

**Fire Policy Committee
Minutes
November 28, 2012**

The Fire Policy Committee of the Board on Public Safety Standards and Training held a regular meeting at 9:00 a.m. on November 28, 2012, at the Oregon Public Safety Academy in Salem, Oregon. Vice Chair Jeff Jones called the meeting to order at 9:05 a.m.

Attendees

Committee Members:

Jeff Jones, Oregon Fire Chiefs Association, Vice Chair
Alan Ferschweiler, Oregon State Fire Fighters Council – via teleconference
Dave Jones, Oregon Fire District Directors Association
Jamie Paul, Oregon Department of Forestry
Dan Petersen, Oregon Fire Instructors Association
Michelle Stevens, Oregon Fire Marshals Association
Mark Wallace, Oregon State Fire Marshal

Committee Members Absent:

Joe Seibert, Non-Management Firefighter, Chair
Johnny Mack, Community College Fire Programs
Scott Stanton, Oregon Volunteer Firefighters Association
Erin Janssens, Portland Fire & Rescue

DPSST Staff:

Todd Anderson, Training Division Director
Julie Olsen-Fink, Fire Certification Supervisor
Tina Diehl, Fire Certification Specialist
Allison Sebern, Fire Certification Coordinator
Marilyn Lorance, Standards & Certification Supervisor
Kristen Turley, Standards & Compliance Coordinator
Linsay Hale, Compliance Coordinator
Mark Ayers, Fire Training Program Supervisor

Guests:

Terry Riley, Marion County Fire District #1



1. Minutes from May 23, 2012 meeting

Michelle Stevens moved to approve the minutes from the May 23, 2012 Fire Policy Committee meeting. Dave Jones seconded the motion. The motion carried in a unanimous vote.

2. **Fire Policy Committee Overview**

Presented by Marilyn Lorance and Kristen Turley

Discussion and clarification on Certification Standards for Fire Service Professionals.

3. **Revisions to OAR 259-009-0005, 259-009-0062 and 259-009-0080
NFPA 1041 - Standard for Professional Qualifications for Fire Service Instructor**

Presented by Julie Olsen-Fink

BACKGROUND: The Fire Certification Program of the Department of Public Safety Standards and Training (DPSST) was authorized by the Fire Policy Committee (FPC) to review the NFPA 1041 Standard for Fire Service Instructor Professional Qualifications, 2012 Edition. At the direction of Chair John Klum, public notification was posted for those fire service professionals who had an interest in participating.

TASK FORCE MEMBERS:

Terry Riley, Chair	Marion County Fire District #1
Michael Kinkade, Vice Chair	Forest Grove Fire & Rescue
Zack Barresse	Boardman RFPD
Paula Simone	Central Oregon Community College
Paul Reynolds	Southwestern Community College
Jake Campbell	Redmond Fire & Rescue
Jim Whelan	Stanfield RFPD
Monte Keady	Klamath County FD #1
William Benjamin	Portland Community College
Manuel Irusta	Hood River Fire Department
Robb Milano	Canby RFPD #62
Jason Jantzi	Oregon OSHA

DPSST STAFF:

Julie Olsen-Fink	DPSST Staff
Mark Ayers	DPSST Staff
Allison Sebern	DPSST Staff

The Task Force met and concluded their work on November 5, 2012 at the Oregon Public Safety Academy. The Task Force unanimously determined, after reviewing the 2007 and 2012 editions, it would benefit Oregon fire service professionals to adopt the 2012 standard and remain current with the NFPA standards.

RECOMMENDATION: The NFPA Fire Instructor Task Force recommends the standard be approved with the addition of the NFPA Fire Instructor III task book as there were no other substantive changes noted between the two standards. The Task Force is recommending their request be presented to the Board for final approval.

The Task Force recommends approving the following proposed rule language:

The following revised language for OAR 259-009-0005 contains recommended deletions (~~strikethrough text~~) and additions (**bold and underlined text**). For ease of review, only the recommended new language has been included. (If the proposed language is adopted, subsequent sections of the current rule will be renumbered as required.)

259-009-0005

Definitions

(9) “Content Expert” means a person who documents their experience, knowledge, training and education for the purposes of course instruction.

~~(46)~~ **(47)** “NFPA **Fire** Instructor I” means a fire service instructor who has demonstrated the knowledge and ability to deliver instruction effectively from a prepared lesson plan, including instructional aids and evaluation instruments; adapt lesson plans to the unique requirements of the students and authority having jurisdiction; organize the learning environment so that learning is maximized; and meet the record-keeping requirements of authority having jurisdiction.

~~(47)~~ **(48)** “NFPA **Fire** Instructor II” means a fire service instructor who, in addition to meeting **NFPA Fire** Instructor I qualifications, has demonstrated the knowledge and ability to develop individual lesson plans for a specific topic including learning objectives, instructional aids, and evaluation instruments; schedule training sessions based on overall training plan of authority having jurisdiction; and supervise and coordinate the activities of other instructors.

~~(48)~~ **(49)** “NFPA **Fire** Instructor III” means a fire service instructor who, in addition to meeting **NFPA Fire** Instructor II qualifications, has demonstrated the knowledge and ability to develop comprehensive training curricula and programs for use by single or multiple organizations; conduct organization needs analysis; and develop training goals and implementation strategies.

259-009-0062

Fire Service Personnel Certification

(j) The provisions of the NFPA Standard No. 1041, Edition of ~~2007~~ **2012**, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the ~~following definitions and modifications:~~

~~(A) "Fundamentals of Instruction" shall mean a 16-hour instructor training course for those instructors used for in-house training. This course includes a task book. This course does not lead to certification.~~

~~(B) the successful completion of Successfully complete an approved task book for NFPA Fire Service Instructor I, and II and III. This requirement is effective for any application for certification after January 4, 2002.~~

259-009-0080

Certification of Instructors

(1) The Department ~~shall~~ **will** certify instructors deemed qualified to teach in any of the certified training courses.

(2) Instructors will be certified on the basis of minimum qualifications as established by the Department in areas of education, training, and experience. It ~~shall~~ **is** the continuing responsibility of the Department to see that instructors are qualified to teach.

(3) Instructors for subjects ~~shall~~ **must**:

(a) Be certified or trained in the subject area they are teaching;

(b) Be certified as an NFPA Fire Instructor ~~I~~; **and or be a Content Expert**.

(c) ~~Complete an instructor development course, or an equivalent course.~~

(A) Applications for instructor certification must be submitted to the Department on an Instructor Certification Application (DPSST Form F-9F).

~~(4) Review and approval of instructors shall be the responsibility of the Department.~~

~~(5) **B**~~ Applications for Content Expert instructor certification ~~shall~~ **must** be submitted **to the Department** on an Instructor Certification Application (DPSST Form F-9F) and ~~shall~~ **must** be accompanied by a detailed resume of individual qualifications.

~~(6) **4**~~ If **an application for Instructor or Content Expert Instructor** certification is denied, the applicant ~~shall~~ **will** be notified in writing and advised of the reasons for denial **as prescribed in OAR 259-009-0070**.

~~(7) **5**~~ Instructor certification is not required for teaching assignments in non-Department certified courses.

~~(8) **6**~~ Review of instructor certification may be initiated upon the request of an agency head, staff, or other reliable source.

~~(9 7) Instructor or Content Expert Instructor certification must be renewed upon the expiration of course certification must be renewed every five (5) years within the cycle of the approved course or when there is a change to the certified course standard.~~

~~(10) Instructors will be responsible for ensuring that student rosters shall be completed, indicating the actual number of hours attended by each student. Rosters shall also indicate whether each student passed or failed. Rosters shall be returned to the Department within thirty (30) calendar days of course completion; otherwise, the Department may decertify the course.~~

(8) Instructors delivering a certified course are responsible for ensuring the accuracy of the student rosters by indicating if they passed, failed or did not complete the course (incomplete). Rosters must be submitted to the Department on a Department-approved form within thirty (30) calendar days of course completion; otherwise the Department may decertify the course.

(11) Instructors are responsible to provide students with a Department-approved Notice of Course Completion (NOCC) form upon successful completion of the approved course.

ACTION ITEM I: Determine whether to recommend approval to the Board to file the proposed rule language for OAR 259-009-0005, OAR 259-009-0062 and OAR 259-009-0080 with the Secretary of State as a proposed rule. (Note: the remaining definitions would be renumbered sequentially.)

ACTION ITEM II: Determine whether to recommend filing the proposed language for OAR 259-009-0005, OAR 259-009-0062, and 259-009-0080 with the Secretary of State as permanent rule if no comments are received

ACTION ITEM III: Pursuant to ORS 183.333, determine whether there is a significant fiscal impact on small businesses. *No fiscal impact by consensus.*

Mark Wallace moved to recommend to the Board filing the proposed language for OAR 259-009-0005, OAR 259-009-0062, and OAR 259-009-0080 with the Secretary of State as proposed rules and as permanent rules if no comments are received. Dave Jones seconded the motion. The motion carried in a unanimous vote.

4. **OAR 259-009-0070 – Proposed Rule 2012 HB 2712
Mandatory/Discretionary Disqualifying Crimes**

Presented by Linsay Hale

Issue: HB 2712 (Oregon Laws, Chapter 597) updates and simplifies the current statutory revenue and distribution structure related to criminal fines, assessments and other financial

penalties imposed on convictions for felonies, misdemeanors and violations other than parking infractions.

The passage of HB 2712 brought to light a large, previously unknown universe of primarily “regulatory” misdemeanor and felony crimes and classified or reclassified a number of crimes as well. DPSST’s legal services coordinator has identified the crimes and made recommendations about possible presumptive categories for each of them, based on reasoning of the earlier criminal justice workgroup that developed the current list.

On September 5, 2012 a workgroup comprised of various members of the Fire Policy Committee was convened to review these identified crimes and the staff recommendations. This proposed rule update contains additions to the discretionary disqualifying crimes list and the presumptive categories as recommended by the workgroup members.

The following revised language for OAR 259-009-0070 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-009-0070

Denial/Revocation

Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification

(c) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

25.785(3) (False Submission Social Security Number) – Category I;

92.337 (Furnishing False Information or Making a False Representation) – Category I;

305.815 (False Return, Statement or Document) – Category I;

411.630 (Unlawfully Obtaining Public Assistance) – Category I;

411.675 (Submitting Wrongful Claim for Payment) – Category I;

411.840 (Unlawfully Obtaining or Disposing of Supplemental Nutrition Assistance) – Category I;

433.010(1) (Willfully Causing the Spread of Communicable Disease) – Category II;

476.150 (Entry and Inspection of Premises; Interfering or Preventing Entry) – Category II;

476.380 (Burning without a Permit) – Category II;

476.510 to 476.610 (Violations of the Emergency Conflagration Act) – Category II;

532.140 (Branding or Marking Forest and Booming Equipment with the Intent to Injure or Defraud) – Category I;

632.470 (False Representation as to Raising, Production or Packing, Class A Misdemeanor) – Category I;

632.475 (Possession of Unlabeled, Falsely Labeled or Deceptively Packed Products, Class A Misdemeanor) – Category I;

659.815 (Deceptive Representations or Advertisements by Persons Employing Labor) – Category I;

688.120 (Fraudulent Representation) – Category I;

689.995(3) (Willfully Furnishing False Information) – Category I;

689.995(4) (Making or Causing to be Made Any False Representations) – Category I;

731.260 (False or Misleading Filings) – Category I;

759.360(2) and (3) (False Statements or False Representation) – Category I;

ACTION ITEM 1: Determine whether to recommend filing proposed language for OAR 259-009-0070 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-009-0070 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. *No fiscal impact by consensus.*

Mark Wallace moved to recommend filing proposed language for OAR 259-009-0070 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Dave Jones seconded the motion. The motion carried in a unanimous vote.

5. Revocation Case Review for Joshua F. Gingerich #24421 – Netarts-Oceanside RFPD and West Valley Fire District

Presented by Kristen Turley

ISSUE:

Should Joshua Gingerich’s fire certifications be revoked based on his discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW:

This case involves the following actions and processes related to GINGERICH:

GINGERICH served as a fire service professional from 2007 to 2012.

GINGERICH holds the following fire certifications:

- 1. NFPA Fire Fighter I & II*
- 2. NFPA Operations Level Responder*
- 3. NFPA Rope Rescue Technician*
- 4. NFPA Surface Water Rescue Technician*

On or about April 19, 2011, GINGERICH was discharged for cause from Netarts-Oceanside RFPD.

On or about January 25, 2012, GINGERICH was discharged for cause from the West Valley Fire District.

Based on the information provided in Exhibit A7 and A8, DPSST was unable to determine if the conduct that led to GINGERICH’s discharge violated the established standards for a “discharge for cause” as defined in OAR 259-009-0070.

On or about May 8, 2012, GINGERICH was convicted of Menacing and Interfering with Making a Report. Menacing and Interfering with Making a Report are not discretionary disqualifying crimes for the purpose of certification.

*On or about May 18, 2012, GINGERICH was convicted of two counts of Attempt to commit Coercion. **Attempt to commit Coercion is a discretionary disqualifying crime for the purposes of certification.***

These convictions were compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter must be reviewed by the Fire Policy Committee (FPC).

On September 10, 2012, TURLEY mailed GINGERICH a letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee’s consideration. As a policy, DPSST also provides a Stipulated Order Revoking and/or Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order, which ends the denial or revocation process.

On or about October 10, 2012, GINGERICH provided information for the FPC’s consideration.

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-009-0070(4) specifies discretionary disqualifying conduct, which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that must be reviewed by the FPC.

In OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

- (a) Category I: **Honesty**. Honesty includes straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.
- (b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.
- (c) Category III: **Justice**. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair.

Staff Explanation: The above rule creates a presumption that if an individual has been convicted of any of the discretionary crimes, they have violated the core values of the fire service profession and may not be fit to receive or hold certification. To determine that the applicant may hold certification means that the FPC has determined that in the case of the subject individual, these convictions do not violate the core values.

SPECIFIC TO THIS CASE:

OAR 259-009-0070(4) specifies the discretionary disqualifying conviction of Attempt [ORS 161.405] Coercion [ORS 163.275] as violating Category III, Justice, based on the elements of the crime.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, OAR 259-009-0070(7)(d) provides that the FPC and Board will consider aggravating and mitigating circumstances including, but not limited to the following:

- (A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self-reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

ACTION ITEM 1:

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to revoke GINGERICH's certifications by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.
2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.
 - b. The identified conduct *did/did not* violate the core value of **Honesty**.
 - c. The identified conduct *did/did not* violate the core value of **Professionalism**.
 - d. The identified conduct *did/did not* violate the core value of **Justice**.

3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that GINGERICH's conduct, including the criminal conviction(s) and all mitigating and aggravating circumstances identified by the committee, *does/does not* rise to the level to warrant revocation of his certification(s), and therefore recommends to the Board that GINGERICH's certifications be *revoked/not revoked*.

ACTION ITEM 2: (to be considered if denial and revocation are recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to re-apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

By vote, the Fire Policy Committee recommends a minimum initial period of ineligibility of time to be determined.



Dave Jones moved that the Committee adopts the staff report as the record on which their recommendations are based. Mark Wallace seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify and articulate the misconduct that is specific to this case. *Two counts of Attempt to Commit Coercion. Attempt to Commit Coercion is a discretionary disqualifying crime for purposes of certification.*
- b. The identified conduct **did** violate the core value of Honesty.
- c. The identified conduct **did** violate the core value of Professionalism.
- d. The identified conduct **did** violate the core value of Justice.

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

The FPC identified the following conduct as mitigating circumstances:

- His misconduct and crimes were limited to a 24-month period.
- His conduct apparently stemmed from emotional stress but the Committee did not find this mitigating.

The FPC identified the following conduct as aggravating circumstances:

- His criminal conduct involved threats to kill the victim.
- He was discharged for cause from two separate fire departments.
- He was sentenced to jail time as well as probation.
- His other criminal convictions that are not in themselves listed as discretionary disqualifying crimes.

Mark Wallace moved that the Committee finds that GINGERICH's conduct does rise to the level to warrant revocation of his certifications, and therefore recommends to the Board that GINGERICH's certifications be revoked. Jamie Paul seconded the motion. The motion carried unanimously.

Michelle Stevens moved that the Committee recommends to the Board that GINGERICH's initial minimum period of ineligibility to re-apply for certification would be until May 8, 2015, the date on which his probation is scheduled to end. Mark Wallace seconded the motion. The motion carried unanimously.

6. Revocation Case Review for Michael S. Lynch #16110 – Lakeview Fire Department

Presented by Kristen Turley

ISSUE:

Should Michael Lynch's fire certifications be revoked based on his discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW:

This case involves the following actions and processes related to LYNCH:

LYNCH has served as a fire service professional since 2001.

LYNCH holds the following fire certifications:

- 1. NFPA Fire Fighter I*
- 2. NFPA Wildland Fire Apparatus*
- 3. NFPA Fire Apparatus Driver/Operator*
- 4. NFPA Apparatus Equipped w/Fire Pump*

*On or about June 25, 2012, LYNCH was convicted of four counts of First Degree Official Misconduct. **First Degree Official Misconduct is a discretionary disqualifying crime for the purposes of certification.***

On or about June 25, 2012, LYNCH signed a Stipulated Order agreeing to the permanent revocation of his Basic Telecommunicator and Emergency Medical Dispatcher Certification. DPSST staff spoke to District Attorney Jody Vaughan regarding the inclusion of LYNCH's fire certifications in the Stipulated Order and was informed that the fire certifications were not part of their plea agreement.

These convictions were compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter must be reviewed by the Fire Policy Committee (FPC).

On September 10, 2012, TURLEY mailed LYNCH a letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. As a policy, DPSST also provides a Stipulated Order Revoking and/or Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order, which ends the denial or revocation process.

On or about October 18, 2012, LYNCH provided information for the FPC's consideration.

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-009-0070(4) specifies discretionary disqualifying conduct, which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that must be reviewed by the FPC.

In OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

- (a) Category I: **Honesty**. Honesty includes straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.
- (b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.
- (c) Category III: **Justice**. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair.

Staff Explanation: The above rule creates a presumption that if an individual has been convicted of any of the discretionary crimes, they have violated the core values of the fire service profession and may not be fit to receive or hold certification. To determine that the applicant may hold certification means that the FPC has determined that in the case of the subject individual, these convictions do not violate the core values.

SPECIFIC TO THIS CASE:

OAR 259-009-0070(4) specifies the discretionary disqualifying conviction of First Degree Official Misconduct [ORS 162.415] as violating Category II, Professionalism, based on the elements of the crime.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, OAR 259-009-0070(7)(d) provides that the FPC and Board will consider aggravating and mitigating circumstances including, but not limited to the following:

(A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self-reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

ACTION ITEM 1:

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to revoke LYNCH's certifications by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.
2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.
 - b. The identified conduct *did/did not* violate the core value of **Honesty**.

- c. The identified conduct *did/did not* violate the core value of **Professionalism**.
 - d. The identified conduct *did/did not* violate the core value of **Justice**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
 4. By vote, the Fire Policy Committee finds that LYNCH's conduct, including the criminal conviction(s) and all mitigating and aggravating circumstances identified by the committee, *does/does not* rise to the level to warrant revocation of his certification(s), and therefore recommends to the Board that LYNCH's certifications be *revoked/not revoked*.

ACTION ITEM 2: (to be considered if denial and revocation are recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to re-apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

By vote, the Fire Policy Committee recommends a minimum initial period of ineligibility of *time to be determined*.



Michelle Stevens moved that the Committee adopts the staff report as the record on which their recommendations are based. Mark Wallace seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify and articulate the misconduct that is specific to this case. *Four counts of First Degree Official Misconduct. First Degree Official Misconduct is a discretionary disqualifying crime, for purposes of certification.*
- b. The identified conduct **did** violate the core value of Honesty.
- c. The identified conduct **did** violate the core value of Professionalism.
- d. The identified conduct **did** violate the core value of Justice.

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

The FPC did not identify any mitigating circumstances.

The FPC identified the following conduct as aggravating circumstances:

- He repeatedly engaged in criminal conduct and his acts placed the public at risk.
- Although his plea agreement resulted in four convictions, 16 events were documented.

- He admitted to the crimes in his plea agreement and again in his letter to the FPC, yet did not see anything wrong with his actions.
- There was restitution ordered but it had not been satisfied by the due date.
- There were no letters of support submitted for him.

Dave Jones moved that the Committee finds that LYNCH's conduct does rise to the level to warrant revocation of his certifications, and therefore recommends to the Board that LYNCH's certifications be revoked. Mark Wallace seconded the motion. The motion carried unanimously.

Mark Wallace moved that the Committee recommends to the Board that LYNCH's initial minimum period of ineligibility to re-apply for certification would be seven (7) years. Dan Petersen seconded the motion. The motion carried unanimously.

7. Denial Case Review for Emmett E. Middaugh IV #30063–Forest Grove Fire & Rescue

Presented by Kristen Turley

ISSUE:

Should Emmett Middaugh's application for NFPA Fire Fighter I be denied based on his discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW:

This case involves the following actions and processes related to MIDDAUGH:

MIDDAUGH has served as a fire service professional since 2011.

On July 18, 2012, MIDDAUGH applied for a NFPA Fire Fighter I certification.

On or about October 23, 2009, MIDDAUGH was arrested for DUII. Misdemeanor DUII is not a discretionary disqualifying crime, for purposes of certification.

*On or about April 28, 2010, MIDDAUGH was convicted of Driving While Suspended. **Driving While Suspended is a discretionary disqualifying crime for purposes of certification.***

On October 23, 2012, DPSST contacted Beaverton Municipal Court regarding any outstanding financial obligations MIDDAUGH may have. The court confirmed that his obligations to the court are paid in full.

This conviction was compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter must be reviewed by the Fire Policy Committee (FPC).

On September 10, 2012, TURLEY mailed MIDDAUGH a letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. As a policy, DPSST also provides a Stipulated Order Revoking and/or Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order, which ends the denial or revocation process.

On or about September 19, 2012, MIDDLEAUGH provided information for the FPC's consideration.

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-009-0070(4) specifies discretionary disqualifying conduct, which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that must be reviewed by the FPC.

In OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

- (a) Category I: **Honesty**. Honesty includes straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.
- (b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.
- (c) Category III: **Justice**. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair.

Staff Explanation: The above rule creates a presumption that if an individual has been convicted of any of the discretionary crimes, they have violated the core values of the fire service profession and may not be fit to receive or hold certification. To determine that the applicant may hold certification means that the FPC has determined that in the case of the subject individual, these convictions do not violate the core values.

SPECIFIC TO THIS CASE:

OAR 259-009-0070(4) specifies the discretionary disqualifying conviction of Driving While Suspended [ORS 811.182] as violating Category II, Professionalism, based on the elements of the crime.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, OAR 259-009-0070(7)(d) provides that the FPC and Board will consider aggravating and mitigating circumstances including, but not limited to the following:

(A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self-reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

ACTION ITEM 1:

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to deny MIDDAUGH's certification by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.
2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.
 - b. The identified conduct *did/did not* violate the core value of **Honesty**.

- c. The identified conduct *did/did not* violate the core value of **Professionalism**.
 - d. The identified conduct *did/did not* violate the core value of **Justice**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
 4. By vote, the Fire Policy Committee finds that MIDDGAUGH's conduct, including the criminal conviction(s) and all mitigating and aggravating circumstances identified by the committee, *does/does not* rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that MIDDGAUGH's certification be *denied/not denied*.

ACTION ITEM 2: (to be considered if denial and revocation are recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to re-apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

By vote, the Fire Policy Committee recommends a minimum initial period of ineligibility of *time to be determined*.



Michelle Stevens moved that the Committee adopts the staff report as the record on which their recommendations are based. Mark Wallace seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify and articulate the misconduct that is specific to this case. *Driving While Suspended is a discretionary disqualifying crime for purposes of certification.*
- b. The identified conduct **did** violate the core value of Honesty.
- c. The identified conduct **did not** violate the core value of Professionalism.
- d. The identified conduct **did not** violate the core value of Justice.

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

The FPC identified the following conduct as mitigating circumstances:

- His prior military years of service and associated awards he received.
- His letters of support.
- He had completed his probation and all of the associated requirements.
- The incident occurred prior to his service as a fire fighter.

The FPC identified the following conduct as aggravating circumstances:

- He knowingly drove a motor vehicle while his driver's license was suspended.

Mark Wallace moved that the Committee finds that MIDDAUGH's conduct does not rise to the level to warrant denial of his certification, and therefore recommends to the Board that MIDDAUGH's certification not be denied. Jamie Paul seconded the motion. The motion carried unanimously.

8. Round Table/Staff Update

Julie Olsen-Fink reported:

- Astoria Fire Department update. All training files have been reviewed. Fire Fighters with certifications that have been impacted will be allowed to go through a process of task performance evaluations to provide refresher training that would support that process. Ted Ames will be the new Fire Chief at the Astoria Fire Department.
- NFPA 1003 Airport Fire Fighter Task Force met and will be making the recommendation to adopt the most recent standard. There are no significant changes.
- Theresa Mills, who was our Office Specialist I, has accepted a promotion to the Academy Training Assistant position. We will recruit for that position and have it filled the first of next year.

Todd Anderson reported:

- The Fire Marshal's Office, Oregon State Police, and DPSST are working on the Fire Insurance Premium Tax. We are asking for a 1% to 1.5% increase. Right now there is great support.
- Marilyn Lorange, the Supervisor from Standards and Certification will be retiring at the end of this year. She has been an incredible asset to DPSST.
- Training has been extremely busy. Mark Ayers and staff have had the skid truck up in Portland. Between Portland Fire & Rescue and Tualatin Valley Fire & Rescue, they have trained approximately 1,100 people.
- A large survival skills weekend was conducted November 2-4 at DPSST.
- We are preparing for the next Legislative Session and the budget preparation exercise that goes along with that.

The next scheduled meeting is February 27, 2013.

Meeting adjourned at 11:40 a.m.