

Police Policy Committee

Minutes

May 12, 2009

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on May 12, 2009 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 10:00 a.m. by Vice-Chair Stuart Roberts.

Attendees

Policy Committee Members:

Stuart Roberts, Vice-Chair, Oregon Association Chiefs of Police
Rob Gordon, Oregon State Sheriffs' Association
Brandon Kaopuiki, Non-Management Law Enforcement
Larry O'Dea, Assistant Chief, Portland Police Bureau
Tim McLain, Superintendent, Oregon State Police
Edward Mouery, Oregon State Police
Kent Barker, Oregon Association Chiefs of Police
Dave Miller, Federal Bureau of Investigation, Oregon
Mike Healy, Oregon Association Chiefs of Police
Robert King, Non-Management Law Enforcement

Committee Members Absent

Steven Piper, Non-Management Law Enforcement
Andrew Bentz, Chair, Oregon State Sheriffs' Association
Raul Ramirez, Oregon State Sheriffs' Association

Guests:

Kenneth Herbst
Linda Ellington

DPSST Staff:

Eriks Gabliks, Deputy Director
Marilyn Lorance, Standards and Certification Supervisor
Bonnie Narvaez, Certification Coordinator
Theresa King, Professional Standards Coordinator
Kristen Turley, Professional Standards Coordinator
Tami Hinshaw, Executive Assistant
Carolyn Kendrick, Administrative Specialist



1. Minutes of February 10, 2009 Meeting

Approve minutes from the February 10, 2009 meeting.

See Appendix A for details

Tim McLain moved to approve the minutes from the February 10, 2009 meeting. Ed Mouery seconded the motion. The motion carried unanimously.

2. OAR 259-001-0005 – Proposed Rule

Rulemaking Notice - Electronically
Presented by Bonnie Narvaez

See Appendix B for details

Kent Barker moved to recommend filing the proposed language for OAR259-001-0005 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Tim McLain seconded the motion. The motion carried unanimously.

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

3. OAR 259-008-0010 – Public Comment Received – Staff Recommendation

Requirement of physical examination after separation due to physical inability to perform essential tasks of a law enforcement officer.

Presented by Bonnie Narvaez

See Appendix C for details

Rob Gordon moved to adopt the proposed rule language that was previously submitted to the Police Policy Committee amending OAR 259-008-0010 as a permanent rule. Michael Healy seconded the motion. The motion carried unanimously.

4. Michael L. Perkins – DPSST #42637

Presented by Theresa King

See Appendix D for details

Staff requests the committee review the matter and make a recommendation to the Board whether or not to revoke PERKINS' Basic Police Certification, based on his discretionary disqualifying misconduct.

- *Tim McLain moved that the committee adopts the staff report as the record upon which its recommendations are based. Kent Barker seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue. **Dishonesty**
 - b. The identified conduct did 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**.
 - g. The identified conduct did involve **Insubordination**.
- By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. *The committee agreed that PERKINS' lack of response could be considered aggravating. A mitigating circumstance could be the questioning of the officer.*
- *Kent Barker moved that by the lack of consensus the committee finds PERKINS' conduct does not rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that PERKINS' certification(s) not be revoked. Rob Gordon seconded the motion. The motion carried in a 6 to 4 vote with Michael Healy, Larry O'Dea, Dave Miller, and Tim McLain voting no.*

5. Patrick S. Vaughn – DPSST #29202

Presented by Theresa King

See Appendix E for details.

ACTION ITEM 1:

Staff requests the Police Policy Committee review the matter and make a recommendation to the Board whether or not to revoke VAUGHN's Basic Police Certifications, based on his discretionary disqualifying misconduct.

- *Tim McLain moved that the committee adopts the staff report as the record upon which its recommendations are based. Rob Gordon seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue. *Conduct on the day of arrest and interaction with officers that were forced to respond to the call.*
 - b. The identified conduct did involve **Dishonesty**.
 - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
 - d. The identified conduct did involve **Misuse of Authority**.
 - e. The identified conduct did involve **Gross Misconduct**.
 - f. The identified conduct did involve **Misconduct**.
 - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. *The committee agreed there was no mitigating circumstances however how VAUGHN responded to the officers who were trying to do their job was certainly aggravating.*
- *Rob Gordon moved that the committee finds that VAUGHN's conduct did involve Gross Misconduct and Misconduct, that it was aggravated because of the potential danger to the folks involved, because of the influence his actions had on the reputation of the profession and agency involved, does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that VAUGHN's certification(s) be revoked. Tim McLain seconded the motion. The motion carried unanimously by all voting with Robert King abstaining.*

ACTION ITEM 2:

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).

Tim McLain moved that the committee recommends to the Board that the minimum period of ineligibility to reapply for certification(s) will be ten years from the date of revocation. Dave Miller seconded the motion. The motion carried unanimously by all voting with Robert King abstaining.

6. Robert L. Burk – DPSST #27390

Presented by Theresa King

See Appendix F for details.

ACTION ITEM 1:

Staff requests the Police Policy Committee review the matter and make a recommendation to the Board whether or not to revoke BURK's Basic, Intermediate and Advanced Police Certifications, based on his discretionary disqualifying misconduct.

- ***Robert King moved that the committee adopts the staff report as the record upon which its recommendations are based. Tim McLain seconded the motion. The motion carried unanimously.***
- ***By discussion and consensus:***
 - a. Identify the conduct that is at issue. ***Misconduct***
 - 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***.
 - g. The identified conduct ***did not*** involve ***Insubordination***.
- ***By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. The committee agreed that BURK's letter could be considered mitigating.***
- ***Rob Gordon moved that the committee finds BURK's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that BURK's certification(s) be revoked based on his misconduct. Ed Mouery seconded the motion. The motion carried unanimously.***

ACTION ITEM 2:

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).

Rob Gordon moved that the committee recommends to the Board that the minimum period of ineligibility to reapply for certification(s) will be three years from the date of revocation. Brandon Kaopuiki seconded the motion. The motion carried unanimously.

7. Lawrence C. Raglione – DPSST #06181

Presented by Theresa King

See Appendix G for details.

Brandon Kaopuiki stated for the record that this case comes out of his agency and he worked with RAGLIONE for several years. That being said, Brandon abstained from voting on this matter.

ACTION ITEM 1:

Staff requests the Police Policy Committee review the matter and make a recommendation to the Board whether or not to revoke RAGLIONE's Basic, Intermediate and Advanced Police Certifications, based on his discretionary disqualifying misconduct.

- ***Kent Barker moved that the committee adopts the staff report as the record upon which its recommendations are based. Rob Gordon seconded the motion. The motion carried unanimously by all voting with Brandon Kaopuiki abstaining.***
- ***By discussion and consensus:***
 - a. Identify the conduct that is at issue. ***Dishonesty***
 - b. The identified conduct ***did*** 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***.
 - g. The identified conduct ***did*** involve ***Insubordination***.
- ***By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. The committee did not state any mitigating or aggravating circumstances.***
- ***Robert King moved that the committee finds RAGLIONE's conduct does not rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that RAGLIONE's certification(s) not be revoked. With no second on the motion, the motion died.***

Rob Gordon made an alternative motion and moved that the committee finds RAGLIONE's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that RAGLIONE's certification(s) be revoked. Larry O'Dea seconded the motion. The motion carried with an 8 to 1 vote with Robert King voting no and Brandon Kaopuiki abstaining.

ACTION ITEM 2:

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).

Kent Barker moved that the committee recommends to the Board that the minimum period of ineligibility to reapply for certification(s) will be seven years from the date of revocation. Rob Gordon seconded the motion. The motion carried with a 7 to 2 vote with Ed Mouery and Robert King voting no and Brandon Kaopuiki abstaining.

The meeting briefly adjourned for lunch at 11:50am and resumed session at 12:31pm.

8&9. *Two cases were removed from the agenda by legal counsel; Chief Bosley and Brandon Claggett signed stipulated orders revoking their certifications. Therefore these cases will not be heard by this committee.*

10. Gary L. Welberg – DPSST #30083

Presented by Theresa King

See Appendix H for details.

ACTION ITEM 1:

Staff requests the Police Policy Committee review the matter and make a recommendation to the Board whether or not to revoke WELBERG's Basic, Intermediate and Advanced Police Certifications, based on his discretionary disqualifying misconduct.

- *Kent Barker moved that the committee adopts the Staff report as the record upon which its recommendations are based. Tim McLain seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue. *Dishonesty and Misconduct*
 - b. The identified conduct did involve **Dishonesty**.
 - c. The identified conduct did involve a **Disregard for the Rights of Others**.
 - d. The identified conduct did involve **Misuse of Authority**.
 - e. The identified conduct did involve **Gross Misconduct**.
 - f. The identified conduct did involve **Misconduct**.
 - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. *The committee did not state any mitigating or aggravating circumstances.*
- *Tim McLain moved that the committee finds WELBERG's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that WELBERG's certification(s) be revoked. Kent Barker seconded the motion. The motion carried unanimously.*

ACTION ITEM 2:

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).

Tim McLain moved that the committee recommends to the Board that WELBERG's misconduct was a lifetime disqualifier; he may never reapply to the Police Policy Committee seeking certification. Rob Gordon seconded the motion. The motion carried unanimously.

11. Kenneth C. Herbst – DPSST #24485

Presented by Kristen Turley

After preliminary discussion, Michael Healy moved that the committee table this case to allow time for additional review by committee members. Brandon Kaopuiki seconded the motion. The motion carried unanimously.

The committee agreed to schedule a special meeting by the first week in June. Staff will coordinate dates and times.

12. Law Enforcement Memorial Wall Nomination

Philip W. Bureau, Oregon State Police

Presented by Eriks Gabliks

See Appendix I for details.

Michael Healy moved that this request does not rise to the level necessary to be recognized, based on the information provided this committee at this point. Robert King seconded the motion. The motion carried unanimously.

13. Additional Business

Presented by Eriks Gabliks

Eriks provided an update on the budget, policy and bills currently before the legislature.

Previously discussed background investigation standards were brought before the Sheriff's Conference. The consensus was that they did not disagree with the need for background standards, they just didn't think it needed to be in a rule. It was suggested that DPSST adopts a Best Practice Background Form and post it to the website as a resource for people. That way the smaller agencies that don't have the ability to vet the background investigations every year can use our form. Committee members suggested placing the F-4 form revision on the agenda for the next Police Policy Committee meeting on August 11, 2009.

Tim McLain noted that Dave Miller is retiring in June 2009 and stated his appreciation for Dave's participation and hard work. Dave Miller appreciates the opportunity to serve.

14. Next Regularly Scheduled Police Policy Committee Meeting

Tuesday, August 11, 2009 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 1:42 p.m.

Appendix A

Police Policy Committee Minutes (Draft) February 10, 2009

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on February 10, 2009 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, Chair, Oregon State Sheriffs' Association
Rob Gordon, Oregon State Sheriffs' Association
Brandon Kaopuiki, Non-Management Law Enforcement
Brian Martinek, Assistant Chief, Portland Police Bureau
Tim McLain, Superintendent, Oregon State Police
Edward Mouery, Oregon State Police
Steven Piper, Non-Management Law Enforcement
Raul Ramirez, Oregon State Sheriffs' Association
Kent Barker, Oregon Association Chiefs of Police
Dan Nielsen, SAC FBI, Oregon
Stuart Roberts, Oregon Association Chiefs of Police

Committee Members Absent

Mike Healy, Oregon Association Chiefs of Police
Robert King, Non-Management Law Enforcement

Guests:

Richard Brown, DPSST Board Member

DPSST Staff:

Eriks Gabliks, Deputy Director
Marilyn Lorance, Standards and Certification Supervisor
Theresa King, Professional Standards Coordinator
Bonnie Salle-Narvaez, Certification Coordinator
Cameron Campbell, Academy Training Director
Carolyn Kendrick, Administrative Specialist



Chairman Andrew Bentz announced he would not be in attendance at the May 12, 2009 Police Policy Committee meeting and opened nominations to appoint a Vice-Chairman. Tim McLain moved to nominate Stuart Roberts. Rob Gordon seconded the motion. The motion carried unanimously by all voting.

1. Minutes of November 12, 2008 Meeting

Approve minutes from the November 12, 2008 meeting.

See Appendix A for details

Tim McLain moved to approve the minutes from the November 12, 2008 meeting. Stuart Roberts seconded the motion. The motion carried unanimously by all voting.

2. OAR 259-008-0015 – Proposed Rule

Background Investigation
Presented by Bonnie Salle-Narvaez

See Appendix B for details

After extensive discussion regarding the language and purpose of this rule proposal, it is the consensus of the committee to refer the proposed rule OAR 259-008-0015 back to the workgroup to re-work and update the language and purpose.

3. OAR 259-008-0020 – Proposed Rule

Issuance of DPSST Number
Presented by Bonnie Salle-Narvaez

See Appendix C for details

Tim McLain moved to recommend filing the proposed language for OAR259-008-0020 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Steven Piper seconded the motion. The motion carried unanimously by all voting.

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

4. OAR 259-008-0068 – Proposed Rule

Fee Increase for Certified Retired Officer Program
Presented by Bonnie Salle-Narvaez

See Appendix D for details

Brian Martinek moved to eliminate the certified retired officer program. Rob Gordon seconded the motion. The motion carried unanimously by all voting.

5. Convene in Executive Session at 2:25 p.m.

To discuss matters exempt from disclosure under ORS 92.660(2)(f) related to whether a medical waiver for Jesus Armenta should be recommended to the Board.

6. Reconvene in Regular Session at 2:27 p.m.

To take final action regarding a determination of whether a medical waiver for Jesus Armenta should be recommended to the Board.

Steven Piper moved to recommend to the Board the approval of a waiver of the depth perception standard for Recruit Jesus Armenta so he can attend the next available Basic Police Course. Brian Martinek seconded the motion. The motion carried unanimously by all voting.

7. Jose A. Rodriguez – DPSST #17444

Presented by Theresa King

Prior to case review staff provided a brief summary of how staff proceeded in preparing these first cases under the new OAR rules which became effective January 1, 2009. Staff also explained the additional decision item that requires (in the case of a denial or revocation motion) the committee to determine a minimum initial period of ineligibility for an individual to reapply for certification.

See Appendix E for details

- **Brandon Kaopuiki moved that the committee adopts the staff report as the record upon which its recommendations are based. Edward Mouery seconded the motion. The motion carried unanimously by all voting.**
- By discussion and consensus:
 - h. Identify the conduct that is at issue. **Two convictions of public indecency.**
 - i. The identified conduct **did not** involve **Dishonesty.**
 - j. The identified conduct **did** involve a **Disregard for the Rights of Others.**
 - k. The identified conduct **did not** involve **Misuse of Authority.**
 - l. The identified conduct **did not** involve **Gross Misconduct.**
 - m. The identified conduct **did** involve **Misconduct.**
 - n. The identified conduct **did not** involve **Insubordination.**
- By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. **The consensus of the committee is that there was aggravating circumstances and no mitigating circumstances.**
- **Rob Gordon moved that the committee finds RODRIGUEZ's conduct does rise to the level to warrant the revocation of his Basic Police certification, and therefore recommends to the Board that RODRIGUEZ's certification be revoked. Tim McLain seconded the motion. The motion carried unanimously by all voting.**
- **Brian Martinek moved that the committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be a minimum of 15 years from the date of revocation. Tim McLain seconded the motion. The motion carried unanimously by all voting.**

8. Ryan P. Bloodworth – DPSST #38816

Presented by Theresa King

See Appendix F for details.

- **Tim McLain moved that the committee adopts the staff report as the record upon which its recommendations are based. Edward Mouery seconded the motion. The motion carried unanimously by all voting.**
- By discussion and consensus:
 - a. Identify the conduct that is at issue. **2 DUII convictions**
 - b. The identified conduct **did not** involve **Dishonesty.**
 - c. The identified conduct **did not** involve a **Disregard for the Rights of Others.**
 - d. The identified conduct **did not** involve **Misuse of Authority.**
 - e. The identified conduct **did** involve **Gross Misconduct.**
 - f. The identified conduct **did** involve **Misconduct.**
 - g. The identified conduct **did not** involve **Insubordination.**
- By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. **The committee conceded that there were no mitigating circumstances.**
- **Tim McLain moved that the committee finds BLOODWORTH's conduct does rise to the level to warrant the revocation of his Basic Police certification, and therefore recommends to the Board that BLOODWORTH's certification be revoked under the categories of Gross Misconduct and Misconduct. Stuart Roberts seconded the motion. The motion carried unanimously by all voting.**
- **Dan Nielsen moved that the committee recommends to the Board the minimum period of ineligibility to reapply for certification will be 10 years from the date of revocation. Edward Mouery seconded the motion. The motion carried unanimously by all voting.**

9. & 10. The Committee DID NOT convene in Executive Session

11. Levi S. Dowty – DPSST #43189

Presented by Theresa King

See Appendix G for details.

- *Tim McLain moved that the committee adopts the staff report as the record upon which its recommendations are based. Brian Martinek seconded the motion. The motion carried unanimously by all voting.*
- *The committee considered that this single event occurred prior to DOWTY's serving in public safety as a full-time police officer. He was honest about the incident and because the one-time misconduct has not been repeated, it appeared from the information he provided that DOWTY has mitigated the incident. The committee also considered DOWTY's work performance and character information received from the employer as mitigating factors.*
- *Brian Martinek moved that the committee finds DOWTY's misconduct did occur but does not rise to the level to warrant the denial of his basic police training and subsequent certification, and therefore recommends to the Board that DOWTY's training and certification not be denied. Edward Mouery seconded the motion. The motion carried unanimously by all voting.*

12. Charles J. Bellinger – DPSST #35565

Presented by Theresa King

See Appendix H for details.

Brandon Kaopuiki stated for the record that he works with Charles Bellinger and would abstain from voting.

Steven Piper also stated for the record that he works with Charles Bellinger and would abstain from voting.

- *Stuart Roberts moved that the committee adopts the staff report as the record upon which its recommendations are based. Tim McLain seconded the motion. The motion carried unanimously by all voting.*
- *The committee considered that this single event occurred after BELLINGER had served 10-years in public safety and determined that this incident did not involve dishonesty, that BELLINGER took responsibility for his misconduct, and sought to mitigate it through current positive changes in his life. The committee commended BELLINGER's employer in their efforts to remediate BELLINGER's conduct through discipline and a Last Chance Agreement which outlined all parties' expectations and required accountability.*
- *Rob Gordon moved that the committee finds BELLINGER's misconduct did occur but does not rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that BELLINGER's certification(s) not be revoked. Edward Mouery seconded the motion. The motion carried unanimously by all voting.*

13. Michael P. Garibay – DPSST #49745

Presented by Theresa King

See Appendix I for details.

- *Steven Piper moved that the committee adopts the staff report as the record upon which its recommendations are based. Stuart Roberts seconded the motion. The motion carried unanimously by all voting.*
- *The committee considered that these events occurred prior to GARIBAY entering public safety, and that he has demonstrated changes in his lifestyle which include living alcohol free, that mitigate the prior events. The committee determined GARIBAY took responsibility for his prior conduct, self-disclosed the incidents to his employer, and he has made contributions to his community since that time. The committee also considered the conduct-related character references provided by the employer and members of the community impacted by public safety.*
- *Brandon Kaopuiki moved that the committee finds GARIBAY's misconduct did occur but does not rise to the level to warrant the denial of his basic police training and subsequent certification, and therefore recommends to the Board that GARIBAY's training and certification be not be denied. Edward Mouery seconded the motion. The motion carried unanimously by all voting.*

14. Ryan L. Cooper – DPSST #35377

Presented by Theresa King

See Appendix J for details.

- *Stuart Roberts moved that the committee adopts the staff report as the record upon which its recommendations are based. Dan Nielsen seconded the motion. The motion carried by all voting.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue. **Dishonesty.**
 - b. The identified conduct did involve **Dishonesty.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others.**
 - d. The identified conduct did not involve **Misuse of Authority.**
 - e. The identified conduct did involve **Gross Misconduct.**
 - f. The identified conduct did involve **Misconduct.**
 - g. The identified conduct did involve **Insubordination.**
- *By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. **The committee agreed that there were aggravating circumstances and no mitigating circumstances.***
- *Tim McLain moved that the committee finds COOPER's conduct does rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that COOPER's certifications be revoked. Steven Piper seconded the motion. The motion carried unanimously by all voting.*
- *Tim McLain moved that the committee recommends to the Board that COOPER's misconduct was a lifetime disqualifier; he may never reapply to the Police Policy Committee seeking certification. Brian Martinek seconded the motion. The motion carried unanimously by all voting.*

15. Law Enforcement Memorial Wall Nomination

Samuel S. Young – Portland Police Bureau

Presented by Eriks Gabliks

See Appendix K for details.

Steven Piper moved to include Samuel S. Young's name on the Law Enforcement Memorial Wall. Tim McLain seconded the motion. The motion carried unanimously by all voting.

16. Law Enforcement Memorial Wall Nomination

William (Bill) Hakim – Oregon State Police
Presented by Eriks Gabliks

See Appendix L for details.

Brian Martinek moved in include William (Bill) Hakim’s name on the Law Enforcement Memorial Wall. Brandon Kaopuiki seconded the motion. The motion carried unanimously by all voting.

17. Law Enforcement Memorial Wall Nomination

Tom Tennant – Woodburn Police Department
Presented by Eriks Gabliks

See Appendix M for details.

Tim McLain moved to include Tom Tennant’s name on the Law Enforcement Memorial Wall. Rob Gordon seconded the motion. The motion carried unanimously by all voting.

18. Discussion Item

OAR 259-008-0067 – Retired Executives and Lapsed Certification
Presented by Rob Gordon

See Appendix N for details.

The committee debated the value of executive law enforcement officers returning to Basic Training because of lapsed certification due to the fact that executive responsibilities are far different than basic officers.

It was noted that other states have solved this issue with a waiver system for executives. It could be designed to include Career Officer Development or Executive Training rather than the return to Basic Training. The committee stated that Oregon’s current practice limits the state’s potential in recruiting as executive officers are recruited nationally.

Staff stated in terms of the broad discussion, it would be possible for a multi-discipline work group to discuss modifying waiver processes that would not require opening up state statutes. If the work group chooses, it could identify a different kind of waiver process and carve out certain exceptions that go to policy committees and the board rather than the straight forward review process in place now. It would be appropriate to have different kinds of waivers for different kinds of occasions. The committee agreed with this option and Rob Gordon volunteered to participate in the work group representing the Oregon State Sheriff’s Association.

19. Discussion Item

Student Injuries
Presented by Cameron Campbell

See Appendix O for details.

The committee brought forth the following questions in response to Cameron Campbell’s review of student injuries:

- *Is an injured student able to return to the same week he/she was injured in the next class rather than starting the entire 16-week training over again?*
 - a. *Staff stated that Administrative Rules says that credit is not given for incomplete training. Therefore the student must start at the beginning of the course.*

- *If a student gets injured and cannot complete class one are they automatically enrolled in class two?*
 - a. *This depends on the nature and severity of the injury. DPSST will work with the agency to determine if the next class is appropriate. Scheduling the student for the next class is not automatic however. If at all possible DPSST will enroll the student in the very next scheduled class.*

- *There are many agencies that have DPSST certified instructors, can an exception be made if a DPSST certified instructor instructs the remedial training at their agency? Could that substitute for having the student come back and take the entire 16-week course again?*
 - a. *Training is not solely based on the curriculum itself, but on the technique, the equipment available, as well as the available venues. Many training events cannot be replicated at the local agency. When instructors are on campus they are working for DPSST. At the local agency it is different. Instructors conducting remedial training off campus could be/are subjected to peer pressure and pressure from upper management to pass the student – possibly resulting in training inconsistent with DPSST’s standards for certification. Therefore, the 16-week course would need to be retaken.*

The committee struggles with the possibility of a student who is doing fine, gets to the latter part of the class, and then gets injured and cannot complete training. Some committee members believe it doesn’t make sense for the agency and DPSST to have the student go through the entire training again. DPSST needs to make sure that the training each person receives is equivalent to what the class receives especially since DPSST has to certify to that fact. DPSST does not apply any hard and fast rule to the issue. Each case is examined on its own merits and DPSST will work with individual agencies.

20. Additional Business

Presented by Eriks Gabliks

Eriks gave a brief overview of the upcoming budget.

Eriks announced Chief Kent Barker as new member of the Police Policy Committee and introduced visitor Richard Brown, DPSST Board Member.

21. Next Police Policy Committee Meeting

Tuesday, May12, 2009 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 4:17 p.m.

Appendix B

Department of Public Safety Standards and Training Memo

Date: April 21, 2009
To: Police Policy Committee
From: Bonnie Narváez
Rules Coordinator
Subject: OAR 259-001-0005 – Proposed Rule
Rulemaking Notice - Electronically

Issue: During the 2007 legislative session, the Oregon Legislature enacted legislation (HB 2121) allowing state agencies to provide notice of any adopted, amended or repealed rule electronically. Staff is recommending a change to the current rule to include the new provisions relating to electronic transmissions of public rulemaking notice(s).

The Administrative Procedures Manual requires DPSST to maintain a mailing list with the names and addresses or e-mail addresses of persons who have requested in writing that DPPST mail them copies of its notices of proposed rulemaking, but DPSST is not required to list individuals within the context of its administrative rules. However, OAR 259-001 includes several lists of parties to receive notices. That list has not been updated for many years.

Staff is recommending that its interested parties list, along with a process to add or remove individuals from the interested parties list, be posted on its website and maintained by the rules coordinator rather than listing the individual parties separately in administrative rule. In preparing to implement HB 2121, and to update our interested parties lists, staff previously mailed notice to agencies, associations and all current individuals on its criminal justice interested parties list(s) and provided notice to its constituents via a listserv announcement. In addition, the memo was sent out via e-mail to numerous public safety entities and associations. To date, a total of 44 entities have responded.

The following revised language for OAR 259-001-0005 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-001-0005

Notice of Proposed Permanent Rulemaking and Adoption of Temporary Rules

~~**Notice to Interested Persons on Proposals to Adopt, Amend, or Repeal any Administrative Rule Affecting Police Officers, Corrections Officers, or Parole and Probation Officers, Telecommunicators, Emergency Medical Dispatchers, Fire Service Professionals, Law Enforcement Units, and Public or Private Safety Agencies as Defined in ORS 181.610**~~

~~In accordance with ORS 183.341(4), to provide a reasonable opportunity for interested persons to be notified of the proposed actions affecting police officers, corrections officers, parole and probation officers, telecommunicators, emergency medical dispatchers, fire service professionals, law enforcement units, or public or private safety agencies, the Board and the Department shall give notice of the proposed adoption, amendment, or repeal of rule(s):~~

(1) Except as provided in ORS 183.335(7) or (12) or 183.341, before permanently adopting, amending, or repealing an administrative rule, the Department will give notice of its intended action:

(a) To legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(b) To persons on the interested parties lists described in section (2) of this rule at least 28 days before the effective date of the rule;

~~(1) (c) **In the Secretary of State's Bulletin referred to in ORS 183.360** At least twenty-one (21) days prior to **before** the effective date of the **rule; and** intended action, in the Secretary of State's Bulletin referred to in ORS 183.360.~~

~~(2) (d) At **To other persons, agencies, or organizations to whom the Department is required to provide an opportunity to comment pursuant to state statute at** least twenty-eight (28) days prior to **before** the effective date of the intended action, by mailing or furnishing a copy of the notice to the following: **rule.**~~

(e) In addition to the above, the Department may send notice of intended action to other persons, agencies or organizations that the Department, in its discretion, believes to have an interest in the subject matter of the proposed rule at least 28 days before the effective date of the rule.

~~(a) Oregon State Sheriff's Association (OSSA);~~

~~(b) Oregon Association Chiefs of Police (OACP);~~

~~(c) Oregon Peace Officers Association (OPOA);~~

~~(d) Oregon Criminal Justice Association (OCJA);~~

~~(e) Oregon Department of Corrections;~~

~~(f) United Press International;~~

~~(g) Associated Press;~~

~~(h) Capitol Building Press Room;~~

~~(i) Oregon Council of Police Associations (OCPA);~~

~~(j) Oregon Department of Justice;~~

~~(k) Oregon State Police Officers Association (OSPOA);~~

~~(l) Federation of Parole & Probation Officers (FPPO);~~

~~(m) Oregon State Police Headquarters;~~

~~(n) Oregon Emergency Management;~~

~~(o) Oregon Chapter/Association of Public Safety Communications Officers (APCO);~~

~~(p) Oregon Fire Chief's Association (OFCA);~~

~~(q) Oregon Health Division, Emergency Medical Services Section;~~

- ~~(r) Oregon Fire Instructors Association (OFIA);~~
- ~~(s) Oregon Fire Marshals Association (OFMA);~~
- ~~(t) Oregon Fire District Directors Association (OFDDA);~~
- ~~(u) Oregon Volunteer Firefighters Association (OVFA);~~
- ~~(v) Oregon State Firefighters Council (OSFC);~~
- ~~(w) League of Oregon Cities (LOC);~~
- ~~(x) Portland Police Bureau;~~
- ~~(y) Oregon State Fire Marshal's Office;~~
- ~~(z) Oregon State Forestry;~~
- ~~(aa) Federal Bureau of Investigation—Oregon Office;~~
- ~~(bb) Oregon District Attorneys Association (ODAA);~~
- ~~(cc) Portland Fire Bureau.~~

(2) Pursuant to ORS 183.335(8), the Department will maintain an interested parties list for each OAR chapter of rules for which the Department has administrative responsibility. A person, group, or entity that wants to be placed on such a list to receive notices of proposed permanent adoption, amendment, or repeal of a rule must make a request in writing or by electronic mail to the rules coordinator. The request must include either a mailing address or an electronic mail address where notices may be sent.

(3) Notices under this rule may be sent by use of hand delivery, state shuttle, postal mail, electronic mail, or facsimile. The Department recognizes state shuttle as “mail” and may use this means to notify other state agencies.

(a) An email notification under section (1) of this rule may consist of any of the following:

(A) An email that attaches the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(B) An email that includes a link within the body of the email, allowing direct access online to the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(C) An email with specific instructions within the body of the email, usually including an electronic URL (Universal Resource Locator) address, to find the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(b) The Department may use facsimile as an added means of notification, if necessary. Notification by facsimile under section (1) of this rule must include the Notice of Proposed Rulemaking or

Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact, or specific instructions to locate these documents online.

(c) The Department will honor all written requests that notification be sent by postal mail instead of electronically if a mailing address is provided.

(4) If the Department adopts or suspends a temporary rule, the Department will notify:

(a) Legislators specified in ORS 183.335(15);

(b) Persons on the interested parties list described in Section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter; and

(c) Other persons, agencies, or organizations that the Department is required to notify pursuant to state statute or federal law.

(d) In addition to the above, the Department may send notice to other persons, agencies, or organizations that the Department, in its discretion, believes to have an interest in the subject matter of the temporary rulemaking.

(4) The Department may state how and where a copy of a proposed rule or temporary rule may be obtained on paper, by electronic mail, or from a specified web site.

~~(3) At least twenty eight (28) days prior to the effective date of the intended action, by mailing a copy of the notice to persons on the Board and Department mailing list established pursuant to ORS 183.335(7).~~

Stat. Auth.: ORS 181.640 **& 183.341**

Stats. Implemented: ORS 181.640, **183.330, 183.335 & 13.341**

ACTION ITEM 1: Determine whether to approve filing the proposed language for OAR 259-001-0005 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to approve filing the proposed language for OAR 259-008-001-0005 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 C

Department of Public Safety Standards and Training Memorandum

DATE: April 14, 2009
TO: Police Policy Committee
FROM: Bonnie Narváez
Rules Coordinator
SUBJECT: Public Comment Received - Staff Recommendation
OAR 259-008-0010

The Police Policy Committee and Board on Public Safety Standards and Training previously reviewed and approved filing a proposed permanent rule with the Secretary of State's office to amend the rules relating to a physical examination and require a law enforcement officer who is separated from employment for a reason related to a physical inability to perform the essential task of a law enforcement to successfully complete a physical examination prior to obtaining re-employment in a certifiable position or applying for certified retired officer status. The proposed rules were filed with the Secretary of State's Office and opened for public comment.

A total of one (1) comment was received during the open comment period. The comment is as follows:

COMMENT: "It appears that the proposed change would deny a retired certification to someone who is medically retired. Is this correct? While it makes sense to require a new physical evaluation for someone who is seeking re-employment, it doesn't make sense to deny a retired certification to someone who has retired for medical reasons."

STAFF RESPONSE: The Police Policy Committee previously recommended that the Certified Retired Officer program be abolished. Staff is in the permanent rulemaking process of eliminating those rules. Because the certified retired officer certification level will no longer be an option for a retired officer, the comment submitted will be addressed by the elimination of this program. However, a medically retired officer will remain eligible to apply for a "retired officer" card from the Department.

FINDINGS OF FACT:

1. On February 2, 2009, a Notice of Proposed Rulemaking was filed with the Secretary of State's office (see Exhibit A)
2. On March 1, 2009, the Notice of Proposed Rulemaking was published in the Secretary of State's monthly publication (Bulletin). (see Exhibit B)
3. During the month of March 2009, the Notice of Proposed Rulemaking was posted on the Department of Public Safety Standards and Training's website.
4. On March 24, 2009, the public comment period closed.

CONCLUSION:

The Department previously presented proposed rule amendment to OAR 259-008-0010 to the Police Policy Committee and Corrections Policy Committee. It was reviewed and discussed by all committee members from each committee and the Department received approval from both committees to forward their recommendation to approve the proposed language for 259-008-0010 to the Board.

The Department presented the proposed rule amendment to OAR 259-008-0010 to the Board. It was reviewed by Board members and the Department received approval to file the proposed amendment with the Secretary of State's office as a proposed rule.

The Department provided notice of a proposed rulemaking hearing to:

- a) The Secretary of State's office;
- b) Legislative Counsel;
- c) The agency interested parties' list; and
- d) The Department's website;

The Department received one public comment during the public comment period indicating that it did not make sense to deny a retired certification to someone who has retired for medical reasons.

It is the conclusion of the rules coordinator that the Department provided ample notice of the proposed rule amendment to OAR 259-008-0010 to the largest extent possible to public safety agencies and public safety personnel. After careful consideration of the single comment submitted, contrasted with the extensive public notice given, the comment received did not appear to represent a statewide concern among public safety agencies about the rule amendment as originally drafted. It is further noted that the Department is in the process of abolishing the certified retired officer program.

STAFF RECOMMENDATION: Adopt the proposed rule language previously submitted to the Police Policy Committee, amending OAR 259-008-0010, as a permanent rule.

Appendix D

Department of Public Safety Standards and Training Memorandum

DATE: May 12, 2009
TO: Police Policy Committee
FROM: Theresa King
Professional Standards Coordinator
SUBJECT: Michael L. Perkins DPSST #42637

ISSUE:

Should Michael Perkins' Basic Police Certification be revoked based on his discretionary disqualifying misconduct defined in OAR 259-008-0070, and as referenced in OAR 259-008-0010?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to PERKINS:

PERKINS was employed by the Warm Springs Police Department as a police officer in 2004 where he remained for approximately one year. During this time PERKINS attended the DPSST Basic Police Academy and obtained his Basic Police Certification. PERKINS signed his Criminal Justice Code of Ethics in 2005.

PERKINS was employed by the Linn County Sheriff's Office in 2006 and remained employed for under one year prior to resigning.

PERKINS was employed with the Jefferson County Sheriff's Office in 2007 where he remained employed for under one year and received a probationary discharge.

DPSST requested and received information that led to PERKINS' probationary discharge.

In September and October 2008, in follow-up to the employer's information, DPSST obtained additional information subsequently provided as Affidavits, attesting to recollections of Sheriff Jones, Undersheriff Adkins and Deputy Sheriff Dominguez.

In December, DPSST attempted to reach PERKINS at three different mailing addresses he had provided to the Oregon Department of Motor Vehicles, to his employer, and an additional address obtained by the Dept. of Justice Watch Center. Each mailing was sent by regular mail and by certified mail return receipt requested. The last of the two certified correspondence were returned "unclaimed" and the regular mail was not returned in either instance. To date PERKINS 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 259-008-0010(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness includes, but is not limited to:

- (A) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or
- (B) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

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 for discretionary disqualifying conduct, 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 Police Policy Committee review the matter and make a recommendation to the Board whether or not to revoke PERKINS' Basic Police Certification, based on his discretionary disqualifying misconduct.

- By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - 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**.

- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
- By vote, the Policy Committee finds PERKINS' conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that PERKINS' 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(s) will be *identify period of time* from the date of revocation.

Appendix E

Department of Public Safety Standards and Training Memorandum

DATE: May 12, 2009
TO: Police Policy Committee
FROM: Theresa King
Professional Standards Coordinator
SUBJECT: Patrick S. Vaughn DPSST #29202

ISSUE:

Should Patrick VAUGHN's Basic Police Certification be revoked based on his discretionary disqualifying misconduct defined in OAR 259-008-0070, and as referenced in OAR 259-008-0010?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to VAUGHN:

In 1994 VAUGHN was employed with the Portland Police Bureau where he served for fourteen (14) years. VAUGHN obtained his Basic Police Certification and signed his Criminal Justice Code of Ethics in 1994. In August 2006, VAUGHN was arrested for Attempt Burglary, was ultimately charged with Criminal Mischief in the Second Degree and this matter was dismissed as a result of a plea agreement.

DPSST requested and received information that led to VAUGHN's arrest.

Between December 2008 and March 2009, DPSST attempted to reach VAUGHN at three different mailing addresses that he had provided to the Oregon Department of Motor Vehicles and an additional address obtained by the U.S. Postal Service and the Dept. of Justice Watch Center. VAUGHN was provided an opportunity to submit mitigating circumstances for the PPC's consideration. Each mailing was sent by regular mail and by certified mail return receipt requested. To date VAUGHN has not provided information for the PPC's consideration.

DPSST followed up with PPB on the "lay-off" "medical" notation on the F4, Personnel Action Report (Ex A1). Two internal investigation summaries were provided along with the clarification, "Vaughn was medically separated following a fitness for duty and before discipline was imposed."

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 259-008-0010(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

(b) For purposes of this standard, lack of good moral fitness includes, but is not limited to:

- (C) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or
- (D) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

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 for discretionary disqualifying conduct, 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 Police Policy Committee review the matter and make a recommendation to the Board whether or not to revoke VAUGHN's Basic Police Certifications, based on his discretionary disqualifying misconduct.

- By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - 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**.

- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
- By vote, the Policy Committee finds VAUGHN's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that VAUGHN's 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(s) will be *identify period of time* from the date of revocation.

Appendix F

Department of Public Safety Standards and Training Memorandum

DATE: May 12, 2009
TO: Police Policy Committee
FROM: Theresa King
Professional Standards Coordinator
SUBJECT: Robert L. Burk DPSST #27390

ISSUE:

Should Robert BURK's Basic, Intermediate and Advanced Police Certifications be revoked based on his discretionary disqualifying misconduct defined in OAR 259-008-0070, and as referenced in OAR 259-008-0010?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to BURK:

In 1995 BURK was employed with the Cannon Beach Police Department where he served less than one year and resigned. BURK signed his Criminal Justice Code of Ethics in 1995. BURK obtained his Basic Police Certification. In 1995 BURK then became employed with the Clatsop County Sheriff's Office (CCSO) where he served for over 14 (fourteen) years before he resigned. During his tenure with the CCSO BURK obtained his Intermediate and Advanced Police Certifications. In 2007 BURK then became employed with the Baker City Police Department where he served for over one year and resigned during an internal investigation.

DPSST requested and received information that led to BURK's resignation.

In February and March, 2009, DPSST attempted to reach BURK at two different mailing addresses that he had provided to the Oregon Department of Motor Vehicles, and an additional address obtained by the Dept. of Justice Watch Center. BURK was provided an opportunity to submit mitigating circumstances for the PPC's consideration. Each mailing was sent by regular mail and by certified mail, return receipt requested.

In March BURK provided information for the PPC's consideration which included a letter from him and from his union president. Subsequent to this, BURK's former Chief provided a letter for the PPC's consideration.

Upon staff review of BURK's information provided for the PPC's consideration, Burk commented, "I wish I knew what the exact allegations against me were so that I could stand up for myself. DPSST requested, and received the remaining information regarding the preliminary investigation against BURK. A clarifying email showed that BURK, through his union counsel, received a copy of the specific allegations against him which were contained in the internal investigation.

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 259-008-0010(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

(c) For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(E) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(F) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

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 for discretionary disqualifying conduct, 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 Police Policy Committee review the matter and make a recommendation to the Board whether or not to revoke BURK's Basic, Intermediate and Advanced Police Certifications, based on his discretionary disqualifying misconduct.

- By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - 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**.

- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
- By vote, the Policy Committee finds BURK's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that BURK's 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(s) will be *identify period of time* from the date of revocation.

Appendix G

Department of Public Safety Standards and Training Memorandum

DATE: May 12, 2009
TO: Police Policy Committee
FROM: Theresa King
Professional Standards Coordinator
SUBJECT: Lawrence C. Raglione DPSST #06181

ISSUE:

Should Lawrence C. RAGLIONE's Basic, Intermediate and Advanced Police Certifications be revoked based on his discretionary disqualifying misconduct defined in OAR 259-008-0070, and as referenced in OAR 259-008-0010?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to RAGLIONE:

In 1975 RAGLIONE was employed with the Troutdale Police Department where he served for six (6) years until he was terminated. After a four (4) year break in service, RAGLIONE was hired by the Tigard Police Department in 1986 where he served for four (4) years until he resigned in 1991. RAGLIONE was then hired by the Gresham Police Department where he served for sixteen (16) years and retired in 2007 under a Separation Agreement dated January 8, 2008. RAGLIONE held Basic, Intermediate and Advanced Police certifications.

DPSST first received a F4, Personnel Action Report, showing RAGLIONE was on an administrative leave of absence on November 27, 2007. DPSST then received a F4, Personnel Action Report showing that RAGLIONE had retired. The Gresham Police Department (GPD) requested a retirement packet and upon inquiry from DPSST staff, it was determined that RAGLIONE's retirement did not meet the "honorably retired" requirements of OAR. In July 2008, DPSST mailed a letter to GPD asking for clarification of the circumstances that led to RAGLIONE's retirement. GPD marked the box, "This employee retired, and the circumstances that led to his retirement may have involved issues relating to violation of the moral fitness standards as cited above. This agency is sending you the investigation for your review."

Subsequent to this, DPSST received Internal Affairs #07-04, a 2006 Last Chance Agreement and related documents.

In January 2009, DPSST mailed RAGLIONE a letter advising him that his case would be heard before the Police Policy Committee and invited him to provide mitigating circumstances on his behalf for the Committee's consideration. RAGLIONE, through his attorney, provided a letter and supporting information for the Committee's review. (See Ex A17 resource material regarding Settlement Agreements; Ex A18, impact of Cuff v. DPSST Supreme Court Decision.)

In March 2009, DPSST requested clarification of prior discipline of untruthfulness of GPD.

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 259-008-0010(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

(d) For purposes of this standard, lack of good moral fitness includes, but is not limited to:

- (G) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or
- (H) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

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 for discretionary disqualifying conduct, 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 Police Policy Committee review the matter and make a recommendation to the Board whether or not to revoke RAGLIONE's Basic, Intermediate and Advanced Police Certifications, based on his discretionary disqualifying misconduct.

- By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - 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**.

- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
- By vote, the Policy Committee finds RAGLIONE's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that RAGLIONE's 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(s) will be *identify period of time* from the date of revocation.

Appendix H

Department of Public Safety Standards and Training Memorandum

DATE: May 12, 2009
TO: Police Policy Committee
FROM: Theresa King
Professional Standards Coordinator
SUBJECT: Gary Welberg DPSST #30083

ISSUE:

Should Gary WELBERG's Basic, Intermediate and Advanced Police Certifications be revoked based on his discretionary disqualifying misconduct defined in OAR 259-008-0070, and as referenced in OAR 259-008-0010?

BACKGROUND and OVERVIEW

This case involves the following actions and processes related to WELBERG:

In February 2007, Union County DA THOMPSON referred a criminal investigation of Furnishing Alcohol to a Minor to the Malheur County DA NORRIS. A preliminary investigation had been conducted by UCSO Deputy James VOLEZ and a more in-depth investigation had been conducted by Patric MONTGOMERY (ret OSP), serving with UCSO. The crime of Furnishing Alcohol to a Minor was the only crime that had been investigated however NORRIS ultimately declined to prosecute on both the alcohol and whether WELBERG had supplied false information in the police report he had prepared.

During the Summer and early Fall of 2007, numerous members of the LaGrande Police Department asked that an internal investigation be conducted to determine whether WELBERG supplied false information in a police report, however no IA was conducted.

In the Fall of 2007, DPSST was contacted by numerous public safety officers with the LaGrande Police Department who had concerns about WELBERG's integrity. The focus of the concern was that WELBERG had falsified a police report when he alleged another officer had provided alcohol to a minor female and that this matter had not been investigated criminally or internally. It was during this time that DPSST staff was conducting an unrelated large investigation. To preserve the assertions being made, brief interviews were conducted, reduced to Affidavits and emailed to the various individuals to affirm the content and to have notarized. In addition to the affidavits, DPSST obtained a number of documents from the complainants relating to their concerns. Chief John Courtney had been contacted by DPSST about the complaints and he ultimately determined he would wait until DPSST completed their inquiry before he would re-consider the request for an internal investigation against WELBERG.

During April 23 – 25, 2008, DPSST investigators conducted (18) eighteen interviews. Upon the completion of the final interview on April 25, 2008, DPSST investigators concluded that there was conduct on the part of Gary WELBERG that could potentially constitute one or more crimes and that this conduct had not been criminally investigated. DPSST investigators discussed their concerns with DA Timothy THOMPSON.

On April 28, 2008, DPSST investigators reviewed the case developments with Marilyn LORANCE, Standards and Certification Manager. Upon review, LORANCE concurred with DPSST investigators' recommendations to refer the case to the Union County District Attorney's Office for a criminal investigation. On April 28, 2008, DPSST referred the case in its entirety to the Union County District Attorney's Office. Under the direction of DA THOMPSON, DPSST

provided a copy of all documents to Patric MONTGOMERY who had been selected to conduct the criminal investigation of possible Official Misconduct.

In May 2008, WELBERG's attorney, WILLIAMS, sought DPSST's investigation. DPSST advised WILLIAMS of the transfer of the record. During the months of May and June, MONTGOMERY conducted the criminal investigation and in July 2008, DA THOMPSON referred the criminal case to the Oregon Department of Justice, Criminal Division for review. (DOJ) In October 2008 DOJ conducted additional interviews and on January 14, 2009 DOJ declined to prosecute the case criminally. In February 2009, DA THOMPSON referred the case back to DPSST, requesting that DPSST continue the administrative process. THOMPSON also provided a letter that he had written to City Administrator STROPE and Acting Police Chief REDDINGTON in which he made a determination that he would no longer use WELBERG as the sole witness. THOMPSON followed this letter with a letter to Defense Counsel in which he determined, "*It is my opinion that substantial doubt exists as to Officer Welberg's reputation for truthfulness. . . .I made the decision that this office will not accept any of Officer Welberg's criminal case referrals and investigations without independent corroboration of all of his actions and observations.*"

In February 2009, DPSST mailed WELBERG a letter advising him that his case would be heard before the Police Policy Committee and allowed WELBERG 30 days for an opportunity to provide mitigating circumstances for the Committee's consideration. This certified letter was sent to WELBERG's attorney, WILLIAMS, per his instructions. Copies of these documents were also faxed to WILLIAMS and to Acting Chief REDDINGTON.

In March 2009, DA THOMPSON notified DPSST that WELBERG had placed a letter in his personal residential mailbox and THOMPSON stated, "The fact that the letter was placed in my personal mailbox, rather than dropped off or delivered to my office by regular mail service is significant to me. It is a subtle way of "personalizing" his concerns and letting me know that he knows where I live and that he can intrude on my personal life. I find this conduct disturbing and the unwritten message threatening, as does my family. This conduct is unprofessional." The referenced letter from WELBERG contained pictures of his children.

Also in March 2009, WELBERG was involved in an incident in which he drove his wife to the place of employment of Bri WISHART, the minor whom WELBERG reported had received alcohol as a minor. WELBERG's wife made contact with WISHART while WELBERG remained in the vehicle. The result of this contact was that both WELBERG and his wife were "trespassed" from that establishment. Based on the two additional incidents, DPSST wrote a letter to WELBERG advising him that these incidents would be included materials to the Policy Committee and allowed him an additional 30 days to provide the Committee with mitigating circumstances. This letter was sent via certified mail. WELBERG's attorney contacted DPSST advising he was no longer representing WELBERG. On March 30, 2009, DPSST received the Certified Mail, "Unclaimed."

In March, DPSST received a F4, Personnel Action Report showing that WELBERG had resigned in lieu of termination. DPSST sought the underlying investigation that led to this resignation.

In April, DPSST made a second request for information from the LaGrande Police Department for information that led to WELBERG's resignation. DPSST obtained the requested information which included a termination notice, Settlement Agreement and supporting documents.

To date DPSST has not received any information from WELBERG 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 259-008-0010(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

(e) For purposes of this standard, lack of good moral fitness includes, but is not limited to:

- (I) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or
- (J) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

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 for discretionary disqualifying conduct, 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 Police Policy Committee review the matter and make a recommendation to the Board whether or not to revoke WELBERG's Basic, Intermediate and Advanced Police Certifications, based on his discretionary disqualifying misconduct.

- By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
- By discussion and consensus:
 - a.) Identify the conduct that is at issue.
 - 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**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
- By vote, the Policy Committee finds WELBERG's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that WELBERG's 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(s) will be *identify period of time* from the date of revocation.

Appendix I

Department of Public Safety Standards and Training Memo

Date: May 6, 2009
To: BPSST Police Policy Committee
From: Eriks Gabliks
Deputy Director
Subject: Law Enforcement Memorial Wall Nomination
Philip Warren Bureau – Oregon State Police

Issue: A request has been made to include Philip W. Bureau's name on the Fallen Officer's Memorial Wall.

Background: Philip W. Bureau was a State Trooper assigned to the Grants Pass Patrol Office of the Oregon State Police (OSP). Trooper Bureau was 33 years of age when he suffered a heart attack at the Grants Pass Patrol Office while on-duty on August 27, 1959. Trooper Bureau was rushed to Josephine General Hospital where he was pronounced dead by the two doctors who tried to revive him.

Patricia Bureau Alvarez, Trooper Bureau's daughter, has worked with staff at the Department of Public Safety Standards and Training (DPSST) for more than a year on this nomination. Ms Alvarez has submitted newspaper articles, a Final Order from the State Accident Insurance Commission, and an affidavit from her mother, Beatrice Bureau Bentson. Ms Alvarez has also sent many e-mails and letters to DPSST. All of these documents support the tragic loss of Trooper Bureau due to a heart attack.

The Final Order issued by the State Accident Insurance Commission on November 5, 1959 finds that Trooper Bureau was "fatally injured as a result of accidental injury arising out of and in the course of employment." The affidavit issued by Beatrice Bureau Bentson indicates that Trooper Bureau "had to change a flat tire on a patrol car on his way back to the State Police Headquarters after his patrol duty that day. He complained of pain in his arm and chest area." Mrs. Bentson also indicates that her husband was "injured in an incident wherein he had to wrestle with a prisoner in his patrol car. He was hospitalized and he was diagnosed as having sustained a brachial plexus injury. I now believe that he had suffered a heart attack that was improperly diagnosed."

While working with OSP retirees, DPST received an e-mail from Senior Trooper Butch Lamkin (Retired) who was stationed at the Grants Pass Patrol Office for most of his career. Trooper Lamkin stated that there was photo of Phil on the wall of the patrol office. A co-worker, Trooper Marvin Ritchie, told Trooper Lamkin that Bureau had returned to the office after covering a bad traffic crash and dropped dead in the front office.

Staff Recommendation: DPSST staff has done extensive work on this nomination for over a year. Active and retired members of OSP were enlisted to assist in the investigative process. OSP has no official documentation of Trooper Bureau's death as being in the line of duty. DPSST staff does not diminish the many documents, e-mails, and letters Ms Alvarez and her family have submitted on her father's behalf but they do not provide clear and convincing evidence that the death was in the line of duty. Retired Sr. Trooper Lamkin's email is telling but we have been unable to corroborate the information.

Based on the information we have received to date, we believe the death DOES NOT meet 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.

While the documents submitted clearly indicated Trooper Bureau died of a heart attack we cannot make a clear connection to line of duty death.

Action Items: Determine whether Trooper Bureau’s name will be included on the Law Enforcement Memorial Wall based on the information received.

Attachments:

- A) Grants Pass Newspaper clippings - August 28, 1959
- B) Affidavit – Beatrice Bureau Bentson – March 28, 2009
- C) Correspondence from Patricia Bureau Alvarez – April 2, 2008
- D) Correspondence to Patricia Bureau Alvarez from DPSST – April 18, 2008
- E) Correspondence (E-Mail) from Patricia Bureau Alvarez – July 10, 2008
- F) Correspondence (E-Mail) from Patricia Bureau Alvarez – September 7, 2008
- G) Correspondence from Patricia Bureau Alvarez – July 23, 2008
- H) Correspondence from Patricia Bureau Alvarez – April 3, 2009
- I) Correspondence (E-Mail) from Butch Lamkin – May 1, 2009
- J) State Accident Insurance Commission – Final Order – November 3, 1959
- K) National Institute of Neurological Disorders and Stroke – Brachial Plexus Information

259-008-0100

Miscellaneous Activities of the Board or Department

(7) In accordance with the Oregon Revised Statutes the Board, in consultation with the Department, designates the following classifications of public safety personnel killed in the line of duty who may be honored at the Law Enforcement Memorial Wall.

(a) Eligibility

(A) For the purpose of placing names, law enforcement officer includes, as defined in ORS 181.610, police officer, reserve officer, corrections officer, and parole and probation officer. Also included are federal law enforcement officers assigned to or performing law enforcement duties in Oregon.

(b) Criteria for placement on the Law Enforcement Memorial Wall:

(A) Officers who suffered an "in-the-line-of-duty" death.

(i) “In the line of duty death” means 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.

(ii) A fatal injury may include a medical condition which arises out of law enforcement actions or training for enforcement action or emergency response causing an officer's death immediately or within 24 hours or causing her/his death during a continuous period of hospitalization resulting from a law enforcement action.

(iii) Not included under this definition are deaths attributed to natural causes (except when a medical condition arises out of law enforcement action or law enforcement training for enforcement action or emergency response causing an officer's death immediately or within 24 hours or causing his/her death during a continuous period of hospitalization immediately following the taking of law enforcement action). Deaths attributed to voluntary alcohol or controlled substance abuse, deaths caused by the intentional misconduct of the officer, deaths caused by the officer's intention to bring about his or her own death, and deaths attributed to an officer performing his/her duty in a grossly negligent manner at time of death are not included under this definition.

(iv) When there is doubt arising from circumstances of the officer's death or with respect to individual status as a law enforcement officer, the matter shall be resolved by a majority vote of the Board on Public Safety Standards and Training Executive Committee.

(c) Exclusions from the Law Enforcement Memorial Wall:

(A) Officers whose deaths are attributed to natural causes are not eligible for inclusion in the wall; or

(B) A death that is attributed to the officer's voluntary alcohol or substance abuse use; or

(C) Death caused by intentional misconduct of the officer; or

(D) Death caused by the officer's intention to bring about his or her own death; and

(E) Death attributed to an officer performing his or her duty in a grossly negligent manner at the time of death.

(d) When there is doubt arising from the circumstances of the officer's death or with respect to the individual status as a law enforcement officer, the matter shall be resolved by a majority vote of the Executive Committee.

(e) The costs of maintenance and relocation of the Law Enforcement Memorial Wall and the costs of an annual memorial service honoring persons killed in the line of duty shall be paid out of the Police Memorial Trust Fund.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0080; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98