

Police Policy Committee Minutes May 16, 2013

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on May 16, 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
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
Holly Russell, Oregon State Sheriffs' Association
Glen Scruggs, Non-Management Law Enforcement
Marc Tisher, Non-Management Law Enforcement
Mathew Workman, Oregon Association Chiefs of Police

Committee Members Absent:

Richard Evans, Oregon State Police, Superintendent
Joel Lujan, Oregon State Police Command Staff Representative
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
Jared Bledsoe, Lincoln City Police Department
Chief Keith Kilian, Lincoln City Police Department
Rod Edwards, Multnomah County Sheriff's Office



1. Minutes of February 21, 2013 Meeting

Approve minutes from the February 21, 2013 meeting.

To see a complete record of the February 21, 2013 Police Policy Committee minutes, please go to:

http://www.oregon.gov/dpsst/BD/Policy_Committee_Minutes/PPC_Minutes/PPC022113.pdf

- *Craig Halupowski moved to approve the minutes from the February 21, 2013 Police Policy Committee meeting. Tom Bergin seconded the motion. The motion carried unanimously.*

2. OAR 259-008-0070 – Proposed Rule

Presented by, Linsay Hale

See Appendix A for details.

- *Larry Blanton moved that the Police Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0070 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. James Hunter seconded the motion. The motion carried unanimously.*

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

3. Police Field Training Manual Revision & Update

Presented by Todd Anderson

See Appendix B for details.

- *Tom Bergin moved that the Police Policy Committee recommends to the Board approval of the updated Police Field Training Manual. Craig Halupowski seconded the motion. The motion carried unanimously.*

4. Complaint Filed by Brett Elliot

Presented by Eriks Gabliks

- *It is the opinion of DPSST that the complaint filed by Brett Elliot against the Multnomah County Sheriff's Office had been thoroughly investigated and has no merit.*
- *The committee requests the complete investigation be added to the August Police Policy Committee packet for further review.*

5. Follow-up on the Committee's Request to Investigate Terrilee Levie, Columbia County 9-1-1 – DPSST #25730

Presented by Leon Colas

To read the minutes that discussed investigating Terrilee Levie, please follow the link below.

http://www.oregon.gov/dpsst/BD/Policy_Committee_Minutes/PPC_Minutes/PPC022113.pdf

- *During the February Police Policy Committee meeting, it was the consensus of the committee that DPSST investigate LEVIE for her involvement with the FULLER investigation.*
- *Columbia County Sheriff's Office conducted a full investigation and did not find a level of dishonesty to proceed with revocation of her certifications. Her agency administered internal discipline.*
- *It is the consensus of the committee not to proceed with another investigation on LEVIE.*

6. Jared L. Bledsoe, Lincoln City Police Department – DPSST #52254

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.*
- *By discussion and consensus:*
 - Identify and articulate the **misconduct that is specific to this case. BLEDSOE's 2010 conviction in Nevada for possession of a firearm by a child under 18 years of age.***
 - The identified conduct did not involve **Dishonesty**.*
 - The identified conduct did not involve a **Disregard for the Rights of Others**.*
 - The identified conduct did not involve **Misuse of Authority**.*
 - The identified conduct did not involve **Gross Misconduct**.*
 - The identified conduct did not involve **Misconduct**.*
 - 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 BLEDSOE's certification(s) not be revoked.*

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

Presented by Leon Colas

This case was heard by the policy committee in February of 2013. At that time the committee recommended not to revoke JAYNE's certification(s). The Board requested the case be brought back before the committee for further review.

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. Craig Halupowski seconded the motion. The motion carried unanimously with Kent Barker abstaining.*
- *Upon further review, the Police Policy Committee does not find conduct that rises to the level to warrant revocation, therefore, recommends to the Board that JAYNE's certification(s) not be revoked.*

8. **Homero Reynaga, Portland Police Bureau – DPSST #29551**

Presented by Leon Colas

See Appendix E for details.

- *James Hunter moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Holly Russell seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.*
- *By discussion and consensus:*
 - a. *Identify and articulate the **misconduct that is specific to this case. REYNAGA's 2012 DUII 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 REYNAGA driving while intoxicated and involved in an accident that injured another person.***

- f. The identified conduct did involve **Misconduct based on the statement 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 noted as mitigating circumstances REYNAGA attended inpatient rehabilitation. He paid his fine. REYNAGA immediately cooperated with officers and did not use his job as leverage. He was disciplined by his agency. The letter from his Chief was mitigating.

The committee did not note any aggravating circumstances.

- *Craig Halupowski moved that the Policy Committee finds REYNAGA'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. Ryan Humphrey seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.*

9. Charles R. Keller, St. Helens Police Department – DPSST #28157

Presented by Leon Colas

See Appendix F for details

- *James Hunter moved that the Police Policy Committee adopts the staff report, with a correction in the staff report, second paragraph to read city policies, formerly reported as county policies, as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case: **KELLER's violation of agency and city policy and 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 in a 10-1 vote.**
 - e. The identified conduct did involve **Gross Misconduct based on KELLER texting a female subordinate and asking her to expose her chest. He took a lack of ownership in the initial complaint. KELLER effected the efficient operation of the agency.**
 - f. The identified conduct did involve **Misconduct based on the statement noted above under GROSS MISCONDUCT.**

- g. The identified conduct ***did*** involve **Insubordination in a 10-1 vote. KELLER was directed not to discuss the case and did anyway with several people. KELLER did not respond to a phone call from the department in a four-hour period when directed to report for duty while on paid administrative leave.**

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

The policy committee found as mitigating circumstances KELLER being honest while being interviewed. He admitted he was wrong in trying to allege ongoing harassment. He was honest when questioned about asking the female officer to remove her shirt.

The policy committee found as aggravating circumstances KELLER disrupted the operations of the department for his own personal reasons. He asked a female officer who was his subordinate, to remove her shirt. He tried to shift ownership onto others in the department. KELLER tried to accuse others of sexual harassment.

- ***Glen Scruggs moved that the Police Policy Committee finds KELLER'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. Ryan Humphrey seconded the motion. The motion failed.***
- ***Tom Bergin moved that the Police Policy Committee finds KELLER'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 in a 6-5 vote.***
- ***The Police Policy Committee voted on the categories listed below and recommends to the Board that KELLER's conduct receive the following periods of ineligibility:***

Category IV: Gross Misconduct (5-10 years). ***Craig Halupowski moved that the Police Policy Committee recommend to the Board a five-year revocation based on Gross Misconduct. Tom Bergin seconded the motion. The motion carried in a 9-2 vote.***

Category V: Misconduct (3-7 years). ***Craig Halupowski moved that the Police Policy Committee recommend to the Board a five-year revocation based on Misconduct. Tom Bergin seconded the motion. The motion carried in a 9-2 vote.***

Category VI: Insubordination (3-7 years). ***Craig Halupowski moved that the Police Policy Committee recommend to the Board a five-year revocation based on Insubordination. Tom Bergin seconded the motion. The motion carried in a 9-2 vote.***

- *It is the consensus of the committee that KELLER may reapply for certifications in five years.*

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

Presented by Leon Colas

This case was heard by the policy committee in November of 2012. At that time the committee recommended not to revoke SHADRON's certification(s). The Board has requested that the case be brought back before the committee for further review.

See Appendix G for details.

- *Ryan Humphrey moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Holly Russell seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.*
- *Upon further review, the Police Policy Committee does not find conduct that rises to warrant revocation, therefore, recommends to the Board that SHADRON's certification(s) not be revoked.*

11. Staff Report

DPSST held the Law Enforcement Memorial on May 7, 2013. Three names were added to the wall through the historic recognition process from the Portland Police Bureau. U.S Marshal Russ Burger and Chief Michael Reese spoke at the memorial. There is one request pending through the historic recognition process to add another fallen officer's name to the memorial wall from the Bandon Police Department. This will be added to the August committee meeting agenda for approval.

DPSST is facilitating a workgroup to discuss the application of Brady vs Maryland. The workgroup consists of Labor, Chiefs, Sheriff's, Portland Police Bureau, Oregon State Police, District Attorneys, the US Attorney's Office, and the Department of Justice. As a result of the meetings, they have created a number of sub-workgroups that will follow the model of Senate Bill 111 which created a plan for each county on how to address Brady. The workgroup will come back in July to proceed further. Currently, there is legislation pending that would change the whole discussion around Brady.

A bill introduced at the request of the Judiciary Committee which would establish the Center for Policing Excellence at DPSST has moved from the Judiciary Committee to Ways and Means. This bill would restore the Criminal Justice Leadership Training Program at DPSST, embrace evidence-based policing theories and practices, and would also bolster the Criminal Justice Regional Training Program. The fiscal impact for this bill is approximately 1.2 million dollars for four full-time employees and program-related services and supplies.

OHSU University Police are trained and certified at DPSST the same as any other Law Enforcement Officer in the state. By statute, they cannot be armed while on duty. A bill was introduced that would allow these officers to be armed 24 hours a day. The University of Oregon Police Department is approaching the Board of Higher Education in June with their staffing plan where they want to carry firearms on campus.

Bail Bond agents introduced a bill which did not make it out of committee, which leads DPSST to believe the bill is dead.

A number of Use of Force bills were introduced, none of which have moved out of committee.

A bill was introduced for Human Trafficking that originally would have required DPSST to train every full time and reserve officer in the state. DPSST submitted a fiscal impact statement on training all law enforcement officers, which would affect the sending agencies budgets as well.

DPSST has posted a number of classes and there are classes scheduled into June. DPSST will be hosting the Southern Police Institute Internal Affairs class. It is a 40-hour class that is free of charge. DPSST also hosted the IACP Alzheimer's class. DPSST is developing a Stress First Aid class for Law Enforcement in which a military model will be used.

Currently, there are three Basic Police classes in session with 20 students scheduled for the June Basic Police class.

DPSST hosted a group from Bangladesh in partnership with the Portland Police Bureau. They were here to tour the campus. In June, DPSST is hosting IADLEST in Portland and in Salem.

DPSST's Training Division is working with Lines for Life to get mental health practitioners in the classrooms to teach the students along with instructors.

Holly Russell is retiring from the Oregon State Sheriff's Association. Today will be her last Police Policy Committee meeting as a representative of OSSA. Her service on the committee is greatly appreciated.

There have been a few staff changes in the Training Division. Gary Ninman is the new Tactical Training Supervisor. Currently, there are two individuals in background for the Telecommunications Coordinator and the Parole and Probation Coordinator positions.

12. Next Police Policy Committee Meeting –August 15, 2013 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 3:25 p.m.

Appendix A

Department of Public Safety Standards and Training Memo

Date: May 16, 2013

To: Police Policy Committee

From: Linsay Hale
Rules Coordinator

Subject: OAR 259-008-0070 – Proposed Rule
2012 HB 2712 – Mandatory/Discretionary Disqualifying Crimes

Issue: HB 2712 (Oregon Laws, Chapter 597) updates and simplifies the current statutory revenue and distribution structure related to criminal fines, assessments and other financial penalties imposed on convictions for felonies, misdemeanors and violations other than parking infractions.

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

On October 2, 2012 and again on December 7, 2012 a workgroup comprised of various members of the Telecommunications, Corrections and Police Policy Committees was convened to review these identified crimes and the staff recommendations.

This proposed rule update contains additions to the discretionary disqualifying crimes list and the presumptive categories as recommended by the workgroup members. Additionally, because all criminal convictions meet the definition of Misconduct, crimes with a presumptive category of Misconduct (Category V) are not included on the discretionary list and any crime previously determined to be Misconduct only are removed. Finally, language is added to allow for summary staff disposition or administrative closure for crimes with a presumptive category of only Misconduct (Category V) if the conviction occurred over seven years prior to the date of review and it represents the sole criminal conviction in the officer’s history.

The following revised language for OAR 259-008-0070 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0070

Denial/Revocation

Grounds for Mandatory Denial or Revocation of Certification

(3) Mandatory Grounds for Denying or Revoking Certification of a Public Safety Professional or Instructor:

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

(A) The public safety professional or instructor has been discharged for cause from employment as a public safety professional or instructor. For purposes of this rule, "discharged for cause," means an employer-initiated termination of employment for any of the following reasons after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the public safety professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.

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

(ii) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, 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.

(iii) 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;

(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a public safety professional or instructor that remedial measures have been unable to correct.

(v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office.

(B) The public safety professional or instructor has been convicted in this state or any other jurisdiction of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(C) The public safety professional or instructor has been convicted of violating any law of this state or any other jurisdiction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug except the Department may deny certification for a conviction of possession of less than one ounce of marijuana, which occurred prior to certification; or

(D) The public safety professional or instructor has been convicted in this state of any of the following offenses, or of their statutory counterpart(s) in any other jurisdiction, designated under the law where the conviction occurred as being punishable as a crime:

25.785(3) (False Submission of a Statement Regarding Social Security Number),

106.041(5) (Intentional False Statement on Marriage License; Application)

162.075 (False swearing),

162.085 (Unsworn falsification),

162.145 (Escape in the third degree),

162.175 (Unauthorized departure),

162.195 (Failure to appear in the second degree),

162.235 (Obstructing governmental or judicial administration),

162.247 (Interfering with a peace officer),

162.257 (Interfering with a firefighter or emergency medical technician),

162.295 (Tampering with physical evidence),

162.305 (Tampering with public records),

162.315 (Resisting arrest),

162.335 (Compounding),

162.365 (Criminal impersonation),

162.369 (Possession of false law enforcement identification),

162.375 (Initiating a false report),

162.385 (Giving false information to a peace officer for a citation or arrest warrant),

162.415 (Official misconduct in the first degree),

163.200 (Criminal mistreatment in the second degree),

163.454 (Custodial sexual misconduct in the second degree),

163.687 (Encouraging child sexual abuse in the third degree),

163.732 (Stalking),

164.045 (Theft in the second degree),

164.085 (Theft by deception),

164.095 (Theft by receiving),

164.125 (Theft of services),

164.235 (Possession of a burglary tool or theft device),

164.877 (Unlawful tree spiking; unlawful possession of substance that can damage certain wood processing equipment)

165.007 (Forgery in the second degree),

165.017 (Criminal possession of a forged instrument in the second degree),

165.037 (Criminal simulation),

165.042 (Fraudulently obtaining a signature),

165.047 (Unlawfully using slugs),

165.055 (Fraudulent use of a credit card),

165.065 (Negotiating a bad check),

165.080 (Falsifying business records),

165.095 (Misapplication of entrusted property),

165.100 (Issuing a false financial statement),

165.102 (Obtain execution of documents by deception),

165.118(1) (Unlawfully Altering Metal Property),

165.118(2)(a)(b) (False Statement on a Metal Property Record),

165.825 (Sale of drugged horse),

166.065(1)(b) (Harassment),

166.155 (Intimidation in the second degree),

166.270 (Possession of weapons by certain felons),

166.350 (Unlawful possession of armor-piercing ammunition),

166.416 (Providing false information in connection with a transfer of a firearm),

166.418 (Improperly transferring a firearm),

166.470 (Limitations and conditions for sales of firearms),

167.007 (Prostitution),

167.075 (Exhibiting an obscene performance to a minor),

167.080 (Displaying obscene materials to minors),

167.132 (Possession of gambling records in the second degree),

167.147 (Possession of a gambling device),

167.222 (Frequenting a place where controlled substances are used),

167.262 (Adult using minor in commission of controlled substance offense),

167.320 (Animal abuse in the first degree),

167.330 (Animal neglect in the first degree),

167.332 (Prohibition against possession of domestic animal),

167.333 (Sexual assault of animal),

167.337 (Interfering with law enforcement animal),

167.355 (Involvement in animal fighting),

167.370 (Participation in dogfighting),

167.431 (Participation in cockfighting),

167.820 (Concealing the birth of an infant),

305.815 (False Swearing of Return, Statement or Other Tax Document),

307.990 (Willful False Statement to Property Tax Assessment Officer),

398.224 (Refusal to Appear to Testify),

462.415(2) (Racing a Prohibited Animal),

462.420 (Stimulating or Depressing Participating Animal),

462.430 (Influencing the Results of Races),

462.450 (Possession, Transportation or Use of Drugs at Race Course),

462.460 (Racing an Animal Under Name or Designation Other than Registered Name or Designation or Altering License),

462.470 (Aiding or Abetting Racing Animal Under Name or Designation Other than Registered Name or Designation),

475.525 (Sale of drug paraphernalia),

475.840 (Manufacture or deliver a controlled substance),

475.860 (Unlawful delivery of marijuana),

475.864 (Unlawful possession of marijuana),

475.906 (Distribution of controlled substance to minors),

475.910 (Application of controlled substance to the body of another person),

475.912 (Unlawful delivery of imitation controlled substance),

475.914 (Unlawful acts, registrant delivering or dispensing controlled substance),

475.916 (Prohibited acts involving records and fraud),

475.918 (Falsifying drug test results),

475.920 (Providing drug test falsification equipment),

475.950 (Failure to report precursor substances transaction),

475.955 (Failure to report missing precursor substances),

475.960 (Illegally selling drug equipment),

475.965 (Providing false information on precursor substances report or record),

475.969 (Unlawful possession of phosphorus),

475.971 (Unlawful possession of anhydrous ammonia),

475.973 (Unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine; unlawful distribution),

475.975 (Unlawful possession of iodine in its elemental form),

475.976 (Unlawful possession of iodine matrix),

657.300 (False Statements or Failure to Report Material Fact By Employer),

657.495 (Fraudulently Lowering Contributions),

658.415 (False Swearing or Affirmation of Application of License, Proof of Insurance and Financial Responsibilities of Farm Labor Contractors),

659.810 (Filing a False Statement with Employment Agency to Secure Labor),

679.170 (3) (Fraudulent Alteration of Diploma, Certificate or Transcript),

679.170(5) (Willful False Statement to Oregon Board of Dentistry),

689.995 (Willfully Furnishing False Information; Pharmacists, Drug Outlets; Drug Sales),

807.520 (False swearing to receive license),

807.620 (Giving false information to police officer),

Any offense involving any acts of domestic violence as defined in ORS 135.230.

(b) The Department must take action on a mandatory disqualifying conviction, regardless of when it occurred, unless the Department, or the Board, has previously reviewed the conviction and approved the public safety professional or instructor for certification under a prior set of standards.

Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification

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

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

(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 has engaged in conduct that fails to meet the applicable minimum standards as described in subsection (b), minimum training or the terms and conditions established under ORS 181.640;

(C) The public safety professional or instructor has engaged in conduct that resulted in the conviction 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; or

(D) A public safety professional failed to attend at least one session with a mental health professional within six months after the public safety professional was involved in using deadly physical force, as required by ORS 181.789.

(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, or 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. **By definition, all criminal convictions meet the definition of Misconduct within this category.**

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.

(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 **NOTE: Those criminal convictions not listed below are presumptively considered Misconduct (Category V):**

25.260 (Unlawful Disclosure of Confidential Records of Child Support Division) – Category II,

~~97.931 (Registration of Salesperson for Endowment Care Cemeteries, Pre-construction Sales and Prearrangement Sales) – Category V,~~

~~97.933 (Certification of Provider of Prearrangement or Preconstruction) – Category V,~~

~~97.937 (Deposit of Trust Funds made by Endowment Care Cemeteries) – Category V,~~

~~97.941 (Prearrangement or Preconstruction Trust Fund Deposits) – Category V,~~

~~97.990(4) (Maintaining a Nuisance) – Category V,~~

162.405 (Official Misconduct in the Second Degree) — Category III,

162.425 (Misuse of Confidential Information) — Category III,

~~162.455 (Interfering with Legislative Operations) — Category V,~~

162.465 (Unlawful Legislative Lobbying) — Category I,

163.160 (Assault in the Fourth Degree) — Category II,

163.187 (Strangulation) — Category II,

163.190 (Menacing) — Category II,

163.195 (Recklessly Endangering Another Person) — Category IV,

163.212 (Unlawful Use of Stun Gun, Tear Gas or Mace in the Second Degree) — Category IV,

163.415 (Sexual Abuse in the Third Degree) — Category II,

163.435 (Contributing to the Sexual Delinquency of a Minor) — Category II,

163.445 (Sexual Misconduct) — Category II,

163.465 (Public Indecency) — Category II,

163.467 (Private Indecency) — Category II,

163.545 (Child Neglect in the Second Degree) — Category IV,

163.693 (Failure to Report Child Pornography) — Category IV,

163.575 (Endangering the Welfare of a Minor) — Category III,

163.700 (Invasion of Personal Privacy) — Category II,

163.709 (Unlawful Directing of Light from a Laser Pointer) — Category IV,

~~164.043 (Theft in the Third Degree) — Category V,~~

~~164.132 (Unlawful Distribution of Cable Equipment) — Category V,~~

~~164.140 (Criminal Possession of Rented or Leased Personal Property) — Category V,~~

164.162 (Mail Theft or Receipt of Stolen Mail) — Category I,

~~164.243 (Criminal Trespass in the Second Degree by a Guest) — Category V,~~

~~164.245 (Criminal Trespass in the Second Degree) — Category V,~~

~~164.255 (Criminal Trespass in the First Degree) — Category V,~~

164.265 (Criminal Trespass While in Possession of a Firearm) — Category IV,

164.272 (Unlawful Entry into a Motor Vehicle) — Category IV,

~~164.278 (Criminal Trespass at Sports Event) — Category V,~~

164.335 (Reckless Burning) — Category IV,

~~164.345 (Criminal Mischief in the Third Degree) — Category V,~~

~~164.354 (Criminal Mischief in the Second Degree) — Category V,~~

~~164.373 (Tampering with Cable Television Equipment) — Category V,~~

~~164.377 (Computer Crime) — Category V,~~

~~164.775 (Deposit of Trash Within 100 Yards of Water) — Category V,~~

164.785 (Placing Offensive Substances in waters/on highways or property) — Category IV,

~~164.805 (Offensive Littering) — Category V,~~

~~164.813 (Unlawful Cutting and Transporting of Special Forest Products) — Category V,~~

~~164.815 (Unlawful Transport of Hay) — Category V,~~

~~164.825 (Cutting and Transport of Coniferous Trees without Permit/Bill of Sale) — Category V,~~

164.845 (FTA on Summons for ORS 164.813 or 164.825) — Category IV,

~~164.863 (Unlawful Transport of Meat Animal Carcasses) — Category V,~~

~~164.865 (Unlawful Sound Recording) — Category V,~~

~~164.875 (Unlawful Video Tape Recording) — Category V,~~

164.887 (Interference with Agricultural Operations) — Category II,

~~165.107 (Failing to Maintain a Metal Purchase Record) — Category V,~~

~~165.109 (Failing to Maintain a Cedar Purchase Record) — Category V,~~

165.540 (Obtaining Contents of Communications) — Category IV,

~~165.555 (Unlawful Telephone Solicitation) — Category V,~~

165.570 (Improper Use of Emergency Reporting System) — Category IV,

165.572 (Interference with Making a Report) — Category II,

165.577 (Cellular Counterfeiting in the Third Degree) — Category I,

165.805 (Misrepresentation of Age by a Minor) — Category I,

166.025 (Disorderly Conduct in the Second Degree) — Category IV,

166.027 (Disorderly Conduct in the First Degree) — Category IV,

166.075 (Abuse of Venerated Objects) — Category II,

166.076 (Abuse of a Memorial to the Dead) — Category II,

166.090 (Telephonic Harassment) — Category II,

166.095 (Misconduct with Emergency Telephone Calls) — Category IV,

166.155 (Intimidation in the Second Degree) — Category II,

166.180 (Negligently Wounding Another) — Category IV,

166.190 (Pointing a Firearm at Another) — Category IV,

166.240 (Carrying a Concealed Weapon) — Category IV,

166.250 (Unlawful Possession of a Firearm) — Category IV,

166.320 (Setting of a Springgun or Setgun) — Category IV,

166.385 (Possession of Hoax Destructive Device) — Category IV,

166.425 (Unlawful Purchase of Firearm) — Category I,

166.427 (Register of Transfers of Used Firearms) — Category IV,

166.480 (Sale or Gift of Explosives to Children) — Category IV,

166.635 (Discharging Weapon or Throwing Object at Trains) — Category IV,

166.638 (Discharging Weapon Across Airport Operational Surfaces) — Category IV,

~~166.645 (Hunting in Cemeteries) — Category V,~~

166.649 (Throwing Object off Overpass in the Second Degree) — Category IV,

~~167.122 (Unlawful Gambling in the Second Degree) — Category V,~~

167.312 (Research and Animal Interference) — Category II,

167.315 (Animal Abuse in the Second Degree) — Category IV,

167.325 (Animal Neglect in the Second Degree) — Category IV,

167.340 (Animal Abandonment) — Category IV,

~~167.351 (Trading in Nonambulatory Livestock) — Category V,~~

167.352 (Interfering with Assistance, Search and Rescue or Therapy Animal) — Category IV,

167.385 (Unauthorized Use of Livestock Animal) — Category II,

167.388 (Interference with Livestock Production) — Category II,

~~167.390 (Commerce in Fur of Domestic Cats and Dogs) — Category V,~~

~~167.502 (Sale of Certain Items at Unused Property Market) — Category V,~~

~~167.506 (Record Keeping Requirements) — Category V,~~

167.808 (Unlawful Possession of Inhalants) — Category IV,

167.810 (Creating a Hazard) — Category IV,

167.822 (Improper Repair Vehicle Inflatable Restraint System) — Category IV,

241.525 (Corrupt Practices) – Category III,

Chapter 319 (Any Violation Involving a False Statement – Motor Vehicle and Aircraft Fuel Tax) – Category I,

411.320 (Disclosure and Use of Public Assistance Records) — Category II,

~~468.922 (Unlawful disposal, storage or treatment of hazardous waste in the second degree) — Category V,~~

~~468.929 (Unlawful transport of hazardous waste in the second degree) — Category V,~~

~~468.936 (Unlawful Air Pollution in the Second Degree) — Category V,~~

~~468.943 (Unlawful Water Pollution in the Second Degree) — Category V,~~

468.956 (Refusal to Produce Material Subpoenaed by the Commission) — Category IV,

471.410 (Providing Liquor to Person under 21 or to Intoxicated Person) — Category IV,

~~Chapter 496—498 (When treated as a misdemeanor crime) — Category based on the elements of the specific crime,~~

~~609.341 (Permit Requirement for Keeping of Exotic Animals; Breeding of Animals) — Category V,~~

~~609.405 (Requirement for Destroying Dog or Cat) — Category V,~~

~~609.505 (Unlawfully Obtaining Dog or Cat) — Category V,~~

~~609.520(c) (Animal Dealer Failing to Turn Over Dog or Cat) — Category V,~~

609.805 (Misrepresentation of Pedigree; Mutilation of Certificate or Proof of Pedigree) – Category I,

609.990(3)(a) (Violation of ORS 609.098 – Maintaining a Dangerous Dog) – Category IV,

632.470 (False Representation as to Raising, Production or Packing) – Category I,

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

657.295 (Violation of Unemployment Insurance Witness Fees, Disputed Claims Expenses and Counsel Fees) – Category I,

659.800 (Use of Force or Misrepresentation to Prevent Employment) - Category I,

659.805 (Blacklisting and Blackmailing) – Category II,

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

659.845 (Fraudulently Accepting Advancement and Refusing to Work) – Category I,

661.040 (Violation of Limitations of Fees Charged Laborers by Collective Bargaining Agents) – Category I

661.260 (False Filing or Fraudulent Filing) – Category I,

688.120 (Fraudulent Representation as a Physical Therapist or Physical Therapist Assistant) – Category I,

~~717.200 to 717.320 (Any violation) — Category V,~~

731.260 (False or Misleading Filings; Insurance Code) – Category I,

803.225 (Failure to Designate Replica..Vehicle in Title or Registration Application) — Category I,

807.430 (Misuse of Identification Card) — Category I,

807.510 (Transfer of documents for the purpose of misrepresentation) — Category I,

807.530 (False Application for License) — Category I,

~~807.570 (Failure to Carry or Present License) — Category V,~~

807.580 (Using Invalid License) — Category I,

807.590 (Permitting Misuse of License) — Category I,

807.600 (Using Another's License) — Category I,

811.060 (Vehicular Assault of Bicyclist or Pedestrian) — Category IV,

811.140 (Reckless Driving) — Category IV,

~~811.172 (Improperly Disposing of Human Waste) — Category V,~~

811.182 (Criminal Driving While Suspended or Revoked) — Category IV,

811.231 (Reckless Endangerment of Highway Workers) — Category IV,

811.540 (Fleeing or Attempt to Elude a Police Officer) — Category IV,

811.700 (Failure to Perform Duties of Driver when Property is Damaged) — Category IV,

811.740 (False Accident Report) — Category I, and

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

825.990(3)(d) (False Material Statement or Representation in any Application, Label, Manifest, Record, Report, Permit or Other Document Filed, Maintained or Used for Purposes of Compliance) – Category I,

825.990(3)(e) (Failure to Include Material Information Required by Department of Transportation) – Category I,

830.035(2) (Fleeing; Attempts to Elude) — Category IV,

830.053 (False or Fraudulent Report of Theft of Boat) — Category I,

830.315(1) (Reckless Operation) — Category IV,

830.325 (Operation a Boat while Under the Influence of Intoxicating Liquor or Controlled Substance) — Category IV,

~~830.383 (Person Required to Remedy Especially Hazardous Condition) — Category V,~~

~~830.460(2) (Prohibited Activities — Operating a Vessel that Fails to Comply with Equipment Requirements) — Category V,~~

~~830.460(3) (Prohibited Activities — Operating a Vessel without Liability Protection) — Category V,~~

830.475(1) (Failure to Perform the Duties of an Operator at Accident) — Category IV,

830.730 (False Information) — Category I,

~~830.909 (Abandoning Boat, Floating Home, or Boathouse) — Category V,~~

~~830.955(1) (Prohibition of Installation of Submersible Polystyrene Device) — Category V,~~

~~830.992 (Purchase of a Boat or Equipment from which Hull or Component Identification Number Removed) — Category V,~~

830.994 (Operates a Boat in Violation of a Court Order) – Category IV₂

837.080 (Prohibited Operation of an Aircraft) – Category IV

Initial Periods of Ineligibility

(d) Upon determination to proceed with the denial or revocation of a public safety professional's or instructor's certification based on discretionary disqualifying misconduct identified in subsection (a), an initial minimum period of ineligibility to apply for certification will be determined based upon the category of misconduct (i.e., Dishonesty, Disregard for Rights of Others, Misuse of Authority, Gross Misconduct, Misconduct or Insubordination).

(e) Following review and recommendation by a Policy Committee, the Board will determine the initial minimum period of ineligibility for discretionary disqualifying misconduct identified in subsection (a) from the time frame identified below for each category of discretionary disqualifying misconduct:

(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).

Eligibility to Reapply; Ineligibility Periods

(5) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for:

(a) Mandatory grounds identified in section (3) of this rule; or

(b) Discretionary Disqualifying Misconduct identified in section (4) of this rule that is determined to be a Category I lifetime disqualifier.

(6) Eligibility to reapply for certification:

(a) In determining the initial minimum period of ineligibility within any category for discretionary disqualifying misconduct listed in section (4) of this rule, the Board will take into consideration any mitigating or aggravating factors, subject to the provisions of section (9) of this rule.

(b) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(c) Any subsequent eligibility to apply for certification will be determined by the Board, after Policy Committee review, subject to the provisions of section (11) of this rule.

Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct

(7) In determining whether to take action on a conviction, the Department must use the following guidelines:

(a) In making a decision on a discretionary denial or revocation, the Department will consider the implementation dates relating to new mandatory conviction notification requirements adopted in 2003 and statutory changes dealing with lifetime disqualifier convictions for public safety officers adopted in 2001.

(b) The Department will not take action on a conviction constituting discretionary disqualifying misconduct that occurred prior to January 1, 2001. However, the Department may consider such conviction as evidence that a public safety professional or instructor does not meet the established moral fitness guidelines.

(c) The Department may take action on any conviction constituting discretionary disqualifying misconduct that occurred after January 1, 2001, however, crimes with a presumptive category of only Misconduct (Category V) may be appropriate for summary staff disposition or administrative closure if the conviction occurred seven years or more prior to the date of review and it represents the sole criminal conviction in the public safety professional's or instructor's history.

(d) The Board may reconsider any mandatory conviction which subsequently becomes a conviction constituting discretionary disqualifying misconduct, upon the request of the public safety professional or instructor.

(e) The length of ineligibility for training or certification based on a conviction begins on the date of conviction.

(f) The Department will not take action against a public safety professional, instructor, or agency for failing to report, prior to January 1, 2003, a conviction that constitutes discretionary disqualifying misconduct.

(g) The Department may take action against a public safety professional, instructor, or agency for failing to report, after January 1, 2003, any conviction that constitutes discretionary disqualifying misconduct.

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0070 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0070 with the Secretary of State as a permanent rule if no comments are received.

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

Attachments:

Attachment A –Workgroup Staff Memo, Dated October 2, 2012

Attachment B – Workgroup Staff Memo, Dated December 7, 201

Appendix B

**DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING
Memorandum**

TO: BPSST Police Policy Committee
FROM: Eriks Gabliks, Director
DATE: April 15, 2013
SUBJECT: Police Field Training Manual Revision & Update

Over the past few months, DPSST brought together a work group to review and update the Police Officer Field Training Manual (FTM). Through the efforts of many people, this revision was completed in April of 2013. A copy of the final product is attached for your review and anticipated approval.

DPSST would like to extend its' appreciation to those individuals who donated their time and expertise to make this project a success.

Police Officer Field Training Manual Review Committee

Captain Dave Henslee	Corvallis Police Department
Lieutenant Chris Carney	Bend Police Department
Sergeant Dave Shook	Washington County Sheriff's Office
Sergeant Chuck Byram	Pendleton Police Department
Sergeant William Goff	Portland Police Bureau
Sergeant Matt Lowen	Eugene Police Department

DPSST Staff

Eriks Gabliks	Director
Todd Anderson	Training Division Director
Teresa Plummer	Captain, Training Division
Roger Eaton	Captain, Survival Skills
Suzy Isham	Captain, Tactical Training
Rob Anderson	Lieutenant, Training Division
Steve Winegar	Ph.D.
Sharon Huck	JTA Coordinator
Kristy Witherell	Administrative Support
J.D. Edwards	Curriculum Coordinator

Thank you for your time and consideration in this matter. If you have any questions please contact J.D. Edwards in our Curriculum Section.

Appendix C

Department of Public Safety Standards and Training Memorandum

DATE: May 16, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JARED L. BLEDSOE DPSST #52254
Lincoln City Police Department**

ISSUE:

Should Jared L. Bledsoe's Basic Police certification be denied 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 Bledsoe's conduct surrounding his 2010 conviction in Nevada for Possession of a Firearm by a Child Under 18 Years of Age. The equivalent Oregon offense is Child Neglect in the Second Degree, ORS 163.545.

BACKGROUND and OVERVIEW:

1. *From June 2005 until September 2011, BLEDSOE was employed in Nevada as a law enforcement officer.¹*
2. *In September 2011, BLEDSOE was hired as a police officer by the Lincoln City Police Department.² He attended training³ and signed his Code of Ethics.⁴*
3. *In March 2013, DPSST received a Form F-7 Application for Certification in which BLEDSOE was seeking his Basic Police certification. On that form he acknowledged that he had been convicted of a crime in the State of Nevada in 2010. The crime was Possession of a Firearm by a Child Under 18 Years of Age.⁵ Our standard review process, upon receipt of this information, showed that BLEDSOE had acknowledged this conviction on his Form F-5*

¹ Ex A1

² Ex A1

³ Ex A1

⁴ Ex A2

⁵ Ex A3

Application for Training in October 2011.⁶ That acknowledgement should have triggered this review process at that time, but for unknown reasons that was overlooked, and BLEDSOE was allowed into the Career Officer Development Course (COD) without Police Policy Committee and Board review of his case.⁷ He successfully completed the COD course and continued his employment with the Lincoln City Police Department. He is now applying for Basic Police certification.⁸

- 4. DPSST notified the agency and BLEDSOE of the matter and began collecting the information relevant to his Nevada conviction.⁹ We reviewed the Nevada statute and compared it to Oregon's statutes and determined that the closest equivalent Oregon statute is ORS 163.545 Child Neglect in the Second Degree.¹⁰*
- 5. In March 2013, DPSST notified BLEDSOE 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.¹¹*
- 6. BLEDSOE provided a response, with copies of the investigative reports, and letters of support.¹²*

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

⁶ Ex A4

⁷ Ex A5

⁸ Ex A4

⁹ Ex A6

¹⁰ Ex A7

¹¹ Ex A8

¹² Ex A9, with sub-exhibits

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:

* * *

163.545 (Child Neglect in the Second Degree) – Category IV.

* * *

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of Child Neglect in the Second Degree, ORS 163.545 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 deny BLEDSOE's certification(s) based on discretionary disqualifying misconduct:

- 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 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**.

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

5. By vote, the Policy Committee finds BLEDSOE'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 denied/not be denied*.

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 D

Department of Public Safety Standards and Training
Memorandum

DATE: May 16, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JOHN T. JAYNE DPSST #44146
Hillsboro Police Department**

ISSUE:

Should John T. Jayne's Basic and Intermediate 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?

PPC RECONSIDERATION:

The issue in this case involves Jayne's conduct surrounding his probationary discharge subsequent to a call he made while off-duty to report missing firearms. On November 15, 2012, the Police Policy Committee (PPC) reviewed this matter and recommended to the Board to **not** revoke JAYNE's certifications. Prior to the Board meeting, this matter was pulled from the consent agenda for further discussion. The Board then voted on a majority vote to return this case to the PPC for reconsideration.

BACKGROUND and OVERVIEW:

1. *On March 22, 2004, JAYNE was hired by the Tualatin Police Department as a police officer.¹³ He signed his Criminal Justice Code of Ethics¹⁴ and ultimately obtained Basic and Intermediate Police certifications.¹⁵ On November 4, 2011, JAYNE resigned from the Tualatin Police Department and on November 8, 2011 he was hired by the Hillsboro Police Department as a police officer.¹⁶*

¹³ Ex A1

¹⁴ Ex A2

¹⁵ Ex A1

¹⁶ Ex A1

2. *In December 2011, DPSST received an F-4 Personnel Action Report, showing JAYNE had received a probationary discharge on November 23, 2011.¹⁷ DPSST sought and obtained information relating to the probationary discharge.¹⁸*
3. *In September 2012, DPSST notified JAYNE 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.¹⁹*
4. *JAYNE provided a response.²⁰*
5. *On January 24, 2013, this case was presented to the Board. The case had been pulled from the consent agenda for review prior to the Board meeting. At the meeting, some Board members expressed their concern about the recommendation of the Police Policy Committee and requested the case be returned to the PPC for reconsideration on the issue of dishonesty.²¹ There is no new information since the first presentation to the PPC, this is a review of the previously submitted case. To aid in that, I have added as exhibits the Board Staff Report and exhibits, the minutes of the January 24, 2013 Board meeting, and the minutes and a transcription of the recording of the November 15, 2012 PPC meeting.²²*
6. *I did notify JAYNE that his case would be reviewed a second time by the PPC.²³*

PPC RECOMMENDATION TO THE BOARD:

On November 15, 2012, the PPC, with one member abstaining, recommended to the Board that JAYNE's certifications **not** be revoked on the following basis:

1. The PPC did not reach a consensus that JAYNE's conduct involved *Dishonesty*.
2. The PPC determined that JAYNE's conduct did not involve *Disregard for the Rights of Others*.
3. The PPC determined that JAYNE's conduct did not involve *Misuse of Authority*.
4. The PPC determined that JAYNE's conduct did not involve *Gross Misconduct*.
5. The PPC determined that JAYNE's conduct did not involve *Misconduct*.
6. The PPC determined that JAYNE's conduct did not involve *Insubordination*.
7. The PPC found as aggravating circumstances that JAYNE's letter to the committee was condescending and rationalized his behavior.
8. The PPC found as mitigating circumstances the letter JAYNE's estranged wife wrote to the

¹⁷ Ex A3

¹⁸ Ex A4

¹⁹ Ex A5

²⁰ Ex A6

²¹ Ex A8

²² Ex A9 – A12

²³ Ex A13

former employer on Jayne's behalf.

9. The PPC adopted the Staff Report and associated documents as the record on which their recommendation was based.

10. With one member abstaining, the PPC did not reach a consensus that JAYNE's conduct involved Dishonesty, and otherwise determined that JAYNE's conduct does not involve any other category of misconduct and recommended to the Board the same.

BOARD DISCUSSION:

After discussion, the Board returned this matter to the PPC for reconsideration based on JAYNE'S statement in reporting the theft of his firearms that he had no suspect. He appeared to have lied, but was not found by the PPC to be dishonest. That is inconsistent with the general view of the committees. There were other ways that JAYNE could have presented his information to dispatch without lying. It was noted conversely that JAYNE did not intend to deceive, but simply did not want his personal dispute to be broadcast over the radio.

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))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

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, 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 their initial recommendation pursuant to the Board's direction.

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: May 16, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: HOMERO REYNAGA DPSST #29551
Portland Police Bureau**

ISSUE:

Should Homero Reynaga'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 Reynaga's conduct surrounding his 2012 conviction for Driving Under the Influence of Intoxicants.

BACKGROUND and OVERVIEW:

7. *In May 1994, REYNAGA was hired as a police officer by the Molalla Police Department.²⁴ He attended training,²⁵ signed his Code of Ethics,²⁶ and received a Basic Police certification.²⁷ On June 2, 1998, REYNAGA resigned from the Molalla Police Department, and on June 4, 1998, he was hired by the Portland Police Bureau as a police officer. He ultimately obtained Intermediate and Advanced Police certifications.²⁸*
8. *In September, 2011, DPSST received information via LEDS that REYNAGA had been arrested for DUII and Assault IV in Marion County, Oregon. DPSST requested and received information on the arrest.²⁹ DPSST monitored the case through OJIN for resolution.*

²⁴ Ex A1

²⁵ Ex A1

²⁶ Ex A2

²⁷ Ex A1

²⁸ Ex A1

9. *DPSST learned that REYNAGA was convicted of DUII in May 2012. The Assault IV charge was dismissed upon a civil compromise.³⁰ DPSST requested and received the court judgment and related documents.³¹*
10. *In February 2012, DPSST notified REYNAGA 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.³²*
11. *REYNAGA provided a response.³³*
12. *In addition to the criminal conviction, REYNAGA received internal discipline from the agency. That information is provided here for the committee's consideration.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; . . .

* * *

²⁹ Ex A3, A4

³⁰ Ex A5

³¹ Ex A6, A7

³² Ex A8

³³ Ex A9

³⁴ Ex A10, 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 of 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 REYNAGA'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 REYNAGA'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 denied/not be denied*.

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: May 16, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: CHARLES R. KELLER DPSST #28157
St. Helens Police Department**

ISSUE:

Should Charles R. Keller's Basic, Intermediate, Advanced and Supervisory Police certifications, and his Instructor 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 KELLER's conduct surrounding his resignation pursuant to a settlement agreement after an internal investigation sustained violations of agency and county policies relating to insubordination, conduct disrupting the efficiency of the department and untruthfulness, among others.

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

BACKGROUND and OVERVIEW:

13. *On July 15, 1994, KELLER was hired by the St. Helens Police Department as a police officer.³⁵ He signed his Code of Ethics,³⁶ and ultimately obtained Basic, Intermediate and Advanced Police certifications as well as an Instructor certification.³⁷*
14. *In December 2012, DPSST received an F-4 Personnel Action Report showing that KELLER had resigned pursuant to a Settlement Agreement effective November 30, 2012.³⁸ DPSST requested and received the information leading to the resignation.³⁹*

³⁵ Ex A1

³⁶ Ex A2

³⁷ Ex A1

³⁸ Ex A3

15. In February 2013, DPSST notified KELLER 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.⁴⁰
16. KELLER provided a response.⁴¹ In the attachment to his letter to the committee, he responds to the particular allegations in Sgt. White's October 19, 2012 Findings of Fact after certain paragraphs by typing his response in red right after Sgt. White's statements. DPSST is not able to reproduce the responses in the red-ink format, but they do appear as a lighter gray.⁴²
17. KELLER had also contacted me previously to deliver documents that he had received. However, other than a copy of his resignation letter,⁴³ everything he gave me is identical in content to what the agency provided. I have not included them here, but they are available if the committee members would like to review them.

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; . . .

* * *

³⁹ Ex A4, A5 with sub-exhibits, A6, A7

⁴⁰ Ex A8

⁴¹ Ex A10

⁴² Ex A10

⁴³ Ex A9

(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 KELLER's certification(s) 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 KELLER'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: May 16, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JOHN P. SHADRON DPSST #37126
Portland Police Bureau**

ISSUE:

Should John P. Shadron'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?

PPC RECONSIDERATION:

The issue in this case involves SHADRON's conduct surrounding his 2011 conviction for DUII and Reckless Driving. On November 15, 2012, the Police Policy Committee (PPC) reviewed this matter and recommended to the Board to **not** revoke SHADRON's certifications. Prior to the Board meeting, this matter was pulled from the consent agenda for further discussion. The Board then voted on a majority vote to return this case to the PPC for reconsideration.

BACKGROUND and OVERVIEW:

18. *In February 1999, SHADRON was hired as a police officer by the Portland Police Bureau.⁴⁴ He signed his Code of Ethics,⁴⁵ and ultimately obtained his Basic, Intermediate and Advanced Police certifications.⁴⁶*
19. *In July 2011, DPSST received information that SHADRON had pled guilty to DUII and Reckless Driving in Multnomah County Circuit Court.⁴⁷ Subsequently, DPSST sought and obtained the information leading to SHADRON's convictions.⁴⁸ SHADRON had originally*

⁴⁴ Ex A1

⁴⁵ Ex A2

⁴⁶ Ex A1

⁴⁷ Ex A3

⁴⁸ Ex A4, A5

*been charged with seven counts of criminal conduct, but five of those were dismissed pursuant to civil compromise, resulting in the two convictions.*⁴⁹

20. *In August 2011, DPSST notified SHADRON 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.*⁵⁰
21. *SHADRON provided a response.*⁵¹
22. *This matter was scheduled to be heard by the PPC on November 17, 2011. Prior to that meeting, the agency requested that DPSST hold the matter pending resolution of the agency's internal investigation and discipline, if any. DPSST agreed to pend the case.*
23. *In September 2012, DPSST received the final documents regarding the internal investigation as well as the documentation from the Independent Police Review Board.*⁵²
24. *In September 2012, DPSST notified SHADRON 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.*⁵³
25. *SHADRON provided a new response for the PPC.*⁵⁴
26. *On January 24, 2013, this case was presented to the Board. The case had been pulled from the consent agenda for review prior to the Board meeting. At the meeting, some Board members expressed their concern about the recommendation of the Police Policy Committee and requested the case be returned to the PPC for further consideration.*⁵⁵ *There is no new information since the first presentation to the PPC, this is a review of the previously submitted case. To aid in that, I have added as exhibits the Board Staff Report and exhibits, the minutes of the January 24, 2013 Board meeting, and the minutes and a transcription of the recording of the November 15, 2012 PPC meeting.*⁵⁶
27. *I did notify SHADRON that his case would be reviewed a second time by the PPC.*⁵⁷

PPC RECOMMENDATION TO THE BOARD:

1. On November 15, 2012, the PPC recommended to the Board that SHADRON's certifications **not** be revoked on the following basis:
 - a. The PPC determined that SHADRON's conduct did not involve *Dishonesty*.
 - b. The PPC determined that SHADRON's conduct did not involve *Disregard for the Rights of Others*.

⁴⁹ Ex A3, A4, A5

⁵⁰ Ex A6

⁵¹ Ex A7

⁵² Ex A10

⁵³ Ex A11

⁵⁴ Ex A12

⁵⁵ Ex A14, A15

⁵⁶ Ex A15 – A18

⁵⁷ Ex A19

- c. The PPC determined that SHADRON's conduct did not involve *Misuse of Authority*.
- d. The PPC determined that SHADRON's conduct involved *Gross Misconduct*. Both DUII and Reckless Driving are Gross Misconduct offenses by definition. Due to the substantial amount of negative publicity, SHADRON's conduct also affected the efficient operation of the agency.
- e. The PPC determined that SHADRON's conduct involved *Misconduct*. His conduct violated the law.
- f. The PPC determined that SHADRON's conduct did not involve *Insubordination*.
- g. The PPC found as aggravating circumstances that SHADRON's left the scene of an accident, his driving in a previous matter, and that his recollection of events was so different than that of the victim and an independent witness. Mitigating factors for the committee were the letter from the Chief of Police in support of SHADRON, and that the Police Bureau handled the matter appropriately.
- h. The PPC adopted the Staff Report and associated documents as the record on which their recommendation was based.
- i. In a unanimous vote, with one member recusing himself, the PPC determined that SHADRON's misconduct does **not** rise to the level to warrant revocation of his certifications and recommends to the Board the same.

BOARD DISCUSSION:

After discussion, the Board returned this matter to the PPC for reconsideration based on the long span of time between the misconduct and the traumatic event in SHADRON's life, and the fact of two distinct events and that SHADRON did not seem to have learned from the first event. It was conversely noted that the event for which SHADRON was convicted occurred on the anniversary of the traumatic event.

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))

DISCRETIONARY DISQUALIFYING MISCONDUCT

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:

** * **

811.140 (Reckless Driving) – Category IV.

** * **

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 both DUII and Reckless Driving as Category IV, Gross Misconduct, based on the elements of the crimes. They carry a presumptive length of ineligibility for reconsideration of 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 their initial recommendation pursuant to the Board's direction.

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.