

Police Policy Committee Minutes August 15, 2013

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on August 15, 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
Michael Crebs, Portland Police Bureau (Designee for Chief Mike Reese)
Richard Evans, Oregon State Police, Superintendent
Craig Halupowski, Non-Management Law Enforcement
James Hunter, Oregon Association Chiefs of Police
Joel Lujan, Oregon State Police Command Staff Representative
Glen Scruggs, Non-Management Law Enforcement
Mike Wells, Non-Management Law Enforcement
Mathew Workman, Oregon Association Chiefs of Police

Committee Members Absent:

Ryan Humphrey, Non-Management Law Enforcement
Marc Tisher, 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
Craig Flierl, Lieutenant, Oregon State Police
Mike Hall, Sergeant, Forest Grove Police Department
Elissa Harrington, KOIN 6 News
Amy Goodall, Lobbyist, Oregon Council of Police Associations
Dale Jorgensen, Captain, Lake Oswego Police Department
Jeff Lewis, Sergeant, Oregon State Police
Ty Nguyen, KOIN 6 News
Megan Phelan, City of Lake Oswego
Santiago Puente, Mt. Angel Police Department
Jeff Rose, Officer, Monmouth Police Department
Scott Thran, Lieutenant, Lake Oswego Police Department

1. Minutes of May 16, 2013 Meeting

Approve minutes from the May 16, 2013 meeting.

To see a complete record of the May 16, 2013 Police Policy Committee minutes, please go to:

http://www.oregon.gov/dpsst/BD/Policy_Committee_Minutes/PPC_Minutes/PPC051613.pdf

Ñ *James Hunter moved to approve the minutes from the May 16, 2013 Police Policy Committee meeting. Mike Wells seconded the motion. The motion carried unanimously.*

2. Law Enforcement Memorial Wall Nomination, Billy Dale Seawright – Bandon Police Department

Presented by Eriks Gabliks

Ñ *The nomination came from a retired sergeant from the Bandon Police department. Billy Dale Seawright suffered a massive heart attack and passed away while attending the police academy in 1973. Sergeant Boggs is requesting Officer Seawright to be recognized on the Law Enforcement Memorial. Since Officer Seawright was attending training at the time of his death, he is eligible to be added onto the Memorial Wall.*

Ñ *Glen Scruggs would like to note the standard states, “death directly resulting from law enforcement training”. He questions whether or not the nomination met the standard.*

- *Craig Halupowski moved that the Police Policy Committee recommends to the Board not to approve adding Billy Dale Seawright’s name to the Law Enforcement Memorial Wall. Tom Bergin seconded the motion. The motion carried unanimously.*

3. Brett Elliott’s Complaints Against the Multnomah County Sheriff’s Office and DPSST

Presented by Eriks Gabliks

Ñ *The committee requested the complete investigation of Brett Elliott’s complaints against Multnomah County Sheriff’s Office.*

Ñ *DPSST provided the committee with the completed Field Training Manual with the sign-offs, letters from the Multnomah County District Attorney’s and DPSST’s staff summary.*

- *Tom Bergin moved that the Police Policy Committee determined the complaints made by Brett Elliott have been thoroughly investigated without any violation noted. Craig Halupowski seconded the motion. The motion carried unanimously.*

4. Martin E. Bradford, Lake Oswego Police Department – DPSST #43298

Presented by Leon Colas

See Appendix A for details

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

Ñ By discussion and consensus:

- a. Identify and articulate the **misconduct that is specific to this case. Violation of department policies in regards to BRADFORD's sexual conduct while on duty, untruthfulness, use of agency equipment, use of personal equipment, and violation of mealtimes and breaks.**
- b. The identified conduct did involve **Dishonesty based on BRADFORD lying about having sexual intercourse while on duty. BRADFORD was asked about his location while on duty and gave a false location. He made a statement that Ms. Anderson propositioned him with oral sex and he stopped her which contradicts Ms. Anderson's statement. BRADFORD continually falsified statements. The statement in BRADFORD's letter that he just met with the women for coffee and conversation was untruthful. The text messages he sent to Ms. Anderson were contrary to BRADFORD's statements. BRADFORD was untruthful in the letter he submitted to the committee.**
- c. The identified conduct did involve a **Disregard for the Rights of Others based on BRADFORD taking advantage of the agency. He was not in a position to protect his community while engaging in sexual conduct while on duty. He was not in the city while he was on duty.**
- d. The identified conduct did involve **Misuse of Authority based on BRADFORD violating public trust by performing sexual acts while on duty.**
- e. The identified conduct did involve **Gross Misconduct based on BRADFORD violating the efficient operation of the agency. He was texting while on duty. BRADFORD was having sex while on duty which is a gross deviation from the standard of care.**
- f. The identified conduct did involve **Misconduct based on statements above under GROSS MISCONDUCT.**
- g. The identified conduct did involve **Insubordination based on BRADFORD being dishonest during the interview. He was previously directed to logout on the MDC and did not.**

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

The policy committee did not note any mitigating circumstances.

The policy committee found as aggravating circumstances BRADFORD's letter submitted to the committee. He continued to deny his misconduct; he brought up other officers misconduct, his family life, but didn't address any facts or issues at hand. BRADFORD did not take responsibility for his actions. The letter he submitted mirrored the letter Officer DAY submitted. BRADFORD received discipline previously for similar misconduct.

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

5. **Joshua P. Day, Lake Oswego Police Department – DPSST #36342**

Presented by Leon Colas

See Appendix B for details

Ñ *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.*

Ñ By discussion and consensus:

- h. Identify and articulate the **misconduct that is specific to this case.** *Violation of department policies in regards to DAY's sexual conduct while on duty, untruthfulness, use of agency equipment, use of personal equipment, and violation of mealtimes and breaks.*
- i. The identified conduct ***did*** involve **Dishonesty based on DAY lying about his sexual misconduct with Ms. Anderson in his first and second interviews. DAY stated Ms. Anderson contacted him, but the phone records showed he was untruthful. DAY originally stated that he was not in uniform when he would**

drive his patrol car to Ms. Anderson's house. Later, he changed his statement when he was addressed being out of range while on duty. DAY was untruthful in the letter he submitted to the committee.

- j. The identified conduct did involve a **Disregard for the Rights of Others based on DAY's failure to protect and serve his community.**
- k. The identified conduct did involve **Misuse of Authority based on DAY violating public trust by performing sexual acts while on duty.**
- l. The identified conduct did involve **Gross Misconduct based on DAY violating the efficient operation of the agency. He was texting while on duty. DAY was having sex while on duty which is a gross deviation from the standard of care.**
- m. The identified conduct did involve **Misconduct based on statements above under GROSS MISCONDUCT. DAY violated the practices and standards generally followed by public safety officers.**
- n. The identified conduct did involve **Insubordination based on DAY being dishonest during the interview. He failed to comply with the rule/order in regards to having sex while on duty.**

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

The policy committee did not note any mitigating circumstances.

The policy committee found as aggravating circumstances DAY's letter submitted to the committee. He continued to deny his misconduct, brought up other officers misconduct, his family life but didn't address any facts or issues at hand. DAY did not take responsibility for his actions. The letter he submitted mirrored the letter Officer BRADFORD submitted. DAY resigned during the investigation.

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

6. **Michael T. Dungey, Clackamas County Sheriff's Office – DPSST #25114**

Presented by Leon Colas

See Appendix C for details.

Ñ *James Hunter moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based with the addition of the color photographs provided by the agency. Craig Halupowski seconded the motion. The motion carried unanimously.*

The committee went into executive session at 2:30 p.m. to discuss DUNGEY's medical history. *The committee reconvened at 2:39 p.m.*

- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case. *DUNGEY sleeping while on duty.***
 - b. The identified conduct ***did not*** involve **Dishonesty.**
 - c. The identified conduct ***did not*** involve a **Disregard for the Rights of Others.**
 - d. The identified conduct ***did not*** involve **Misuse of Authority.**
 - e. The identified conduct ***did not*** involve **Gross Misconduct.**
 - f. The identified conduct ***did not*** involve **Misconduct.**
 - g. The identified conduct ***did*** involve **Insubordination based on *DUNGEY sleeping while on duty.***

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

The committee noted as mitigating circumstances DUNGEY's medical issues that were discussed during executive session.

The committee noted as aggravating circumstances DUNGEY sleeping during an aggravated murder court proceeding. DUNGEY had prior acts that led to termination. DUNGEY positioned himself behind a pole in the courtroom which obstructed his visibility.

Ñ *Craig Halupowski moved that the Policy Committee finds DUNGEY'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. James Hunter seconded the motion. The motion carried unanimously.*

7. **Juan B. Elenes, Washington County Sheriff's Office – DPSST #45953**

Presented by Leon Colas

See Appendix D for details

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

Ñ By discussion and consensus:

- a. Identify the conduct that is at issue, specific to this case: **ELENES' violations of professional conduct and truthfulness.**
- b. The identified conduct did involve **Dishonesty based on ELENES minimizing his role in establishing the relationship with the female. In his interview he was asked about last contact with the female and he lied about the timeframe. He lied about knowing about the investigation. He told the female he lied during the interview.**
- c. The identified conduct did involve a **Disregard for the Rights of Others. The female had called the police for help and ELENES made contact with her. ELENES was familiar with the female and knew she had a history of depression and alcoholism. He showed up at her house with a bottle of wine.**
- d. The identified conduct did involve **Misuse of Authority based on ELENES using his position to initiate contact with the female. He intentionally did not logout of his computer. ELENES brought wine to the female knowing she has an issue with alcohol.**
- e. The identified conduct did involve **Gross Misconduct based on ELENES manipulating the system. He sought her out. ELENES used the department computer software system to look up the female. He gave alcohol to the female knowing she was an alcoholic.**
- f. The identified conduct did involve **Misconduct based on the statement noted above under GROSS MISCONDUCT. ELENES accessed LEDS for personal use.**
- g. The identified conduct did not involve **Insubordination.**

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

The policy committee found as aggravating circumstances ELENES targeted somebody who had a weakness. He used his role as a law enforcement professional to find that weakness and exploit it. ELENES used public safety criminal records to

further his desire to have a relationship with the female. He did not respond to DPSST. ELENES brought wine to the female.

The committee did not find any mitigating circumstances.

Ñ *Mike Wells moved that the Police Policy Committee finds ELENES' conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Craig Halupowski seconded the motion. The motion carried unanimously.*

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

8. Timothy S. Garr, Medford Police Department – DPSST #28909

Presented by Leon Colas

See Appendix E for details.

Ñ *James Hunter moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based with the correction to his date with the military police to 1986-1991. Mike Wells seconded the motion. The motion carried unanimously.*

- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case.** *The committee did not find misconduct in this case.*
 - b. The identified conduct did not involve **Dishonesty.**
 - c. The identified conduct did not involve a **Disregard for the Rights of Others.**
 - d. The identified conduct did not involve **Misuse of Authority.**
 - e. The identified conduct did not involve **Gross Misconduct.**
 - f. The identified conduct did not involve **Misconduct.**
 - g. The identified conduct did not involve **Insubordination.**

Ñ *James Hunter moved that the Policy Committee finds GARR's conduct does not rise to the level to warrant the revocation of his certifications(s) and, therefore,*

recommends to the Board that these certification(s) not be revoked. Craig Halupowski seconded the motion. The motion carried unanimously.

9. **Katherine A. Irwin, Department of Public Safety Standards and Training – DPSST #23050**
Presented by Leon Colas

See Appendix F for details.

Ñ *Mike Wells 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 Tom Bergin abstaining.*

- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**. *The committee did not find misconduct in this case.*
 - b. The identified conduct **did not** involve **Dishonesty**.
 - c. The identified conduct **did not** involve a **Disregard for the Rights of Others**.
 - d. The identified conduct **did not** involve **Misuse of Authority**.
 - e. The identified conduct **did not** involve **Gross Misconduct**.
 - f. The identified conduct **did not** involve **Misconduct**.
 - g. The identified conduct **did not** involve **Insubordination**.

Ñ *Craig Halupowski moved that the Policy Committee finds IRWIN's conduct does not rise to the level to warrant the revocation of her certifications(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Joel Lujan seconded the motion. The motion carried unanimously with Tom Bergin abstaining.*

10. **Santiago J. Puente, Mt. Angel Police Department – DPSST #49206**
Presented by Leon Colas

See Appendix G for details.

Ñ *James Hunter moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Mike Wells seconded the motion. The motion carried unanimously with Craig Halupowski abstaining.*

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

- b. The identified conduct ***did not*** involve **Dishonesty**.
- c. The identified conduct ***did not*** involve a **Disregard for the Rights of Others**.
- d. The identified conduct ***did not*** involve **Misuse of Authority**.
- e. The identified conduct ***did not*** involve **Gross Misconduct**.
- f. The identified conduct ***did not*** involve **Misconduct**.
- g. The identified conduct ***did*** involve **Insubordination based on PUENTE being given clear direction not to leave the city limits and he did. He was told by his sergeant three times to contact the District Attorney's office and did not.**

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

The committee noted as mitigating circumstances the number of letters of reference in support of PUENTE. His performance evaluations were positive. He received a life-saving award. PUENTE submitted a response to the committee. He self-reported his actions.

The committee noted as aggravating circumstances PUENTE's performance issues from the very beginning that were not followed through on by the FTO's or supervisors who allowed the conduct to occur.

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

11. Thomas E. Shepherd, Polk County Sheriff's Office – DPSST #29611

Presented by Leon Colas

See Appendix H for details

- Ñ *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Mike Wells seconded the motion. The motion carried unanimously.*
- Ñ By discussion and consensus:

- a. Identify the conduct that is at issue, specific to this case: ***Insubordination based on SHEPHERD's violation of the last chance agreement.***
- b. The identified conduct ***did not*** involve **Dishonesty**.
- c. The identified conduct ***did not*** involve a **Disregard for the Rights of Others**.
- d. The identified conduct ***did not*** involve **Misuse of Authority**.
- e. The identified conduct ***did not*** involve **Gross Misconduct**.
- f. The identified conduct ***did not*** involve **Misconduct**.
- g. The identified conduct ***did*** involve **Insubordination based on SHEPHERD violating the direct order to take a breath test based on his last chance agreement.**

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

The policy committee found as aggravating circumstances SHEPHERD calling in sick twice in a two week period. His absence caused his Sheriff and Sergeant to take time out of their schedules and show up at SHEPHERD's door. He violated the last chance agreement less than a month after signing it. SHEPHERD did not provide a response to the committee.

The committee did not find any mitigating circumstances.

Ñ ***Rich Evans moved that the Police Policy Committee finds SHEPHERD'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. Mike Wells seconded the motion. The motion carried unanimously.***

Ñ ***Rich Evans moved that the Police Policy Committee recommends to the Board that SHEPHERD's conduct encapsulated the highest end of the category noted above with a focus on INSUBORDINATION, therefore, recommending a seven year revocation; SHEPHERD may reapply for certification in seven years. Craig Halupowski seconded the motion. The motion carried unanimously.***

12. Staff Report

Director Gabliks welcomed Michael Crebs to the Police Policy Committee representing Chief Michael Reese and the Portland Police Bureau. He replaced Eric Hendricks on the committee, who is retiring at the end of the month.

The OHSU Police Bill was passed through the legislature, allowing OHSU police to be armed 24 hours a day. The University of Oregon Police Department was authorized by the Board of Higher Education to carry firearms as well. All police officers in the state are now armed.

The Eyewitness Identification bill was dropped by the Oregon Trial Lawyers Association and DPSST promised to deliver a CD/DVD program to instruct Eyewitness Identification. The DVD is completed and should be going out in the mail by next week to all of the agencies across the state.

A Bill introduced on Brady was passed but at a reduced capacity with the understanding that the law enforcement community will work on a fix for the Brady issues. There is a workgroup of more than 30 people working through a fix.

DPSST did not receive any budget reductions this year from the Ways and Means Committee. We appreciate all of the chiefs and sheriffs and state police work in ensuring that.

The Agency Oversight Bill which gives permission to finish the investigation on an individual after they have resigned has passed. House Bill 3194 was approved which restores the Leadership program at DPSST. DPSST is in the process of hiring for the leadership coordinator position. The two-week Supervision and two-week Middle-Management class is slated to begin after January 1, 2014. DPSST is embracing Data Led Policing and Data Led Criminal Justice as part of the program.

At the last Board meeting, they approved DPSST's request to stop offering the optional CPR class in the evening. The class will be phased out after January 1, 2014.

The new Police Field Training Manual that the policy committee approved has been distributed to all agencies as of July 1.

DPSST has the first officer who has failed to meet the Police Officer Maintenance Standard. Linsay Hale stated DPSST has sent a letter to the officer advising him that the maintenance training needed to be completed or his certification will be suspended. DPSST has extended the timeframe and the officer has not fulfilled the requirements to keep his certifications current. The officer has requested a hearing and DPSST is moving into a contested case process. As soon as the maintenance requirement has been met, the suspension will be lifted.

Sheriff Skrah from Klamath County Sheriff's Office is attending Basic Police #339.

Under SB412, all Tribes in Oregon who have police departments, except for the Burns Paiute Tribe, are in compliance. DPSST is working with tribal police departments to establish a class for tribes who seek to set up a law enforcement agency.

Linsay Hale is filling in as the Standards and Certification Manager as a professional development opportunity.

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

With no further business before the committee, the meeting adjourned at 4:15 p.m.

Appendix A

Department of Public Safety Standards and Training Memorandum

DATE: August 15, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: MARTIN E. BRADFORD DPSST #43298
Lake Oswego Police Department

ISSUE:

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

The issue in this case involves BRADFORD's conduct surrounding his resignation during an internal investigation that sustained violations of agency policies relating to sexual conduct while on duty, use of agency equipment and personal equipment on duty, mealtimes and breaks, conduct, and untruthfulness.

BACKGROUND and OVERVIEW:

- 1. From June 2003 to July 2007, BRADFORD was employed with the Manzanita Department of Public Safety as a police officer, and while employed there he signed his Code of Ethics and obtained Basic and Intermediate Corrections certifications.¹ On July 16, 2007, BRADFORD resigned from the Manzanita Department of Public Safety and on July 18, 2007, he was hired by the Lake Oswego Police Department as a police officer, ultimately obtaining an Advanced Police certification.²*
- 2. In October 2012, DPSST received an F-4 Personnel Action Report showing that BRADFORD had resigned effective October 16, 2012 during an investigation.³ DPSST requested and received the information leading to the resignation.⁴*

¹ Ex A1, A2

² Ex A1, A2

³ Ex A3

⁴ Ex A4, A5 (with sub-exhibits)

3. *In May 2013, DPSST notified BRADFORD 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.*⁵
4. *BRADFORD provided a response.*⁶

DISCUSSION:

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

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

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

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

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

** * **

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

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

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness,

⁵ Ex A6

⁶ Ex A7

respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

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

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

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

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

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

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

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

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

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

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

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

3. By discussion and consensus:

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

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

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

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

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

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

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

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

5. By vote, the Policy Committee finds BRADFORD's conduct *does/does not* rise to the level to warrant the revocation of his certification(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 B

Department of Public Safety Standards and Training Memorandum

DATE: August 15, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JOSHUA P. DAY DPSST #36342
Lake Oswego Police Department**

ISSUE:

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

The issue in this case involves DAY's conduct surrounding his resignation during an internal investigation that sustained violations of agency policies relating to sexual conduct while on duty, use of agency equipment and personal equipment on duty, mealtimes and breaks, conduct, and untruthfulness.

BACKGROUND and OVERVIEW:

5. *From July 2001 to August 2006, DAY was employed with Fairview Police Department as a police officer, and while employed there he signed his Code of Ethics and obtained Basic and Intermediate Corrections certifications.⁷ On August 13, 2006, DAY resigned from the Fairview Police Department and on August 15, 2006, he was hired by the Lake Oswego Police Department as a police officer, ultimately obtaining an Advanced Police certification.⁸*

⁷ Ex A1, A2

⁸ Ex A1, A2

6. *In November 2012, DPSST received an F-4 Personnel Action Report showing that DAY had resigned effective October 31, 2012 during an investigation.⁹ DPSST requested and received the information leading to the resignation.¹⁰*
7. *In May 2013, DPSST notified DAY 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*
8. *DAY provided a response.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 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:

⁹ Ex A3

¹⁰ Ex A4, A5 (with sub-exhibits)

¹¹ Ex A6

¹² Ex A7

(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 DAY's certification(s) based on violation of the established moral fitness standards.

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 **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 DAY'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 C

Department of Public Safety Standards and Training Memorandum

DATE: August 15, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JOSHUA P. DAY DPSST #36342
Lake Oswego Police Department**

ISSUE:

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

The issue in this case involves DAY's conduct surrounding his resignation during an internal investigation that sustained violations of agency policies relating to sexual conduct while on duty, use of agency equipment and personal equipment on duty, mealtimes and breaks, conduct, and untruthfulness.

BACKGROUND and OVERVIEW:

9. *From July 2001 to August 2006, DAY was employed with Fairview Police Department as a police officer, and while employed there he signed his Code of Ethics and obtained Basic and Intermediate Corrections certifications.¹³ On August 13, 2006, DAY resigned from the Fairview Police Department and on August 15, 2006, he was hired by the Lake Oswego Police Department as a police officer, ultimately obtaining an Advanced Police certification.¹⁴*
10. *In November 2012, DPSST received an F-4 Personnel Action Report showing that DAY had resigned effective October 31, 2012 during an investigation.¹⁵ DPSST requested and received the information leading to the resignation.¹⁶*

¹³ Ex A1, A2

¹⁴ Ex A1, A2

¹⁵ Ex A3

11. In May 2013, DPSST notified DAY 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.¹⁷

12. DAY provided a response.¹⁸

DISCUSSION:

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

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

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

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

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

* * *

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

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

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness,

¹⁶ Ex A4, A5 (with sub-exhibits)

¹⁷ Ex A6

¹⁸ Ex A7

respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

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

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

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

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

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

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

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

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

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke DAY'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 DAY'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 D

Department of Public Safety Standards and Training
Memorandum

DATE: August 15, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: JUAN B. ELENES DPSST #45953
Washington County Sheriff's Office

ISSUE:

Should Juan B. Elenes' Basic and Intermediate Police certifications and Basic and Intermediate Corrections certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

The issue in this case involves ELENES' conduct surrounding his resignation during an internal investigation into violations of agency policies related to Professional Conduct and Truthfulness.

BACKGROUND and OVERVIEW:

13. *On August 1, 2005, ELENES was hired by the Washington County Sheriff's Office as a deputy sheriff.¹⁹ He signed his Code of Ethics,²⁰ and ultimately obtained Basic and Intermediate Police certifications and Basic and Intermediate Corrections certifications.²¹*
14. *In March 2013, DPSST received an F-4 Personnel Action Report showing that ELENES had resigned effective March 22, 2013 during an investigation.²² DPSST requested and received the information leading to the resignation.²³*
15. *In May 2013, DPSST notified ELENES 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.²⁴*
16. *ELENES did not provide a response.*

¹⁹ Ex A1

²⁰ Ex A2

²¹ Ex A1

²² Ex A3

²³ Ex A4, A5

²⁴ Ex A6

DISCUSSION:

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

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

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

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

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

** * **

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

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

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

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

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

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

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

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

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

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

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

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

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

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

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

15. By discussion and consensus:

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachments:

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

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

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

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

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

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

Appendix E

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

DATE: August 15, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: TIMOTHY S. GARR DPSST #28909
Medford Police Department**

ISSUE:

Should Timothy S. Garr's Basic, Intermediate, and Advanced Police certifications, and his Basic Corrections 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 GARR's conduct surrounding his resignation during an internal investigation and pursuant to a settlement agreement involving violations of his Work Improvement Plan, including his failure to conduct appropriate investigations and failure to complete incident reports as directed.

BACKGROUND and OVERVIEW:

17. From June 1996, to November 1991, GARR was on military duty as a military police officer.²⁵ On December 27, 1993, GARR was hired by the Jackson County Sheriff's Office as a deputy sheriff.²⁶ He resigned from that agency on August 20, 2000, and on August 21, 2000 he was hired by the Medford Police Department as a police officer.²⁷ He signed his Code of Ethics,²⁸ and ultimately obtained Basic, Intermediate and Advanced Police certifications as well as a Basic Corrections certification.²⁹

²⁵ Ex A1

²⁶ Ex A1

²⁷ Ex A1

²⁸ Ex A2

²⁹ Ex A1

18. In August 2012, DPSST received an F-4 Personnel Action Report showing that GARR had resigned effective August 1, 2012 during an internal investigation and pursuant to a Settlement Agreement.³⁰ DPSST requested and received the information leading to the resignation.³¹
19. In February 2013, DPSST notified GARR 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 He requested an extension until the next PPC meeting, in August, 2013, which was granted.³³
20. GARR provided a response.³⁴

DISCUSSION:

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

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

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

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

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

* * *

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

³⁰ Ex A3

³¹ Ex A4, A5

³² Ex A6

³³ Ex A7

³⁴ Ex A8

(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 GARR’s certification(s) based on violation of the established moral fitness standards.

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

19. By discussion and consensus:

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

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

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

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

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

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

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

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

21. By vote, the Policy Committee finds GARR'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 F

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

DATE: August 15, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: KATHERINE A. IRWIN DPSST #23050
Department of Public Safety Standards & Training**

ISSUE:

Should Katherine Irwin's Basic, Intermediate and Advanced Police certifications and her 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 Irwin's conduct surrounding her resignation in lieu of termination after an internal investigation into violations of agency policies related to Standards of Conduct, Maintaining a Professional Workplace and Tactical Training Venue Operational Procedures.

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

BACKGROUND and OVERVIEW:

21. On August 20, 1989, IRWIN was hired by the Seaside Police Department as a police officer.³⁵ She signed her Code of Ethics,³⁶ and obtained Basic and Intermediate Police certifications.³⁷ IRWIN resigned from the Seaside Police Department on October 2, 1992 and was hired by the Portland Public Schools Police on October 12, 1992, obtaining an Advanced Police Certificate while with that agency.³⁸ On July 9, 1998, IRWIN resigned from

³⁵ Ex A1

³⁶ Ex A2

³⁷ Ex A1

³⁸ Ex A1

the Portland Public Schools Police and was hired by the Department of Public Safety Standards & Training (DPSST) on July 12, 1998.³⁹

22. *In February 2013, DPSST received an F-4 Personnel Action Report showing that IRWIN had resigned in lieu of termination effective February 15, 2013.⁴⁰ DPSST requested and received the information leading to the resignation.⁴¹*
23. *In May 2013, DPSST notified IRWIN via certified mail that her case would be heard before the Police Policy Committee (PPC) and allowed her an opportunity to provide mitigating circumstances for the Committee's consideration.⁴²*
24. *IRWIN provided a response.⁴³*

DISCUSSION:

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

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

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

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

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

* * *

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

³⁹ Ex A1

⁴⁰ Ex A3

⁴¹ Ex A4 – A7

⁴² Ex A8

⁴³ Ex A10

(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 IRWIN's certification(s) based on violation of the established moral fitness standards.

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

23. 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**.

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

25. By vote, the Policy Committee finds IRWIN's conduct *does/does not* rise to the level to warrant the revocation of her certification(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: August 15, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: SANTIAGO J. PUENTE DPSST #49206
Mt. Angel Police Department**

ISSUE:

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

The issue in this case involves PUENTE's conduct surrounding his resignation during an internal investigation into violations of agency policies related to Orders, Standards for Arrest, Performance, Safety, and Assistance to Agencies Outside the City.

BACKGROUND and OVERVIEW:

25. *On July 28, 2008, PUENTE was hired by the Mt. Angel Police Department as a police officer.⁴⁴ He signed his Code of Ethics,⁴⁵ and ultimately obtained a Basic Police certification.⁴⁶*
26. *In March 2013, DPSST received an F-4 Personnel Action Report showing that PUENTE had resigned effective February 13, 2013 during an investigation.⁴⁷ DPSST requested and received the information leading to the resignation.⁴⁸*
27. *In May 2013, DPSST notified PUENTE 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.⁴⁹*

⁴⁴ Ex A1

⁴⁵ Ex A2

⁴⁶ Ex A1

⁴⁷ Ex A3

⁴⁸ Ex A4, A5 and sub-exhibits

28. PUENTE provided a response.⁵⁰

DISCUSSION:

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

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

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

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

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

* * *

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

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

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

⁴⁹ Ex A6

⁵⁰ Ex A7

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

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

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

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

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

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

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

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*

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

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

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

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

27. 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.**

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

29. By vote, the Policy Committee finds PUENTE'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 H

Department of Public Safety Standards and Training
Memorandum

DATE: August 15, 2013

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: THOMAS E. SHEPHERD DPSST #29611
Polk County Sheriff's Office

ISSUE:

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

The issue in this case involves SHEPHERD's conduct surrounding his resignation during an internal investigation that sustained violations of agency policies relating to Performance Expectations - Orders and Violations of Professional Conduct – Insubordination, and violation of his Last Chance Agreement with the county.

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

BACKGROUND and OVERVIEW:

29. On July 1, 1996, SHEPHERD was hired by the Polk County Sheriff's Office as a deputy sheriff.⁵¹ He signed his Code of Ethics,⁵² and ultimately obtained Basic, Intermediate, Advanced and Supervisory Police certifications.⁵³
30. In February 2013, DPSST received an F-4 Personnel Action Report showing that SHEPHERD had resigned effective January 25, 2013 during an investigation.⁵⁴ DPSST requested and received the information leading to the resignation.⁵⁵

⁵¹ Ex A1

⁵² Ex A2

⁵³ Ex A1

⁵⁴ Ex A3

⁵⁵ Ex A4, A5

31. *In May 2013, DPSST notified SHEPHERD 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.*⁵⁶
32. *SHEPHERD did not provide a response.*

DISCUSSION:

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

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

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

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

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

** * **

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

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

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness,

⁵⁶ Ex A6

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 SHEPHERD's certification(s) based on violation of the established moral fitness standards.

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

31. 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**.

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

33. By vote, the Policy Committee finds SHEPHERD's conduct *does/does not* rise to the level to warrant the revocation of his certification(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.