

Police Policy Committee Minutes February 21, 2013

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on February 21, 2013 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:32 p.m. by Chair Kent Barker.

Attendees

Policy Committee Members:

Kent Barker, Chair, Oregon Association Chiefs of Police
Tom Bergin, Oregon State Sheriffs' Association
Richard Evans, Oregon State Police, Superintendent
Craig Halupowski, Non-Management Law Enforcement
Ryan Humphrey, Non-Management Law Enforcement
James Hunter, Oregon Association Chiefs of Police
Joel Lujan, Oregon State Police Command Staff Representative
Marc Tisher, Non-Management Law Enforcement
Mathew Workman, Oregon Association Chiefs of Police

Committee Members Absent:

Larry Blanton, Oregon State Sheriffs' Association
Eric Hendricks, Portland Police Bureau (Designee for Chief Mike Reese)
Holly Russell, Oregon State Sheriffs' Association
Glen Scruggs, Non-Management Law Enforcement
Mike Wells, Non-Management Law Enforcement

DPSST Staff:

Eriks Gabliks, Director
Todd Anderson, Training Division Director
Leon Colas, Professional Standards Coordinator/Investigator
Linsay Hale, Certification Coordinator
Sharon Huck, JTA Coordinator
Kristy Witherell, Administrative Support

Guests:

Steve Beck, Oregon Council of Police Associations
Joe Nofsinger, Cornelius Police Department
Kristen Tweeney
Tim Weaver
Vicki Summers
Ken Summers, Cornelius Police Department
Bruce Schmid, Cornelius Police Department



1. Minutes of November 15, 2012 Meeting

Approve minutes from the November 15, 2012 meeting.

See Appendix A for details

- *Tom Bergin moved to approve the minutes from the November 15, 2012 Police Policy Committee meeting. Craig Halupowski seconded the motion. The motion carried unanimously.*

2. OAR 259-008-0075 – Proposed Rule

Presented by Linsay Hale

See Appendix B for details.

- *Tom Bergin moved that the Police Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0075 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Rich Evans seconded the motion. The motion carried unanimously.*

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

3. OAR 259-008-0025 – Proposed Rule

Presented by Linsay Hale

See Appendix C for details.

- *Ryan Humphrey moved that the Police Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0025 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Craig Halupowski seconded the motion. The motion carried unanimously.*

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

4. Gregory M. Eaton, Douglas County Sheriff's Office – DPSST #51783

Presented by Leon Colas

See Appendix D for details

- *James Hunter moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Tom Bergin seconded the motion. The motion carried unanimously.*

- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case. *Misconduct based on insubordination.***
 - b. The identified conduct ***did not*** involve **Dishonesty.**
 - 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 not*** involve **Gross Misconduct.**
 - f. The identified conduct ***did*** involve **Misconduct based on EATON conducting personal business during work hours, going home while on duty, sleeping in his patrol car, and utilizing office equipment for personal gain.**
 - g. The identified conduct ***did*** involve **Insubordination based on EATON taking home his patrol car after he was instructed not to.**

By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances.

The committee did not note any mitigating circumstances.

The committee noted as aggravating circumstances EATON's lack of response to DPSST. EATON failed to follow direction or instruction. He was not in the patrol area as assigned.

- *Rich Evans moved that the Police Policy Committee finds EATON's conduct does rise to the level to warrant the revocation of his certification(s) and therefore, recommends to the Board that these certification(s) be revoked. Ryan Humphrey seconded the motion. The motion carried unanimously.*
- *Craig Halupowski moved that the Police Policy Committee recommends to the Board that EATON's conduct encapsulated the lowest end of the categories noted above with a focus on MISCONDUCT, therefore, recommending a three year revocation; EATON may reapply for certification in three years. Mathew Workman seconded the motion. The motion carried unanimously.*

5. Steven L. Enyart – DPSST #37772

Presented by Leon Colas

See Appendix E for details

- *Mathew Workman moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.*

- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case. *ENYART's DUII and reckless driving conviction.***
 - b. The identified conduct ***did not*** involve **Dishonesty.**
 - 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 based on *ENYART's DUII and reckless driving conviction.***
 - f. The identified conduct ***did*** involve **Misconduct based on above noted under *Gross Misconduct.***
 - 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 did not note any mitigating circumstances.

The committee noted as aggravating circumstances ENYART's three previous DUII convictions. He refused to take a breath test and did not cooperate during the investigation. ENYART did not provide a response to DPSST.

- *Craig Halupowski moved that the Police Policy Committee finds ENYART's conduct does rise to the level to warrant the revocation of his certification(s) and therefore, recommends to the Board that these certification(s) be revoked. Rich Evans seconded the motion. The motion carried unanimously.*
- *Craig Halupowski moved that the Police Policy Committee recommends to the Board that ENYART's conduct encapsulated the highest end of the categories noted above with a focus on GROSS MISCONDUCT, therefore, recommending a 10 year revocation; ENYART may reapply for certification in 10 years. Tom Bergin seconded the motion. The motion carried unanimously.*

6. David S. Fuller, Columbia County Sheriff's Office – DPSST #16332

Presented by Leon Colas

See Appendix F for details.

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Joel Lujan seconded the motion. The motion carried unanimously.*

- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case. Dishonesty.**
 - b. The identified conduct ***did*** involve **Dishonesty based on FULLER lying about the damage to the vehicle he hit. He lied about purchasing a bumper for the vehicle. FULLER changed his story several times. FULLER denied talking to a bus full of people. FULLER contradicted and minimized how much alcohol he had consumed.**
 - 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 based on FULLER's DUI conviction. He did not report the accident to the police.**
 - f. The identified conduct ***did*** involve **Misconduct based on noted above under Gross Misconduct.**
 - 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 did not note any mitigating circumstances.

The policy committee noted as aggravating circumstances FULLER being vocal throughout the news and media to try to make his case go his way. He stated that it wasn't a DUI; it was Sheriff Dickerson harassing him. FULLER was extremely disrespectful. He did not provide a response to DPSST.

- *Tom Bergin moved that the Policy Committee finds FULLER's conduct does rise to the level to warrant the revocation of his certifications(s) and, therefore, recommends to the Board that these certification(s) be revoked. Craig Halupowski seconded the motion. The motion carried unanimously.*
- *Craig Halupowski moved that the Police Policy Committee recommends to the Board that FULLER's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore, recommending a lifetime revocation; FULLER may never reapply for certifications. Tom Bergin seconded the motion. The motion carried unanimously.*
- *Rich Evans moved that the Police Policy Committee recommends to DPSST to investigate Dispatch Supervisor Terri Levie for untruthfulness in regard to her statements in the case. Tom Bergin seconded the motion. The motion carried unanimously.*

7. **Kenneth D. Summers, Cornelius Police Department – DPSST #14947**

Presented by Leon Colas

See **Appendix G** for details

- ***James Hunter moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Joel Lujan seconded the motion. The motion carried unanimously.***
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case: ***SUMMERS acting as a vehicle dealer without a license.***
 - b. The identified conduct ***did not*** involve **Dishonesty in a 5-4 vote.**
 - 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 not*** involve **Gross Misconduct.**
 - f. The identified conduct ***did*** involve **Misconduct based on SUMMERS' misdemeanor conviction of acting as a dealer without a license.**
 - 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 policy committee found as mitigating circumstances multiple letters of support for SUMMERS. He appears to have a stellar career. SUMMERS was honest about what he had done. SUMMERS was in attendance for the policy committee meeting.

The policy committee found as aggravating circumstances SUMMERS being charged with a misdemeanor.

- ***Marc Tisher moved that the Police Policy Committee finds SUMMERS conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Craig Halupowski seconded the motion. The motion carried unanimously.***

8. Jeffrey J. Paulson, Klamath Falls Police Department – DPSST #44734

Presented by Leon Colas

See Appendix H for details.

- *Tom Bergin moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously with James Hunter abstaining.*
- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case.**
PAULSON lying by omission and showing up to work intoxicated.
 - b. The identified conduct did involve **Dishonesty based on PAULSON lying by omission, showing up to work intoxicated and denying doing so, and was evasive when answering questions during his interview.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others based on PAULSON engaging in domestic disputes in front of his children. He coached his son on what to say in his statement to caseworkers. PAULSON went to work intoxicated. He drove erratically while on duty.**
 - d. The identified conduct did not involve **Misuse of Authority.**
 - e. The identified conduct did involve **Gross Misconduct based on PAULSON driving drunk while on duty. PAULSON racing around in a patrol car. There were six different officers who gave similar statements of PAULSON's behavior while on duty.**
 - f. The identified conduct did involve **Misconduct based on what was stated above under Gross Misconduct.**
 - 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 PAULSON manipulating people in order to get what he wants. He would mold his behavior to what is required of him to get what he wants. He manipulated the system. PAULSON finding religion as soon as the restraining order was enforced seemed manipulating and insincere.

The committee did not identify any mitigating circumstances.

- *Ryan Humphrey moved that the Police Policy Committee finds PAULSON's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Mathew Workman seconded the motion. The motion carried unanimously with James Hunter abstaining.*
- *Ryan Humphrey moved that the Police Policy Committee recommends to the Board that PAULSON's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore, recommending a lifetime revocation; PAULSON may never reapply for certification. Craig Halupowski seconded the motion. The motion carried unanimously with James Hunter abstaining.*

9. Community Policing Problem Solving Award

Todd Anderson

A new award has been created for the basic police class. It is a voluntary commitment by the agencies that would like their students to participate. It is a community solution/community policing project. It is a written project. The basis of the project is to identify a problem in the community and look for solutions to it. It is a four-part written piece. When the student completes the project, they will be recognized during their graduation ceremony. This project is in addition to regular coursework and participating agencies would have to sign off to allow for overtime. There will be a panel within the agency who will review the student's project to ensure standards are met.

10. Staff Report

Eriks Gabliks

The DPSST bill the Board approved allowing DPSST to finish a case regardless of employment standing with the agency has passed through the House and is up for Senate review. A bill has been introduced to allow OHSU officers to be armed while on duty. OHSU has asked DPSST to testify about their status within the Academy. There was an Eyewitness Identification bill introduced by criminal lawyers. DPSST, Chief's, and Sheriffs have drafted a policy for Eyewitness Identification and have made their case stating that there is no need for a bill to be introduced. The last bill DPSST is interested in is the Center for Policing Excellence. This bill would bring back Leadership training at DPSST for Supervisors, Middle-Management, and put resources out to help agencies deal with evidence-based or data-led policing.

DPSST added the additional Basic Police class. The class will run with 22 students.

During the last meeting, Larry Blanton brought up issues with agency's bringing their investigations to the policy committee. DPSST will bring in the University of Louisville Internal Affairs class. It is a 40-hour class for internal affairs personnel. The class will be held in May or June.

The Field Training Manual continues to be revised. The final draft will be shown at the April 1, 2013 meeting.

The Chair gave permission to bring three law enforcement officers killed in the line of duty forward to the Board. The Portland Police Bureau identified three fatalities that their agency had early on. They will be added to the memorial wall May 7, 2013 at 1:00 p.m. U.S. Marshal Russ Berger will be the guest speaker for the Law Enforcement Memorial.

Tactical Training Supervisor Suzy Isham is leaving DPSST to be the Public Safety Director for Clackamas Community College.

We currently have an Oregon Liquor Control Commission class running. It is a four-week class.

Rich Evans stated that he appreciates the professionalism, attitude, and work happening at DPSST with Director Gabliks and his staff. DPSST is meeting and exceeding expectations.

11. Next Police Policy Committee Meeting –May 16, 2013 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 3:16 p.m.

Appendix A

**Police Policy Committee
Minutes
November 15, 2012**

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on November 15, 2012 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:30 p.m. by Chair Kent Barker.

Attendees

Policy Committee Members:

Kent Barker, Chair, Oregon Association Chiefs of Police
Tom Bergin, Oregon State Sheriffs' Association
Larry Blanton, Oregon State Sheriffs' Association
Craig Halupowski, Non-Management Law Enforcement
Eric Hendricks, Portland Police Bureau (Designee for Chief Mike Reese)
Ryan Humphrey, Non-Management Law Enforcement
James Hunter, Oregon Association Chiefs of Police
Joel Lujan, Oregon State Police Command Staff Representative
Holly Russell, Oregon State Sheriffs' Association
Glen Scruggs, Non-Management Law Enforcement
Mathew Workman, Oregon Association Chiefs of Police

Committee Members Absent:

Larry Blanton, Oregon State Sheriffs' Association
Richard Evans, Oregon State Police, Superintendent
Marc Tisher, Non-Management Law Enforcement
Mike Wells, Non-Management Law Enforcement

DPSST Staff:

Eriks Gabliks, Director
Marilyn Lorange, Standards and Certification Program Manager
Leon Colas, Professional Standards Coordinator/Investigator
Sharon Huck, JTA Coordinator
Kristy Witherell, Administrative Support



12. Minutes of August 16, 2012 Meeting

Approve minutes from the August 16, 2012 meeting.

See Appendix A for details

- *Mathew Workman moved to approve the minutes from the August 16, 2012 Police Policy Committee meeting. Ryan Humphrey seconded the motion. The motion carried unanimously.*

13. Richard L. Coufal, Multnomah County Sheriff's Office – DPSST #25208

Presented by Leon Colas

See Appendix B for details

- *Tom Bergin moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Joel Lujan seconded the motion. The motion carried unanimously.*

- By discussion and consensus:

- h. Identify and articulate the **misconduct that is specific to this case.** *Falsifying overtime slips.*
- i. The identified conduct did involve **Dishonesty based on COUFAL falsifying overtime slips. He was untruthful to his sergeant.**
- j. The identified conduct did not involve a **Disregard for the Rights of Others.**
- k. The identified conduct did not involve **Misuse of Authority.**
- l. The identified conduct did not involve **Gross Misconduct.**
- m. The identified conduct did involve **Misconduct based on COUFAL collecting unearned overtime.**
- n. 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 mitigating circumstances COUFAL being honest when interviewed. He took the time to respond to DPSST.

The committee noted as aggravating circumstances COUFAL referring to the allegations in his letter but did not take responsibility for his actions. He would schedule court dates so he would receive overtime.

Ryan Humphrey moved that the Police Policy Committee finds COUFAL's conduct does rise to the level to warrant the revocation of his certification(s,) and therefore, recommends to the Board that these certification(s) be revoked. Holly Russell seconded the motion. The motion carried unanimously.

- *Craig Halupowski moved that the Police Policy Committee recommends to the Board that COUFAL's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore recommending a lifetime revocation; COUFAL may never reapply for certification. Ryan Humphrey seconded the motion. The motion carried unanimously.*

14. John. T. Jayne, Hillsboro Police Department – DPSST #44146

Presented by Leon Colas

See Appendix C for details

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Ryan Humphrey seconded the motion. The motion carried unanimously with Kent Barker abstaining.*
- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**. *The Police Policy committee does not find conduct that rises to revocation.*
 - b. The identified conduct did not involve **Dishonesty in a 5-4 vote**.
 - 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 not involve **Gross Misconduct**.
 - f. The identified conduct did not involve **Misconduct**.
 - g. The identified conduct did not involve **Insubordination**.
- *The Police Policy Committee did not find conduct that rises to warrant revocation, therefore, recommends to the Board that JAYNE's certification(s) not be revoked.*

15. Michael C. Pratt, Tualatin Police Department – DPSST #47013

Presented by Leon Colas

See Appendix D for details

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Ryan Humphrey seconded the motion. The motion carried unanimously with Kent Barker abstaining.*
- By discussion and consensus:

- h. Identify and articulate the **misconduct that is specific to this case. *Misconduct based on socializing with known problem individuals and insubordination based on not following through with calling out on calls when repeatedly instructed to.***
- i. The identified conduct ***did not*** involve **Dishonesty.**
- j. The identified conduct ***did not*** involve a **Disregard for the Rights of Others.**
- k. The identified conduct ***did not*** involve **Misuse of Authority.**
- l. The identified conduct ***did not*** involve **Gross Misconduct.**
- m. The identified conduct ***did*** involve **Misconduct based on PRATT socializing with friends at a known “problem house” and unauthorized use of a department computer by accessing Facebook.**
- n. The identified conduct ***did*** involve **Insubordination based on PRATT being told repeatedly by his sergeant to call out on calls and he did not do that. When conducting bar checks, he would socialize with patrons.**

By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances.

The committee did not note any mitigating circumstances.

The policy committee noted as aggravating circumstances PRATT not responding to DPSST. His behavior showed that he was on a path down a wrong road. He would log onto Facebook while on duty. He was warned about the lack of discretion and did not listen.

- *Glen Scruggs moved that the Policy Committee finds PRATT’s conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Craig Halupowski seconded the motion. The motion carried unanimously.*
- *Glen Scruggs moved that the Police Policy Committee recommends to the Board that PRATT’s conduct encapsulated the highest end of the categories noted above with a focus on MISCONDUCT, therefore recommending a seven year revocation; PRATT may reapply for certification in seven years. Ryan Humphrey seconded the motion. The motion carried unanimously with Kent Barker abstaining.*

16. John P. Shadron, Portland Police Bureau – DPSST #37126

Presented by Leon Colas

See Appendix E for details

- ***Ryan Humphrey moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.***
- By discussion and consensus:
 - h. Identify the conduct that is at issue, specific to this case: ***DUII and reckless driving conviction.***
 - i. The identified conduct ***did not*** involve **Dishonesty.**
 - j. The identified conduct ***did not*** involve a **Disregard for the Rights of Others.**
 - k. The identified conduct ***did not*** involve **Misuse of Authority.**
 - l. The identified conduct ***did*** involve **Gross Misconduct based on his DUII conviction.**
 - m. The identified conduct ***did*** involve **Misconduct based on his DUII conviction.**
 - n. The identified conduct ***did not*** involve **Insubordination.**

By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances.

The policy committee found as mitigating circumstances the letter written by the chief in support of SHADRON. He was disciplined at work. SHADRON went through the court process. It was the consensus that the bureau handled the incident appropriately.

The policy committee did not find any aggravating circumstances.

- ***Craig Halupowski moved that the Police Policy Committee finds SHADRON's conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Glen Scruggs seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.***

17. Dennis T. Swanberg, Canby Police Department – DPSST #13706

Presented by Leon Colas

See **Appendix F** for details

- ***Ryan Humphrey moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.***

- By discussion and consensus:
 - h. Identify and articulate the **misconduct that is specific to this case.**
Dishonesty based on SWANBERG being deceptive while interviewed.
 - i. The identified conduct did involve **Dishonesty in a 7-2 vote, based on SWANBERG being deceptive when interviewed; he omitted facts and was evasive.**
 - j. The identified conduct did involve a **Disregard for the Rights of Others in a 7-2 vote, based on SWANBERG not taking action to protect one from another.**
 - k. The identified conduct did not involve **Misuse of Authority.**
 - l. The identified conduct did not involve **Gross Misconduct.**
 - m. The identified conduct did involve **Misconduct based on SWANBERG not following policies and procedures and not taking a report of abuse.**
 - n. 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 SWANBERG received training in Karly's Law two weeks prior. He was a 28-year veteran of law enforcement and knows that he needs to write reports.

The committee did not identify any mitigating circumstances.

- *Craig Halupowski moved that the Police Policy Committee finds SWANBERG's conduct does rise to the level to warrant the revocation of his certification(s,) and therefore, recommends to the Board that these certification(s) be revoked. Eric Hendricks seconded the motion. The motion carried in an 8-1 vote.*
- *Eric Hendricks moved that the Police Policy Committee recommends to the Board that SWANBERG's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore recommending a lifetime revocation; SWANBERG may never reapply for certification. Craig Halupowski seconded the motion. The motion carried in a 7-3 vote.*

18. Randy B. Vanderhoof, Portland Police Bureau – DPSST #25521

Presented by Leon Colas

See Appendix G for details

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Joel Lujan seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.*
- By discussion and consensus:
 - o. Identify the conduct that is at issue, specific to this case: *DUII conviction.*
 - p. The identified conduct did not involve **Dishonesty.**
 - q. The identified conduct did not involve a **Disregard for the Rights of Others.**
 - r. The identified conduct did not involve **Misuse of Authority.**
 - s. The identified conduct did involve **Gross Misconduct based on his DUII conviction.**
 - t. The identified conduct did involve **Misconduct based on his DUII conviction.**
 - u. The identified conduct did not involve **Insubordination.**

By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances.

The policy committee found as mitigating circumstances the letter written by the chief in support of VANDERHOOF. He was disciplined at work. He went through alcohol classes. VANDERHOOF was cooperative with the arresting officer. Discipline was handled internally. VANDERHOOF participated to make a video to raise awareness of driving under the influence.

The policy committee did not find any aggravating circumstances.

- *Craig Halupowski moved that the Police Policy Committee finds VANDERHOOF's conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Tom Bergin seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.*

19. Staff Report

By Eriks Gabliks

DPSST will be hosting two classes in the next quarter. The International Association of Chiefs of Police is hosting a class about working with Alzheimer's. This class is slated for May. The next class we are hosting is the Below 100 Training Program. It is a national outreach to bring the number of law officers killed down around the country.

The Board approved the changes that the committee moved forward in regard to the Basic Police 16 week curriculum. This will take effect in the January class, BP 335.

The Board approved the changes to the intermediate and advanced matrix for certifications.

There has been an uptick in hiring by the larger agencies from around the state. OSP is looking to potentially hire 40 in the spring. The down side is it's attrition hiring. There has not been any growth in jobs. DPSST has added another class in the spring to accommodate the hiring.

There has been interest in running another Police to Corrections class. As of right now, there haven't been enough students interested to run a class yet.

Klamath County elected a Sheriff that will be attending the 16 week academy due to his absence in law enforcement for over 20 years.

The Field Training Evaluation Program review committee met to update the training manual. Two sections that will be added to the manual will be Ethics and Health and Wellness. DPSST will be beefing up local mental health services, homeless contacts, and handcuffing the mentally ill.

The Portland City Council has approved a training facility for the City of Portland Police Bureau. It is not in competition with DPSST. It will be an in-service facility.

Marilyn Lorance is retiring at the end of December. She has agreed to stay on in a limited basis during the legislative session to help with the transition.

Marilyn:

The workgroup representing telecommunications, corrections, and police met and reviewed the content of all of the crimes that had been identified as a part of HB2712 and made recommendations that will be coming back to the committees. In the course of the conversation, they wanted to answer a more global question about whether there will be a way to better address crimes that are only in the misconduct category. That required Lorraine Anglemier to go back and work on comparing existing crimes that are only in the misconduct category. They are in the category because they violate the law, not the other minimum standards definitions. Lorraine is still doing the comparison work. We hope to have information by early December for the workgroup members to make decisions that will come back to the policy committees in February.

20. Next Police Policy Committee Meeting –February 21, 2013 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 3:24 p.m.

Appendix B

Department of Public Safety Standards and Training Memo

Date: February 21, 2013

To: Police Policy Committee

From: Linsay Hale
Rules Coordinator

Subject: OAR 259-008-0075 – Proposed Rule
Eligibility for Candidacy for Office of Sheriff

Background: ORS 206.015(1) reads “A person is not eligible to be a candidate for election or appointment to the office of sheriff unless: (a) The person is at least 21 years of age or older; (b) The person has at least four years’ experience as a full-time law enforcement officer or at least two years’ experience as a full-time law enforcement officer with at least two years’ post-high-school education; and (c) The person has not been convicted of a felony or of any other crime that would prevent that person from being certified as a police officer ...”

The statute further requires that DPSST, in consultation with the Board, develop a procedure for determining the eligibility of individuals to be a candidate for election to the office of sheriff based on the requirements of ORS 206.015(1). A copy of that determination is to be filed with the county clerk or county election official in charge of elections no later than the 61st day before the date of the election. If an individual does not meet the requirements, that person is deemed to be not eligible to be a candidate and, therefore, cannot be placed on the ballot as a candidate for the office of sheriff [ORS 206.015(4)].

Currently, DPSST complies with this requirement by requiring that any prospective candidate for the office of sheriff submit a Form F-25 Sheriff Eligibility Application (Att. A) and a Form F-26 Criminal History Affidavit (Att. B) to the Department “not sooner than the first of July before the primary election and not later than the 70th day before any election ...” [OAR 259-008-0075(8)(a)]. Once received, staff reviews the application, conducts a criminal background check and makes an eligibility determination based on the individual qualifications as of the date the review is conducted. A certified letter is then sent to the county clerk or county election official affirming whether the individual is eligible or ineligible to appear on the ballot as a candidate for election to the office of sheriff. A certified letter is also sent to the prospective candidate relaying the results of the determination.

Issue: Questions were raised during the last election cycle about the current process for determining eligibility to run for the office of sheriff, specifically, when an eligibility determination should be requested by a prospective candidate (prior to the primary election or

general election) and what date the Department should use when making an eligibility determination.

Legal counsel concluded that based on current statutory language, statutory history and legislative intent, the law requires DPSST to determine eligibility as of the time that the person has become a candidate for the office of sheriff, in other words, the date that a nominating petition or declaration of candidacy is filed with the county clerk.

Therefore any individual wishing to appear on the ballot as a candidate for the office of sheriff must file a nominating petition or declaration of candidacy BEFORE requesting an eligibility determination with DPSST. DPSST will determine eligibility based on the individual's qualifications as of the date the nominating petition or declaration of candidacy was filed with the county clerk.

The deadline for an individual to file as a candidate is 70 days before the primary election. ORS 206.015(1) gives DPSST 9 days after that deadline to determine whether the candidates who have filed are eligible and may have their names placed on the ballot. As always, DPSST would be able to make such determinations earlier, provided that the candidate has already filed with their county clerk.

This proposed rule change will update the Department's eligibility determination process for all candidates for election to the office of sheriff. In addition, the Form F-25 will be updated to include a section for reporting the date that a nominating petition or declaration of candidacy was filed with the county election officials.

DPSST plans to provide this information to all county clerks and sheriff's offices both at the time this proposed rule is adopted and as a reminder before the filing deadline for each county.

The following revised language for OAR 259-008-0075 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0075

Eligibility for Candidacy for Office of Sheriff

(1) A person is not eligible to be a candidate for election or appointment to the office of sheriff unless at the time in which an eligibility determination is being requested the person:

(a) ~~The person is~~ is 21 years of age or older;

(b) ~~The person has~~ Has at least four years experience as a full-time law enforcement officer or at least two years experience as a full-time law enforcement officer with at least two years post-high school education; and

(c) ~~The person has~~ Has not been convicted of a felony or any other crime that would prevent the person from being certified as a police officer under ORS 181.610 to 181.670.

(2) As used in section (1) of this rule, "two years post-high school education" means four semesters or six quarters of classroom education in a formal course of study undertaken after graduation from high school in any accredited college or university. The term does not include apprenticeship or on-the-job training.

(~~8~~ 3) The procedure for determining whether an individual is eligible to be a candidate for election to the office of sheriff is:

(a) After filing a nominating petition or declaration of candidacy with the county clerk or county official in charge of elections, A a potential candidate for sheriff must submit an Application for Determination of Eligibility to Be Sheriff (DPSST Form F-25) and Criminal History Affidavit (DPSST Form F-26) to the Department ~~not sooner than the first of July before the primary election and not later than the 70th day before any election (ORS 249.037);~~

(b) The Department will make an eligibility determination and file a copy of its determination on an individual's eligibility to be a candidate for election to the office of sheriff with the county clerk or county official in charge of elections not later than the 61st day before the date of an election;

(c) The Department will notify the applicant in writing of the determination and decision concerning the eligibility of the applicant by certified mail, mailed to the applicant and postmarked at not later than the 61st day before the date of an election.

~~(9) Any candidate seeking election or appointment to the office of sheriff, must submit a criminal history affidavit (DPSST Form F-26), provided by the Department.~~

~~(10 9) If any falsification is made on the application or documents submitted in support of the application, the The Department may deny approval, revoke and/or rescind any approval previously given if any falsification is made on the application or documents submitted in support of the application.~~

~~(11 10) The Department will provide a copy of this rule to all persons requesting an evaluation of their eligibility to be a candidate for sheriff, upon request.~~

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0075 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0075 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.

Attachments:

Attachment A – DPSST Form F-25 – Sheriff Eligibility Application

Attachment B – DPSST Form F-26 – Criminal History Affidavit

Attachment C – Department of Justice Letter of Advice #259-003-GG0266-12; Sheriff Eligibility under ORS 206.015, Serena Hewitt, AAG

Appendix C

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

Date: February 21, 2013
To: Police Policy Committee
From: Linsay Hale
Rules Coordinator
Subject: OAR 259-008-0025 – Proposed Rule
Minimum Standards for Training

Issue: Current administrative rule requires law enforcement officers who have not been employed in a full-time law enforcement position for an extended period of time to complete additional training before becoming recertified. Specifically, officers away from the profession between 2 ½ to five years must satisfactorily complete a two-week Career Officer Development course and field training program. Officers who have been out of the profession for five or more years must repeat the full Basic Course. These requirements are in place to ensure that all certified, active law enforcement officers are current in the knowledge and abilities of their profession.

In rare instances, an officer's employment history may not require additional training to retain certification, but the periods of employment are so limited and sporadic, not requiring additional training could potentially create a liability for the employing agency and the Department. Staff is requesting to add an exception to rule to address these unusual situations.

The following revised language for OAR 259-008-0025 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0025

Minimum Standards for Training

(8) Notwithstanding this rule, the Department may prescribe additional training for Basic certification, up to and including completion of the full Basic course, in situations in which previous periods of employment have been limited.

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0025 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0025 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.

Appendix D

Department of Public Safety Standards and Training
Memorandum

DATE: February 21, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: GREGORY M. EATON DPSST #51783
Douglas County Sheriff's Office

ISSUE:

Should Gregory M. Eaton's Basic Police certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

The issue in this case involves EATON's conduct surrounding his probationary discharge.

BACKGROUND and OVERVIEW:

1. *From February 2006 to January 2011, Eaton was employed by an out-of-state agency as a deputy sheriff.¹ On January 9, 2011, EATON was hired by the Douglas County Sheriff's Office as a deputy sheriff.² He signed his Code of Ethics,³ and obtained a Basic Police certification.⁴*
2. *In May 2012, DPSST received an F-4 Personnel Action Report showing that EATON's employment was terminated by a probationary discharge.⁵ DPSST requested and received the information leading to the discharge.⁶*
3. *In December 2012, DPSST notified EATON via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.⁷*
4. *EATON did not provide a response.*

¹ Ex A1

² Ex A1

³ Ex A2

⁴ Ex A1

⁵ Ex A3

⁶ Ex A4, A5

⁷ Ex A6

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(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; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(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. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

(iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;

- (iv) *Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
- (v) *Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
- (vi) *Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
- (vii) *Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) *Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) *Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) *Whether the misconduct involved domestic violence;*
- (F) *Whether the public safety professional or instructor self reported the misconduct;*
- (G) *Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) *Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) *What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

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. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke EATON's certification(s) based on violation of the established moral fitness standards:

2. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
3. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case.**

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

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

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

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

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

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

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

5. By vote, the Policy Committee finds EATON's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments:

*Information Only - **SUBSEQUENT DUE PROCESS:***

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix E

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

DATE: February 21, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: STEVEN L. ENYART DPSST #37772

ISSUE:

Should Steven L. Enyart's Basic, Intermediate and Advanced Police certifications be revoked based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4), and as referenced in OAR 259-008-0010?

The issue in this case involves ENYART's conduct surrounding his 2012 conviction for DUII.

BACKGROUND and OVERVIEW:

5. *In July 1999, ENYART was hired as a police officer by the Beaverton Police Department.⁸ He signed his Code of Ethics,⁹ and ultimately obtained his Basic, Intermediate and Advanced Police certifications.¹⁰ ENYART resigned from the Beaverton Police Department in March, 2007, and his certifications are lapsed.¹¹*
6. *In July 2012, DPSST received information that ENYART had been arrested for DUII and Reckless Driving in Washington County.¹² DPSST sought and obtained the information leading to ENYART's arrest.¹³ DPSST monitored the case, and in October 2012, ENYART was convicted of DUII after pleading guilty. The Reckless Driving offense had not been charged.¹⁴ DPSST then requested and obtained the information on the conviction.¹⁵*

⁸ Ex A1

⁹ Ex A2

¹⁰ Ex A1

¹¹ Ex A1

¹² Ex A3

¹³ Ex A4, A5

¹⁴ Ex A6

7. *In November 2012, DPSST notified ENYART via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*¹⁶
8. *ENYART did not provide a response.*
9. *As background information only, DPSST learned that ENYART has a prior conviction for DUII in 1991 in Lane County.*¹⁷ *DPSST takes no action on discretionary criminal convictions prior to 2001.*¹⁸ *He was also arrested in September 2010 in Washington County for DUII and two counts of Recklessly Endangering. The Recklessly Endangering offenses were not charged, and ENYART was acquitted on the DUII after a bench trial.*¹⁹

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(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; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

* * *

¹⁵ Ex A7, A8

¹⁶ Ex A9

¹⁷ Ex A10

¹⁸ OAR 259-008-0070 (7) (b)

¹⁹ Ex A11

(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. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

813.010 (Driving Under the Influence of Intoxicants) – Category IV.

* * *

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of DUII as Category IV, Gross Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration for certification of five to ten years.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) Whether the misconduct involved domestic violence;*
- (F) Whether the public safety professional or instructor self reported the misconduct;*

- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

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. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke ENYART's certification(s) based on discretionary disqualifying misconduct:

- 6. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

- 7. By discussion and consensus:

- a. Identify and articulate the **misconduct that is specific to this case**.

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

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

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

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

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

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

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

9. By vote, the Policy Committee finds ENYART's conduct *does/does not* rise to the level to warrant the denial of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix F

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

DATE: February 21, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: DAVID S. FULLER DPSST #16332
Columbia County Sheriff's Office**

ISSUE:

Should David S. Fuller's Basic, Intermediate and Advanced Police certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

The issue in this case involves FULLER's conduct surrounding his resignation during an internal investigation of violations of department policies related to general conduct, including driving while intoxicated, fail to report a traffic crash, and truthfulness.

BACKGROUND and OVERVIEW:

10. On August 22, 1983, FULLER was hired by the Columbia County Sheriff's Office as a deputy sheriff.²⁰ He signed his Code of Ethics,²¹ and ultimately obtained Basic, Intermediate and Advanced Police certifications.²²
11. In September 2012, DPSST received an F-4 Personnel Action Report showing that FULLER had retired during an internal investigation.²³ DPSST requested and received the information leading to the retirement.²⁴ DPSST later received additional documents concerning FULLER from Columbia County S.O. as background for the PPC's review.²⁵

²⁰ Ex A1

²¹ Ex A2

²² Ex A1

²³ Ex A3

²⁴ Ex A4, A5

²⁵ Ex A6

12. In November 2012, DPSST notified FULLER via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.²⁶

13. FULLER did not provide a response.

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(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; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(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.

²⁶ Ex A7

(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. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

- (i) *Whether it was a misdemeanor or violation;*
- (ii) *The date of the conviction(s);*
- (iii) *Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
- (iv) *Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
- (v) *Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
- (vi) *Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
- (vii) *Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) *Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) *Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) *Whether the misconduct involved domestic violence;*
- (F) *Whether the public safety professional or instructor self reported the misconduct;*
- (G) *Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) *Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) *What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

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. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke FULLER's certifications based on violation of the established moral fitness standards:

10. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

11. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case.**

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

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

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

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

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

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

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

13. By vote, the Policy Committee finds FULLER's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments:

*Information Only - **SUBSEQUENT DUE PROCESS:***

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix G

Department of Public Safety Standards and Training Memorandum

DATE: February 21, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: KENNETH D. SUMMERS DPSST #14947
Cornelius Police Department**

ISSUE:

Should Kenneth D. Summers' Basic, Intermediate, Advanced, Supervisory, Management and Executive Police certifications be revoked based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4), and as referenced in OAR 259-008-0010?

The issue in this case involves SUMMERS' discretionary disqualifying misconduct, including but not limited to his 2011 conviction for Acting as a Vehicle Dealer Without a Certificate – ORS. 822.005, a Class A misdemeanor.

BACKGROUND and OVERVIEW:

14. *From 1981 to 2011, SUMMERS was employed as a public safety officer in Oregon, first with the Yamhill County Sheriff's Office, then with the Newberg-Dundee Police Department, and then again with the Yamhill County Sheriff's Office, from which he retired in November, 2011.²⁷ He signed his Criminal Justice Code of Ethics²⁸ and ultimately obtained Basic, Intermediate, Advanced, Supervisory, Management and Executive Police certifications.²⁹ Approximately a year after his retirement, SUMMERS was hired by the Cornelius Police Department as Acting Chief.³⁰*
15. *In November, 2012, DPSST learned through a news release that SUMMERS had been hired by the Cornelius Police Department as Acting Chief, and that news article noted that SUMMERS had been convicted in August of 2012 of Acting as a Vehicle Dealer Without a*

²⁷ Ex A1

²⁸ Ex A2

²⁹ Ex A1

³⁰ Ex A1

Certificate, ORS 822.005, a Class A misdemeanor.³¹ DPSST requested and received the information leading to the conviction.³²

16. In December 2012, DPSST notified SUMMERS via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.³³

17. SUMMERS provided a response.³⁴

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(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; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(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;

³¹ Ex A3

³² Ex A4, A5

³³ Ex A6

³⁴ Ex A7

(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. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4)(a)(c) does not specify ORS 822.005 on the list of offenses for categorization. Under OAR 259-008-0070(4), the Committee may determine the appropriate category for this offense.³⁵

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) Whether the misconduct involved domestic violence;*
- (F) Whether the public safety professional or instructor self reported the misconduct;*
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

³⁵ Ex A8

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. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke SUMMERS' certification(s) based on discretionary disqualifying misconduct:

14. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

15. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case.**

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

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

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

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

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

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

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

17. By vote, the Policy Committee finds SUMMERS' conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).

- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments:

*Information Only - **SUBSEQUENT DUE PROCESS:***

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix H

Department of Public Safety Standards and Training
Memorandum

DATE: February 21, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: JEFFREY J. PAULSON DPSST #44734
Klamath Falls Police Department

ISSUE:

Should Jeffrey J. Paulson's Basic Police certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

The issue in this case involves PAULSON's conduct surrounding his resignation pursuant to a settlement agreement, after an internal investigation concerning his fitness for duty.

EXECUTIVE SESSION: If medical information is discussed, this matter must be moved to executive session.

BACKGROUND and OVERVIEW:

18. On September 20, 2004, PAULSON was hired by the Klamath Falls Police Department as a police officer.³⁶ He signed his Code of Ethics,³⁷ and ultimately obtained a Basic Police certification.³⁸
19. In August 2012, DPSST received an F-4 Personnel Action Report showing that PAULSON had resigned pursuant to a Settlement Agreement effective January 1, 2012.³⁹ DPSST requested and received the information leading to the resignation.⁴⁰

³⁶ Ex A1

³⁷ Ex A2

³⁸ Ex A1

³⁹ Ex A3

⁴⁰ Ex A4, A5

20. In November 2012, DPSST notified PAULSON via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.⁴¹

21. PAULSON provided a response.⁴²

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(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; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

* * *

(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,

⁴¹ Ex A6

⁴² Ex A7

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. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) *When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) *If the misconduct resulted in a conviction:*
 - (i) *Whether it was a misdemeanor or violation;*
 - (ii) *The date of the conviction(s);*
 - (iii) *Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) *Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) *Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) *Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) *Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) *Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) *Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) *Whether the misconduct involved domestic violence;*
- (F) *Whether the public safety professional or instructor self reported the misconduct;*
- (G) *Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) *Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) *What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

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. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke PAULSON's certification(s) based on violation of the established moral fitness standards:

18. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

19. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case.**

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

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

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

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

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

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

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

21. By vote, the Policy Committee finds PAULSON's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).

- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments:

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.