

# **Police Policy Committee**

## **Minutes**

### **February 17, 2011**

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on February 17, 2011 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:33 p.m. by Chair Andrew Bentz.

#### **Attendees**

##### **Policy Committee Members:**

Andrew Bentz, Oregon State Sheriffs' Association, Chair  
Kent Barker, Oregon Association Chiefs of Police  
Tom Bergin, Oregon State Sheriffs' Association  
Chris Brown, Oregon State Police, Superintendent  
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 of Chiefs of Police  
Marc Tisher, Non-Management Law Enforcement

##### **Committee Members Absent**

Arthur Balizan, Federal Bureau of Investigation-Oregon  
Richard Evans, Oregon State Police Command Officer  
Stuart Roberts, Oregon Association Chiefs of Police, Vice Chair  
Holly Russell, Oregon State Sheriffs' Association  
Glen Scruggs, Non-Management Law Enforcement  
Mike Wells, Non-Management Law Enforcement

##### **Guests**

Chief Mathew Workman, Warrenton Police Department  
Chief Don Forman, Lake Oswego Police Department  
Lieutenant Doug Treat, Lake Oswego Police Department  
Maxine Bernstein, The Oregonian

##### **DPSST Staff:**

Eriks Gabliks, Director  
Carolyn Kendrick, Administrative Specialist  
Marilyn Lorance, Certification and Records Supervisor  
Theresa King, Professional Standards Investigative Coordinator



#### **1. Minutes of November 9, 2010 Meeting**

Approve minutes from the November 9, 2010 meeting.

See Appendix A for details

- *Kent Barker moved to approve the minutes from the November 9, 2010 Police Policy Committee meeting. Chris Brown seconded the motion. The motion carried unanimously.*

2. **Law Enforcement Memorial Wall Nomination – Ralph Painter**

Presented by Marilyn Lorance

See **Appendix B** for details

- *Chris Brown moved that the Police Policy Committee recommends to the Board that Ralph Painter's name be added to the Law Enforcement Memorial Wall. Craig Halupowski seconded the motion. **The motion carried unanimously.***

3. **Law Enforcement Memorial Wall Nomination – Roger Lloyd**

Presented by Marilyn Lorance

See **Appendix C** for details

- *Kent Barker moved that the Police Policy Committee recommends to the Board that Roger Lloyd's name be added to the Law Enforcement Memorial Wall. Craig Halupowski seconded the motion. **The motion carried unanimously.***

4. **Robert Gubser**

Presented by Theresa King

See **Appendix D** for details

*Chair Andrew Bentz stated for the record that he knew GUBSER years ago; however, his opinion is not influenced by this fact.*

- *Kent Barker moved that the Police Policy Committee **adopts** the staff report as the record upon which its recommendations are based. Chris Brown seconded the motion. **The motion carried unanimously.***
- By discussion and consensus:
  - a. Identify the conduct that is at issue, specific to this case.
  - b. The identified conduct **did** involve **Dishonesty based on the fact he identified himself to multiple people as a law enforcement officer when he was not employed by a law enforcement agency.**
  - c. The identified conduct **did** involve a **Disregard for the Rights of Others based on comments made regarding detaining people at a scene.**
  - d. The identified conduct **did not** involve **Misuse of Authority.**
  - e. The identified conduct **did** involve **Gross Misconduct based on his act of choking which created a danger or risk to a person.**
  - f. The identified conduct **did** involve **Misconduct based on violation of the law.**
  - 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 identified as aggravating circumstances GUBSER's lack of response to DPSST's letter, several instances of*

*dishonesty, and that he had a police badge that did not belong to him.*

*No mitigating circumstances were identified by the committee.*

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

## 5. Jeffrey Oliver

Presented by Theresa King

See Appendix E for details

- *Kent Barker 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 the conduct that is at issue, specific to this case.
  - b. The identified conduct did not involve **Dishonesty**.
  - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
  - d. The identified conduct did not involve **Misuse of Authority**.
  - e. The identified conduct did not involve **Gross Misconduct**.
  - f. The identified conduct did involve **Misconduct based on violation of the law**.
  - 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 that OLIVER did jump into a situation without thinking. The committee identified as mitigating circumstances the fact that OLIVER self-reported, completed anger management classes, fully cooperated with the process, and the letters received on OLIVER's behalf from the Chief and Captain.*
- *Kent Barker moved that the Policy Committee finds OLIVER'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. Chris Brown seconded the motion. The motion carried unanimously.*

6. **John Harrison**

Presented by Theresa King

See Appendix F for details

- *Ryan Humphrey moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue, specific to this case.
  - b. The identified conduct did involve **Dishonesty based on HARRISON asking a subordinate to lie for him. His intent was to be deceptive.**
  - c. The identified conduct did not involve a **Disregard for the Rights of Others.**
  - d. The identified conduct did involve **Misuse of Authority based on the fact the person he asked to lie for him was a subordinate.**
  - e. The identified conduct did involve **Gross Misconduct based on gross deviation of normal practice.**
  - f. The identified conduct did involve **Misconduct based on impact on the operation of the agency.**
  - 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 an aggravating circumstance that at the time of the investigation HARRISON did not think he did anything wrong and would have done the same thing again.*

*Some committee members noted as a mitigating circumstance that after the investigation, HARRISON was apologetic.*

- *Ryan Humphrey moved that the Police Policy Committee finds HARRISON'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.*
- *Craig Halupowski moved that the Police Policy Committee recommend to the Board that HARRISON's conduct encapsulated the highest end of the categories noted above with a focus on Dishonesty, a lifetime disqualifier; HARRISON may never reapply for certification. Kent Barker seconded the motion. The motion carried unanimously.*

7. **Donovan Schmidt**

Presented by Theresa King

See Appendix G for details

- ***Kent Barker 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.
  - b. The identified conduct ***did*** involve ***Dishonesty based on SCHMIDT admitting to misrepresenting himself, lying about relationships, and how he knew her.***
  - c. The identified conduct ***did*** involve a ***Disregard for the Rights of Others texting of inappropriate photos which compromised protection of the public by SCHMIDT's inability to effectively work under cover.***
  - d. The identified conduct ***did*** involve ***Misuse of Authority based on obtaining a benefit, and abuse of the public's trust with his lack of good reputation.***
  - e. The identified conduct ***did*** involve ***Gross Misconduct based on inefficient operation of the agency.***
  - f. The identified conduct ***did*** involve ***Misconduct based on violation of practices and standards of the agency.***
  - g. The identified conduct ***did*** involve ***Insubordination based on impairment of safe operation of agency and association with felons—outlaw biker gangs.***
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. ***The committee noted as aggravating circumstances the pictures of genitalia flashed around biker groups, tipping off a bar, lack of remorse, cockiness throughout the interviews, and his appalling attitude.***

*No mitigating circumstances were identified.*

- ***Kent Barker moved that the Police Policy Committee finds SCHMIDT'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.***
- ***James Hunter moved that the Police Policy Committee recommends to the Board that SCHMIDT's conduct encapsulated the highest end of all categories noted above with a focus on Dishonesty, a lifetime disqualifier; SCHMIDT may never reapply for certification. Chris Brown seconded the motion. The motion carried unanimously.***

## 8. **John Justema**

Presented by Theresa King

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. 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.
  - b. The identified conduct ***did*** involve ***Dishonesty based on deception about and abuse of the buy 1-get 1 free promotion.***
  - c. The identified conduct ***did*** involve a ***Disregard for the Rights of Others based on principals of fairness, and intimidation of the clerk by reaching in at the person.***
  - d. The identified conduct ***did*** involve ***Misuse of Authority based on the fact he was obtaining a benefit while in uniform.***
  - e. The identified conduct ***did*** involve ***Gross Misconduct based on gross deviation of standard of care.***
  - f. The identified conduct ***did*** involve ***Misconduct based on his harassment of the clerk in the coffee stand.***
  - g. The identified conduct ***did not*** involve ***Insubordination. The committee members were split (5-3) whether JUSTEMA's conduct involved Insubordination. Some committee members thought it did reach the definition of Insubordination due to violation of policy about not obtaining a benefit and unbecoming conduct.***
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. ***The committee noted as aggravating circumstances JUSTEMA's lack of admission of any wrong doing, the embarrassment of the agency and co-workers by media reports, JUSTEMA's lack of response to DPSST, the behavior has been ongoing for years, and the fact that his co-workers went back to pay for the coffee which shows they knew it was wrong.***  
***No mitigating circumstances were identified.***
- ***James Hunter moved that the Police Policy Committee finds JUSTEMA'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.***
- ***Craig Halupowski moved that the Police Policy Committee recommends to the Board that JUSTEMA's conduct encapsulated the highest end of all categories noted above with a focus on Dishonesty, a lifetime disqualifier; JUSTEMA may never reapply for certification. Ryan Humphrey seconded the motion. The motion carried unanimously.***

9. **OAR 259-008-0010**

Presented by Marilyn Lorance

See **Appendix I** for details

***Craig Halupowski moved that the Police Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Tom Bergin seconded the motion. The motion carried unanimously.***

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

**10. OAR 259-008-0060**

Presented by Marilyn Lorange

*See Appendix J for details*

*Chris Brown moved that the Police Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0060 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Craig Halupowski seconded the motion. The motion carried unanimously.*

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

**11. OAR 259-008-0070 – New Process**

Presented by Marilyn Lorange

*See Appendix K for details*

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

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

**12. OAR 259-008-0070 – Additional Identified Statutes**

Presented by Marilyn Lorange

*See Appendix L for details*

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

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

**13. Additional Business**

Presented by Director Gabliks

- DPSST's budget goes in front of the Ways and Means sub-committee next week. On Wednesday, it will be open for public participation. The Chief's Association, Sheriff's Association, Council of Police Association, Portland Police Bureau, and the Citizen's Crime Commission are all going to provide testimony in support of DPSST's programs. Under the Governor's Balanced Budget DPSST is going to take an approximate 5% reduction. This will primarily cut administrative positions. It also cuts the Department of Corrections Audit

Program that was added last session. There is a lot of angst about that reduction because the Board has taken the position that if DPSST cannot audit the Department of Corrections' training program, DPSST cannot certify their employees. On the police side, there are no reductions taken in basic law enforcement training programs or regional training; there is also no restoration of the Leadership Program or Regional Training Coordinators lost in previous budget reductions. At this point, there will be 15 basic classes in the next biennium. As you know we have two basic classes in reserve in the current biennium because agencies just aren't hiring.

- There is nothing yet to report on the legislative front. The Tribal Law Enforcement bill is out. The Sheriff's Association, Chief's Association, and tribal government have had at least two workgroup meetings already.

There are at least six bills dealing with University Police that have been introduced. There is now a seventh, as Community Colleges think it's a good idea as well.

Concerns have been heard from the metro area about OHSU having police officers that are not able to carry weapons on campus. They can carry guns off duty, but not on duty, per the statute. A bill has not yet been introduced that will address that issue.

There are two Use of Force bills introduced by Representative Frederick, from the metro area. Those bills would create many unusual situations on how DPSST would regulate your agencies. We are monitoring those bills to see if they move forward and will keep you posted.

Criminal Fines and Assessment is also up for hearing to restructure how the state disburses the revenue. This is an issue that our stakeholder groups are looking at carefully. DPSST has been a dedicated fund agency for more than 30 years, primarily through the unitary traffic citations and others. DPSST is treated like a general fund agency because what funds we don't use goes into the general fund.

- DPSST, the Sheriffs, and Chiefs appeared yesterday morning in front of the Military and Veteran's Affairs Committee of the Senate to discuss the training provided officers on how to handle situations involving veterans. The discussion was not specific to any incident. DPSST did share the training information provided for the 16-week basic course. The Chiefs and Sheriffs did a very good job of saying that there are issues, but there is also a larger mental health issue. There may potentially be some federal grants that the state may apply for to assist returning veterans. The committee is looking into how to tap some of those funds for training law enforcement personnel on how to engage military personnel and also have crisis response people available. DPSST did point out that what may work in one community may not be viable in another.
- The Law Enforcement Memorial is scheduled for May 5, 2011, at 1:00 p.m.
- Vice-Chair, Stuart Roberts, has submitted his resignation from the Board and Police Policy Committee. He has been asked to serve on another group in Umatilla County which directly affects his organization and cannot serve on both. Chief Mat Workman from Warrenton

Police Department is a nominee to fill this position and is awaiting formal approval from the Governor.

- This committee needs to elect a replacement Vice-Chair. James Hunter nominated **Kent Barker to be Vice-Chair** of this committee. Tom Bergin seconded the motion. **The motion carried** unanimously.

**14. Next Police Policy Committee Meeting – May 19, 2011 at 1:30 p.m.**

*With no further business before the committee, the meeting adjourned at 3:18 p.m.*

## Appendix A

### **Police Policy Committee**

**Minutes (Draft)**

**November 9, 2010**

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on November 9, 2010 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:31 p.m. by Chair Andrew Bentz.

#### **Attendees**

##### **Policy Committee Members:**

Andrew Bentz, Oregon State Sheriffs' Association, Chair  
Kent Barker, Oregon Association Chiefs of Police  
Tom Bergin, Oregon State Sheriffs' Association  
Chris Brown, Oregon State Police, Superintendent  
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 of Chiefs of Police  
Glen Scruggs, Non-Management Law Enforcement  
Marc Tisher, Non-Management Law Enforcement  
Mike Wells, Non-Management Law Enforcement

##### **Committee Members Absent**

Arthur Balizan, Federal Bureau of Investigation-Oregon  
Richard Evans, Oregon State Police Command Officer  
Stuart Roberts, Oregon Association Chiefs of Police, Vice Chair  
Holly Russell, Oregon State Sheriffs' Association

##### **Guests**

Sergeant Dave Carlson, Salem Police Department  
Maxine Bernstein, The Oregonian

##### **DPSST Staff:**

Eriks Gabliks, Director  
Carolyn Kendrick, Administrative Specialist  
Marilyn Lorange, Certification and Records Supervisor  
Theresa King, Professional Standards Investigative Coordinator  
Kristen Turley, Professional Standards Coordinator  
Linsay Bassler, Certification Coordinator



#### **1. Minutes of August 10, 2010 Meeting**

Approve minutes from the August 10, 2010 meeting.

*See Appendix A for details*

*Kent Barker moved to approve the minutes from the August 10, 2010 meeting. Craig Halupowski seconded the motion. The motion carried unanimously.*

**2. Casey LOCKEY – DPSST #40714**

Presented by Theresa King

See Appendix B for details

- *Kent Barker 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. **Reckless Driving**
  - b. The identified conduct did not involve **Dishonesty**.
  - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
  - d. The identified conduct did not involve **Misuse of Authority**.
  - e. The identified conduct did not involve **Gross Misconduct**.
  - f. The identified conduct did involve **Misconduct based on reckless driving**.
  - g. The identified conduct did not involve **Insubordination**.
- *By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. **The committee noted as an aggravating circumstance the lack of response by LOCKEY to DPSST which shows little concern about his certification. Noted as mitigating circumstances by the committee: The fact that LOCKEY cooperated with the courts, completed the diversion program, appeared contrite, and took responsibility for his actions.***
- *Kent Barker moved that the Police Policy Committee finds LOCKEY'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.*

**3. Matthew TRICKEY – DPSST #42951**

Presented by Theresa King

See Appendix C for details

Staff noted a correction of names (should be TRICKEY not LOCKEY in the last sentence under BACKGROUND and OVERVIEW) on the staff report.

- *Kent Barker moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based with the noted correction. Mike Wells seconded the motion. The motion carried unanimously by all voting, with Marc Tisher abstaining.*
- *By discussion and consensus:*
  - a. Identify the conduct that is at issue. **Dishonesty**

- b. The identified conduct did involve **Dishonesty based on the fact that TRICKEY was caught repeatedly lying in the original interview about dishonesty and the internal investigation.**
  - c. The identified conduct did not involve a **Disregard for the Rights of Others.**
  - d. The identified conduct did involve **Misuse of Authority based on TRICKEY being in a position of authority and asking cadets to lie for him.**
  - e. The identified conduct did not involve **Gross Misconduct.**
  - f. The identified conduct did involve **Misconduct.**
  - g. The identified conduct did involve **Insubordination. TRICKEY was lawfully ordered to tell the truth and did not; additionally, he continued contact with a person after being told to stay away.**
- By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. ***The committee noted as aggravating circumstances TRICKEY's lack of response to DPSST, the repeated lies about lying, solicitation of cadets to lie, and TRICKEY's calculated moves to cover his lies. No mitigating circumstances were noted by the committee.***
  - ***Ryan Humphrey moved that the Police Policy Committee finds TRICKEY'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. James Hunter seconded the motion. The motion carried unanimously by all voting, with Marc Tisher abstaining.***
  - ***Kent Barker moved that the Police Policy Committee recommend to the Board that TRICKEY's misconduct encapsulated four of the categories noted above with a focus on the high end of the Dishonesty category, therefore recommending a lifetime disqualifier; TRICKEY may never reapply for certification. Mike Wells seconded the motion. The motion carried unanimously by all voting, with Marc Tisher abstaining.***

#### 4. Chad ARNOLD

Presented by Linsay Bassler

Staff noted exhibit number corrections on the footnotes of the staff report.

The committee convened in executive session at 2:14 p.m. to discuss matters exempt from disclosure under ORS 192.660(1)(f) related to the Chad ARNOLD and Anthony BETTENCOURT cases.

The committee reconvened in regular session at 2:28 p.m. to take final action regarding the Chad ARNOLD and Anthony BETTENCOURT cases.

- ***Eric Hendricks moved that the Police Policy Committee recommend to the Board the approval of a waiver of the visual acuity and depth perception standards for Chad ARNOLD. Craig Halupowski seconded the motion. The motion carried unanimously.***

#### 5. Anthony BETTENCOURT

Presented by Linsay Bassler

- *Kent Barker moved that the Police Policy Committee recommend to the Board the approval of a waiver of the depth perception standards for Anthony BETTENCOURT. Chris Brown seconded the motion. The motion carried unanimously.*
- *Kent Barker moved that the Police Policy Committee recommend forwarding this approval to the Executive Committee for final determination. Chris Brown seconded the motion. The motion carried unanimously.*

## **6. Additional Business**

Presented by Eriks Gabliks

- Staff and committee members welcomed Sheriff Tom Bergin (who took Sheriff Rob Gordon's place) and Superintendent Chris Brown (who replaced former Superintendent Tim McLain) to the Police Policy Committee.
- Basic Police Training: We have gone from feast to famine regarding numbers of students to train. DPSST is starting Basic Police Class #BP323 on November 15, 2010 with 19 students, which may end up being the norm for the next several classes due to the economy and few new hires. We may have to delay the early January 2011 class to the end of January. The Portland Police Bureau will have approximately 15 students to add to the Basic Police class at the end of January and anticipate an additional 20 for the March class. They will have a surge in hiring due to approximately 70 people retiring this next year. DPSST will work with the Portland Police Bureau as well as other constituents on class scheduling.

Because of the shortage of funds and classes, DPSST will be maximizing the use of full-time staff as instructors rather than relying so heavily on part-time instructors. Rest assured that only qualified/certified instructors will be teaching the courses so quality and consistency of instruction will not be compromised.

- Cameron Campbell resigned as Director of Training to pursue other business opportunities. This position will open for application the beginning of 2011. There will be no direct appointment. Mark Ayers, who used to be the Assistant Training Director before budget cuts, has agreed to act as the Interim Director of Training.
- There is no additional news on the budget process.
- Intermediate and Advanced Certification Matrix: This work was delayed due to the uncertainty with the legislature over the last couple years. The individual discipline subcommittees have finished their work on definitions. We are reconstituting a large group meeting to look at the work from each discipline subcommittee to cross-reference rules, etcetera for consistency. The next large group meeting is November 15, 2010. We hope to have reports for the Policy Committees soon.
- On the Legislative Front: DPSST is tracking two issues. One deals with Tribal Law Enforcement Officers being recognized as peace officers in Oregon Revised Statute with full police powers statewide. The second is regarding the University of Oregon wanting to establish their own police department. They would go through the Basic Police course but would have to pay their training costs as does OHSU.

## **7. Next Police Policy Committee Meeting - February 17, 2011 at 1:30 p.m.**

*With no further business before the committee, the meeting adjourned at 2:48 p.m.*

## Appendix B

### Department of Public Safety Standards and Training Memorandum

**Date:** January 24, 2011  
**To:** BPSST/DPSST Police Policy Committee  
**From:** Eriks Gabliks, Director   
**Subject:** Law Enforcement Memorial Wall Nomination  
Chief Ralph Painter – City of Rainier Police Department

#### **Background**

Chief Ralph Painter (DPSST #17323) of the City of Rainier Police Department was shot on the morning of January 5, 2011 while investigating a disturbance at the car audio shop (Rainier Sound Authority) in the area of Dike Road and Rock Crest Street. The call came in at 10:47 a.m. and Chief Painter made contact with the suspect a few minutes later. A struggle with the suspect ensued and Chief Painter was critically wounded when shot in the face. Chief Painter was the only officer on duty that day in the City of Rainier. Upon hearing of the incident, assistance from neighboring agencies responded to the scene. As assisting units from Oregon and Washington arrived, additional gunshots were fired by officers and the suspect. The suspect was taken into custody at 11:10 a.m. Chief Painter was transported to a nearby hospital where he was pronounced dead.

Chief Painter was a member of the Rainier Police Department for more than 21 years (1988-2011). He served in a number of roles with Rainier including Police Officer, Sergeant, and Chief of Police since he was promoted to this position in 2006. He had previously served as a Reserve Police Officer with the nearby St. Helens Police Department for five years from 1983-1988. He held Executive Police Certification from DPSST.

#### **Staff Recommendation**

The death meets the criteria for the Oregon Law Enforcement Officer Memorial. Oregon Administrative Rule 259-008-0100 (i) defines "In the line of duty death" as a fatal injury which is the direct or proximate result of any enforcement action or emergency response resulting in death or death directly resulting from law enforcement training for enforcement action or emergency response that the law enforcement officer is authorized or obligated to perform by law, rule, regulation, or condition of employment or service while on or off duty.

#### **Action Item(s)**

Determine whether Chief Ralph Painter's name will be included on the Law Enforcement Memorial Wall.

#### **Attachments**

The St. Helens Chronicle – *Police Chief Shot, Killed in Rainier* - News Article – 1/5/2011  
Columbia County Sheriff's Office - News Release – *Rainier Police Chief Slain* – 1/6/2011  
The Daily News – *Ralph Painter Obituary* – 1/12/2011  
Columbia County Sheriff's Office – News Release – *Officers' Deadly Use of Force Justified* – 1/21/2011

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## Appendix C

### Department of Public Safety Standards and Training Memorandum

**Date:** February 14, 2011  
**To:** BPSST/DPSST Police Policy Committee  
**From:** Eriks Gabliks, Director   
**Subject:** Law Enforcement Memorial Wall Nomination  
Officer Roger Lloyd – City of Independence Police Department

#### **Background**

Officer Roger Lloyd (DPSST #40198) of the City of Independence Police Department was involved in an on-duty incident on April 30, 2006 where a suspect intentionally rammed his patrol car, then resisted arrest. As a result of this incident Officer Lloyd required surgery for the injury he suffered during the crash. On November 1, 2007, Officer Lloyd was medically determined to be permanently and totally disabled. Officer Lloyd's case was reviewed by the Public Safety Memorial Fund Board on October 24, 2008 at which time the Board determined that the injury was a direct and proximate result of the injury sustained in the line of duty.

Officer Lloyd was hired by the Independence Police Department on January 8, 2001. He received the Purple Heart from the Oregon Peace Officers Association (OPOA) in 2007. After a year of light duty, Officer Lloyd had to retire due to his failing medical condition (Amyotrophic Lateral Sclerosis). Officer Lloyd passed away from his line of duty injuries on August 30, 2010.

#### **Staff Recommendation**

The death meets the criteria for the Oregon Law Enforcement Officer Memorial. Oregon Administrative Rule 259-008-0100 (i) defines "In the line of duty death" as a fatal injury which is the direct or proximate result of any enforcement action or emergency response resulting in death or death directly resulting from law enforcement training for enforcement action or emergency response that the law enforcement officer is authorized or obligated to perform by law, rule, regulation, or condition of employment or service while on or off duty.

#### **Action Item(s)**

Determine whether Officer Roger Lloyd's name will be included on the Law Enforcement Memorial Wall.

#### **Attachments**

Letter – Independence Police Department – February 14, 2011  
Order Awarding Benefits – Public Safety Memorial Fund Board – October 24, 2008

## Appendix D

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 17, 2011  
**TO:** Police Policy Committee  
**FROM:** Theresa M. King  
Professional Standards Investigator/Coordinator  
**SUBJECT:** **Robert GUBSER DPSST #31788**

#### **ISSUE:**

Should Robert GUBSER'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?

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to GUBSER:*

*On May 5, 1998, GUBSER was hired by the Malheur County Sheriff's Office as a police officer.*

*On May 25, 1999, GUBSER was granted a Basic Police Certificate.*

*On March 22, 2001, GUBSER resigned from the Malheur County Sheriff's Office.*

*In early 2010, DPSST received information that GUBSER had been arrested for Criminal Impersonation of a Police Officer and Physical Harassment. Subsequent to this, DPSST determined that GUBSER pled guilty to Criminal Impersonation of a Police Officer and received a deferred sentence. GUBSER was convicted of the Physical Harassment, a Class B Misdemeanor and a discretionary crime for purposes of public safety certification.*

*DPSST sought and obtained the incident report and the judgment from the court.*

*In December 2010, DPSST sent a certified letter to GUBSER advising him 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.*

*To date GUBSER has not provided information for the Committee's consideration.*

#### **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))

#### **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)]

#### **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 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:**

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.*

### **ACTION ITEM 1:**

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify the conduct that is at issue, specific to this case.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds GUBSER'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.

## Appendix E

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 17, 2011  
**TO:** Police Policy Committee  
**FROM:** Theresa M. King  
Professional Standards Investigator/Coordinator  
**SUBJECT:** Jeffrey OLIVER DPSST #32208

#### **ISSUE:**

Should Jeffrey OLIVER's Basic, Intermediate and Advanced Police certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0011, and as referenced in OAR 259-008-0070?

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to OLIVER:*

*On March 18, 1996, OLIVER was hired by the Lake Oswego Police Department as a police officer.*

*On May 12, 1996, OLIVER signed his Criminal Justice Code of Ethics.*

*On May 28, 1997, OLIVER was granted a Basic Police Certificate.*

*On April 12, 2000, OLIVER was granted an Intermediate Police Certificate.*

*On July 29, 2004, OLIVER was granted an Advanced Police Certificate.*

*On September 10, 2010, DPSST was notified by his agency, in accordance with OAR 259-008-0010(5), that OLIVER had been convicted of the crime of Harassment, a Misdemeanor and a discretionary crime for purposes of public safety officer certification. Along with the notification of conviction, the employer advised that an internal investigation had been conducted, appropriate discipline had been imposed and the agency supported OLIVER's retention of his certifications. The employer also provided the underlying incident report and court documents.*

*In December 2010, DPSST sent a certified letter to OLIVER advising him 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.*

*OLIVER provided information for the Committee's consideration.*

#### **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))

#### **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)]

## **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 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:**

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.*

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

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify the conduct that is at issue, specific to this case.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.

3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds OLIVER'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.

## Appendix F

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 17, 2011  
**TO:** Police Policy Committee  
**FROM:** Theresa M. King  
Professional Standards Investigator/Coordinator  
**SUBJECT:** **John HARRISON DPSST #20393**

#### **ISSUE:**

Should John HARRISON'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?

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to HARRISON:*

*On June 15, 1987, HARRISON was hired by the Gresham Police Department as a police officer.*

*On December 8, 1987, HARRISON signed his Criminal Justice Code of Ethics.*

*On March 16, 1988, HARRISON was granted a Basic Police Certificate.*

*On November 16, 1995, HARRISON was granted an Intermediate Police Certificate.*

*On April 18, 2000, HARRISON was granted an Advanced Police Certificate.*

*On August 21, 2000, HARRISON was granted a Supervisory Police Certificate.*

*On November 1, 2010, HARRISON retired from the Gresham Police Department while under investigation.*

*DPSST sought and obtained underlying information that led to the retirement.*

*In December 2010, DPSST sent a certified letter to HARRISON advising him 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.*

*On December 15, 2010, HARRISON called me regarding the upcoming PPC review. During that telephone conversation he admitted to asking a subordinate lie for him but did not understand the seriousness of it at the time.*

*In January 2011, HARRISON provided a letter for the PPC's consideration.*

#### **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))

#### **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)]

## **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 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:**

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.*

### **ACTION ITEM 1:**

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify the conduct that is at issue, specific to this case.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.

3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds HARRISON'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.

## Appendix G

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 17, 2011  
**TO:** Police Policy Committee  
**FROM:** Theresa M. King  
Professional Standards Investigator/Coordinator  
**SUBJECT:** Donovan SCHMIDT DPSST #34592

#### **ISSUE:**

Should Donovan SCHMIDT's Basic, Intermediate and Advanced Police certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0011, and as referenced in OAR 259-008-0070?

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to SCHMIDT:*

*On October 20, 1997, SCHMIDT was hired by the Grants Pass Department of Public Safety as a police officer.*

*On July 17, 2004, SCHMIDT signed his Criminal Justice Code of Ethics.<sup>1</sup>*

*On February 24, 1999, SCHMIDT was granted Basic and Intermediate Police Certificates.*

*On July 19, 2004, SCHMIDT was granted an Advanced Police Certificate.*

*On August 29, 2010, SCHMIDT resigned from the Grants Pass Department of Public Safety during an investigation.<sup>2</sup>*

*DPSST sought and obtained information relating to the resignation.<sup>3</sup>*

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<sup>1</sup> Ex A3

<sup>2</sup> Ex A1

<sup>3</sup> Ex 4 – A6 “ . . . Officer [-] said he reported this to his on-duty supervisor [-] due to his concern that a known drug user and convicted of felon had [sexually explicit] pictures of Officer Schmidt and was showing them to him and probably others [p 1]. . . Deputy Chief Landis reminded me about another incident where a female . . . had claimed she was Officer Schmidt's girlfriend when she was contacted by DHS . . . [-] was under investigation . . . for reportedly using methamphetamine . . . he also told me that Officer Schmidt had reportedly been at a motel in Grants Pass with [-] . . . associated with the Vagos Outlaw

*In December 2010, DPSST sent a certified letter to SCHMIDT advising him 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>4</sup>*

*To date SCHMIDT has not provided information for the Committee's consideration.*

**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))

**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)]

**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;*

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Motorcycle club . . . Officer Schmidt admitted she was an acquaintance.[p 2] . . . I was contacted by Sgt [-] . . .said he knew a woman named [-] [who] sent him an email claiming to be the one that Officer Schmidt sent the [sexually explicit] photos to . . .[-] had an ongoing Theft 2 investigation where [-] was the suspect [p 8] “ Contradictions are cited on pages 15 - 20.

<sup>4</sup> Ex A6

*(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:**

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.

### **ACTION ITEM 1:**

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify the conduct that is at issue, specific to this case.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

4. By vote, the Policy Committee finds SCHMIDT'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.

## Appendix H

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 17, 2011  
**TO:** Police Policy Committee  
**FROM:** Theresa M. King  
Professional Standards Investigator/Coordinator

**SUBJECT: John JUSTEMA DPSST #15028**

#### **ISSUE:**

Should John JUSTEMA'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?

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to JUSTEMA:*

*On February 1, 1987, JUSTEMA was hired by the Josephine County Sheriff's Office as a police officer.*

*On October 7, 1987, JUSTEMA signed his Criminal Justice Code of Ethics.*

*On November 26, 1996, JUSTEMA was granted Basic and Intermediate Police Certificates.*

*On January 26, 2000, JUSTEMA was granted an Advanced Police Certificate.*

*On September 20, 2010, JUSTEMA retired from the Josephine County Sheriff's Office while under investigation.*

*DPSST sought and obtained underlying information that led to the retirement.*

*In December 2010, DPSST sent a certified letter to JUSTEMA advising him 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.*

*To date JUSTEMA has not provided information for the Committee's consideration.*

#### **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))

#### **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)]

#### **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 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:**

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.

### **ACTION ITEM 1:**

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify the conduct that is at issue, specific to this case.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds JUSTEMA'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.

## Appendix I

### Department of Public Safety Standards and Training Memo

Date: February 17, 2011  
To: Police Policy Committee  
From: Linsay Bassler  
Rules Coordinator

Subject: OAR 259-008-0010 – Proposed Rule  
Minimum Education Standards for Employment as a Law Enforcement Officer

Issue: Currently, the minimum standards for employment as a law enforcement officer require applicants to furnish documentary evidence of a high school diploma or GED. On rare occasions an applicant has completed post-secondary education but has not completed high school or received a GED. This rule update adds language allowing law enforcement applicants to furnish documentary evidence of a four-year, post-secondary degree from an accredited college or university to satisfy the minimum education standard.

The following revised language for OAR 259-008-0010 contains recommended additions (**bold and underlined**) and deletions (strikethrough text).

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

\*\*\*

(7) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) High School diploma; or

(B) Successful completion of the General Educational Development (GED) Test.; or

**(C) A four-year, post-secondary degree issued by a degree-granting college or university accredited by a recognized national or regional accrediting body, or recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604.**

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

\*\*\*

ACTION ITEM 1: Determine whether to recommend to the Board filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend to the Board filing the proposed language for OAR 259-008-0010 with the Secretary of State as permanent rule if no comments are received.

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

## Appendix J

### Department of Public Safety Standards and Training Memo

**Date:** February 17, 2011  
**To:** Police Policy Committee  
**From:** Linsay Bassler  
Rules Coordinator

**Subject:** OAR 259-008-0060 – Proposed Rule  
Public Safety Officer Certification

**Issue:** This rule update would remove all reference to Forms F-15M (Multi-Discipline Maintenance Log) and F-15T (Telecommunications/EMD Maintenance Log) and replace with Form F-16 (Maintenance Training Log – Tele/EMD/Multi-Discipline). The maintenance process was changed for the 2009 – 2010 maintenance period, but the processes and form references in this rule were not updated. All references to training points were also removed as requirements to obtain and maintain certification reference training hours, rather than converting them to points. Other obsolete rule references regarding training were also removed. Finally, this update removes obsolete statutory references, updates OAR references, and makes minor housekeeping changes for clarity.

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

#### **259-008-0060**

##### **Public Safety Officer Certification**

- (1) Basic, Intermediate, Advanced, Supervisory, Management, Executive and Instructor Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.
- (2) Basic certification is mandatory and ~~shall~~ **must** be acquired by all police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.
- (3) To be eligible for the award of a certificate, law enforcement officers ~~shall~~ **must** be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.
- (4) To be eligible for the award of a certificate, law enforcement officers ~~shall~~ **must** meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.
- (5) To be eligible for the award of a certificate, telecommunicators must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers ~~shall~~ **must** subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers ~~shall~~ **must** subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T). ~~[Form not included. See ED. NOTE.]~~

(7) Application for certification must be submitted on Form F7 (**Application for Certification**), with all applicable sections of the form completed. The form ~~shall~~ **must** be signed by the applicant. In order to ~~insure~~ **ensure** that the applicant ~~does or does not~~ meets the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative ~~shall~~ **must** sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision ~~shall~~ **must** be specified in writing and ~~shall~~ **must** accompany the ~~Application for Certification~~ (Form F7). ~~[Form not included. See ED. NOTE.]~~

(8) When a department head is the applicant, the above recommendation ~~shall~~ **must** be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, ~~each applicant, for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate,~~ **each applicant must** have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience **for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate.**

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule ~~shall~~ **will** equal one (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule ~~shall~~ **will** equal one and one half (1-1/2) education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(10) ~~Training: Points. Twenty (20) classroom hours of job-related training approved by the Department shall equal one (1) training point. (Example: 200 training hours equal 10 training points.)~~

~~(a) Basic, Intermediate, Advanced, Supervisory, Middle Management, Executive, or Specialized courses certified, sponsored, or presented by the Department shall be approved~~ **by the Board.**

~~(b) The Department may award~~ **record** training ~~points~~ **hours** for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records ~~shall~~ **must** include the subject, instructor, classroom hours, date, sponsor, and location.

~~(c) Training completed in other states, military training, and other specialized training, if properly documented, may be accepted, subject to staff evaluation and approval. These records shall~~ **must** include the subject, date, and classroom hours, and ~~shall~~ **must** be certified true copies of the original.

~~(d) Upon receipt of documentation which shall include the source, syllabus, number of hours, dates and successful completion of the course, the Department or it's designated staff may award training points for correspondence courses.~~

(~~e~~ **d**) College credits earned may be counted for either training ~~points~~ **hours** or education credits, whichever is to the advantage of the applicant.

(~~f~~ **e**) College credit awarded based on training completed may be applied toward either training ~~points~~ **hours** or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the number of college credits awarded based on training attended.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level(~~s~~).

(i) Any college credit received for practical or skills-based training attended will be calculated at a ratio of 1:20 hours for each quarter credit, for purposes of training hour deductions.

(ii) Any college credit received for academic training attended will be calculated at a ratio of 1:10 hours for each quarter credit, for purposes of training hour deductions.

(~~g~~ **f**) ~~Notwithstanding subsection (e) and (f) above, no~~ **No** credit can be applied toward both an education credits and training ~~point~~ **hours** when originating from the same training event.

(11) Experience/Employment:

(a) Experience ~~acquired~~ **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 ~~cease to~~ **not** accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on "leave."<sup>22</sup>

(~~C~~) ~~Notwithstanding section (B) of this rule, a~~ **A** public safety professional may submit a written request for credit for military time served upon return from his or her military duty. The Department will evaluate each written request to determine whether an individual is eligible for any credit for time served.;

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

(~~E~~ **D**) When a public safety professional fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety professional.;

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Experience acquired as a certified part-time telecommunicator,**or** emergency medical dispatcher as defined in OAR 259-008-0005(~~12~~) and (~~32~~) respectively, or part time parole and probation officer; as defined under 259-008-0005(~~20~~) and (~~21~~) and 259-008-0066, shall **will** count on a pro-rated basis.

(d) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when

supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants ~~shall~~ **must** have completed a period of service of not less than nine (9) months with one or more law enforcement units; or public or private safety agencies in a certifiable position; in the field in which certification is being requested-;

(b) Applicants ~~shall~~ **must** have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department-; **and**

(c) Applicants ~~shall~~ **must** have valid first aid and cardiopulmonary resuscitation (CPR) card(s).

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants ~~shall~~ **must** possess a Basic Certificate in the field in which certification is requested-; **and**

(b) Applicants ~~shall~~ **must** have acquired the following combinations of education **hours** and training ~~points~~ **hours** combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(14) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants ~~shall~~ **must** possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested-; **and**

(b) Applicants ~~shall~~ **must** have acquired the following combinations of education and training ~~points~~ **hours** combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(15) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants ~~shall~~ **must** possess or be eligible to possess the Advanced Certificate in the field in which certification is requested-;

(b) Applicants ~~shall~~ **must** have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule-;

(c) Applicants ~~shall~~ **must** have satisfactorily completed the prescribed Supervision Course or an equivalent number of hours of Department-approved supervisory level training within five (5) years prior to application for the Supervisory Certificate-; **and**

(d) Applicants ~~shall~~ **must** be presently employed in, or have satisfactorily performed the duties associated with, the position of a first-level supervisor; as defined in ~~ORS 181.610 and OAR 259-008-0005(16)(13)~~; **and** as attested to by the applicant's department head during the time such duties were performed; for a period of one (1) year. The required experience ~~shall~~ **must** have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(16) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants ~~shall~~ **must** possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested.;

(b) Applicants ~~shall~~ **must** have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.;

(c) Applicants ~~shall~~ **must** have satisfactorily completed the prescribed Middle Management Course or an equivalent number of hours of Department-approved management level training within five (5) years prior to application for the Management Certificate.;

(d) Applicants ~~shall~~ **must** be presently employed in, and ~~shall~~ **must** have served satisfactorily in a Middle Management position, as an ~~Assistant~~ Department Head, or as a **Assistant** Department Head as defined in **ORS 181.610 and** OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(17) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants ~~shall~~ **must** possess or be eligible to possess the Management Certificate in the field in which certification is requested.;

(b) Applicants ~~shall~~ **must** have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.;

(c) Applicants ~~shall~~ **must** have satisfactorily completed 100 hours of Department-approved executive level training within five (5) years prior to application for the Executive Certificate.;

(d) Applicants ~~shall~~ **must** be presently employed in, and ~~shall~~ **must** have served satisfactorily in a Middle Management position, as an ~~Assistant~~ Department Head, or as a **Assistant** Department Head as defined in OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(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:

(a) Basic certification: A law enforcement officer who is certified in one discipline may apply for multi-discipline certification; if employed in or transferred to another discipline within the same law enforcement unit. The applicant must demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification: Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification; and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the ~~EMD~~ **emergency medical dispatcher** discipline since it only exists at the basic certification level.

(c) Retention of ~~M~~multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For a law enforcement officer who also holds ~~EMD~~ **emergency medical dispatcher** certification; a minimum of four (4) hours of training; specific to the ~~EMD~~ **emergency medical dispatcher** discipline; must be reported annually as required under OAR 259-008-0064.

(B) For a law enforcement officer who also holds ~~T~~telecommunicator certification, a minimum of twelve (12) hours of training; specific to the ~~T~~telecommunicator discipline; must be reported annually as required under OAR 259-008-0064.

(C) A minimum of twenty (20) hours of training; specific to each law enforcement discipline in which certification is held; must be reported annually as required under subsections (h) through (l) of this ~~rule~~ **section**.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1st of each year and ends on June 30th the following year.

(f) The employing agency must maintain documentation of all required maintenance training completed.

(g) If reported on an **Form F-6** (Course **Attendance Roster**), required maintenance training must be submitted to the Department by June 30th of each year. Training reported on an **Form F-6** will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by an **Form F-6** Course **Attendance Roster**.

(h) On or after July 1~~st~~ 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 ~~his/her~~ **the** employing agency.

(~~i~~**A**) Within 30 days of receipt of ~~the~~ notification ~~in (h) above~~, the agency ~~or individual~~ must:

(~~A~~**N**) ~~Notify~~ the Department of the training status of any law enforcement officer identified as deficient ~~in~~ **by** submitting a **Form F-16 (Maintenance Training Log)** ~~F-15M or F-15T~~ to the Department; ~~and~~

~~(B) Submit an **Form F-16 F-15M, or F-15T** if multi-discipline includes certification as a telecommunicator or emergency medical dispatcher, identifying the maintenance training completed during the previous one (1) year reporting period.~~

~~(C)~~ Maintenance training hours reported to the Department on ~~an F-15M or F-15T~~ **a Form F-16** will be used solely to verify completion of maintenance training requirements and will not be added to an officer's DPSST training record.

~~(j)~~ 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.

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

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

~~(B) Failure to submit a Form **F-16 F-15M or F-15T** within 30 days after a warning notification letter has been sent.~~

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

~~(m) Upon documentation of compliance with subsection (i) of this rule, a law enforcement officer may reapply for single or multi-discipline certification as outlined by this rule.~~

**(l) Recertification following a recall may be obtained at the approval of the Department 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 of certification if the law enforcement officer is on leave from a public or private safety agency.**

~~(19) Certificates Are Property of Department. Certificates and awards are the property of the Department, and ~~the~~ The Department shall have **has** the power to revoke or recall any certificate or award as provided in the Act.~~

[ED. NOTE: Forms & Tables referenced are available from the agency.]

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

**ACTION ITEM 2:** Determine whether to recommend filing the proposed language for OAR 259-008-0060 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 K**

### Department of Public Safety Standards and Training Memo

Date: February 17, 2011  
To: Police Policy Committee  
From: Linsay Bassler  
Rules Coordinator

Subject: OAR 259-008-0070 – Proposed Rule  
Denial/Revocation

Issue: House Bill 2790 was passed during the 2009 legislative session. Section 3 of this bill amended ORS 181.661 which changed the order of due process for certification denials and revocations. Additional housekeeping changes were made for clarity.

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

259-008-0070

Denial/Revocation

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(9) Denial and Revocation Procedure.

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(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (e) of this rule, based on discretionary disqualifying misconduct, the Policy Committees and Board will consider mitigating and aggravating circumstances, including, but not limited to, the following:

(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; and

- (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; and
  - (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.
- (e) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared and served on the public safety professional or instructor.
- (A) All contested case notices will be prepared in accordance with OAR 137-003-0001 of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.
- (f) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with OAR 137-003-0001 of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional or instructor.
- (B) In discretionary cases heard by a policy committee, the contested case notice will be served on the public safety professional or instructor prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.
- (g f) Response Time:
- (A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.
- (B) A party who has been served with the "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing.
- (h g) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0645.
- (i h) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(j i) Proposed Order: The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(k j) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(l k) Final Order:

(A) A final order will be issued pursuant to OAR 137-003-0070 if a public safety professional or instructor fails to file exceptions and arguments in a timely manner.

(B) Department-proposed amendments to the proposed order in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order is issued.

(m l) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a public safety professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification, under the terms and conditions outlined in the stipulated order.

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

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

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

## Appendix L

### Department of Public Safety Standards and Training Memo

**Date:** February 17, 2011  
**To:** Police Policy Committee  
**From:** Linsay Bassler  
Rules Coordinator  
  
**Subject:** OAR 259-008-0070 – Proposed Rule  
Denial/Revocation

**Background:** For the purposes of denial and revocation standards for criminal justice public safety professionals, conviction of any crime requires DPSST review for either mandatory or discretionary denial or revocation of certification. Between 2005 and 2008 a workgroup of DPSST criminal justice constituents, supported by DPSST staff members, conducted a comprehensive review of denial and revocation standards and disqualifying crimes. The two-part review resulted in the lists of mandatory and discretionary disqualifying crimes currently found in OAR 259-008-0070.

Once the workgroup had defined five categories of discretionary disqualifying misconduct, DPSST's Legal Services Coordinator, Lorraine Anglemier, analyzed the discretionary disqualifying crimes to identify a presumptive category for the conviction, based on the elements of each crime. The workgroup reviewed and finalized those categories, which were included in the list of discretionary disqualifying crimes subsequently adopted within OAR 259-008-0070.

**Issue:** Since the time the current list was adopted into OAR, some issues have been identified that staff believe should be addressed through amendments to the current rules:

First, a recent ruling made by the Ninth Circuit Court declared ORS 167.054 (Furnishing Sexually Explicit Material to a Child) unconstitutional. This crime remains listed as a mandatory disqualifier because the crime remains in the Criminal Code. But we recommend adding a notation to guide staff and constituents regarding this crime.

Second, staff recommends adding three ORS chapters. Crimes in ORS Chapter 97 (Rights and Duties Relating to Cemeteries, Human Bodies and Anatomical Gifts); and Chapter 609 (Animal Control; Exotic Animals; Dealers) were overlooked in the original workgroup review process. The workgroup did review Chapter 830 (Small Watercraft) and recommend this chapter for inclusion in the discretionary list, but the associated crimes were not previously categorized and added to this list.

Similarly, the workgroup discussed crimes associated with violation of ORS 496-498. These chapters deal with the administration and enforcement of hunting, angling and wildlife regulations. In addition to the three specifically identified crimes (which are included in the current list), an individual may be convicted of a misdemeanor for violating any of the provisions of these chapters with a culpable mental state. The workgroup determined that these criminal convictions should remain discretionary disqualifying convictions for the purposes of certification, to allow committee and Board review on a case-by-case basis. Although it is not practical to list every statute that may be violated, staff recommends replacing the current reference to three specific crimes with a broader reference to the

relevant chapters in order to better inform our criminal justice constituents. The appropriate category would have to be determined on a case-by-case basis, when cases are brought to a policy committee for review.

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

**259-008-0070**

**Denial/Revocation**

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***Grounds for Mandatory Denial or Revocation of Certification***

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~~Oregon Laws 2007, Chapter 869, Sec. 2~~ **167.054** (Furnishing sexually explicit material to a child),

\* **the above listed statute has been declared unconstitutional by the Ninth Circuit Court.**

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***Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification***

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**97.931 (Registration of Salesperson for Endowment Care Cemeteries, Preconstruction Sales and Prearrangement Sales) – Category V,**

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

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

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

**97.990(4) (Maintaining a Nuisance) – Category V**

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

~~496.994 (Obstruction to the Taking of Wildlife) – Category V,~~

~~496.996 (Attempt to Take Wildlife Decoy) – Category V,~~

~~498.164 (Use of Dogs or Bait to hunt Black Bears or Cougars) – Category V,~~

**609.341 (Permit Requirement for Keeping of Exotic Animals; Breeding of Animal – Category V,**

**609.405 (Requirement for Destroying Dogs and Cats) – Category V,**

**609.505 (Unlawfully Obtaining Dog or Cat) – Category V**

**609.520(c) (Animal Dealer Failing to Turn Over Dog or Cat) – Category V**

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

**I**

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

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

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

**830.315(1) (Reckless Operation) – Category IV,**

**830.325 (Operating a Boat while Under the Influence of Intoxicating Liquor or Controlled Substance) – Category IV,**

**830.383 (Person Required to Remedy Especially Hazardous Condition) – Category V,**

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

**830.460(3) (Prohibited Activities – Operating a Vessel without Liability Protection) – Category V,**

**830.475(1) (Failure to Perform the Duties of an Operator at Accident) – Category V,**

**830.730 (False Information) – Category I,**

**830.909 (Abandoning Boat, Floating Home or Boathouse) – Category V,**

**803.955(1) (Prohibition of Installation of Submersible Polystyrene Device) – Category V,**

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

**830.994 (Operates a Boat In Violation of a Court Order) – Category V**

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

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

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