

# **Police Policy Committee Minutes August 16, 2012**

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on August 16, 2012 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:40 p.m. by Glen Scruggs.

## **Attendees**

### **Policy Committee Members:**

Larry Blanton, Oregon State Sheriffs' Association  
Richard Evans, Oregon State Police Command Officer  
Craig Halupowski, Non-Management Law Enforcement  
Eric Hendricks, Portland Police Bureau (Designee for Chief Mike Reese)  
Ryan Humphrey, Non-Management Law Enforcement  
James Hunter, Oregon Association Chiefs of Police  
Glen Scruggs, Non-Management Law Enforcement  
Marc Tisher, Non-Management Law Enforcement  
Mike Wells, Non-Management Law Enforcement  
Mathew Workman, Oregon Association Chiefs of Police

### **Committee Members Absent:**

Kent Barker, Chair, Oregon Association Chiefs of Police  
Tom Bergin, Oregon State Sheriffs' Association  
Holly Russell, Oregon State Sheriffs' Association

### **DPSST Staff:**

Eriks Gabliks, Director  
Todd Anderson, Training Division Director  
Marilyn Lorange, Standards and Certification Program Supervisor  
Leon Colas, Professional Standards Coordinator/Investigator  
Linsay Hale, Rules and Compliance Coordinator  
Kristy Witherell, Administrative Support

### **Guests:**

Steve Beck, Oregon Council of Police Associations  
Anthony Barnett, Umatilla Tribal Police Department  
Tim Addleman, Umatilla Tribal Police Department  
Paul Johnson, University of Phoenix



**1. Minutes of May 17, 2012 Meeting**

Approve minutes from the May 17, 2012 meeting.

See Appendix A for details

- *James Hunter moved to approve the minutes from the May 17, 2012 Police Policy Committee meeting. Mike Wells seconded the motion. The motion carried unanimously.*

**2. House Bill 2712**

Presented by Leon Colas

See Appendix B for details

- *DPSST requests the Police Policy Committee identify two members to participate in a single workgroup meeting to review the recommendations and report back to the Policy Committee in November.*
- *Ryan Humphrey and Joel Lujan volunteered to participate in the workgroup.*
- *Marilyn Lorange will contact everyone involved in the workgroup to set up a meeting in September.*
- *The proposal will come back to the committee in November for formal approval of the proposed rule.*

**3. OAR 259-008-0005, 259-008-0060, 259-008-0065 – Proposed Rules**

Presented by Linsay Hale

See Appendix C for details

- *Larry Blanton moved that the Police Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0005, 259-008-0060, & 259-008-0066 with the Secretary of State as proposed rules and make them permanent if no comments are received. Ryan Humphrey seconded the motion. The motion carried unanimously.*

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

**4. Update from the Curriculum Review Committee**

Presented by Todd Anderson

See Appendix D for details.

- *Rich Evans moved that the Police Policy Committee recommends to the Board approval of the proposed new curriculum as presented by the Curriculum Review Committee. Mike Wells seconded the motion. The motion carried unanimously.*

5. **Anthony L. Barnett, La Grande Police Department – DPSST #37913**

Presented by Leon Colas

See **Appendix E** for details

- ***Ryan Humphrey moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Rich Evans seconded the motion. The motion carried unanimously with Mike Wells abstaining.***
  
- By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case. *Violation of the last chance agreement, untruthfulness, harassment, sexual harassment, immoral conduct, and unprofessional conduct.***
  - b. The identified conduct **did not** involve **Dishonesty; determined in an 8-2 vote.**
  - c. The identified conduct **did not** involve a **Disregard for the Rights of Others.**
  - d. The identified conduct **did not** involve **Misuse of Authority; determined in a 6-4 vote.**
  - e. The identified conduct **did** involve **Gross Misconduct; determined in a 6-4 vote based on BARNETT's behavior which was a civil liability to the department. BARNETT's failure to act created a danger/risk to persons. Barnett failed to follow the last chance agreement.**
  - f. The identified conduct **did** involve **Misconduct based on BARNETT's inappropriate sexually-based conversations in the workplace. BARNETT made sexually descriptive comments with other employees while on duty. BARNETT ran vehicle plates for personal reasons.**
  - g. The identified conduct **did** involve **Insubordination based on BARNETT's violation of his last chance agreement.**

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

***The committee noted as mitigating circumstances BARNETT being in attendance for the policy committee meeting and his letter to the committee. BARNETT has a wealth of support from his current employer and his former Chief. BARNETT was hired by another agency after he was fired by La Grande Police Department.***

***The committee noted as aggravating circumstances the age of the female BARNETT was inappropriate with. BARNETT violated his last chance agreement. This behavior was on going by BARNETT.***

- *Larry Blanton moved that the Police Policy Committee finds BARNETT's conduct does rise to the level to warrant the revocation of his certification(s,) and therefore, recommends to the Board that these certification(s) be revoked. Rich Evans seconded the motion. The motion carried in a 7-3 vote.*
- *The Police Policy Committee voted on the categories listed below and recommends to the Board that BARNETT's conduct receive the following periods of ineligibility:*
  - Category IV: Gross Misconduct (5 years to 10 years). *Rich Evans moved that the Police Policy Committee recommend to the Board a five year revocation based on Gross Misconduct. Larry Blanton seconded the motion. The motion carried in a 7-3 vote.*
  - Category V: Misconduct (3 years to 7 years). *Larry Blanton moved that the Police Policy Committee recommend to the Board a three year revocation based on Misconduct. Rich Evans seconded the motion. The motion carried unanimously.*
  - Category VI: Insubordination (3 years to 7 years). *Rich Evans moved that the Police Policy Committee recommend to the Board a three year revocation based on Insubordination. Mathew Workman seconded the motion. The motion carried unanimously.*
- *Since the Police Policy Committee voted for the lowest level of the Gross Misconduct category—a five year revocation, BARNETT may reapply for certification in five years.*

6. **Daniel R. Grice, Springfield Police Department – DPSST #45505**

Presented by Leon Colas

See Appendix F for details

- *Rich Evans moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - Identify and articulate the **misconduct that is specific to this case**. *GRICE's 2011 DUI conviction.*
  - The identified conduct **did not** involve **Dishonesty**.
  - The identified conduct **did not** involve a **Disregard for the Rights of Others**.
  - The identified conduct **did not** involve **Misuse of Authority**.

- e. The identified conduct ***did*** involve **Gross Misconduct based on GRICE's DUII arrest.**
- f. The identified conduct ***did*** involve **Misconduct based on what was stated above under Gross Misconduct.**
- g. The identified conduct ***did not*** involve **Insubordination.**
- By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances.  
*The committee noted as mitigating circumstances the letter of support from Chief Smith. GRICE took responsibility for his actions. GRICE completed alcohol treatment.*

*The policy committee did not identify any aggravating circumstances.*

- *Craig Halupowski moved that the Police Policy Committee finds GRICE'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**. Mike Wells seconded the motion. **The motion carried unanimously.***

7. **Adam Hartlaub, Washington County Sheriff's Office – DPSST #49788**

Presented by Leon Colas

See **Appendix G** for details

- *Craig Halupowski moved that the Police Policy Committee **adopts** the staff report as the record upon which its recommendations are based. Joel Lujan seconded the motion. **The motion carried unanimously with Rich Evans 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 in an 8-1 vote.**
  - c. The identified conduct ***did not*** involve a **Disregard for the Rights of Others.**
  - d. The identified conduct ***did not*** involve **Misuse of Authority.**
  - e. The identified conduct ***did not*** involve **Gross Misconduct.**
  - f. The identified conduct ***did*** involve **Misconduct based on HARTLAUB cheating on a test.**

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

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

*The committee noted as mitigating circumstances HARTLAUB being 25 years old when the offense happened. He was a three-year deputy. His Sheriff supports him. HARTLAUB was honest when he was confronted with cheating on the test.*

*The policy committee did not identify any aggravating circumstances.*

- *Craig Halupowski moved that the Policy Committee finds HARTLAUB'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**. Larry Blanton seconded the motion. **The motion carried** unanimously.*

8. **Kip D. Oswald, North Bend Police Department – DPSST #08674**

Presented by Leon Colas

See **Appendix H** for details

- *Rich Evans moved that the Police Policy Committee **adopts** the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. **The motion carried** unanimously.*
- By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case**.  
*Untruthfulness based on OSWALD forging a doctor's note.*
  - b. The identified conduct **did** involve **Dishonesty based on OSWALD being deceptive about forging the doctor's note**.
  - c. The identified conduct **did not** involve a **Disregard for the Rights of Others**.
  - d. The identified conduct **did not** involve **Misuse of Authority**.
  - e. The identified conduct **did not** involve **Gross Misconduct**.
  - f. The identified conduct **did** involve **Misconduct based on OSWALD forging the doctor's note and taking sick days when he was not sick**.
  - g. The identified conduct **did not** involve **Insubordination**.

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

*The committee noted as aggravating circumstances OSWALD stated he did not want to return to work. The letter submitted by the Chief was aggravating.*

*The committee did not identify and mitigating circumstances*

- *Mike Wells moved that the Police Policy Committee finds OSWALDS's conduct does rise to the level to warrant the revocation of his certification(s), and therefore, recommends to the Board that these certification(s) be revoked. Craig Halupowski seconded the motion. The motion carried unanimously.*
- *The Police Policy Committee voted on the categories listed below and recommends to the Board that BARNETT's conduct receive the following periods on ineligibility:*

*Category I: Dishonesty (5 years to lifetime). James hunter moved that the Police Policy Committee recommend to the Board a five year revocation based on Dishonesty. Larry Blanton seconded the motion. The motion carried in a 6-4 vote.*

*Category V: Misconduct (3 years to 7 years). Larry Blanton moved that the Police Policy Committee recommend to the Board a three year revocation based on Misconduct. Craig Halupowski seconded the motion. The motion carried in a 9-1 vote.*

- *Since the Police Policy Committee voted for the lowest level of the Dishonesty category—a five year revocation, OSWALD may reapply for certification in five years.*

**9. John H. Thorndike, Umatilla Tribal Police Department – DPSST #42494**

Presented by Leon Colas

*See Appendix I for details*

- *Rich Evans 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.*
- *Mike Wells moved that the new evidence provided does not have enough information to change the previous vote which was not to revoke certifications. Craig Halupowski seconded the motion. The motion carried unanimously.*

**10. Daniel E. Woodring, Douglas County Sheriff's Office – DPSST #45529**

Presented by Leon Colas

*See Appendix J for details*

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

- By discussion and consensus:
  - a. Identify the conduct that is at issue, specific to this case: ***Insubordination***.
  - b. The identified conduct ***did not*** involve **Dishonesty**
  - c. The identified conduct ***did not*** involve a **Disregard for the Rights of Others**
  - d. The identified conduct ***did not*** involve **Misuse of Authority**
  - e. The identified conduct ***did not*** involve **Gross Misconduct**
  - f. The identified conduct ***did not*** involve **Misconduct**
  - g. The identified conduct ***did*** involve **Insubordination based on WOODRING not following directions from a supervisor. WOODRING did not follow up with finishing a report when directed to.**

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

*The policy committee did not identify and mitigating or aggravating circumstances.*

- ***Craig Halupowski moved that the Police Policy Committee finds WOODRING'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.***

## **11. Additional Business**

### Director's Report:

Former Board Chair Todd Anderson is on staff as our new Training Division Director.

We have phased back in one Basic Police class because of an uptick of hiring. The class starts October 15<sup>th</sup>.

DPSST will be hosting the Leadership Symposium in October. This is done in partnership with the Chiefs and Sheriffs, OEDI, DOC, and State Police.

The matrix for intermediate and advanced certification is going out for public comment. This process should go pretty smoothly.

### Mike Wells:

OPOA is having its awards banquet in November. OPOA is looking for more awards submissions from around the state.

**12. Next Police Policy Committee Meeting – November 15, 2012 at 1:30 p.m.**

*With no further business before the committee, the meeting adjourned at 3:45 p.m.*

**Appendix A**

**Police Policy Committee  
Minutes  
May 17, 2012**

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on May 17, 2012 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:37 p.m. by Chair Kent Barker.

**Attendees**

**Policy Committee Members:**

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

**Committee Members Absent:**

Richard Evans, Oregon State Police Command Officer  
Marc Tisher, Non-Management Law Enforcement

**DPSST Staff:**

Eriks Gabliks, Director  
Marilyn Lorange, Standards and Certification Program Supervisor  
Leon Colas, Professional Standards Coordinator/Investigator  
Linsay Hale, Rules and Compliance Coordinator  
Kristy Witherell, Administrative Support

**Guests:**

Steve Beck, Oregon Council of Police Associations  
Cory Simons, Oregon State Police  
Ramona Rodamaker, Oregon State Police  
Robbie Graves, Milwaukie Police Employees Association



**13. Minutes of February 16, 2012 Meeting**

Approve minutes from the February 16, 2012 meeting.

*See Appendix A for details*

- *Tom Bergin moved to approve the minutes from the February 16, 2012 Police Policy Committee meeting. James Hunter seconded the motion. The motion carried unanimously.*

**14. OAR 259-008-0060 – Proposed Rule**

Presented by Linsay Hale

See Appendix B for details

- *James Hunter moved that the Police Policy Committee recommend to the Board filing the proposed language for OAR-259-008-0060 with the Secretary of State as a proposed rule. Mike Wells seconded the motion. The motion carried unanimously.*
- *James Hunter moved that the Police Policy Committee recommend to the Board filing the proposed language for OAR-259-008-0060 with the Secretary of State as a permanent rule if no comments are received. Mike Wells seconded the motion. The motion carried unanimously.*

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

**15. John W. Slyter**

Request for Medical Waiver

Presented by Linsay Hale

- *Without going into executive session, James Hunter moved that the Police Policy Committee recommend approval of a medical waiver for John Slyter. Mike Wells seconded the motion. The motion carried unanimously.*
- *James Hunter moved that the Police Policy Committee forward the approval of a medical waiver to the Executive Committee. Mike Wells seconded the motion. The motion carried unanimously.*

**16. James A. Bailey, Albany Police Department – DPSST #48125**

Presented by Leon Colas

See Appendix C for details

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Mike Wells seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - h. Identify and articulate the **misconduct that is specific to this case.** *The Police Policy committee does not find conduct that rises to revocation.*
  - i. The identified conduct did not involve **Dishonesty.**

- j. The identified conduct **did not** involve a **Disregard for the Rights of Others**.
  - k. The identified conduct **did not** involve **Misuse of Authority**.
  - l. The identified conduct **did not** involve **Gross Misconduct**.
  - m. The identified conduct **did not** involve **Misconduct**.
  - n. The identified conduct **did not** involve **Insubordination**.
- *Since the Police Policy Committee did not find conduct that rises to revocation, James Hunter moved that BAILEY's certifications not be revoked. Mike Wells seconded the motion. The motion carried unanimously.*

**17. Henry E. Filipponi, Ontario Police Department – DPSST #49765**

Presented by Leon Colas

*The policy committee has heard FILLIPONI's case in November for a DUII conviction, which the policy committee voted not to revoke his certifications. Since that case was heard, FILIPPONI was convicted of a probation violation.*

*See Appendix D for details*

- *Ryan Humphrey moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Tom Bergin seconded the motion. The motion carried unanimously.*
- *Tom Bergin moved that the Police Policy Committee not rescind the original motion that was brought before the committee and let the original decision stand. Craig Halupowski seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - h. Identify and articulate the **misconduct that is specific to this case**. *FILIPPONI's contempt of court conviction based on a probation violation.*
  - i. The identified conduct **did not** involve **Dishonesty**.
  - j. The identified conduct **did not** involve a **Disregard for the Rights of Others**.
  - k. The identified conduct **did not** involve **Misuse of Authority**.
  - l. The identified conduct **did not** involve **Gross Misconduct**.
  - m. The identified conduct **did** involve **Misconduct based on FILIPPONI's contempt of court misdemeanor conviction and probation violation**.

- n. The identified conduct **did not** involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.  
*The committee noted as mitigating circumstances that FILIPPONI was dealing with personal issues. He notified his work as soon as the arrest happened. He has been cooperative throughout the whole process. He has taken responsibility for his actions. Before this incident, FILIPPONI had been sober for 8 months.*
- The policy committee did not identify any aggravating circumstances.*
- *Craig Halupowski moved that the Policy Committee finds FILIPPONI's conduct does not rise to the level to warrant the denial 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.*

**18. Zachary B. Firestone, Grants Pass Police Department – DPSST #49765**

Presented by Leon Colas

See Appendix E for details

- *James Hunter moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Mike Wells seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - h. Identify and articulate the **misconduct that is specific to this case**. *The Police Policy Committee does not find misconduct that rises to revocation in this case*
  - i. The identified conduct **did not** involve **Dishonesty**.
  - j. The identified conduct **did not** involve a **Disregard for the Rights of Others**.
  - k. The identified conduct **did not** involve **Misuse of Authority**.
  - l. The identified conduct **did not** involve **Gross Misconduct**.
  - m. The identified conduct **did not** involve **Misconduct**.
  - n. The identified conduct **did not** involve **Insubordination**.

- *Since the Police Policy Committee did not find conduct that rises to revocation, Larry Blanton moved that FIRESTONE's certifications not be revoked. Mike Wells seconded the motion. The motion carried unanimously.*

**19. Kirk C. Flerchinger, Umatilla Tribal Police Department – DPSST #26897**

Presented by Leon Colas

*See Appendix F for details*

- *Glen Scruggs 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 Ryan Humphrey abstaining.*
- By discussion and consensus:
  - h. Identify and articulate the **misconduct that is specific to this case**. *The Police Policy Committee does not find misconduct that rises to revocation in this case*
  - i. The identified conduct did not involve **Dishonesty**.
  - j. The identified conduct did not involve a **Disregard for the Rights of Others**.
  - k. The identified conduct did not involve **Misuse of Authority**.
  - l. The identified conduct did not involve **Gross Misconduct**.
  - m. The identified conduct did not involve **Misconduct**.
  - n. The identified conduct did not involve **Insubordination**.
- *Since the Police Policy Committee did not find conduct that rises to revocation, James Hunter moved that FLERCHINGER's certifications not be revoked. Holly Russell seconded the motion. The motion carried unanimously with Ryan Humphrey abstaining.*

**20. Naymon E. Frank, Oregon State Police – DPSST #50173**

Presented by Leon Colas

*See Appendix G for details*

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

- a. Identify the conduct that is at issue, specific to this case: **Dishonesty**
  - b. The identified conduct did involve **Dishonesty based on FRANK lying about the frequency of texts between him and a female. FRANK also lied about using LEDS for personal use.**
  - c. The identified conduct did involve a **Disregard for the Rights of Others based on FRANK being intimate on duty with a female. The female told FRANK to stop contacting her and he continued.**
  - d. The identified conduct did involve **Misuse of Authority based on FRANK using LEDS for personal use.**
  - e. The identified conduct did not involve **Gross Misconduct**
  - f. The identified conduct did involve **Misconduct based on the totality of the circumstances combined. Gross deviation of the standard of care.**
  - g. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

*The committee noted as mitigating circumstances that FRANK was investigated by the agency he worked for, for a crime. The investigation was conducted on agency property. FRANK was not afforded any of the standard protections given to an employee being investigated.*

*The committee noted as aggravating circumstances that FRANK did not write a letter to the committee explaining his circumstances.*

- *Larry Blanton moved that the Police Policy Committee finds FRANK's conduct does rise to the level to warrant the revocation of his certification(s,) and therefore, recommends to the Board that these certification(s) be revoked. Holly Russell seconded the motion. The motion carried unanimously.*
- *Craig Halupowski moved that the Police Policy Committee recommends to the Board that FRANK's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore recommending a lifetime revocation; FRANK may never reapply for certification. Mike Wells seconded the motion. The motion carried unanimously.*

## **21. Sean M. Gilhousen, Coburg Police Department – DPSST #37612**

Presented by Leon Colas

*This case was heard by the policy committee in November of 2011. At that time the committee recommended a lifetime revocation of GILHOUSEN's certifications. Before the case was turned over to the board, GILHOUSEN's attorney claimed that GILHOUSEN did not receive any notifications regarding this case. GILHOUSEN's attorney requested for DPSST to present the case to the policy committee again along with GILHOUSEN's response.*

See Appendix H for details

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Tom Bergin seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - h. Identify the conduct that is at issue, specific to this case: **Dishonesty**
  - i. The identified conduct does involve **Dishonesty based on the same reasons the committee voted on when this case was brought to the Police Policy Committee previously.**
  - j. The identified conduct does not involve a **Disregard for the Rights of Others. The agency that conducted the investigation showed no evidence of GILHOUSEN making illegal traffic stops.**
  - k. The identified conduct does involve **Misuse of Authority**
  - l. The identified conduct does involve **Gross Misconduct**
  - m. The identified conduct does involve **Misconduct**
  - n. The identified conduct does not involve **Insubordination.**
- *Glen Scruggs moved that the Police Policy Committee finds GILHOUSEN's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Craig Halupowski seconded the motion. The motion carried unanimously.*
- *Glen Scruggs moved that the Police Policy Committee let the term of revocation stay the same as previously voted with an amendment to Disregard for the Rights of Others. Craig Halupowski seconded the motion. The motion carried unanimously.*

## **22. Dean Meisner, Beaverton Police Department – DPSST #18594**

Presented by Leon Colas

See Appendix I for details

- *Mike Wells moved that the Police Policy Committee adopts the staff report and the video provided as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried in a 9-2 vote with Kent Barker and Eric Hendricks abstaining.*
- By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case. Dishonesty**
  - b. The identified conduct did involve **Dishonesty based on MEISNER's intent to steal the item from Safeway.**

- c. The identified conduct **did not** involve a **Disregard for the Rights of Others**.
- d. The identified conduct **did not** involve **Misuse of Authority**.
- e. The identified conduct **did not** involve **Gross Misconduct**.
- f. The identified conduct **did** involve **Misconduct based on MEISNER's theft charge**.
- 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 identified as aggravating circumstances that MEISNER was in attire that identified him as a member of the Beaverton Police Department. MEISNER's statement to the committee was also noted as aggravating.*

*The policy committee noted as mitigating circumstances MEISNER's polygraph.*

- *Larry Blanton moved that the Police Policy Committee finds MEISNER's conduct does rise to the level to warrant the revocation of his certification(s), and therefore, recommends to the Board that these certification(s) be revoked. Craig Halupowski seconded the motion. The motion carried unanimously with Kent Barker and Eric Hendricks abstaining.*
- *Glen Scruggs moved that the Police Policy Committee recommends to the Board that MEISNER's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore recommending a lifetime revocation; MEISNER may never reapply for certification. Craig Halupowski seconded the motion. The motion carried unanimously with Kent Barker and Eric Hendricks abstaining.*

### **23. Thomas Perritt, Newberg-Dundee Police Department – DPSST #20049**

Presented by Leon Colas

*See Appendix J for details*

- *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.*
- By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case. *Drinking alcohol while on duty.***

- b. The identified conduct did involve **Dishonesty based on being untruthful in his initial statement.**
  - c. The identified conduct did not involve a **Disregard for the Rights of Others**
  - d. The identified conduct did not involve **Misuse of Authority.**
  - e. The identified conduct did involve **Gross Misconduct based on PERRITT drinking while on duty. He was operating a patrol vehicle while under the influence.**
  - f. The identified conduct did involve **Misconduct based on the same issues stated above.**
  - g. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.  
*The committee noted as mitigating circumstances that PERRITT is an alcoholic which he has admitted to when interviewed. He has given a full account of his alcoholism. PERRITT has taken steps and responsibility to change his behavior. When he was untruthful to his supervisor about drinking, it was while he was under the influence.*  
  
*The policy committee did not note any aggravating circumstances.*
  - *Mike Wells moved that the Police Policy Committee finds PERRITT's conduct does rise to the level to warrant the revocation of his certification(s), and, therefore, recommends to the Board that these certification(s) be revoked. Holly Russell seconded the motion. The motion carried in a 10-1 vote with Glenn Scruggs voting no.*
  - *James Hunter moved that the Police Policy Committee revoke PERRITT's certification for five years based on the minimum period of ineligibility under the Dishonesty category. Craig Halupowski seconded the motion. The motion carried in a 9-2 vote with Glen Scruggs voting no. Mike Wells voting no based on him wanting to seek a lifetime disqualifier.*
  - *Craig Halupowski moved that the Police Policy Committee revoke PERRITT's certification 10 years under Gross Misconduct and 7 years under the Misconduct category. Holly Russell seconded the motion. The motion failed.*
  - *Larry Blanton moved that the Police Policy Committee revoke PERRITT's certifications for five years on both Gross Misconduct and Misconduct. James Hunter*

*seconded the motion. The motion carried in a 9-2 vote with Glen Scruggs voting no and Craig Halupowski voting no based on him wanting to seek the maximum period of ineligibility.*

**24. Corey J. Simons, Oregon State Police – DPSST #35370**

Presented by Leon Colas

*See Appendix K for details*

- *Craig Halupowski moved that the Policy Committee adopts the Staff report as the record upon which its recommendations are based. Ryan Humphrey seconded the motion. The motion carried unanimously.*
  
- By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case. 2012 conviction of recklessly endangering another.**
  - b. The identified conduct **did not** involve **Dishonesty.**
  - c. The identified conduct **did not** involve a **Disregard for the Rights of Others.**
  - d. The identified conduct **did not** involve **Misuse of Authority.**
  - e. The identified conduct **did** involve **Gross Misconduct based on firing a weapon.**
  - f. The identified conduct **did** involve **Misconduct based on the same reasons listed under Gross Misconduct. Conviction of recklessly endangering another.**
  - 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 noted as mitigating circumstances SIMONS' mental and emotional health that was stated in the report at the time of the incident. SIMONS' has sought treatment for his mental and emotional health. The policy committee noted that the letter SIMONS' wrote was very compelling. The letters from Dr. Corey and the judge showed support of SIMONS'. SIMONS' asked for help from his lieutenant and he did not get it. SIMONS' attended the Police Policy Committee meeting. SIMONS' provided two letters from two separate individuals from post trauma treatment in support of him.*

*The policy committee noted as aggravating circumstances SIMONS' firing his weapon.*

- *Larry Blanton moved that the policy committee finds SIMONS' conduct does rise to the level to warrant the revocation of his certifications(s), and therefore, recommends to the Board that these certification(s) be revoked. Mike Wells seconded the motion. The motion failed.*

**25. Howard R. Webb – DPSST #17552**

Presented by Leon Colas

*See Appendix L for details*

- *Mike Wells moved that the Policy Committee adopts the Staff report as the record upon which its recommendations are based. Larry Blanton seconded the motion. The motion carried in a 9-2 vote with Mathew Workman and Ryan Humphrey abstaining.*

- By discussion and consensus:

- Identify and articulate the **misconduct** that is specific to this case. *Dishonesty.*
- The identified conduct did involve **Dishonesty based on WEBB misrepresenting what he had done to credibly establish his ability to certify K-9's.**
- The identified conduct did not involve a **Disregard for the Rights of Others.**
- The identified conduct did not involve **Misuse of Authority.**
- The identified conduct did not involve **Gross Misconduct.**
- The identified conduct did involve **Misconduct based on WEBB violating practices and standards generally followed in the profession. WEBB failed to cease and desist as notified.**
- 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 noted as aggravating circumstances WEBB backdating K-9 certificates. WEBB is still coming into Oregon and teaching classes. WEBB did not respond to DPSST's letter.*

*The policy committee did not note any mitigating circumstances.*

- *Mike Wells moved that the policy committee finds WEBB's conduct does rise to the level to warrant the revocation of his certifications(s), and therefore, recommends to the Board that these certification(s) be revoked. Craig Halupowski seconded the*

***motion. The motion carried unanimously with Mathew Workman and Ryan Humphrey abstaining.***

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

## **26. Additional Business**

### Marilyn Lorange:

Marilyn has been working to set up a workgroup meeting in mid-June. There has been an unofficial concern raised around the subject of terminology used in maintenance training, specifically the use of certification recalls. DPSST does not have explicit authority in our statute to do a recall even though it's considered an administrative action. DPSST has statutory authority to deny, suspend, and revoke certification. DPSST believes it's a terminology issue not a substantive issue. The meeting will tentatively be held on June 18, 2012.

### Director's Report:

The elections took place this week, which showed a spike in the number of people running for sheriff.

There are currently two Basic Police classes in session. We are following Portland's budget discussions as well as OSP, and O&C timber-funded counties such as Lane, Linn, Curry, and Josephine. We are not seeing a back log of students. We are adjusting the classes to run every 90 days to be financially prudent.

The Basic Police and Career Officer Development Review Committee continues. They are scheduled to meet next month. We will try to get a report back to you by the next policy committee meeting. The committee is 90% solid and 10% is looking at seeing if too much time is spent in certain areas. The committee is looking at extending the hours taught for the Mental Health curriculum.

DPSST will be testifying on Monday, May 21 at the Senate Judiciary Committee along with The Chief's Association and the District Attorney's on eyewitness identification. They have an interest in seeing what the state of Oregon is doing to train officers.

Thank you from the Memorial Committee and from staff for all the agencies and associations that helped with the memorial on May 8. It was a great turn out. We honored three officers that you approved to be added to the memorial. There were over 80 family members in attendance. The Kilcullen family and the Painter family went back to Washington D.C. The license plate fund is paying for all of their expenses.

**27. Next Police Policy Committee Meeting – August 16, 2012 at 1:30 p.m.**

*With no further business before the committee, the meeting adjourned at 4:10 p.m.*

*Appendix B*

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

**DATE:** August 16, 2012  
**TO:** Police Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator  
**SUBJECT:** House Bill 2712

**ISSUE:**

House Bill 2712, 2011 Oregon Laws, Chapter 597, updates and simplifies the current statutory revenue and distribution structure related to criminal fines, assessments, and other financial penalties imposed on conviction for felonies, misdemeanors, and violations other than parking infractions.

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

**ACTION ITEM I:**

DPSST staff requests the PPC identify two members to participate in a single workgroup meeting to review the recommendations and report back to the PPC in November.

## Appendix C

### Department of Public Safety Standards and Training Memo

**Date:** August 16, 2012

**To:** Police Policy Committee Memo

**From:** Linsay Hale  
Rules & Compliance Coordinator

**Subject:** OAR 259-008-0005, 259-008-0060, 259-008-0065 & 259-008-0076 – Proposed Rules  
Police & Multi-Discipline Maintenance Training

**Background:** DPSST currently recalls the certification of any law enforcement officer who fails to meet the maintenance training requirements found in administrative rule. The recall is retroactive to the date that the training should have been completed and remains in effect until the required training is completed.

A recent DOJ analysis revealed that DPSST does not have the authority to recall a certification. ORS 181.662(1) states “The Department of Public Safety Standards and Training may deny the application for training, or deny, **suspend** or revoke the certification, of any instructor or public safety officer, except a youth correction officer or fire service professional, after written notice and hearing consistent with the provisions of ORS 181.661, based upon finding that: ... (c) The public safety officer or instructor does not meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640 (1)(a) to (d).”

This means that the only option available to DPSST when an officer fails to complete the maintenance training is to suspend their certification. DOJ has clarified that our current process for “recall” is in essence a suspension action. Pursuant to statute, a suspension is subject to the contested case proceedings, affording the holder of the certification the right to an administrative hearing prior to suspension of certification. Also, suspensions cannot be retroactive. Any suspension would be effective upon the entry of a final order and would remain in effect until the missing training is completed.

**Issue:** There will be few substantive process changes making the transition from “certification recalls” to “certification suspensions.” In almost all cases the maintenance

deficiencies are promptly resolved by the officer and agency. The contested case process would be available to officers in the event that there was a dispute and the maintenance deficiencies were not addressed. The letters sent to officers who fail to complete maintenance training will become part of the contested case process and will include formal written notice of DPSST's proposed action and the affected officer's right to request a hearing pursuant to the Attorney General's Model Rules of Procedure adopted by DPSST.

The current DPSST recall processes are virtually identical for police officers, telecommunicators/emergency medical dispatchers, part-time parole & probation officers and multi-discipline maintenance. On June 18, 2012, a workgroup representing all disciplines met to discuss the proposed terminology and process change. The group unanimously recommended moving forward with the changes.

A timeline has been developed to illustrate the current maintenance recall process and the proposed maintenance suspension process (Att. A.)

The following revised language for OAR 259-008-0005 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

## **259-008-0005**

### **Definitions**

\*\*\*

(25) "~~Recall~~" means ~~the administrative inactivation of a certificate issued by the Department until maintenance requirements or other administrative requirements for certification are met and certification is restored.~~

\*\*\*

(30) "Suspension" means the administrative inactivation of a certificate issued by the Department until maintenance requirements or other administrative requirements for certification are met and certification is restored.

\*\*\*

The following revised language for OAR 259-008-0060 contains recommended additions (**bold and underlined**) and deletions (~~striketrough text~~).

259-008-0060

### Public Safety Officer Certification

\*\*\*

(11) Experience/Employment:

(a) Experience gained as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, creditable service time for experience will not accrue under the following circumstances:

\*\*\*

(C) From the date a public safety professional's certification is ~~recalled~~ suspended until it is reinstated by the Department; or

\*\*\*

(18) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education

standards established in OAR 259-008-0010, 259-008-0011, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

\*\*\*

(h) On or after July 1st of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records and ~~provide notification to the individual and the employing agency.~~ A Contested Case Notice of Intent to Suspend will be prepared and served on the law enforcement officer pursuant to ORS 181.662(c) and these rules. A copy of the notice will be sent to the officer's employing agency.

(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(A B) A law enforcement officer who has been served with a Contested Case Notice of Intent to Suspend has ~~Within 30 days of receipt of notification,~~ from the date of mailing or personal service of the notice to ~~the agency must~~ notify the Department of the training status of any law enforcement officer identified as deficient by submitting a Form F-16 (Maintenance Training Log) to the Department identifying the maintenance training completed during the previous one (1) year reporting period: or to file a written request for hearing with the Department.

(B C) Maintenance training hours reported to the Department on a Form F-16 will be used solely to verify completion of maintenance training requirements and will not be added to an officer's training record.

(i) Default Order: If the required training is not reported to the Department or a request for a hearing received within 30 days from the date of the mailing or personal service of

the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

~~(i) Failure to notify the Department of completion of any required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.~~

(j) The Department will recall a law enforcement officer's certification for:

~~(A) Failure to complete or report any required maintenance training above on or before June 30th of each year; or~~

~~(B) Failure to submit a Form F-16 within 30 days after a warning notification letter has been sent.~~

(k) A law enforcement officer with a recalled suspended certification is prohibited from being employed in any position for which the certification has been recalled suspended.

(l) Recertification following a recall suspension may be obtained, subject to at the approval of the Department approval, by submitting the following:

(A) A written request from the employing agency head requesting recertification, along with a justification of why the maintenance training was not completed; and

(B) Verification that the missing training was completed.

(m) Failure to complete the required maintenance training may not result in a recall suspension of certification if the law enforcement officer is on leave from a public or private safety agency.

(19) Certificates and awards are the property of the Department. The Department has the power to revoke or recall suspend any certificate or award as provided in the Act.

\*\*\*

The following revised language for OAR 259-008-0065 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0065

### Maintenance of Certification For Active Police Officers

\*\*\*

(5)~~(a)~~ On or after January 2 of each year, the Department will identify all police officers who are deficient in maintenance training or First Aid/CPR certification according to Department records and ~~provide notification to the officer and his/her employing agency.~~ **A Contested Case Notice of Intent to Suspend will be prepared and served on the officer pursuant to ORS 181.662(c) and these rules. A copy of the notice will be sent to the officer's employing agency.**

**(a) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.**

**(b) An officer who has been served with a Contested Case Notice of Intent to Suspend has** ~~Within 30 days of receipt of the notification in (a) above,~~ **from the date of mailing or personal service of the notice to** ~~the agency must notify the Department of the training status or First Aid/CPR certification of all police officers identified as deficient by submitting a Form F-15M-Police to the Department, identifying the training or First Aid/CPR certification completed during the previous three (3) year reporting period~~ **or file a written request for hearing with the Department.**

(A) Maintenance training and First Aid/CPR training hours reported to the Department on an F-15M-Police will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(B) Default Order: If the required training is not reported to the Department or a request for hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

~~(B) Failure to notify the Department of completion of the required training for officers with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.~~

~~(6) The Department will recall a police officer's certification for:~~

~~(a) Failure to complete any required maintenance training or maintain First Aid/CPR certification during the maintenance period identified in section (2); or~~

~~(b) Failure to submit the completed Form F-15M-Police, within 30 days after a warning notification letter has been sent.~~

(7) A police officer with a recalled suspended certification may not work in a certified position.

(8) Recertification following a recall suspension:

(a) Recertification following a recall suspension may be obtained, subject to at the approval of the Department approval, by submitting the following:

(A) A written request for re-certification from the employing agency head, along with an explanation of why the training or First Aid/CPR certification was not obtained;

(B) An F-6 Course Roster verifying that any missed training has been completed, and identifying the training as "Maintenance make-up" training; and

(C) Verification of current First Aid/CPR certification, submitted as provided in subsection (2) (b) of this rule.

(b) After 2-1/2 years in a recalled suspended status the a police officer will be required to complete a Career Officer Development Course before ~~s/he can be recertified~~ recertification.

(c) After more than 5 years in a recalled suspended status the a police officer will be required to complete basic training in the appropriate discipline.

(9) Agency heads of the employing agency may document "leave" in extreme circumstances for not completing the annual requirements but must provide documentation as to the reason and indicate when the missed training was completed.

(10) Maintenance Training Requirements for Police Officers on Leave.

(a) A police officer who is on leave for any period between 90 to 180 days will have the same maintenance training deadline as the date established prior to the officer's leave date.

(b) A police officer who is on leave for more than 180 days, but less than one year, will receive a one year extension from the maintenance training deadline established prior to the officer's leave.

(c) A police officer who is on leave for more than one year will receive an extension of the maintenance training deadline established prior to the officer's leave. The extension will be prorated, based on the duration of the officer's leave. Upon the officer's return to work, the officer must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(A) Qualification with the appropriate duty weapon(s); and

(B) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

(d) Failure to meet the requirements of subsection (c) of this section will result in a ~~warning notification or recall of a police officer's certification~~ Notice of Intent to Suspend as described in subsection ~~(4) or (5)~~ of this section rule.

\*\*\*

The following revised language for OAR 259-008-0076 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

## 259-008-0076

### Eligibility Requirements for Police Chief

\*\*\*

(6) Failure to obtain a Management Certificate as required in section (2) or (3) above, will result in the immediate recall suspension of the Police Chief's certification:

(a) A Police Chief with a recalled suspended certification is prohibited from performing the duties of, or working in any capacity as, a Police Chief or Acting Police Chief;

(b) Prior to recertification of a Police Chief's recalled suspended certificate, the employing agency head must submit the following:

(A) A written request for recertification, along with an explanation of the individual's current job duties and why the Department should recertify the individual if they are not currently in a certifiable police officer position; or

(B) Verification that a Management Certificate was obtained, if the individual is requesting reinstatement as a Police Chief.

(c) A police chief whose certification has been recalled suspended pursuant to this rule must submit a completed F-4 (Personnel Action Form) identifying that the individual is no longer serving as, or performing the duties of, police chief prior to reactivating their police certification;

\*\*\*

ATTACHMENT A – Timeline – Current Maintenance Recall Process v. Proposed Maintenance Suspension Process

**ACTION ITEM 1:** Determine whether to recommend filing the proposed language for OAR 259-008-0005, 259-008-0060 & 259-008-0066 with the Secretary of State as a proposed rule.

**ACTION ITEM 2:** Determine whether to recommend filing the proposed language for OAR 259-008-0005, 259-008-0060 & 259-008-0066 with the Secretary of State as a permanent rule if no comments are received.

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

## Appendix D

# Curriculum Review Committee Minutes July 26, 2012

The Curriculum Review Committee held a regular meeting on July 26, 2012 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:07 p.m. by Commander Todd Anderson.

### Attendees

#### **Committee Members:**

Sheriff Jack Crabtree, Yamhill County Sheriff's Office  
Mr. Richard Brown, BPSST member  
Sheriff John Trumbo, Umatilla County Sheriff's Office  
Chief Wyn Lohner, Baker City Police Department  
Deputy Chief Randy Sparacino, Medford Police Department  
Lt. David Virtue, Portland Police Bureau  
Lt. Mike Peterson, Oregon State Police

#### **DPSST Staff:**

Director Eriks Gabliks  
Commander Todd Anderson, Training Division Director  
Captain Ray Rau, Academy Training Supervisor  
Captain Roger Eaton, Survival Skills Supervisor  
Mr. Gary Ninman, Tactical Scenario Coordinator  
Mr. JD Edwards, Training and Testing Development Coordinator  
Ms. Sharon Huck, JTA Coordinator  
Ms. Kristy Witherell, Administrative Support



### **1. Presentation of Proposed Curriculum**

Presented by, Captain Ray Rau

- Based upon the meeting minutes from last spring, we have come up with a proposal based on recommendations from the panel concerning two of the classes. There was a limitation of the 640 class hours.
- The Ethics training has been enhanced. Ethics was taught in week 1 and 2 only. We have added another Ethics class in week 8. This has made it a stronger thread throughout the academy.

- We have condensed the Homicide class and combined it with Introduction to Definitions into Crimes Against Persons class. This is a 4 hour class. The performance objectives remain the same.
- Auto Theft Investigations is now being offered as an optional class to the students.
- The Mental Health and Disabilities class was offered as an 8 hour block, all classroom training. Week 7 offered scenario based training for mental health. Monday of week 8 we are including a 1 hour class of review of what they have learned in week 4 and 7 and a 2 hour Returning Veterans class. It has been beta tested with BP 331. DPSST is also offering a regional 4 hour Returning Veterans training class.
- The Bombs and Explosives class has been reviewed and discussions have been had with the FBI; who teaches the class at the academy. We also provide a scenario based training class where the Oregon State Police comes in and teaches the class. We are still reviewing this subject. We also have a Weapons of Mass Destruction class that is a canned 6 hour class through the Department of Homeland Security. These are separate classes and there should not be redundancies between the two classes.

**Comments:**

Mr. Richard Brown asked if the Weapons of Mass Destruction was the canned piece.

Capt. Rau replied with stating that, yes, it is an 8 hour class that the academy is allowed to teach in 6 hours. The students are required to get 100% on the quiz. It is included in the 640 hours of training.

Mr. Richard Brown asked for more clarification on why it is necessary to teach basic students about bombs when the experts should be the ones handling the situation.

Director Eriks Gabliks stated that the Weapons of Mass Destruction is an awareness class. It is a federally mandated class for all public safety first responders.

**2. Presentation of Proposed PCOD Curriculum**

Presented by, Captain Ray Rau

- All students coming through the class have been certified officers in the past. It was decided that the 80 hours needed to be more streamlined. The course offers more legal classes so the students have a better understanding of how to operate as a police officer in the state of Oregon.

- We have validated it with Chief Don Johnson from Lake Oswego Police Department and Chief Craig Junginger from Gresham Police Department who came through the two week class before any revisions of curriculum. JD Edwards sat down with Chief Johnson to get some feedback, comments, or questions as to they would like to see changed with the class.
- There is a self-study class that is offered quarterly. The people registered receive the Basic Police curriculum 60 days before they are required to take three tests at the academy. The public wanted better customer service offered for people going through the course.
- A twice monthly call-in meeting was developed for all students registered for the self-study class who had any questions about curriculum. A number of students took advantage of calling in to grasp a better understanding of the curriculum we provide.
- A discussion board was later developed where the students could post questions and get a response to their questions faster.
- The self-study curriculum will mirror the PCOD class that will be offered in December.
- An Ethics class has been added to the curriculum that is geared toward an experienced officer.
- In the self-study portion of the class, we have seen an increase in participation of the discussion board. Test scores are higher and the students are performing better.

### **Comments:**

Director Gabliks stated that the biggest thing the students, administrators, Chief's, and Sheriff's comment about COD is, they are not new students. They have experience being law enforcement officers. The curriculum was too remedial for them. The students want to see the meat of the issues. Out of state students wanted to learn how to apply the law in Oregon.

Lt. Mike Peterson asked if Emotional Survival is a testable subject or if it is reviewing emotional survival documentation.

Mr. JD Edwards stated that the Emotional Survival class is for review and is not a testable subject.

Mr. Richard Brown suggested that there should be either a class taught or good information passed onto recruits on how they should deal with the media positively.

Commander Anderson suggested that Captain Rau should address this issue with instructors on their delivery of how to deal with the media.

Sheriff Crabtree sees a lack of understanding between law enforcement and the media. Anywhere the instructors can thread getting positive information out on handling the media would be beneficial.

### **3. Motion to Approve Curriculum and Move Forward**

Deputy Chief Randy Sparacino moved to approve the curriculum changes as written. Mr. Richard Brown seconded the motion and the motion carried unanimously.

### **4. Explanation of Next Steps and Implementation Plan**

Presented by, Commander Todd Anderson

The Police Policy Committee will review the approved curriculum on August 16. With their approval, it will go to the Board in October for final approval. With the Boards final approval, it will be instituted in the January self-study class.

### **5. Closing Comments**

Commander Anderson thanked everyone for the work they have done on this project. There will be a review and update of curriculum from the other disciplines offered at DPSST.

Mr. Richard Brown complemented everyone for the effort that was put forth.

Director Gabliks thanked everyone for their time put on this project. We have been very open and honest that these classes, while they are managed by DPSST, we're the stewards of the program. This is Oregon's program and if we're not meeting the needs of the cities, counties, state police, and the tribal police, we're just wasting a lot of people's time and money. We continue to build on what we already offer.

Lt. Mike Peterson really has enjoyed the partnership between State Police and DPSST. There has been such a warm and open reception between the two agencies. It has been a very fun and positive partnership.

Lt. Mike Peterson asked when the next time we will review curriculum.

Director Gabliks suggested that a Curriculum Review should occur every two to three years.

***With no further business to discuss, the Curriculum Review Committee meeting adjourned at 1:50 pm.***

**Appendix E**

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

**DATE:** August 16, 2012

**TO:** Police Policy Committee

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

**SUBJECT: ANTHONY L. BARNETT DPSST #37913  
LaGrande Police Department**

**ISSUE:**

Should Anthony L. Barnett'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 Barnett's conduct surrounding his resignation while under an internal investigation that sustained violations of department policies regarding truthfulness, harassment, sexual harassment, immoral conduct, professional conduct, the Law Enforcement Code of Ethics, and his Last Chance Agreement.

**BACKGROUND and OVERVIEW:**

1. *On August 16, 1999, BARNETT was hired by the LaGrande Police Department as a police officer.<sup>1</sup> He signed his Criminal Justice Code of Ethics<sup>2</sup> and ultimately obtained Basic, Intermediate and Advanced Police certifications.<sup>3</sup>*
2. *In February 2012, DPSST received an F-4 Personnel Action Report, showing BARNETT resigned during an investigation and pursuant to a settlement agreement effective March 1, 2012.<sup>4</sup> DPSST sought and obtained information relating to the resignation.<sup>5</sup>*
3. *On April 1, 2012, BARNETT was hired by the Umatilla Tribal Police Department as a police officer.<sup>6</sup>*

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<sup>1</sup> Ex A1

<sup>2</sup> Ex A2

<sup>3</sup> Ex A1

<sup>4</sup> Ex A3

<sup>5</sup> Ex A4

<sup>6</sup> Ex A5

4. *In May 2012, DPSST notified BARNETT 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.<sup>7</sup> BARNETT has provided a response, with letters of support.<sup>8</sup> Chief ADDLEMAN of the Umatilla Tribal Police Department sent a separate letter of support.<sup>9</sup>*

**DISCUSSION:**

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

**DISCRETIONARY DISQUALIFYING MISCONDUCT:**

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

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

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

*(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*

*(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.*

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<sup>7</sup> Ex A6

<sup>8</sup> Ex A7

<sup>9</sup> Ex A8

*(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.*

#### **POLICY COMMITTEE AND BOARD REVIEW:**

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

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

*(B) If the misconduct resulted in a conviction:*

*(i) Whether it was a misdemeanor or violation;*

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

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

*(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*

*(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*

*(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*

*(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*

*(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*

*(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*

*(E) Whether the misconduct involved domestic violence;*

*(F) Whether the public safety professional or instructor self reported the misconduct;*

*(G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*

*(H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*

*(I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

**STANDARD OF PROOF:**

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

**ACTION ITEM 1:**

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke BARNETT's certifications 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.**

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

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

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

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

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

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

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

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5. By vote, the Policy Committee finds BARNETT'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 F**

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

**DATE:** August 16, 2012

**TO:** Police Policy Committee

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

**SUBJECT: DANIEL R. GRICE DPSST #45505  
Springfield Police Department**

**ISSUE:**

Should Daniel R. Grice's Basic and Intermediate Police certifications be revoked, and an Advanced Police certification be denied, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4), and as referenced in OAR 259-008-0010?

The issue in this case involves GRICE's 2011 criminal conviction for Driving Under the Influence of Intoxicants.

**BACKGROUND and OVERVIEW:**

1. On March 28, 2005, GRICE was hired by the Springfield Police Department as a police officer.<sup>10</sup> He attended training, signed his Criminal Justice Code of Ethics,<sup>11</sup> and ultimately was granted Basic and Intermediate Police certifications.<sup>12</sup>
2. In October 2011, DPSST received a DPSST form F-7 Application for Certification for GRICE on which he acknowledged a conviction for Driving Under the Influence of Intoxicants.<sup>13</sup> DPSST sought and obtained the information leading to GRICE's conviction.<sup>14</sup>
3. In May 2012, DPSST notified GRICE 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.<sup>15</sup>

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<sup>10</sup> Ex A1

<sup>11</sup> Ex A2

<sup>12</sup> Ex A1

<sup>13</sup> Ex A3

<sup>14</sup> Ex A4

<sup>15</sup> Ex A5

4. *GRICE has provided a response.<sup>16</sup> GRICE's agency head, Chief Jerry Smith, has provided a statement as well.<sup>17</sup>*
5. *It should be noted that GRICE was not eligible for diversion due to a 1997 conviction for DUII in the state of Kentucky. That information came from GRICE's driving record, but records of that case are not available.*

#### **DISCUSSION:**

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT:**

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

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

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

*(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*

*(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*

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<sup>16</sup> Ex A6

<sup>17</sup> Ex A6

*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.*

## **SPECIFIC TO THIS CASE:**

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

## **POLICY COMMITTEE AND BOARD REVIEW:**

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

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

*(B) If the misconduct resulted in a conviction:*

*(i) Whether it was a misdemeanor or violation;*

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

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

*(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*

*(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*

*(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*

*(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*

*(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*

*(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*

*(E) Whether the misconduct involved domestic violence;*

*(F) Whether the public safety professional or instructor self reported the misconduct;*

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

**STANDARD OF PROOF:**

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

**ACTION ITEM 1:**

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke and deny GRICE's certifications based on discretionary disqualifying misconduct:

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

- 7. By discussion and consensus:

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

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

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

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

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

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

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

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

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

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

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

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

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

## Attachments

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

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

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

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

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

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

## Appendix G

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 16, 2012

**TO:** Police Policy Committee

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

**SUBJECT: ADAM M. HARTLAUB DPSST #49788  
Washington County Sheriff's Office**

#### **ISSUE:**

Should Adam M. Hartlaub'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 HARTLAUB's resignation in lieu of termination after an internal investigation sustained violations of agency policies of Professional Conduct, Competent Performance and Prohibited Conduct.

#### **BACKGROUND and OVERVIEW:**

5. *On July 7, 2008, HARTLAUB was hired by the Washington County Sheriff's Office as a deputy sheriff. He completed training,<sup>18</sup> signed the Criminal Justice Code of Ethics,<sup>19</sup> and received a Basic Police certification.<sup>20</sup>*
6. *In January 2012, DPSST received an F-4, Personnel Action Report showing HARTLAUB had resigned from the sheriff's office in lieu of termination.<sup>21</sup> DPSST sought and obtained information relating to the resignation.<sup>22</sup>*
7. *In June 2012, DPSST notified HARTLAUB via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him the opportunity to provide*

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<sup>18</sup> Ex A1

<sup>19</sup> Ex A2

<sup>20</sup> Ex A1

<sup>21</sup> Ex A3

<sup>22</sup> Ex A4

*mitigating circumstances for the Committee's consideration.*<sup>23</sup> *HARTLAUB has submitted a response.*<sup>24</sup>

## **DISCUSSION:**

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

## **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

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

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

*(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*

*(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.*

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<sup>23</sup> Ex A5

<sup>24</sup> Ex A6

*(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.*

#### **POLICY COMMITTEE AND BOARD REVIEW:**

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

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

*(B) If the misconduct resulted in a conviction:*

*(i) Whether it was a misdemeanor or violation;*

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

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

*(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*

*(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*

*(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*

*(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*

*(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*

*(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*

*(E) Whether the misconduct involved domestic violence;*

*(F) Whether the public safety professional or instructor self reported the misconduct;*

*(G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*

*(H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*

*(I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

#### **STANDARD OF PROOF:**

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

#### **ACTION ITEM 1:**

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke HARTLAUB's certification 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**.

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

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

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

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

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

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

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

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**13.** By vote, the Policy Committee finds HARTLAUB'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 16, 2012

**TO:** Police Policy Committee

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

**SUBJECT: KIP D. OSWALD DPSST #08674  
North Bend Police Department**

**ISSUE:**

Should Kip D. Oswald'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 OSWALD's resignation in lieu of termination after an internal investigation for an act of dishonesty.

**BACKGROUND and OVERVIEW:**

8. *On March 17, 1977, OSWALD was hired by the Hillsboro Police Department as a police officer, completed the basic academy training, and resigned from that agency on December 10, 1979.<sup>25</sup> On March 28, 1980, OSWALD was re-hired by the Hillsboro Police Department as a police officer, and was discharged December 10, 1980.<sup>26</sup> On July 15, 1983, OSWALD was hired by the Coos County Sheriff's Office as a deputy sheriff. He signed his Criminal Justice Code of Ethics<sup>27</sup> and ultimately received Basic, Intermediate, Advanced and Supervisory Police certifications.<sup>28</sup> On August 31, 2006, OSWALD retired from the Coos County Sheriff's Office, and on October 22, 2006, he was hired by the North Bend Police Department as a police officer.<sup>29</sup>*

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<sup>25</sup> Ex A1

<sup>26</sup> Ex A1

<sup>27</sup> Ex A2

<sup>28</sup> Ex A1

<sup>29</sup> Ex A1

9. *In February 2012, DPSST received an F-4, Personnel Action Report showing OSWALD had resigned from the department in lieu of termination.<sup>30</sup> DPSST sought and obtained information relating to the resignation.<sup>31</sup>*
10. *In May 2012, DPSST notified OSWALD via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him the opportunity to provide mitigating circumstances for the Committee's consideration.<sup>32</sup> OSWALD has submitted a response.<sup>33</sup>*

## **DISCUSSION:**

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

## **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

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

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

*(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*

*(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*

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<sup>30</sup> Ex A3

<sup>31</sup> Ex A4

<sup>32</sup> Ex A5

<sup>33</sup> Ex A6

*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.*

#### **POLICY COMMITTEE AND BOARD REVIEW:**

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

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

*(B) If the misconduct resulted in a conviction:*

*(i) Whether it was a misdemeanor or violation;*

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

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

*(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*

*(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*

*(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*

*(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*

*(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*

*(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*

*(E) Whether the misconduct involved domestic violence;*

*(F) Whether the public safety professional or instructor self reported the misconduct;*

*(G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*

*(H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*

*(I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

**STANDARD OF PROOF:**

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

**ACTION ITEM 1:**

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke OSWALD's certifications 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**.

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

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

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

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

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

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

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

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**17.** By vote, the Policy Committee finds OSWALD'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 I**

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

**DATE:** August 16, 2012

**TO:** Police Policy Committee

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

**SUBJECT: JOHN H. THORNDIKE DPSST #42494  
Umatilla Tribal Police Department**

**ISSUE:**

Should John H. Thorndike'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 THORNDIKE's discharge for cause and his subsequent reinstatement by the Tribal Court. This is a second review of the case by the Committee.

**BACKGROUND and OVERVIEW:**

11. *In 2007 THORNDIKE was hired by the Umatilla Tribal Police Dept. as a police officer.<sup>34</sup> He attended training,<sup>35</sup> signed his Criminal Justice Code of Ethics<sup>36</sup> and received a Basic Police certification.<sup>37</sup>*
12. *In March 2011, DPSST received an F-4, Personnel Action Report, showing THORNDIKE was discharged for cause from the department.<sup>38</sup> DPSST sought and obtained information relating to the discharge.<sup>39</sup>*
13. *In August 2011 DPSST sent THORNDIKE a Notice of Intent to Revoke Certifications.<sup>40</sup> THORNDIKE subsequently requested a stay of the proceedings pending resolution of his appeal to the Tribal Court, and a request for hearing if the stay was not granted.<sup>41</sup> DPSST*

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<sup>34</sup> Ex A1

<sup>35</sup> Ex A1

<sup>36</sup> Ex A3

<sup>37</sup> Ex A1

<sup>38</sup> Ex A2

<sup>39</sup> Ex A4 – A9

<sup>40</sup> Ex A10

<sup>41</sup> Ex A11

granted the stay. On November 9, 2011, THORNDIKE's appeal was granted and he was reinstated to his employment with the Umatilla Tribal Police Dept.<sup>42</sup>

14. In December 2011, DPSST issued THORNDIKE a Withdrawal of Proceedings on the discharge for cause, and notified THORNDIKE via certified mail that his case would be heard before the Police Policy Committee (PPC). He was allowed the opportunity to provide mitigating circumstances for the Committee's consideration.<sup>43</sup> THORNDIKE submitted a response, with attachments.<sup>44</sup>
15. On February 16, 2012, the PPC met and after considering the evidence submitted, voted unanimously to **not** recommend revocation of THORNDIKE's certification.<sup>45</sup>
16. After THORNDIKE and the Umatilla Tribal Police Department were notified of the PPC's decision, Chief Addleman and Mr. Ray Denny, Director of Public Safety for the Confederated Tribes of the Umatilla Indian Reservation, contacted DPSST. Mr. Denney indicated that they had further information on the same allegation of dishonesty against THORNDIKE and requested that the PPC review the case again.<sup>46</sup>
17. Mr. Denney provided a letter from the Umatilla County District Attorney, Dan Primus, indicating that their office had reviewed the agency's internal investigation and had determined that THORNDIKE's truthfulness was in question and thus subject to *Brady v. Maryland*, requiring such information to be provided to the defense in all cases involving THORNDIKE. This document is dated February 29, 2012, after the Police Policy Committee meeting of February 16, 2012.<sup>47</sup> Mr. Denney also stated he had contacted the US Attorney's Office but was still awaiting a response.
18. DPSST staff reviewed the communications from Mr. Denney and the District Attorney and conferred with PPC Chair Kent Barker regarding pulling the case from Board review and presenting it again to the PPC. Chair Barker agreed to do so.
19. Mr. Denney subsequently provided his information for the PPC's consideration. He set out the timeline of the events in question. Along with the allegations of untruthfulness regarding THORNDIKE missing the CPR class, Mr. Denney added information about an investigation of THORNDIKE's allegation against Chief Addleman, claiming that Chief Addleman had threatened an employee with loss of their job if that employee wrote a letter of support for THORNDIKE for the first PPC meeting.<sup>48</sup> After obtaining these materials, I requested affidavits from the parties mentioned in some of the materials, and these were later provided.<sup>49</sup>

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<sup>42</sup> Ex A12, A13

<sup>43</sup> Ex A14

<sup>44</sup> Ex A15

<sup>45</sup> Ex A16

<sup>46</sup> Ex A17

<sup>47</sup> Ex A17

<sup>48</sup> Ex A18

<sup>49</sup> Ex A19

20. *On March 20, 2012 I notified THORNDIKE of the circumstances and advised him he would have the opportunity to submit another letter to the PPC.<sup>50</sup> He submitted another letter to the PPC, with more letters of support.<sup>51</sup> I had expanded on some of the issues and requested specific responses, which THORNDIKE provided.<sup>52</sup>*
21. *Since the issue of the phone call from THORNDIKE to Sgt. Shoeships regarding THORNDIKE having missed the CPR class is central to this dispute, I have now transcribed the phone call of March 11, 2011 from the cd that THORNDIKE had provided as part of his response for the first PPC meeting.<sup>53</sup>*
22. *On June 26, 2012, I received a copy of a letter from Assistant US Attorney Billy Williams to Mr. Denney indicating his review of the materials he received from Chief Addleman, and his opinion on the matter.<sup>54</sup>*
23. *On June 29, 2012, I received a detailed explanation from Tribal Prosecutor Beauvais about his original letter to Chief Addleman.<sup>55</sup>*
24. *On July 16, 2012, I received an affidavit, with attachments, from Officer Rowan Hayes regarding the matter of whether he had been threatened with the loss of his job if he supportet THORNDIKE.<sup>56</sup>*

#### **DISCUSSION:**

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT:**

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

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

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<sup>50</sup> Ex A20

<sup>51</sup> Ex A21

<sup>52</sup> Ex A21

<sup>53</sup> Ex A22

<sup>54</sup> Ex A23

<sup>55</sup> Ex A24

<sup>56</sup> Ex A25

*(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, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*

*(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.*

#### **POLICY COMMITTEE AND BOARD REVIEW:**

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

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

*(B) If the misconduct resulted in a conviction:*

*(i) Whether it was a misdemeanor or violation;*

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

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

*(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*

*(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*

*(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*

*(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*

*(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*

*(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*

*(E) Whether the misconduct involved domestic violence;*

*(F) Whether the public safety professional or instructor self reported the misconduct;*

*(G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*

*(H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*

*(I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

**STANDARD OF PROOF:**

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

**ACTION ITEM 1:**

Staff requests the Policy Committee review the new information provided and determine by vote whether that information changes their original recommendation to NOT revoke Thorndike’s certification 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.

**ACTION ITEM 2 (Required only if the committee changes its previous recommendation):**

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

- 1. By discussion and consensus:

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

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

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

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

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

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

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

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

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**20.** By vote, the Policy Committee finds THORNDIKE'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 3 (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 J**

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

**DATE:** August 16, 2012

**TO:** Police Policy Committee

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

**SUBJECT: DANIEL E. WOODRING DPSST #45529  
Douglas County Sheriff's Office**

**ISSUE:**

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

The issue in this case involves Woodring's conduct surrounding his resignation in lieu of termination for violations of department policies regarding truthfulness, insubordination, abuse of sick leave, and the Law Enforcement Code of Ethics.

**BACKGROUND and OVERVIEW:**

25. *On January 1, 2006, WOODRING was hired by the Douglas County Sheriff's Office as a deputy sheriff.<sup>57</sup> He signed his Criminal Justice Code of Ethics<sup>58</sup> and obtained Basic and Intermediate Police certifications.<sup>59</sup>*
26. *In December 2011, DPSST received an F-4 Personnel Action Report, showing WOODRING resigned in lieu of termination.<sup>60</sup> DPSST sought and obtained information relating to the resignation.<sup>61</sup>*
27. *In May 2012, DPSST notified WOODRING via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide*

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<sup>57</sup> Ex A1

<sup>58</sup> Ex A2

<sup>59</sup> Ex A1

<sup>60</sup> Ex A3

<sup>61</sup> Ex A4

mitigating circumstances for the Committee's consideration.<sup>62</sup> WOODRING has provided a response.<sup>63</sup>

**DISCUSSION:**

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

**DISCRETIONARY DISQUALIFYING MISCONDUCT:**

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

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

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

*(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*

*(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.*

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<sup>62</sup> Ex A6

<sup>63</sup> Ex A7

*(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.*

#### **POLICY COMMITTEE AND BOARD REVIEW:**

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

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

*(B) If the misconduct resulted in a conviction:*

*(i) Whether it was a misdemeanor or violation;*

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

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

*(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*

*(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*

*(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*

*(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*

*(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*

*(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*

*(E) Whether the misconduct involved domestic violence;*

*(F) Whether the public safety professional or instructor self reported the misconduct;*

*(G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*

*(H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*

*(I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

#### **STANDARD OF PROOF:**

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

#### **ACTION ITEM 1:**

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

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

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

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

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

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

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

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

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

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**24.** By vote, the Policy Committee finds WOODRING'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.*