sent a letter to Respondent that stated, in pertinent part:

The Department of Public Safety Standards and Training (DPSST) has the responsibility to ensure the minimum standards for public safety officers in the State of Oregon are maintained.

*DPSST has received information that you resigned from the Marion County Sheriff's Office in lieu of termination after an internal investigation found you had violated department policies and your Last Chance Agreement. These policies related to Standard of Conduct, Priority of Assignments, and Use of Telephones, Computer and Data Communication Equipment, Email and internet as well as Use of System Resources. Your conduct surrounding these incidents must be reviewed by the Corrections Policy Committee to determine whether you continue to meet the minimum standards for Oregon public safety certification.*

There are two methods of resolving this matter. You may sign the Stipulated Order Revoking Certifications and return it to me within ten (10) calendar days of the date of this letter. Or, if you choose not to sign this Stipulated Order, your case will be presented to the *Corrections Policy Committee* which will review the underlying investigation and make a recommendation whether to revoke your certifications based on your conduct. If their recommendation is to revoke your certifications, DPSST will issue you a Notice of Intent to Revoke. The Policy Committee's recommendation will then be forwarded to the full Board and they will either affirm or overturn the Policy Committee's recommendation. In making their decision, the Policy Committee and Board may consider any mitigating or aggravating circumstances. The Policy Committee will **not** consider oral testimony. You may choose to submit, in writing, relevant information on your behalf. If you choose to respond, I must receive your information, in writing, by 5:00 p.m. on **October 12, 2012**.

If you choose to sign the attached Stipulated Order Revoking Certifications, this document will stop all revocation proceedings through the Policy Committee and the Board.

(Ex. A6 at 1-2; emphasis in original.)

### **Other matters**

47. On November 13, 2012, the Corrections Policy Committee (CPC) met and discussed Respondent's case. The CPC determined that Respondent's behavior involved disregard for the rights of others, gross misconduct, misconduct and insubordination. The CPC recommended revocation of Respondent's certifications for a period of 15 years for disregard for the rights of others; 10 years for gross misconduct; 7 years for misconduct; and 7 years for insubordination. (Ex. A11.)

48. On November 20, 2012, DPSST issued a Contested Case Notice of Intent to

Revoke, Opportunity to be Heard, and Final Order Revoking Certifications if No Request for Hearing is Received (Notice) to Respondent. (Ex. A9.)

49. On November 26, 2012, Respondent requested a hearing to contest the Notice. (Ex. A10.)

50. On January 24, 2013, the Board on Public Safety Standards and Training (Board) met and adopted the CPC's decision regarding Respondent. (Ex. A13.)

## CONCLUSIONS OF LAW

1. Respondent lacks the minimum standards necessary for employment as a law enforcement officer.
2. Respondent's certifications may be revoked for a period not to exceed five years.

## OPINION

DPSST contends that Respondent lacks the minimum standards necessary for employment as a law enforcement officer and should have his certifications revoked. As the proponent of this position, DPSST has the burden of proof. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987). As modified below, DPSST has met its burden.

### **1. Whether Respondent lacks the minimum standards necessary for employment as a law enforcement officer.**

ORS 181.640 provides:

(1) In accordance with any applicable provision of ORS chapter 183, to promote enforcement of law and fire services by improving the competence of public safety personnel and their support staffs, and in consultation with the agencies for which the Board on Public Safety Standards and Training and Department of Public Safety Standards and Training provide standards, certification, accreditation and training:

(a) The department shall recommend and the board shall establish by rule reasonable minimum standards of physical, emotional, intellectual and moral fitness for public safety personnel and instructors.

OAR 259-008-0010 is titled "Minimum Standards for Employment as a Law

Enforcement Officer” and provides, in material part:

(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(a) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(b) Discretionary disqualifying misconduct described in OAR 259-008-0070(4).

DPSST is authorized to establish by rule reasonable minimum standards for public safety personnel and instructors. Pursuant to OAR 259-008-0010(6), the minimum standards for employment as a law enforcement officer includes being of good moral fitness.

In this matter, DPSST contends that Respondent lacks good moral fitness because he engaged in discretionary disqualifying misconduct. I agree with the DPSST.

OAR 259-008-0070 is titled “Denial/Revocation” and provides, in pertinent part:

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Public Safety Professional or Instructor:

(a) The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

\*\*\*\*\*

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640;

\*\*\*\*\*

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes

violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public[;]

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office[;]

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that “Contempt of Court” meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional’s or instructor’s refusal to comply with the rule or order constitutes a substantial breach of that person’s duties.

### **Disregard for the Rights of Others**

DPSST first contends that Respondent engaged in disregard for the rights of others when he failed to meet the general requirements of his caseload. I agree.

Disregard for the rights of others includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public. OAR 259-008-0070(4)(b)(B).

During the period of May 31, 2011 through December 14, 2011, Respondent failed to conduct LSCMI assessments on 46 of his cases; failed to conduct OCMS assessments on 38 of his cases; failed to make the required contacts on 38 of his cases; and failed to utilize and document EPICS on all of the client contacts that he made.

Respondent agreed that he did not meet the general requirements of his caseload. Respondent also agreed that he did not perform his job in a satisfactory manner.

By failing to meet the general requirements of his caseload, Respondent placed the public in danger, demonstrated a disregard for the rights of others and violated his fundamental duty to protect and serve the public.

I find, by a preponderance of the evidence that Respondent engaged in disregard for the rights of others.

DPSST next contends that Respondent engaged in disregard for the rights of others when he stopped working for two months. I disagree.

Respondent testified that although he told Sergeant Bergmann that he had “basically stopped working for two months,” he did not stop working for two months. Respondent’s testimony was logical, consistent and reliable.

Moreover, Respondent’s testimony was corroborated by the fact that, during the period at issue, Respondent received a new client every day and still managed to reduce his caseload from 135 to 110. Therefore, DPSST’s argument is unpersuasive.

### **Gross Misconduct**

DPSST first contends that Respondent engaged in gross misconduct when he failed to meet the general requirements of his caseload. I agree.

Gross Misconduct includes an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance. OAR 259-008-0070(4)(b)(D).

During the period of May 31, 2011 through December 14, 2011, Respondent failed to conduct LSCMI assessments on 46 of his cases; failed to conduct OCMS assessments on 38 of his cases; failed to make the required contacts on 38 of his cases; and failed to utilize and document EPICS on all of the client contacts that he made.

Respondent agreed that he did not meet the general requirements of his caseload. Respondent also agreed that he did not perform his job in a satisfactory manner.

By failing to meet the general requirements of his caseload, Respondent created a danger or risk to persons, property, and the efficient operation of the MSCO. Respondent’s actions were a gross deviation from the standard of care that a reasonable PO would observe in a similar circumstance.

I find, by a preponderance of the evidence that Respondent engaged in gross misconduct.

DPSST next contends that Respondent engaged in gross misconduct by using the internet 6 times more than the office average. I disagree.

The internet usage reports that Sergeant Bergmann received from the Human Resources Department, actually indicated that Respondent clicked his mouse 6 more times than other PO's.

In addition, the internet usage reports did not distinguish between work and personal time. Sergeant Bergmann had no way of knowing what amount of time Respondent spent on the internet that was work-related versus not work-related. Accordingly, DPSST's argument is unpersuasive.

DPSST also contends that Respondent engaged in gross misconduct by not working for two months. However, as set forth previously, I found that argument to be without merit.

### **Misconduct**

DPSST first contends that Respondent engaged in misconduct when he failed to meet the general requirements of his caseload, which violated his Last Chance Agreement. I agree.

Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. OAR 259-008-0070(4)(b)(E).

On April 13, 2011, Respondent signed a Last Chance Agreement wherein he agreed that if he engaged in any misconduct in the next 36 months in violation of the code of ethics, code of conduct, the criminal laws of the state or the United States, such misconduct would be considered just cause for termination of his employment with MSCO.

During the period of May 31, 2011 through December 14, 2011, Respondent failed to conduct LSCMI assessments on 46 of his cases; failed to conduct OCMS assessments on 38 of his cases; failed to make the required contacts on 38 of his cases; and failed to utilize and document EPICS on all of the client contacts that he made.

Respondent agreed that he did not meet the general requirements of his caseload. Respondent also agreed that he did not perform his job in a satisfactory manner.

By failing to meet the general requirements of his caseload, Respondent violated the practices or standards generally followed by PO's in the Oregon public safety profession. Respondent's actions violated the code of ethics, the code of conduct and his Last Chance Agreement.

I find, by a preponderance of the evidence that Respondent engaged in misconduct.

DPSST next contends that Respondent engaged in misconduct when he misused the internet. However, as indicated previously, I found that argument to be without merit.

### **Insubordination**

DPSST contends that Respondent engaged in insubordination when he failed to

meet the required contacts of his caseload as directed by Sergeant Bergmann, which violated his Last Chance Agreement. I agree.

Insubordination includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. OAR 259-008-0070(4)(b)(F).

On May 31, 2011, Sergeant Bergmann met with Respondent and went over his expectations of Respondent, as well as Respondent's Last Chance Agreement with MCSO. The sergeant also instructed Respondent to meet the general requirements of his caseload, including the contact requirements.

During the period of May 31, 2011 through December 14, 2011, Respondent failed to conduct LSCMI assessments on 46 of his cases; failed to conduct OCMS assessments on 38 of his cases; failed to make the required contacts on 38 of his cases; and failed to utilize and document EPICS on all of the client contacts that he made.

Respondent agreed that he did not meet the general requirements of his caseload. Respondent also agreed that he did not perform his job in a satisfactory manner.

By failing to meet the required contacts of his caseload as directed by Sergeant Bergmann, Respondent failed to comply with an order that was reasonably related to the orderly, efficient or safe operation of MSCO, which violated his Last Chance Agreement. Respondent's actions constituted a substantial breach of his duties.

I find that Respondent engaged in insubordination.

Accordingly, the evidence in the record establishes that Respondent engaged in discretionary disqualifying misconduct. Therefore, Respondent lacks good moral fitness. Consequently, Respondent lacks the minimum standards necessary for employment as a law enforcement officer.

## **2. Whether Respondent's Basic, Intermediate, and Advanced Parole and Probation Officer Certifications may be revoked.**

ORS 181.662 provides:

(1) The Department of Public Safety Standards and Training may deny the application for training, or deny, suspend or revoke the certification, of any instructor or public safety officer, except a youth correction officer or fire service professional, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that:

\*\*\*\*\*

(c) The public safety officer or instructor does not meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640(1)(a) to (d).

OAR 259-008-0070 further provides:

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Public Safety Professional or Instructor:

(a) The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

\*\*\*\*\*

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640;

As indicated above, DPSST may revoke the certification of any public safety professional if that individual fails to meet the minimum standards established under ORS 181.640. Because I have determined that Respondent lacks the minimum standards necessary for employment as a law enforcement officer, DPSST may revoke Respondent's Basic, Intermediate, and Advanced Corrections Certifications.

However, I propose that DPSST revoke Respondent's certifications for a period not to exceed five years.

At hearing, Respondent proved that his caseload was 135, substantially higher than the average medium risk caseload. In addition, Respondent proved that he was working in a hostile work environment.

Moreover, Respondent proved that during the period at issue, he asked Sergeant Bergmann several times for help with his large caseload and with EPICS and he did not receive any assistance from his supervisor.

Furthermore, Respondent proved that although he told Sergeant Bergmann that he had "basically stopped working for two months," he actually had continued to work, reducing his caseload from 135 to 110.

Finally, Respondent proved that the internet usage reports that both CPC and DPSST relied upon were unreliable and failed to establish the violations that were asserted by MSCO and DPSST.

Consequently, the reliable evidence in the record establishes that Respondent's certifications should be revoked for a period not to exceed five years.

## **ORDER**

I propose the Department of Public Safety Standards and Training issue the following order:

The Contested Case Notice of Intent to Revoke, Opportunity to be Heard, and Final Order Revoking Certifications if No Request for Hearing is Received issued on November 20, 2012 is **AFFIRMED** as **MODIFIED**.

**Dove L. Gutman**

---

Senior Administrative Law Judge  
Office of Administrative Hearings

## **EXCEPTIONS**

The proposed order is the Administrative Law Judge's recommendation to the Oregon Department of Public Safety Standards and Training (Department). If you disagree with any part of this recommendation, you may make written objections, called "exceptions," to the recommendation and present written argument in support of your exceptions. Exceptions and argument must be filed with the Department of Public Safety Standards and Training not later than fourteen (14) days following the date of mailing of the proposed order at the following address:

Director  
DPSST  
4190 Aumsville Hwy SE  
Salem, Oregon 97317

## **FINAL ORDER**

After considering all the evidence, the proposed order, and the timely filed exceptions, if any, the Department will issue the final order in this case. The final order may adopt the proposed order prepared by the Administrative Law Judge as the final order or modify the proposed order and issue the modified order as the final order (*see* OAR 137-003-0665).

## **APPEAL**

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within sixty (60) days after the final order is served upon you. See ORS 183.480 et seq.

**CERTIFICATE OF MAILING**

On September 16, 2013, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 1203069.

By: First Class Mail

William Brotton  
4676 Commercial St SE #36  
Salem OR 97302

Leon Colas  
Dept. of Public Safety Standards and Training  
4190 Aumsville Hwy SE  
Salem OR 97317

Frank Hammond  
Senior Assistant Attorney General  
Department of Justice  
1162 Court Street Ne  
Salem OR 97301

Ryan Clark  
Administrative Specialist  
Hearing Coordinator

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING**

IN THE MATTER OF: ) **AMENDED PROPOSED ORDER**  
 )  
**WILLIAM N. BROTTON,** ) OAH Case No.: 1203069  
**Respondent** ) Agency Case No.: 32156

**HISTORY OF THE CASE**

On November 20, 2012, the Department of Public Safety Standards and Training (Department or DPSST) issued a Contested Case Notice of Intent to Revoke, Opportunity to be Heard, and Final Order Revoking Certifications if No Request for Hearing is Received (Notice) to William N. Brotton (Respondent). On November 26, 2012, Respondent requested a hearing to contest the Notice.

On December 13, 2012, the Department referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) Dove L. Gutman was assigned to preside at hearing.

On February 21, 2013, a pre-hearing telephone conference was held. ALJ Gutman presided. Respondent represented himself. Assistant Attorney General (AAG) Craig Johnson represented the Department. Leon Colas appeared on behalf of the Department. Hearing was scheduled for June 18, 2013.

On March 13, 2013, Mr. Johnson, on behalf of the Department, requested postponement of the hearing. Respondent had no objection. On March 15, 2013, ALJ Gutman granted the request. Hearing was rescheduled for August 27, 2013.

On August 27, 2013, a hearing was held in Salem, Oregon. Respondent represented himself. Senior AAG Frank Hammond represented the Department. The following individuals provided testimony: Respondent, Sergeant Jay Bergmann, Commander Jeff Wood, Sergeant Jayson Greer, Robert Stai, Lieutenant Kevin Karvandi, Officer Brian Kohlmeier, Leon Colas, and Lisa Settell. The record closed on August 27, 2013.

**ISSUES**

1. Whether Respondent lacks the minimum standards necessary for employment as a law enforcement officer.
2. Whether Respondent's certifications may be revoked.

## EVIDENTIARY RULING

Exhibits A1 through A19, offered by the Department, were admitted into the record without objection.

### FINDINGS OF FACT

#### Background

1. On June 6, 1994, William Brotton (Respondent) was hired by Marion County Corrections (MCC) as a Corrections Officer. (Ex. A1.)

2. On August 6, 1996, Respondent signed the Criminal Justice Code of Ethics, which states, in material part:

AS A CRIMINAL JUSTICE OFFICER, my fundamental duty is to serve mankind; to safeguard lives and property; to protect all persons against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all people to liberty, equality and justice.

I WILL keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity, will be kept ever secret unless revelation is necessary in the performance of my duty.

I WILL never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. Without compromise and with relentlessness, I will uphold the laws affecting the duties of my profession courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence, and never accepting gratuities.

I RECOGNIZE my position as a symbol of public faith, and I accept it, as a public trust to be held so long as I am true to the ethics of The Criminal Justice System.

(Ex. A2 at 1.)

3. Respondent subsequently received his Basic, Intermediate, and Advanced

Corrections Certifications.<sup>24</sup> (Ex. A1 at 2.)

4. Respondent worked at MCC until September 1, 1998. (Ex. A1 at 1-2.)

5. On September 2, 1998, Respondent was hired by Marion County Sheriff's Office (MCSO) as a Deputy Sheriff. Respondent was a good employee. (Ex. A1 at 1-2; test. of Stai.)

6. On or about June 15, 2008, Respondent transferred into the Parole and Probation Department of MCSO. (Ex. A1 at 1-2.)

7. Respondent subsequently received his Basic, Intermediate, and Advanced Parole and Probation Officer Certifications. (Ex. A1 at 1.)

8. Respondent worked at MCSO until he resigned on January 6, 2012. (Test. of Bergmann, Brotton; Ex. A1.)

### **MCSO Policy**

9. **General Order 26.1.1 – Standards of Conduct** provides, in pertinent part:

#### **Conduct**

A. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect favorably on the Marion County Sheriff's Office. Conduct unbecoming an employee shall include that which brings the Sheriff's Office into disrepute, reflects discredit upon the employee or the Department, or that which impairs the operation or efficiency of the Department or employee.

B. Employees shall maintain a level of moral conduct in their personal and business affairs which is in keeping with the highest standards of the law enforcement profession. Employees shall not participate in any incident involving moral turpitude or which impairs their ability to perform as Law Enforcement Personnel or causes the Department to be brought into disrepute.

#### **Conformance to Laws**

A. Employees shall obey all laws of the United States, state and local jurisdiction in which the employees are present.

B. A conviction for any violation of law, other than a minor traffic violation, shall be prima facie evidence of a violation

---

<sup>24</sup> Respondent's Corrections Certifications have since lapsed. (Ex. A1 at 2.)

of this section.

(Ex. A19 at 7-13; emphasis in original.)

10. **Policy 4110 – Priority of Assignments** provides, in relevant part:

This policy applies to all deputies, temporary hire deputies, case aides and interns assigned to manage caseloads.

1. Staff will prioritize work assignments in accordance with Evidence Based Practices when time does not permit the accomplishment of all segments of the workload due to emergencies, crisis, or when other events occur.

2. Staff will adhere to the following priority order of work duties:

- Emergencies, which may include, but are not limited to:
  - Incidents in which an offender presents an imminent risk to public safety.
  - Arrests, crisis intervention and reports pertaining to any emergency.
- Court appearance as required.
- Violation reports.
- Case management of offenders:
  - Driven by offender risk level as determined by risk, need, responsivity and offense type.
- Staff will prioritize tasks with the offenders who pose the highest risk of re-offending.
  - Cases classified as High or New.
  - Cases classified as Medium.
  - Cases classified as Low/Limited.
- Mandatory training, such as:
  - Firearms
  - Taser
  - Defensive Tactics/Confrontational Simulation
  - First Aid/CPR
- Committees/Community events

3. Staff will adhere to the following priority order of tasks:

- Assessments
- Change Contracts
- Notifications
- Treatment referrals
- Monitoring (per “Audit Checklist Requirements”)
- All other case work as needed.

4. Staff will obtain supervisor approval to depart from the above-listed priorities.

(Ex. A19 at 5-6; emphasis in original.)

11. **Marion County Administrative Policy 701 – Use of Telephones, Computer, and Data Communication Equipment, E-mail and Internet** provides, in material part:

### **1. Purpose**

The proper use of county offices and telecommunication equipment, e-mail and the Internet is an important method of effectively carrying out the mission of Marion County. Office and telecommunication equipment includes telephones, computers, personal digital assistants, facsimile machines, mobile data systems, modems, copy machines and other office equipment. In addition to the hardware components, information processing systems also include software components that make this equipment operate effectively.

These systems are tools to help county employees and volunteers carry out their job responsibilities efficiently. E-mail and the Internet are tools used to expedite communication within the county, with other agencies and with the public. These tools should be used appropriately.

### **2. General Policy**

(a) Office equipment and data communication hardware and software acquired by the county are to be used for official county business functions. Brief and infrequent personal use of these items is permitted consistent with this policy and department guidelines. Employees shall not use county equipment, hardware and software for private business activities.

\*\*\*\*\*

### **5. Internet**

Internet access is provided as a resource and tool for assisting in the conduct of official county business. Incidental personal use of county equipment to access Internet sites outside of work hours is permitted if it is conducted in a manner consistent with these policies and the standards of the Oregon Government Standards and Practices Commission. Personal

use of county Internet access to sites devoted to racist, violent or sexual content is strictly prohibited.

\*\*\*\*\*

Elected officials and department heads may establish more restrictive Internet use policies for their department. An elected official or department head may request the Information Technology department to implement software to limit, restrict and/or monitor employee Internet access at any time and without notice.

\*\*\*\*\*

## **10. Summary**

The proper use of county office and telecommunications equipment enhances productivity and allows the county to meet increased service needs. It is the responsibility of each county employee to use this equipment properly. Violation of the policies or procedures set forth in this policy may be grounds for disciplinary action up to and including termination of county employment.

(Ex. A19 at 14-19; emphasis in original.)

### **12. Policy 1445 – Use of System Resources provides, in part:**

This policy applies to all Sheriff's Office employees.

1. Employees will use this policy as a supplement to Marion County Information Technology Policy 701: Use of Telephones, Computer and Data Communication Equipment, E-Mail and Internet.

2. Employees will use system resources for Sheriff's Office business.

3. Employees with supervisory approval may use county owned computers, software, and internet access for personal use only before or after scheduled work hours and during rest or meal periods. Personal use does not constitute compensable time or overtime.

- Allowed personal use shall not interfere with Sheriff's Office business and must be virtually at no cost to the county.

\*\*\*\*\*

9. Employees will use system resources in an ethical, legal, appropriate, and professional manner. Uses of system resources must not be false, unethical, unlawful, offensive, lewd or disruptive. \*\*\*.

\*\*\*\*\*

17. The Sheriff's Office may withdraw permission for any or all uses of its system resources at any time without cause or explanation.

(Ex. A19 at 1-4; emphasis in original.)

13. MCSO policy requires its employees to carry their badges and/or identification cards on their persons at all times except when impractical or dangerous to their safety or to an investigation. (Test. of Stai, Brotton; Ex. A19 at 11.)

### **Respondent's behavior while employed at MCSO**

#### ***Smelling of alcohol***

14. On February 23, 2009, at 0900 hours, Sergeant Jayson Greer with MCSO entered Respondent's office at Marion County Parole and Probation, and was overcome by a strong odor of an alcoholic beverage. The sergeant asked Respondent if he had just used hand sanitizer and Respondent said, "Yes."

Sergeant Greer reported his observation to Sergeant Jay Bergmann and Office Manager Christina McCarty and requested that they follow-up regarding the smell. Sergeant Bergmann and Ms. McCarty could not detect an odor of an alcoholic beverage on Respondent's person.

Sergeant Greer then contacted Lieutenant Jeff Wood and Commander Troy Clausen regarding his observation. Sergeant Greer was directed to speak with Respondent about the odor and allow Respondent to go home for the day.

At 1035 hours, Sergeant Greer requested Respondent come to his office. Ms. McCarty was present as a witness. The sergeant asked Respondent if he had drank alcohol the previous night. Respondent admitted that he had but stated he was in bed by midnight. Sergeant Greer advised Respondent that he could detect an odor of an alcoholic beverage coming from his breath and person. Respondent explained that his pores emit the smell of what he has eaten or drank, including alcohol and garlic. The sergeant advised Respondent that, given the nature of his job (conducting intakes with newly sentenced offenders), he should take the rest of the day off. Respondent did as requested. (Test. of Greer; Ex. A5 at 7-9.)

15. On December 22, 2010, Respondent attended a high profile sentencing hearing at Marion County courthouse. Respondent was not on duty, was not wearing a uniform,

and was not carrying a firearm. Pursuant to MCSO policy, Respondent was displaying his identification badge. Law enforcement personnel from other agencies were also in attendance.

At 1225 hours, while in the courtroom, Captain Jason Alexander with the Woodburn Police Department spoke with Lieutenant Robert Stai with MCSO and reported that Respondent was reeking of an alcoholic beverage. Lieutenant Stai approached Respondent and asked to speak with him outside of the courtroom. The lieutenant observed an odor of an alcoholic beverage coming from Respondent. The lieutenant also observed that Respondent had bloodshot and watery eyes.

Lieutenant Stai advised Respondent that someone had reported that he smelled like he had been drinking. The lieutenant also told Respondent that he could smell the odor of an alcoholic beverage on his person. Lieutenant Stai asked Respondent if he had been drinking that day, and Respondent said, "No." Respondent reported that he had been out partying the night before. Respondent also confirmed that he was not working. The lieutenant asked Respondent if he was able to get home safely, and Respondent indicated that he could. Respondent was cooperative with the lieutenant.

Shortly thereafter, Lieutenant Stai reported the incident to Commander Kevin Schultz with MCSO. At 1300 hours, Commander Schultz reported the matter to Lieutenant Kevin Karvandi with MCSO. Lieutenant Karvandi subsequently reported the matter to Commander Jeffrey Wood with MCSO. Commander Wood ordered Lieutenant Karvandi to investigate the incident. (Test. of Stai, Karvandi, Wood; Ex. A5 at 11, 53-55.)

16. On December 23, 2010, Lieutenant Karvandi interviewed Respondent regarding the courthouse incident. Respondent was cooperative with the lieutenant during the investigation. (Test. of Karvandi; Ex. A5 at 51, 53-55.)

17. On January 3, 2011, Commander Wood notified Respondent that MCSO was investigating the alleged violations of General Order 26.1.1 – Standard of Conduct, and Marion County Administrative Policy 515 – Court Facilities Security. (Exs. A5 at 40.)

18. On January 10, 2011, Lieutenant Karvandi submitted a report to Commander Wood, which stated, in part:

Re: Conclusion/Recommendation regarding incident involving Dep. William Brotton on December 22<sup>nd</sup>, 2010 at the Marion County Courthouse

Dep. Brotton was hired by the Marion County Sheriff's Office as a temporary hire Corrections Officer with the Institutions Division on June 7<sup>th</sup>, 1994 and hired on a full-time status on March 1<sup>st</sup>, 1996. On June 15<sup>th</sup>, 2008 Dep. Brotton transferred from the Institutions Division to the Parole and Probation Division as a Parole/Probation Deputy. Since Dep. Brotton's transfer to the Parole and Probation Division it is evident from his work performance that he takes

pride in his work, is very organized, quick to grasp new concepts/tasks and overall has done a good job managing his caseload.

As noted in my investigation there has been one prior incident, on February 23<sup>rd</sup>, 2009, involving Dep. Brotton smelling of alcohol in the work place. Dep. Brotton received coaching and counseling regarding this incident and was ultimately sent home for the rest of the day.

The seriousness of the current alleged violation (General Order 26.1.1 – Standard of Conduct) is not to be taken lightly. Dep. Brotton's actions reflect unfavorably to the Sheriff's Office and bring disrepute on the reputation or public image of the Sheriff's Office. I will note that the Court hearing Dep. Brotton attended on December 22<sup>nd</sup>, 2010 was high profile with many supporting law enforcement agencies in attendance. As noted in my investigation it was Capt. Alexander of Woodburn PD who brought his observations to the attention of Lt. Stai, who also indicated there had been several other people who had made comments about smelling the odor of an alcoholic beverage on Dep. Brotton while wearing his Sheriff's Office identification. It will be noted again that Capt. Alexander had been with other members of the Woodburn PD to include Chief Scott Russell.

Regarding Marion County Administrative Policy 515 – Court Facilities Security, I found this policy allows for the Sheriff and his/her designee (staff) to have 24-hour access to the Marion County Courthouse on or off-duty. This was confirmed by the Judicial Security Unit supervisor Lt. Dan Connor. Therefore, Dep. Brotton had authorization to use his Sheriff's Office identification card to gain entrance into the Courthouse on December 22<sup>nd</sup>, 2010.

As part of my investigation, I met with Dep. Brotton on December 23<sup>rd</sup>, 2010 and January 6<sup>th</sup>, 2011. On both occasions Dep. Brotton was cooperative.

Alleged Violation Sustained:

In review of the investigation reports concerning the incident involving Dep. Brotton on December 22<sup>nd</sup>, 2010 at the Marion County Courthouse, I conclude that Dep. Brotton violated the following Office policy:

- General Order 26.1.1 – Standard of Conduct: On December 22<sup>nd</sup>, 2010, Dep. Brotton attended a high

profile/high visibility hearing at the Marion County Courthouse smelling of alcohol while wearing a Sheriff's Office identification card. Although Dep. Brotton reports being off duty, he was wearing his Sheriff's Office identification card smelling of alcohol and any reasonable citizen would think he was on duty. By definition these acts reflect unfavorably and bring disrepute on the reputation or public image of the Sheriff's Office. Further, Dep. Brotton had previously been directed by Sgt. Jake Greer to be cognizant of the issue of him smelling of alcohol at the work place.

There is no clear case precedent for corrective action. Based on similar behavioral instances, I would recommend an appropriate corrective action range from a written reprimand up to and including a suspension.

(Ex. A5 at 51-52; emphasis in original.)

19. On February 15, 2011, Sheriff Jason Myers with MCSO notified Respondent that he would receive a one-day suspension for violating the Standards of Conduct General Order 26.1.1. Respondent was suspended effective February 28, 2011. (Ex. A5 at 56.)

### ***DUII***

20. On January 1, 2011, Respondent was arrested for DUII. On that date, at 0335 hours, Deputy Brian Dunkin with MCSO initiated a stop of Respondent's vehicle after observing the vehicle stopped in the middle of an intersection and then crossing over the center line on Skyline Road and again on Davis Road.

Deputy Dunkin contacted Respondent and explained the reason for the stop. The deputy asked Respondent why he had been stopped in the middle of the intersection. Respondent stated he had dropped his cigarette in the door pocket and had stopped to get it out before it caught fire.

While talking to Respondent, Deputy Dunkin observed a strong odor of an alcoholic beverage coming from Respondent. The deputy also observed that Respondent's eyes were bloodshot, watery and droopy. Deputy Dunkin asked Respondent if he had consumed any alcoholic beverages that evening. Respondent stated that he had three vodka drinks at "Melgard's" and was almost home.

After learning that Respondent worked for MCSO, Deputy Dunkin contacted Sergeant Burnham regarding the situation. Sergeant Burnham advised that he would request Salem Police Department (SPD) to conduct the remainder of the investigation.

At or around 0350 hours, Officer Brian Kohlmeyer with SPD arrived on scene to conduct the DUII investigation. Deputy Dunkin relayed his observations to Officer Kohlmeyer, as well as the reason for the stop.

Officer Kohlmeyer made contact with Respondent, who was seated in the driver's seat of the stopped vehicle. The officer observed a strong odor of an alcoholic beverage coming from the vehicle. The officer also observed that Respondent's eyes were bloodshot and glassy, and his speech was slightly slurred.

Officer Kohlmeyer asked Respondent if he was willing to perform field sobriety tests (FSTs), and Respondent said, "Sure, but I will fail, I always do." The officer asked Respondent why he always fails. Respondent explained that he could only see out of his left eye, which affects his balance. Respondent further explained that when he was two-years-old he had a medical issue that made him virtually blind in his right eye.

Officer Kohlmeyer read Respondent his *Miranda* rights from a prepared card. Respondent indicated he understood his rights. Officer Kohlmeyer administered the HGN, Nine Step Walk and Turn, and the One Leg Stand. At the conclusion of the tests, the officer advised Respondent that he was under arrest for DUII.

Officer Kohlmeyer transported Respondent to the police station. Upon arrival, Respondent agreed to take a breath test. The results of the breath test indicated that Respondent's BAC was .20%. Respondent was polite and cooperative throughout the investigation. (Test. of Kohlmeyer; Ex. A5 at 13-38.)

21. On January 3, 2011, Commander Wood notified Respondent that MCSO was investigating the alleged violation of General Order 26.1.1 – Standard of Conduct. Commander Wood also notified Respondent that he was being placed on administrative leave. Commander Wood ordered Lieutenant Karvandi to conduct the investigation. (Test. of Wood; Ex. A5 at 39.)

22. On March 1, 2011, Lieutenant Karvandi interviewed Respondent regarding the status of the DUII charge. Respondent reported the following: He had pled guilty to DUII on February 24, 2011 and been placed on DUII diversion; his driver license was suspended for 90 days; he had applied for a hardship permit; he had attended the Victim Impact Panel; he had completed his ADES assessment; and he had enrolled in counseling. (Ex. A5 at 129-130.)

23. On March 7, 2011, Lieutenant Karvandi submitted a report to Commander Wood, which stated, in part:

Re: Conclusion/Recommendation regarding incident involving Dep. William Brotton being arrested on Saturday January 1, 2011 on a new charge of Driving Under the Influence of Intoxicants (DUII).

Dep. Brotton was hired by the Marion County Sheriff's Office as a temporary hire Corrections Officer with the Institutions Division on June 7<sup>th</sup>, 1994 and hired on a full-time status on March 1<sup>st</sup>, 1996. On June 15<sup>th</sup>, 2008 Dep. Brotton transferred from the Institutions Division to the

Parole and Probation Division as a Parole/Probation Deputy. Since Dep. Brotton's transfer to the Parole and Probation Division it is evident from his work performance that he takes pride in his work, is very organized, quick to grasp new concepts/tasks and overall has done a good job managing his caseload.

With regard to the current alleged policy violations, initially when I began my investigation General Order 26.1.1 – Standard of Conduct was the only alleged policy violation. As I conclude my investigation I will also be alleging that Dep. Brotton has violated the Code of Ethics – vowing to obey the very laws he was sworn to uphold.

Regarding General Order 26.1.1 – Standard of Conduct, Dep. Brotton's actions on January 1, 2011 resulted in him being arrested and formally charged with a new crime of DUII. Based on the information contained in the police reports it was determined that Dep. Brotton was too intoxicated to be driving. Dep. Brotton failed the field sobriety tests and the result of his breath sample was a .20 BAC. Dep. Brotton entered a plea of guilty on February 24, 2011 and was consequently placed on DUII Diversion for 12 months. Dep. Brotton's actions has [sic] brought discredit towards himself and reflect unfavorably upon the Sheriff's Office, fellow officers, and the criminal justice profession. Additionally, Dep. Brotton's actions bring disrepute on the reputation and public image of the Sheriff's Office. Further, by definition of this offense, Dep. Brotton failed to obey all laws of the State of Oregon.

Regarding our Code of Ethics, all sworn staff (including Dep. Brotton) have vowed to obey the very laws that they are sworn to uphold. By the very nature of Dep. Brotton's actions (DUII arrest & placed on DUII Diversion) he has failed to obey all laws that he was sworn to uphold. I will also note that the Code of Ethics form located in Dep. Brotton's personnel file bears his signature.

#### Mitigating Circumstances:

As part of Dep. Brotton's DUII Diversion, he was ordered to complete the Victim Impact Panel (VIP), and complete an ADES assessment and follow treatment recommendations. Thus far, Deputy Brotton completed the VIP on February 14, 2011 and completed his ADES assessment at M & W Services on January 7, 2011. Dep. Brotton also attended his scheduled alcohol evaluation at Creekside Counseling on

January 24, 2011 and is currently enrolled in their program.

Aggravating Circumstances:

As noted in my investigation there has [sic] been two prior incidents involving Dep. Brotton having issues with alcohol. The first incident was on February 23<sup>rd</sup>, 2009 involving Dep. Brotton smelling of alcohol in the work place. Although there was no evidence to suggest that Dep. Brotton was physically intoxicated, it was not acceptable for Dep. Brotton to meet with clients or work with other staff due to him smelling of alcohol. Dep. Brotton received coaching and counseling regarding this incident and was ultimately sent home for the rest of the day. Further, Dep. Brotton was directed by Sgt. Jake Greer to be cognizant of the issue of him smelling of alcohol at the work place. The second incident was on December 22, 2010 involving Dep. Brotton who attended a high profile/high visibility hearing at the Marion County Courthouse (on personal business) smelling of alcohol while wearing a Sheriff's Office identification card. In this incident Dep. Brotton had bloodshot eyes and smelled of alcohol, however, he did not have any signs of impairment or intoxication such as slurred speech or difficulty walking. Dep. Brotton was found in violation of General Order 26.1.1 – Standard of Conduct, based on his actions reflecting unfavorably and bringing disrepute on the reputation and public image of the Sheriff's Office. Consequently, Dep. Brotton received formal discipline on February 15, 2011 resulting in a 1 day suspension of employment (instituted on February 28, 2011).

It is also important to point out the short time-frame between the incident on December 22, 2010 involving Dep. Brotton smelling of alcohol at the Marion County Courthouse, and his DUII arrest on January 1, 2011. Taking into consideration Dep. Brotton was already put on notice that his actions on December 22, 2010 at the Courthouse could result in discipline, it is concerning that he committed additional policy violations less than ten days later by being arrested for DUII on January 1, 2011.

With regard to Dep. Brotton's attitude I would like to point out some comments that he made at the last due process meeting held on February 10, 2011 (regarding the Courthouse incident on December 22, 2010). During this meeting Dep. Brotton made comments assigning blame to a prior administration which departed several years ago for his actions, as well as blame towards his previous supervisor Sgt.

Jake Greer. Based on his blaming comments it lends to the impression that he is not taking accountability for his actions.

Finally, as a result of Dep. Brotton's DUII arrest, his driver's license is suspended for 90 days as of January 30, 2011 at 1700 hours. According to my calculations, a 90 day license suspension would be through April 30, 2011 and reinstated on May 1, 2011. Unfortunately, Dep. Brotton is unable to apply for a hardship license for his employment with the Sheriff's Office at this time based on his administrative leave status. As mentioned in my investigation report dated March 7, 2011 in order for Dep. Brotton to be able to apply for a hardship license for the purpose of his employment with the Sheriff's Office, it would involve a letter from the Sheriff's Office on letterhead signed by an administrator outlining what his obligations to drive would be. Further, Dep. Brotton would also have to be off of administrative leave status. At this time, Dep. Brotton is unable to meet the standards of his Essential Job Functions of this position based on his inability to operate a motor vehicle.

Alleged Violations Sustained:

In review of the investigation reports concerning the incident involving Dep. Brotton's arrest for DUII on January 1, 2011, I conclude that Dep. Brotton violated the following:

- General Order 26.1.1 – Standard of Conduct: On January 1, 2011 Dep. Brotton's actions resulted in him being arrested and formally charged with a new crime of DUII. Dep. Brotton entered a plea of guilty on February 24, 2011 and was consequently placed on DUII Diversion for 12 months. Dep. Brotton's actions has [sic] brought on discredit towards himself and reflect unfavorably upon the Sheriff's Office, fellow officers, and the criminal justice profession. Additionally, Dep. Brotton's actions bring disrepute on the reputation and public image of the Sheriff's Office. Further, by definition of this offense, Dep. Brotton failed to obey all laws of the State of Oregon.
- Code of Ethics: As a sworn deputy, Dep. Brotton vowed to obey the very laws that they are sworn to uphold. By the very nature of Dep. Brotton's actions (DUII arrest & placed on DUII Diversion) he has failed to obey all laws that he was sworn to uphold. The Code of Ethics form outlining clear expectations is located in Dep. Brotton's personnel file bearing his signature.

Based on the totality of the circumstances, weighing all mitigating and aggravating factors, I am recommending an appropriate corrective action range from a 30 day suspension of employment up to and including termination of employment.

(Ex. A5 at 131-133; emphasis in original.)

24. On April 13, 2011, Respondent signed a Last Chance Agreement with MCSO that stated, in pertinent part:

1. Brotton will receive a suspension without pay of thirty (30) calendar days in connection with his violations of County policies.

2. Brotton must complete all terms and conditions of his diversion requirements, including but not limited to all education, evaluation and/or the successful completion of drug and alcohol counseling and/or counseling as may be recommended in the diversion process or by the substance abuse professional. Brotton shall provide access to all treatment provider(s) and records related to his progress in completing any and all aspects of the recommendations made by the substance abuse professional. As part of this Agreement, Brotton agrees to sign the included authorization (and any other authorization that may become necessary) to determine if Brotton has completed all requirements and that failure to provide or revoke such releases will be considered breach of agreement and grounds for termination.

3. Brotton will be subject to random drug and alcohol testing up to and including 6 times per year for the next 36 months. Any non-negative result will be grounds for immediate dismissal without recourse.

4. If Brotton engages in any misconduct in the next 36 months in violation of the code of ethics, code of conduct, the criminal laws of the state or the United States, such misconduct will be considered just cause for termination of Brotton's employment with the Sheriff's Office, Brotton's employment with the Sheriff's Office will be terminated, and neither Brotton nor FOPPO will file or pursue any grievance under the collective bargaining agreement regarding Brotton's discharge.

(Ex. A4 at 8-9.)

25. On April 15, 2011, Sheriff Jason Myers with MCSO notified Respondent that he would receive a 30 day suspension for violating the Standards of Conduct General Order 26.1.1 and the Code of Conduct General Order 72.1.9. Respondent was suspended effective April 17, 2011 through May 16, 2011. (Ex. A5 at 156.)

### *Work performance issues*

26. While employed at MCSO as a Parole and Probation Officer (PO), Respondent worked in the Wolverine office. Respondent was assigned a medium risk caseload, which comprised of approximately 100 clients to supervise. Respondent was required to meet the following general requirements:<sup>25</sup>

- Meet each client face-to-face 7 times every 180 days, roughly one contact every month and document those meetings.<sup>26</sup>
- Complete a Level of Service Case Management Inventory (LSCMI) risk assessment on each client every 180 days.
- Complete an Oregon Case Management System (OCMS) risk assessment on each client every 180 days.
- Monitor each client for violations and report those violations to the releasing authority in a timely manner.
- Maintain contact with each client and request warrants for those that make themselves unavailable for supervision.

(Test. of Bergmann.) A LSCMI risk assessment provides the PO with the offender's risk to commit crimes in the community within the next few years. An OCMS risk assessment provides the PO with the offender's overall risk to reoffend. (*Id.*)

27. On May 31, 2011, Respondent returned to work at MCSO. Respondent's caseload had increased to approximately 135 clients. As of the date of his return, Respondent needed to perform risk assessments on all of his clients. Sergeant Bergmann met with Respondent and went over his expectations of Respondent, as well as Respondent's Last Chance Agreement with MCSO. The sergeant also instructed Respondent to meet the general requirements of his caseload, including the contact requirements. (Test. of Bergmann.)

28. On the date of his return, several of Respondent's co-workers told him that they did not want him there and that he should be fired. The work environment at MCSO was hostile towards Respondent. (Test. of Brotton.)

29. On May 31, 2011, Respondent opened an email from Sergeant Matt Meier that instructed all employees in the Wolverine office to refrain from using streaming music on MCSO's computers. (Ex. A18 at 4.) Respondent does not recall reading the email. (Test.

---

<sup>25</sup> The general requirements are derived from the Audit Checklist Requirements, which are set forth in policy. Every Parole and Probation Officer is required to know the Audit Checklist Requirements. (Test. of Bergmann.)

<sup>26</sup> Every significant contact or detail must be documented in the chronological record (or data base).

of Brotton.)

30. Sometime in August of 2011, Respondent received training in Effective Practice in Community Supervision (EPICS), a new model of supervision. EPICS required the PO to sit down with each client, identify goals for the client to reach while on parole or probation, go over all of the goals with the client, and identify things in the client's life that could be supportive and non-supportive of the client achieving the goals. (Test. of Bergmann.)

31. Following the three-day training, Respondent was required to meet the general requirements as well as utilize the EPICS model of supervision with each client and to document that use in the chronological records. (Test. of Bergmann; Ex. A4 at 4.)

32. Respondent did not fully understand EPICS. He asked Sergeant Bergmann for assistance with his large caseload and with the use of EPICS on at least four occasions (once a month). Sergeant Bergmann did not provide any assistance to Respondent. The sergeant believed Respondent could do his job without assistance. (Test. Bergmann, Brotton.)

33. When Respondent used EPICS, it took him 45 minutes per client. Respondent did not have enough time in the day to complete EPICS and the other requirements for every client on his caseload. Respondent got behind on meeting the general requirements. (Test. of Brotton.)

34. Respondent used EPICS on at least 30 percent of his caseload. He failed to document the use in the chronological records. (Test. of Brotton.)

35. On or about October 27, 2011, one of Respondent's co-workers at MCSO complained to Sergeant Bergmann that Respondent was not supervising his caseload correctly. Sergeant Bergmann subsequently informed Commander Wood and began an investigation. (Test. of Bergmann.)

36. During the time period that Respondent was struggling with his large caseload, two other PO's in the Wolverine office were struggling with their caseloads. (Test. of Bergmann, Brotton.)

37. On December 14, 2011, Sergeant Bergmann submitted an investigation report to Commander Wood, which stated, in part:

Re: Investigation involving Deputy William Brotton

On 10-27-11, I received information indicating that Brotton had not been supervising his clients appropriately and had been spending an inordinate amount of time on his computer accessing Facebook. I subsequently checked the chronological records (chronos) and noted that Brotton did not appear to be complying with contact standards on many of his clients.

On 11-03-11, I notified you of the above information and you ordered me to look into the matter in more detail.

I contacted Stella Bouldin from Human Resources and requested an internet usage report for the months of September and October 2011. I also requested internet usage reports for several other Parole and Probation Deputies (POs), during the same time frame. The reports I received indicated that Brotton's internet usage was roughly 6 times more than the other POs.<sup>27</sup> The reports also indicated that Brotton was accessing streaming music on his computer as well as Facebook and other social networking sites. I briefly checked the chronos for each of the clients on Brotton's caseload and learned he was not meeting the contact standards with approximately 40 of the clients on his caseload. I also checked Level of Service Case Management Inventory (LSCMI) and Oregon Case Management System (OCMS) risk assessments for Brotton's caseload and learned that he was past due on 46 LSCMI assessments and 38 OCMS assessments. This inquiry indicated that Brotton was potentially in violation of the following policies:

- General Order 26.1.1 – Standard of Conduct
- Policy 4110 – Priority of Assignments
- Marion County Administrative Policy 701 – Use of Telephones, Computer and Data Communication Equipment, E-mail and Internet
- Policy 1445 – Use of System Resources

#### Notice of Investigation (11-16-11)

On 11-16-11, I met with Brotton in my office at 3867 Wolverine Street N.E. Ste #1 Bldg F. I advised him that he had the right to union representation. He declined to have union representation. I served him with the Notice of Investigation and gave him time to read it. Brotton read the Notice of Investigation and began talking to me. I told Brotton that this was not an interview and that I was not asking him questions. Brotton told me that he had been using Pandora and that everyone uses it. He then told me that his caseload was somewhat in disarray because he was angry about the disproportionate workload. He went on to say that many of the PO's around the office don't work very hard and that he was tired of working harder than they were. He then

---

<sup>27</sup> The internet usage reports actually indicated that Respondent clicked his mouse 6 more times than other PO's. (Test. of Bergmann.)

stated that he became angry about the workload issues and basically stopped working for two months. I suggested to him that he stop talking to me and consult with his union representati[ve]. He stated that he did not want to talk to his union representative. I then suggested that he consult with his union attorney. He stated that he did not want to consult the union attorney. I then suggested he may want to consult with his own attorney. Brotton signed the Notice of Investigation f[orm].

On 11-18-11, I received detailed internet usage reports from Human Resources. Those reports indicate that Brotton used the internet more than 6 times as much as his peers and spent between 2 and 8 hours browsing the internet each day.<sup>28</sup> The reports also indicated that Brotton listened to Pandora, a streaming music website, every day for several hours. The reports also indicated that Brotton accessed Facebook and other social networking websites every day; often for more than 30 minutes and on multiple occasions for several hours. It should be noted here that staff in this office have been directed not to use streamlining music websites as it slows down the internet connection and interferes with the entire network for this office.

On 11-29-11 and 12-01-11, I completed an in depth review of Brotton's caseload. I reviewed all of the chrono entries from May 2011 to the present. I also reviewed all of Brotton's caseload files.

Brotton is currently assigned to supervise a caseload of about 100 medium risk clients. The general requirements of this caseload are as follows:

- Meet with each client face to face 7 times each 180 days, roughly one contact every month and document those meetings.
- Utilize the EPICS model of supervision with each client and document in chrono's and Change Contracts.
- Complete an LSCMI risk assessment on each client every 180 days.
- Complete an OCMS risk assessment on each client every 180 days.
- Monitor each client for violations and report those

---

<sup>28</sup> The internet usage reports indicated that Respondent clicked his mouse 6 more times than other PO's. The internet usage reports did not distinguish between work and personal time. Sergeant Bergmann had no way of knowing what amount of time Respondent spent on the internet that was work-related versus not work-related. (Test. of Bergmann.)

violations to the releasing authority in a timely manor [sic].

- Maintain contact with each client and request warrants for those that make themselves unavailable for supervision.

The in depth review revealed the following:

- 46 of the cases did not have an LSCMI completed in the last 180 days.
- 38 of the cases did not have an OCMS completed in the last 180 days.
- 38 of the cases appear to be lacking the required contacts:
  - All of those cases had no contact with the PO in over 30 days.
  - 30 of those cases had no contact with the PO in over 60 days.
  - 16 of those cases did not have a current appointment scheduled.
  - 7 of those cases should have had a warrant as they had absconded supervision.
- There were only 7 documented attempts to utilize the EPICS model with this caseload. It should be noted here that Brotton was trained in the EPICS model in August of 2011 and was given directives to begin using the model with all of his clients. Through the months of September, October, and November there should be approximately 300 documented attempts to utilize the EPICS model.

On 12-02-11, I spoke with Brotton and scheduled an interview with him for 12-05-11 at 2:00PM.

On 12-05-11, at approximately 11:30AM, I tried to contact Brotton in an effort to give him reports for his review prior to the interview. I was unable to locate him, so I gave the reports to the FOPPO president who agreed to give the reports to Brotton as soon as he returned to the office.

#### Interview with Deputy William Brotton (12-05-11)

On 12-05-11, at approximately 2:10PM I met with Brotton, Wendy Bales – FOPPO president, and Lt. Karvandi. I asked Brotton if he had received the reports and if he had time to review them. He stated that he did. I asked him if he had any questions regarding the reports. He indicated that he did not. I gave him a copy of the “Advice of Employee Rights.” Brotton read the form and signed it. I asked him if he had any questions. He stated that he did not.

I asked Brotton if he remembered the E-mail, sent by Sgt. Meier on 02-28-11, which directed staff to discontinue using streaming media websites. Brotton stated that he did not. I showed him a copy of the E-mail properties which indicated that he opened the E-mail on 05-31-11. Brotton stated that he did not contest that, but did not remember reading the E-mail. I informed Brotton that the internet usage report indicated that he had accessed streamlining music on numerous occasions and asked him to explain. Brotton stated that he used streamlining music almost every day in between meeting with clients. I asked him how long he had been doing that. He stated that he thought he began using streaming music around September of 2008.

I reminded Brotton about the internet usage policies that allowed for brief and infrequent use of the internet for personal use while on breaks and lunch periods. I advised him that his internet usage was well over the acceptable level and asked him what he was doing on the internet. Brotton stated that he uses the internet to search for resources for his clients, such as parenting classes, housing resources, treatment resources, and food banks. Brotton also stated that he used the internet to search for cars and housing for himself. Brotton also stated that in order to fully answer the question he would need to see a detailed report of his usage for each day so he could explain exactly what he was doing. I referenced the internet usage report that showed numerous hours of internet browsing each day and asking him what percentage of that was work related. Brotton stated that some days he may have had internet pages open on his computer while he was working on other things and some days he spends a large amount of time accessing a number of internet based programs that are all work related. I asked Brotton what he was doing on Facebook. He stated that it depended on the day and time, but he did use his personal Facebook account to monitor his client's activity on Facebook and contact them. I asked him if there was documentation of this activity, Brotton stated that there were sanctions that documented the use of Facebook to substantiate violations, but he could not remember the names of the clients. Brotton also stated that he had transferred two clients to gang caseloads and the gang association was verified through Facebook. Again he could not remember the names. I asked Brotton why that information wasn't documented in the chronos. Brotton then sited [sic] one case and mentioned an event about a year ago where he documented information received from Facebook.

I advised Brotton that the chronos indicated he was not meeting the contact standards on about 40 of his cases. I asked him to explain. He stated that he recently created an intake calendar because his prior system for tracking cases had not been working and he had lost track of some. He also indicated that some of his clients had failed to report and that he had lost track of them due to the number of cases on his caseload. I asked him if he had anything to say about other contacts on his caseload. He stated that he was not doing home visits because he though[t] I had previously told him not to do home visits and to focus on office visits. He went on to say that he had not been in the field for three months and assumed that someone would have noticed and would have said something if that was a problem.

I advised him that ISIS indicated he was overdue on 46 LSCMI assessments and 38 OCMS assessments. I asked him to explain. He stated it was due to caseload turnover and that was about normal for everyone in the office.

I advised him there was very little evidence that he was using EPICS. I then asked him if he was using EPICS. He stated that he was using EPICS with 30 to 50 percent of the people that he sees. I asked him how often he used EPICS. He stated the last time he utilized EPICS it took 50 minutes and he chose not to use EPICS on the next 5 people so he could catch up. I then asked him why he wasn't documenting his use of EPICS as required. He stated that he was trying to work EPICs into his conversations with his clients, but he was having a hard time considering the numbers on his caseload. I advised him that there were only 7 documented instances of EPICS. He stated that he forgets to chrono contacts on a regular basis and just because information is not documented does not mean the work is not getting done. He mentioned that I have talked to him several times about this issue and that he is working on it now, but cannot change the past.

At the end of the interview, Brotton provided several documents that he had created which gave explanations for the lack of contacts and LSCMI's for his caseload. He then submitted LSCMI listings for several other caseloads and stated that his LSCMI assessments are about normal for the office. He went on to say that he came to work the day after he was notified of the investigation and did this research on the other caseloads. He also submitted several letters of reference that he had solicited.

### Additional Information

It should be noted here that Brotton's number of LSCMI's overdue is not the norm for the office. The caseloads that he referenced are High risk caseloads with much higher rates of abscond, or specialty caseloads which require difference risk assessments than the LSCMI, with one exception – and that PO is still in the Field Training and Evaluation Program and has been counseled about the importance of completing assessments. Brotton failed to reference the other similar caseload to his, which has only 9 overdue LSCMI assessments.

### Findings

#### General Order 26.1.1 – Standard of Conduct: **Sustained**

After reviewing all of the information gathered, I find that Brotton did use streaming music from the internet despite receiving an E-mail from a supervisor directing all staff to cease.

After reviewing all of the information gathered, I find that Brotton failed to utilize EPICS with his caseload as required. In the three months since his EPICS training, he should have approximately 300 instances of EPICS. The fact that there are only 7 documented instances of EPICS is compelling. I do not find Brotton's claim of utilizing EPICS on 30 to 50 percent of his clients, despite the fact that none of that is documented, to be credible. Even if it were, utilizing EPICS on only 30 to 50 percent of his caseload would be unacceptable, and failing to document it would be unacceptable.

#### Policy 4110 – Priority of Assignments: **Sustained**

After reviewing all of the information gathered, I find that Brotton has failed to manage his caseload in a manor [sic] consistent with the Audit Checklist Requirements. He has failed to complete OCMS assessments as required. He has failed to complete LSCMI assessments as required. He has failed to maintain contact standards with about 40 percent of his caseload. He has failed to utilize EPICS with his caseload. Brotton has claimed that he has had more contacts with his clients than the record reflects because he has forgotten to properly document them. Proper documentation is also a part of case management.

Marion County Administrative Policy 701 – Use of  
Telephones, Computer and Date Communication Equipment,

E-mail and Internet: **Sustained**

I find that Brotton's use of the internet is excessive. The internet usage reports are both clear and compelling. His total requests, which indicates the number of times he clicks on a link, is 6 times that of his peers. His total browsing time exceeds 248 hours for the months of September and October which averages out to more than 6 hours per work day. His use of streaming music accounts for about 1/3 of that time. He uses the computer to access Facebook every day. On 12 occasions he was on Facebook for more than 1 hour. On 3 occasions he was on Facebook for more than 2 hours. On one occasion he was on Facebook for more than 8 hours.

The policy states that brief and infrequent use of the internet for personal use on breaks and lunch periods is permitted as long as it does not interfere with normal work. Brotton's use is neither brief nor infrequent and I believe it is clear from the above violations that it is interfering with normal work.

Brotton's claim that the majority of the internet usage is work related cannot be verified as he has not documented any of this activity in the official records.

Policy 1445 – Use of System Resources: **Sustained**

This policy is congruent with Marion County Administrative Policy 701. It orders that computers and the internet are to be used for work purposes with brief and infrequent personal use allowed. As mentioned above, Brotton's use of the internet is neither brief nor infrequent.

Aggravating Factors

- Brotton is currently on a Last Chance Agreement.
- Brotton received formal discipline on 04-15-11 for violating General Order 26.1.1 – Standard of Conduct and General Order 72.1.9 – Code of Conduct. Brotton committed the crime of Driving Under the Influence of Intoxicants. Brotton was arrested for this crime and subsequently entered into a Diversion Program with the Courts. Brotton received a 30 day suspension of employment and also entered into the Last Chance Agreement.
- Brotton received formal discipline on 02-15-11 for violating General Order 26.1.1 – Standard of Conduct: On 1-22-10, Brotton attended a high profile/high visibility hearing at the Marion County Courthouse smelling of alcohol while wearing his Sheriff's Office identification card. Brotton did not conduct himself in a manner favorable to the MCSO and brought disrepute on the

reputation or public image of the Sheriff's Office.  
Brotton received a 1 day suspension of employment (on 02-28-11).

- There was a very short time-frame between the incident on 12-22-10 involving Brotton smelling of alcohol at the Marion County Courthouse, and his DUII arrest on 01-01-11.
- On 05-31-11, Brotton returned to work following his 30 day suspension. On that day, I advised him that while he was out of the office, several of his peers had found cases on his caseload that did not meet contact standards. I advised him that this office had reestablished contact with those cases and that he needed to maintain contact standards with his caseload.
- Brotton's attitude is not favorable. He takes very little responsibility for his actions. He blames high workload and miscommunication for the performance issues. Instead of accepting responsibility for his caseload and working to correct the errors, he spends his time investigating other caseloads in an attempt to justify his work. There is a very clear discrepancy between his statements to me on the day he was notified of this investigation and the day he was interviewed.

#### Mitigating Factors

- Brotton has fully complied with all of the requirements of his Diversion Program.
- Brotton opened the E-mail, which directed him not to use streaming music on his computer, on the first day he returned to work following his suspension. He would have undoubtedly opened a large number of E-mails on that day.

#### Recommendation

Based on the totality of the circumstances outlined in this report, considering all of the mitigating and aggravating factors as well as Brotton's attitude, I am recommending termination of employment.

(Ex. A4 at 3-7; emphasis in original.)

38. The PO's at MSCO were allowed to use the internet for work-related matters. The internet usage reports that Sergeant Bergmann received from the Human Resources Department, did not distinguish between work and personal time. Sergeant Bergmann had no way of knowing what amount of time Respondent spent on the internet that was work-related versus not work-related. (Test. of Bergmann, Brotton.)

39. Although Respondent told Sergeant Bergmann that he had “basically stopped working for two months,” he did not stop working for two months. During the period at issue, Respondent was receiving, on average, one new client every day. Respondent had to work to reduce his caseload. As of the date of December 14, 2011, Respondent had reduced his caseload from 135 to 110. (Test. of Brotton; Exs. A15, A16.)

40. Respondent did not perform his job in a satisfactory manner. Respondent did not meet the general requirements of his caseload. (Test. of Brotton.)

41. Respondent’s actions of failing to meet the general requirements on his caseload, placed the public in danger, affected the efficient operation of the MSCO, violated the standards and practices of the public safety profession, violated his supervisor’s directives, and violated his Last Chance Agreement. (Test. of Bergmann; Exs. A4, A9.)

42. On December 15, 2011, Commander Wood notified Respondent that MCSO was investigating the following alleged violations:

- General Order 26.1.1 – Standard of Conduct
- Policy 4110 – Priority of Assignments
- Marion County Administrative Policy 701 – Use of Telephones, Computer and Data Communication Equipment, E-mail and Internet
- Policy 1445 – Use of System Resources

(Ex. A4 at 11.) Commander Wood also notified Respondent that he was being placed on administrative leave. (*Id.*)

43. On January 6, 2012, Respondent submitted his resignation to MCSO. (Ex. A4 at 16.)

### **Actions by DPSST**

44. On January 13, 2012, MCSO notified DPSST that Respondent had resigned in lieu of termination. (Ex. A3.)

45. On January 24, 2012, Kristen Turley, Standards & Compliance Coordinator with DPSST, sent a letter to Sheriff Jason Myers with MCSO, requesting copies of the underlying investigation that led to Respondent’s resignation. (Ex. A4 at 1.)

46. On September 12, 2012, Leon Colas, Professional Standards Investigator and Coordinator with DPSST, sent a letter to Respondent that stated, in pertinent part:

The Department of Public Safety Standards and Training (DPSST) has the responsibility to ensure the minimum standards for public safety officers in the State of Oregon are maintained.

*DPSST has received information that you resigned from the Marion County Sheriff's Office in lieu of termination after an internal investigation found you had violated department policies and your Last Chance Agreement. These policies related to Standard of Conduct, Priority of Assignments, and Use of Telephones, Computer and Data Communication Equipment, Email and internet as well as Use of System Resources. Your conduct surrounding these incidents must be reviewed by the Corrections Policy Committee to determine whether you continue to meet the minimum standards for Oregon public safety certification.*

There are two methods of resolving this matter. You may sign the Stipulated Order Revoking Certifications and return it to me within ten (10) calendar days of the date of this letter. Or, if you choose not to sign this Stipulated Order, your case will be presented to the *Corrections Policy Committee* which will review the underlying investigation and make a recommendation whether to revoke your certifications based on your conduct. If their recommendation is to revoke your certifications, DPSST will issue you a Notice of Intent to Revoke. The Policy Committee's recommendation will then be forwarded to the full Board and they will either affirm or overturn the Policy Committee's recommendation. In making their decision, the Policy Committee and Board may consider any mitigating or aggravating circumstances. The Policy Committee will **not** consider oral testimony. You may choose to submit, in writing, relevant information on your behalf. If you choose to respond, I must receive your information, in writing, by 5:00 p.m. on **October 12, 2012**.

If you choose to sign the attached Stipulated Order Revoking Certifications, this document will stop all revocation proceedings through the Policy Committee and the Board.

(Ex. A6 at 1-2; emphasis in original.)

### **Other matters**

47. On November 13, 2012, the Corrections Policy Committee (CPC) met and discussed Respondent's case. The CPC determined that Respondent's behavior involved disregard for the rights of others, gross misconduct, misconduct and insubordination. The CPC recommended revocation of Respondent's certifications for a period of 15 years for disregard for the rights of others; 10 years for gross misconduct; 7 years for misconduct; and 7 years for insubordination. (Ex. A11.)

48. On November 20, 2012, DPSST issued a Contested Case Notice of Intent to

Revoke, Opportunity to be Heard, and Final Order Revoking Certifications if No Request for Hearing is Received (Notice) to Respondent. (Ex. A9.)

49. On November 26, 2012, Respondent requested a hearing to contest the Notice. (Ex. A10.)

50. On January 24, 2013, the Board on Public Safety Standards and Training (Board) met and adopted the CPC's decision regarding Respondent. (Ex. A13.)

## CONCLUSIONS OF LAW

1. Respondent lacks the minimum standards necessary for employment as a law enforcement officer.

2. Respondent's certifications may be revoked for a period not to exceed five years.

## OPINION

DPSST contends that Respondent lacks the minimum standards necessary for employment as a law enforcement officer and should have his certifications revoked. As the proponent of this position, DPSST has the burden of proof. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987). As modified below, DPSST has met its burden.

### **1. Whether Respondent lacks the minimum standards necessary for employment as a law enforcement officer.**

ORS 181.640 provides:

(1) In accordance with any applicable provision of ORS chapter 183, to promote enforcement of law and fire services by improving the competence of public safety personnel and their support staffs, and in consultation with the agencies for which the Board on Public Safety Standards and Training and Department of Public Safety Standards and Training provide standards, certification, accreditation and training:

(a) The department shall recommend and the board shall establish by rule reasonable minimum standards of physical, emotional, intellectual and moral fitness for public safety personnel and instructors.

OAR 259-008-0010 is titled "Minimum Standards for Employment as a Law

Enforcement Officer” and provides, in material part:

(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(a) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(b) Discretionary disqualifying misconduct described in OAR 259-008-0070(4).

DPSST is authorized to establish by rule reasonable minimum standards for public safety personnel and instructors. Pursuant to OAR 259-008-0010(6), the minimum standards for employment as a law enforcement officer includes being of good moral fitness.

In this matter, DPSST contends that Respondent lacks good moral fitness because he engaged in discretionary disqualifying misconduct. I agree with the DPSST.

OAR 259-008-0070 is titled “Denial/Revocation” and provides, in pertinent part:

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Public Safety Professional or Instructor:

(a) The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

\*\*\*\*\*

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640;

\*\*\*\*\*

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes

violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public[;]

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office[;]

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that “Contempt of Court” meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional’s or instructor’s refusal to comply with the rule or order constitutes a substantial breach of that person’s duties.

### **Disregard for the Rights of Others**

DPSST first contends that Respondent engaged in disregard for the rights of others when he failed to meet the general requirements of his caseload. I agree.

Disregard for the rights of others includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public. OAR 259-008-0070(4)(b)(B).

During the period of May 31, 2011 through December 14, 2011, Respondent failed to conduct LSCMI assessments on 46 of his cases; failed to conduct OCMS assessments on 38 of his cases; failed to make the required contacts on 38 of his cases; and failed to utilize and document EPICS on all of the client contacts that he made.

Respondent agreed that he did not meet the general requirements of his caseload. Respondent also agreed that he did not perform his job in a satisfactory manner.

By failing to meet the general requirements of his caseload, Respondent placed the public in danger, demonstrated a disregard for the rights of others and violated his fundamental duty to protect and serve the public.

I find, by a preponderance of the evidence that Respondent engaged in disregard for the rights of others.

DPSST next contends that Respondent engaged in disregard for the rights of others when he stopped working for two months. I disagree.

Respondent testified that although he told Sergeant Bergmann that he had “basically stopped working for two months,” he did not stop working for two months. Respondent’s testimony was logical, consistent and reliable.

Moreover, Respondent’s testimony was corroborated by the fact that, during the period at issue, Respondent received a new client every day and still managed to reduce his caseload from 135 to 110. Therefore, DPSST’s argument is unpersuasive.

### **Gross Misconduct**

DPSST first contends that Respondent engaged in gross misconduct when he failed to meet the general requirements of his caseload. I agree.

Gross Misconduct includes an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance. OAR 259-008-0070(4)(b)(D).

During the period of May 31, 2011 through December 14, 2011, Respondent failed to conduct LSCMI assessments on 46 of his cases; failed to conduct OCMS assessments on 38 of his cases; failed to make the required contacts on 38 of his cases; and failed to utilize and document EPICS on all of the client contacts that he made.

Respondent agreed that he did not meet the general requirements of his caseload. Respondent also agreed that he did not perform his job in a satisfactory manner.

By failing to meet the general requirements of his caseload, Respondent created a danger or risk to persons, property, and the efficient operation of the MSCO. Respondent’s actions were a gross deviation from the standard of care that a reasonable PO would observe in a similar circumstance.

I find, by a preponderance of the evidence that Respondent engaged in gross misconduct.

DPSST next contends that Respondent engaged in gross misconduct by using the internet 6 times more than the office average. I disagree.

The internet usage reports that Sergeant Bergmann received from the Human Resources Department, actually indicated that Respondent clicked his mouse 6 more times than other PO's.

In addition, the internet usage reports did not distinguish between work and personal time. Sergeant Bergmann had no way of knowing what amount of time Respondent spent on the internet that was work-related versus not work-related. Accordingly, DPSST's argument is unpersuasive.

DPSST also contends that Respondent engaged in gross misconduct by not working for two months. However, as set forth previously, I found that argument to be without merit.

### **Misconduct**

DPSST first contends that Respondent engaged in misconduct when he failed to meet the general requirements of his caseload, which violated his Last Chance Agreement. I agree.

Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. OAR 259-008-0070(4)(b)(E).

On April 13, 2011, Respondent signed a Last Chance Agreement wherein he agreed that if he engaged in any misconduct in the next 36 months in violation of the code of ethics, code of conduct, the criminal laws of the state or the United States, such misconduct would be considered just cause for termination of his employment with MSCO.

During the period of May 31, 2011 through December 14, 2011, Respondent failed to conduct LSCMI assessments on 46 of his cases; failed to conduct OCMS assessments on 38 of his cases; failed to make the required contacts on 38 of his cases; and failed to utilize and document EPICS on all of the client contacts that he made.

Respondent agreed that he did not meet the general requirements of his caseload. Respondent also agreed that he did not perform his job in a satisfactory manner.

By failing to meet the general requirements of his caseload, Respondent violated the practices or standards generally followed by PO's in the Oregon public safety profession. Respondent's actions violated the code of ethics, the code of conduct and his Last Chance Agreement.

I find, by a preponderance of the evidence that Respondent engaged in misconduct.

DPSST next contends that Respondent engaged in misconduct when he misused the internet. However, as indicated previously, I found that argument to be without merit.

### **Insubordination**

DPSST contends that Respondent engaged in insubordination when he failed to

meet the required contacts of his caseload as directed by Sergeant Bergmann, which violated his Last Chance Agreement. I agree.

Insubordination includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. OAR 259-008-0070(4)(b)(F).

On May 31, 2011, Sergeant Bergmann met with Respondent and went over his expectations of Respondent, as well as Respondent's Last Chance Agreement with MCSO. The sergeant also instructed Respondent to meet the general requirements of his caseload, including the contact requirements.

During the period of May 31, 2011 through December 14, 2011, Respondent failed to conduct LSCMI assessments on 46 of his cases; failed to conduct OCMS assessments on 38 of his cases; failed to make the required contacts on 38 of his cases; and failed to utilize and document EPICS on all of the client contacts that he made.

Respondent agreed that he did not meet the general requirements of his caseload. Respondent also agreed that he did not perform his job in a satisfactory manner.

By failing to meet the required contacts of his caseload as directed by Sergeant Bergmann, Respondent failed to comply with an order that was reasonably related to the orderly, efficient or safe operation of MSCO, which violated his Last Chance Agreement. Respondent's actions constituted a substantial breach of his duties.

I find that Respondent engaged in insubordination.

Accordingly, the evidence in the record establishes that Respondent engaged in discretionary disqualifying misconduct. Therefore, Respondent lacks good moral fitness. Consequently, Respondent lacks the minimum standards necessary for employment as a law enforcement officer.

## **2. Whether Respondent's Basic, Intermediate, and Advanced Parole and Probation Officer Certifications may be revoked.**

ORS 181.662 provides:

(1) The Department of Public Safety Standards and Training may deny the application for training, or deny, suspend or revoke the certification, of any instructor or public safety officer, except a youth correction officer or fire service professional, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that:

\*\*\*\*\*

(c) The public safety officer or instructor does not meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640(1)(a) to (d).

OAR 259-008-0070 further provides:

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Public Safety Professional or Instructor:

(a) The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

\*\*\*\*\*

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640;

As indicated above, DPSST may revoke the certification of any public safety professional if that individual fails to meet the minimum standards established under ORS 181.640. Because I have determined that Respondent lacks the minimum standards necessary for employment as a law enforcement officer, DPSST may revoke Respondent's Basic, Intermediate, and Advanced Corrections Certifications.

However, I propose that DPSST revoke Respondent's certifications for a period not to exceed five years.

At hearing, Respondent proved that his caseload was 135, substantially higher than the average medium risk caseload. In addition, Respondent proved that he was working in a hostile work environment.

Moreover, Respondent proved that during the period at issue, he asked Sergeant Bergmann several times for help with his large caseload and with EPICS and he did not receive any assistance from his supervisor.

Furthermore, Respondent proved that although he told Sergeant Bergmann that he had "basically stopped working for two months," he actually had continued to work, reducing his caseload from 135 to 110.

Finally, Respondent proved that the internet usage reports that both CPC and DPSST relied upon were unreliable and failed to establish the violations that were asserted by MSCO and DPSST.

Consequently, the reliable evidence in the record establishes that Respondent's certifications should be revoked for a period not to exceed five years.

## **ORDER**

### **AMENDED PROPOSED ORDER**

The Department of Public Safety Standards and Training issues the following amended proposed order: That the November 20, 2012 Notice of Intent to Deny and Revoke certifications be **AFFIRMED** as **MODIFIED** except as to the initial period of ineligibility to reapply for certification, which shall be fifteen years from the date of the Final Order issued in this matter.

---

Eriks Gabliks, Director  
Department of Public Safety Standards and Training  
STATE OF OREGON

### **EXCEPTIONS**

The proposed order is the Administrative Law Judge's recommendation to the Oregon Department of Public Safety Standards and Training (Department). If you disagree with any part of this recommendation, you may make written objections, called "exceptions," to the recommendation and present written argument in support of your exceptions. Exceptions and argument must be filed with the Department of Public Safety Standards and Training not later than fourteen (14) days following the date of mailing of the proposed order at the following address:

Director  
DPSST  
4190 Aumsville Hwy SE  
Salem, Oregon 97317

### **FINAL ORDER**

After considering all the evidence, the proposed order, and the timely filed exceptions, if any, the Department will issue the final order in this case. The final order may adopt the proposed order prepared by the Administrative Law Judge as the final order or modify the proposed order and issue the modified order as the final order (*see* OAR 137-003-0665).

### **APPEAL**

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within sixty (60) days after the final order is served upon you. See ORS 183.480 et seq.

*Appendix E*

**Department of Public Safety Standards and Training  
Memorandum**

**DATE:** November 12, 2013

**TO:** Corrections Policy Committee

**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT:** Valencia, Edwin DPSST #50921  
Basic Corrections Certification  
Department of Corrections

**OVERVIEW:** DPSST was notified by e-mail from Valencia's employer, Eastern Oregon Correctional Institution, that Valencia had been convicted of Negligent Driving in Washington State. The judgment was attached to the e-mail. The Oregon equivalent of this offense is DUI. We opened a case and obtained the police reports on the Negligent Driving arrest. The employer opened an internal investigation, and determined that Valencia was untruthful during their investigation as well as during the original police investigation about how much he had to drink the night of his arrest. DPSST subsequently received an F-4 Personnel Action Form that showed that Valencia had resigned during the investigation.

At issue in this case is Valencia's criminal conviction for Negligent Driving, and the untruthfulness during both investigations.

**STAFF ANALYSIS:** After reviewing the police reports and the agency's internal investigation, staff has identified by a preponderance of evidence that Valencia engaged in misconduct involving a criminal conviction and untruthfulness. Staff has determined that the misconduct involves **Dishonesty, Gross Misconduct** and **Misconduct**.

**Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification.**

Valencia was untruthful with the police officer who arrested him about how much he had to drink prior to driving. Valencia repeated the same lie to the institution's HR Manager, Mr. Imhoff, who did the internal investigation. Valencia later admitted that he lied in both circumstances.

(Ex A6 p. 3; A8 p. 3,4,5, 20; A9 p. 3)

**Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect or serve the public.**

Staff did not find evidence that Valencia disregarded the rights of others as defined above.

**Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.**

Staff did not find evidence that Valencia misused his authority as defined above.

**Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance.**

Valencia was convicted of Negligent Driving in Washington State, the equivalent of Oregon's DUII criminal offense. DUII is a presumed Category IV – Gross Misconduct offense.

(Ex A7, A13)

**Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.**

Valencia violated the law when he committed the crime of Negligent Driving. (Ex A7, A13)

**Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.**

Staff did not find evidence that Valencia's conduct involved Insubordination as defined above.

\*A copy of the staff analysis was provided to Valencia for the purposes of facilitating mitigation.

**COMMITTEE DISCUSSION:**

**I.** Review the investigation and supporting documentation in its entirety and review and amend staff analysis as necessary.

**II.** Identify any aggravating or mitigating circumstances surrounding the misconduct.

**CASE SUMMARY:**

Misconduct that is specific to this case, considered by the Committee:

---

---

---

---

---

---

---

---

---

---

The identified conduct *did/did not* involve **Dishonesty**.

---

---

---

---

---

---

---

---

The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

---

---

---

---

---

The identified conduct *did/did not* involve **Misuse of Authority**.

---

---

---

---

---

The identified conduct *did/did not* involve **Gross Misconduct**.

---

---

---

---

---

The identified conduct *did/did not* involve **Misconduct**.

---

---

---

---

---

The identified conduct *did/did not* involve **Insubordination**.

---

---

---

---

---

Identified aggravating circumstances:

---

---

---

---

---

Identified mitigating circumstances:

---

---

---

---

---

**ACTION ITEM 1:**

By vote, determine if Valencia's conduct rises to the level to warrant the revocation of his certifications. Recommend to the Board that these certifications *be revoked/not be revoked*.

**ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):**

Using the following ineligibility grid and the categories of identified misconduct, by vote determine and recommend to the Board an initial minimum period of ineligibility to reapply for certification:

- (A) Dishonesty (5 years to Lifetime)
- (B) Disregard for Rights of Others (5 years to 15 years)
- (C) Misuse of Authority (5 years to 10 years)
- (D) Gross Misconduct (5 years to 10 years)
- (E) Misconduct (3 years to 7 years)
- (F) Insubordination (3 years to 7 years)