

# Corrections Policy Committee Minutes February 14, 2012

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, February 14, 2012, in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. The executive session was held pursuant to ORS 192.660(2)(f) for the purpose of considering information or records that are exempt by law from public disclosure. Chair Todd Anderson called the meeting to order at 1:36 p.m.

## **Attendees:**

### **Committee Members:**

Todd Anderson, Oregon State Sheriff's Association, Chair  
Tom Cramer, Department of Corrections Training Division Director  
Erik Douglass, Non-Management Corrections Officer  
Michael Gower, Designee for Director of Department of Corrections  
Nancy Howton, Department of Corrections Security Manager  
Joseph Pishioneri, Non-Management Law Enforcement  
Amanda Rasmussen, Non-Management Corrections Officer  
Ida Rovers, Department of Corrections, Women's Correctional Facility  
Lisa Settell, Parole and Probation Officer  
Diana Simpson, Oregon State Sheriff's Association  
Jeff Wood, Oregon Association of Community Corrections Directors  
Linda Yankee, Oregon Sheriff's Jail Command Council

### **Committee Members Absent:**

Barbara Shipley, Oregon Sheriff's Jail Command Council  
Brian Burger, Department of Corrections AFSCME Representative

### **Guests:**

Robert Gable, Department of Corrections

### **DPSST Staff:**

Eriks Gabliks, Director  
Carolyn Kendrick, Administrative Specialist  
Marilyn Lorance, Standards and Certifications Supervisor  
Theresa King, Professional Standards Coordinator/Investigator  
Leon Colas, Professional Standards Coordinator/Investigator  
Kristy Witherell, Office Specialist II  
Karen Evans, Investigator Trainer  
Teresa Plummer, Private Security/Investigators Supervisor  
Suzzane Weinert, Compliance Specialist II



## **1. Minutes (November 8, 2011)**

Approve the minutes of the November 8, 2011 Corrections Policy Committee meeting.

See Appendix A for details.

*Michael Gower reminded the committee members of the importance of reviewing the minutes in their entirety prior to voting approval.*

- *Michael Gower moved that the committee approve the minutes of the November 8, 2012 Corrections Policy Committee meeting. Diana Simpson seconded the motion. The motion carried unanimously.*

2. Quarterly Review of DOC BCC by the DPSST Audit Team

Presented by Theresa King

See Appendix B for details

*Committee members stated appreciation of the relationship and partnership between the Department of Corrections and DPSST.*

*The policy committee agrees with staff's presentation of the Quarterly Review of Department of Corrections Basic Corrections Course.*

3. Fallen Law Enforcement Officer Memorial Wall Nomination- Buddy Herron, DOC/ EOCI

Presented by Eriks Gabliks

See Appendix C for details.

- *Diana Simpson moved that the Corrections Policy Committee recommend to the Executive Board the approval of adding Buddy Ray Herron's name to the Law Enforcement Memorial Wall. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

4. Status Update – Ron Hager

Regarding proposed denial of certification

Presented by Marilyn Lorange

See Appendix D for details.

- *Marilyn Lorange summarized the background for Ron Hager's request that information regarding his withdrawn professional standards case be included in the record of Committee minutes.*

5. Ryan M. Fernandez, Marion County Sheriff's Office – DPSST #45198

Presented by Leon Colas

See Appendix E for details.

- *Michael Gower moved that the Corrections Policy Committee adopts the Staff report as the record upon which its recommendations are based. Joe Pishioneri seconded the motion. The motion carried unanimously.*

- By discussion and consensus:
  - a. Identify and articulate the misconduct that is specific to this case. **Truthfulness issues.** *FERNANDEZ was subpoenaed to appear as a witness in court but did not show stating he could not get time off work. Improper release of inmate. Improperly accessed LEADS for personal use.*
  - b. The identified conduct ***did*** involve **Dishonesty based on untruthfulness regarding failure to appear in court and not working when he said he was.**
  - c. The identified conduct ***did*** involve a **Disregard for the Rights of Others based on failure to appear in court which caused a delay of trial. Did not fulfill his duties to protect and serve; use of other coworker's access code into LEADS.**
  - d. The identified conduct ***did*** involve **Misuse of Authority through the use of LEADS for personal use; used the color of the badge as latitude to get out of a subpoena to appear in court.**
  - e. The identified conduct ***did*** involve **Gross Misconduct based on the violation of inmate release procedure.**
  - f. The identified conduct ***did*** involve **Misconduct when he violated the practice or standard normally followed by public safety personnel when being subpoenaed to appear in court.**
  - g. The identified conduct ***did*** involve **Insubordination when he failed to appear in court when subpoenaed; he violated the general order of the agency three times.**
  
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee noted as aggravating circumstances the fact that FERNANDEZ lied about working so he didn't have to appear in court, he changed his story about where he was that day, and he lied in the letter to DPSST about the reason he resigned from his position. FERNANDEZ had multiple incidents of discipline in his personnel file.*

*No mitigating circumstances were identified.*

- *Michael Gower moved that the Corrections Policy Committee finds FERNANDEZ's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Nancy Howton seconded the motion. The motion carried unanimously.*
  
- *Michael Gower moved that the Corrections Policy Committee recommends to the Board that FERNANDEZ's misconduct encapsulated all six of the categories noted above with a focus on the highest end of the Dishonesty category- a lifetime disqualifier; FERNANDEZ may never reapply for certification. Linda Yankee seconded the motion. The motion carried unanimously.*

6. **Robert A. Gable, Department of Corrections – DPSST #48832**  
Presented by Leon Colas

See Appendix F for details.

- *Diana Simpson moved that the Corrections Policy Committee adopts the Staff report as the record upon which its recommendations are based. Amanda Rasmussen seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify and articulate the misconduct that is specific to this case. *GABLE was convicted of contempt of court following a domestic violence conviction in February of 2010. He was also convicted of reckless driving in August of 2010.*
  - b. The identified conduct did not involve **Dishonesty**.
  - c. The identified conduct did involve a **Disregard for the Rights of Others based on his contempt of court charge and his road rage incident that potentially put everyone on the road in danger.**
  - d. The identified conduct did not involve **Misuse of Authority**.
  - e. The identified conduct did involve **Gross Misconduct based on his reckless driving which created a risk to property and persons on the road; violation of the code of ethics.**
  - f. The identified conduct did involve **Misconduct with his contempt of court conviction.**
  - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee noted as mitigating circumstances that GABLE maintained employment throughout his convictions of contempt of court and reckless driving. GABLE has taken full responsibility for his behavior and has taken the appropriate steps to change it. GABLE submitted letters of reference to his employer and DPSST to support his change in behavior. GABLE did not notify his agency of both convictions the day after they occurred. The committee noted that there was a misunderstanding in the details of the no contact order that led to the contempt conviction.*

*The committee noted as aggravated circumstances that GABLE disregarded the rights of others with the domestic violence conviction in the presence of a child.*
- *Michael Gower moved that the Corrections Policy Committee finds GABLE's conduct does not rise to the level to warrant the revocation of his certifications(s) and,*

*therefore, recommends to the Board that these certification(s) not be revoked. Diana Simpson seconded the motion. The motion carried unanimously.*

**7. Douglas S. Hawker, Department of Corrections – DPSST #36735 –PULLED FROM AGENDA**

**8. Christopher L. Hill, Department of Corrections – DPSST #45247**

Presented by Leon Colas

See Appendix H for details.

- *Nancy Howton moved that the Corrections Policy Committee adopts the Staff report as the record upon which its recommendations are based. Diana Simpson seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify and articulate the misconduct that is specific to this case. *Hill was convicted two separate times within a thirteen month period of DUII. He was also convicted with DWS. He was dishonest with the arresting officer on the second DUII and DWS conviction.*
  - b. The identified conduct did involve *Dishonesty based on HILL lying to the arresting officer about having a valid driver's license. HILL told the officer that he left the license at home; he gave the officer an expired temporary license and a passport. He was also dishonest about having current insurance on the vehicle.*
  - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
  - d. The identified conduct did not involve **Misuse of Authority**.
  - e. The identified conduct did involve **Gross Misconduct based on having two DUII convictions in thirteen months.**
  - f. The identified conduct did involve **Misconduct based on having a DWS conviction which was a violation of HILL's probation.**
  - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee identified as aggravating circumstances HILL had been addressed by his agency on multiple occasions for his conduct. HILL failed to respond to DPSST's letter. HILL did not report his DUII to his agency. HILL was convicted of two DUII's in one year.*

*No mitigating circumstances were identified*

- *Amanda Rasmussen moved that the Corrections Policy Committee finds HILL's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Diana Simpson seconded the motion. The motion carried unanimously.*
- *The Corrections Policy Committee voted on the categories listed below and recommends to the Board that HILL's conduct receive the following periods of ineligibility:*

Category I: Dishonesty (5 years to Lifetime). *Diana Simpson moved that the Corrections Policy Committee recommend to the Board a lifetime revocation based on dishonesty. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

Category IV: Gross Misconduct (5 years to 10 years). *Diana Simpson moved that the Corrections Policy Committee recommend to the Board a 5 year revocation based on gross misconduct. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

Category V: Misconduct (3 years to 7 years). *Diana Simpson moved that the Corrections Policy Committee recommend to the Board a 3 year revocation based on misconduct. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

*Since the Corrections Policy Committee voted for the highest level of the Dishonesty category—a lifetime disqualifier, HILL may never reapply for certification.*

#### **9. Robert L. Myers, Department of Corrections – DPSST #42937**

Presented by Leon Colas

*See Appendix I for details.*

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Michael Gower seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue: *MYERS misused his agency computer and email. MYERS used derogatory references toward supervisors and coworkers. MYERS attempted to coerce coworkers into deleting incriminating emails. Dishonesty in regards to MYERS calling in sick when he was not.*
  - b. The identified conduct did involve *Dishonesty in regards to MYERS' use of sick time when he was not sick.*
  - c. The identified conduct did involve a *Disregard for the Rights of Others based on MYERS' derogatory comments about supervisors and coworkers. MYERS violated the agency's code of ethics. MYERS became distracted from his duties which put inmates and coworkers in danger.*

- d. The identified conduct did involve **Misuse of Authority in regards to MYERS accessing and using the AS400 for personal use. MYERS looked up information for a person who did not have access to the AS400.**
- e. The identified conduct did involve **Gross Misconduct based on MYERS' not using work time effectively, creating a danger/risk to inmates and staff.**
- f. The identified conduct did involve **Misconduct based on the content of emails and destroying emails.**
- g. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted the flavor of the letter MYERS wrote as an aggravating circumstance. The only mitigating circumstance the committee noted is the emails appeared to stop after MYERS was addressed by his Captain.*
- *Diana Simpson moved that the Corrections Policy Committee finds MYERS' conduct did rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Linda Yankee seconded the motion. The motion carried unanimously.*
- *The Corrections Policy Committee voted on the categories listed below and recommends to the Board that MYERS' conduct receive the following periods of ineligibility:*

Category I: Dishonesty (5 years to Lifetime). *Joe Pishioneri moved that the Corrections Policy Committee recommend to the Board a lifetime revocation based on dishonesty. Ida Rovers seconded the motion. The motion carried unanimously.*

Category II: Disregard for the Rights of Others (5 years to 15 years). *Joe Pishioneri moved that the Correction Policy Committee recommend to the Board a 5 year revocation based on disregards of the rights of others. Ida Rovers seconded the motion. The motion carried unanimously.*

Category III: Misuse of Authority (5 years to 10 years). *Joe Pishioneri moved that the Corrections Policy Committee recommend to the Board a 5 year revocation based on misuse of authority. Ida Rovers seconded the motion. The motion carried unanimously.*

Category IV: Gross Misconduct (5 years to 10 years). *Joe Pishioneri moved that the Corrections Policy Committee recommend to the Board a 5 year revocation based on gross misconduct. Ida Rovers seconded the motion. The motion carried unanimously.*

Category V: Misconduct (3 years to 7 years). *Joe Pishioneri moved that the Corrections Policy Committee recommend to the Board a 5 year revocation based on misconduct. Ida Rovers seconded the motion. The motion carried unanimously.*

*Since the Corrections Policy Committee voted for the highest level of the Dishonesty category—a lifetime disqualifier, MYERS may never reapply for certification.*

**10. Ubaldo S. Perez, Department of Corrections – DPSST #48545**

Presented by Leon Colas

See Appendix J for details.

- *Diana Simpson moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Michael Gower seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue: *PEREZ was in violation of the law when he was convicted of DUII and driving while suspended.*
  - b. The identified conduct did not involve **Dishonesty**.
  - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
  - d. The identified conduct did not involve **Misuse of Authority**.
  - e. The identified conduct did not involve **Gross Misconduct**.
  - f. The identified conduct did involve **Misconduct based on PEREZ's driving while suspended violation**.
  - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted as mitigating circumstances that PEREZ took responsibility for his DUII conviction and he successfully completed diversion. PEREZ also wrote a letter informing his supervisor of his DUII and DWS the day after it occurred.*
- *Nancy Howton moved that the Corrections Policy Committee finds PEREZ's conduct did not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Lisa Settell seconded the motion. The motion carried unanimously.*

**11. Matthew W. Wilson, Department of Corrections – DPSST #31753**

Presented by Leon Colas

See Appendix G for details.

- *Michael Gower moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Joe Pishioneri seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the misconduct that is at issue: *WILSON was convicted of DUI in February of 2007.*
  - b. The identified conduct did not involve **Dishonesty**.
  - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
  - d. The identified conduct did not involve **Misuse of Authority**.

- e. The identified conduct did involve **Gross Misconduct based on WILSON's DUI conviction.**
- f. The identified conduct did not involve **Misconduct.**
- g. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted as mitigating circumstances that WILSON complied with all that was necessary for the DUI conviction. It has been 5 years since the conviction and WILSON has had no further issues. The policy committee noted as an aggravating circumstance the fact that WILSON was burping during BAC testing to give a false read.*
- *Michael Gower moved that the Corrections Policy Committee finds WILSON's conduct did not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Erik Douglass seconded the motion. The motion carried unanimously.*

## **12. Richard W. Wilson, Marion County Sheriff's Office – DPSST #49156**

Presented by Leon Colas

*See Appendix H for details.*

- *Michael Gower moved to ask Marion County for more information on the case. Linda Yankee seconded the motion. The motion carried unanimously.*

## **13. Additional Business**

Director's Report

There are a number of new faces around the table. Linda Yankee joins us as the new Sheriff's Jail Command Council representative. She takes the place of Raimond Adgers who was termed out. Linda is also from Multnomah County Sheriff's Office. Joe Pishioneri is from Lane County Sheriff's Office. He is a Deputy in the Corrections Division. Joe is the committee's new non-management representative and he is taking the place of David Nielsen. Ida Rovers has served two terms and cannot serve a third so this is her last meeting. The committee is working with Amanda Rasmussen to find a replacement. Tami Jackson has been selected to take Ida's place. Tami be going in front of the Board at the April meeting. Tami will come on board at the May meeting as the Department of Corrections, Women's Correctional Facility representative. Todd approved her nomination this morning, so we'll have that on the Board agenda.

Sheriff Simpson appeared in front of the Senate Rules Committee last Friday for her nomination and confirmation as one of the two new Sheriff's Association representatives on the Board. That is moving forward, so she will move seats but she will still remain on this committee as one of the Board members.

Todd Anderson has retired but he has stayed on the Board until the confirmation process has been completed. Todd's term will end March 1 and Sheriff Simpson will start on March 1<sup>st</sup>.

In the back of the room, DPSST staff from Private Security and Private Investigation has been sitting in on this and other committee meetings to see how they are run so they can get a feeling for the process.

Last Friday, our staff met with the Certification Matrix Group. Amanda and Jeff were in on that meeting. The group talked about the intermediate and advanced matrix and what it takes to move up in the chart. We have not looked at the chart in more than 15 years. The group will disseminate that information to all of the stakeholder groups to see if there is any feedback which you will probably see at your next meeting in May. Corrections, Parole and Probation, and Law Enforcement will be in the same matrix and Telecommunication will be in a separate matrix.

The new Basic Corrections class is currently in session. We are using the 6-week format that the Corrections policy Committee approved at the end of last year. The class is at the mid-point and everything seems to be working well. There is a lot more hands on training with the new 6-week curriculum. There will be a report at the next meeting on the success of the new format.

There has been some consternation in POL/ COR, also known as Police to Corrections Class. This is for Officers or Deputies who have law enforcement certification but also have interest in having corrections certification and/ or training. A lot of interest has come from Lebanon and Springfield police which have city jails that sometimes augment them with police officers. They would come to this 2-week class as well as counties that may be losing deputies due to layoffs that have outdated correction certification. The consternation is two-part; first, is the training class itself. Second is getting certified if you complete the class as a corrections officer as well as a police officer. The certification standard requires that the officer or deputy go through another physical exam because they have to meet the entry standard of the basic officer. One of the issues is the cost of having incumbent officers, some of which are command staff, get another medical evaluation. Some will result in waivers coming in front of the policy committee because some of the officers/deputies have been working for 20 to 25 years and their vision or hearing may not be what it once was when they first started their career. DPSST wanted to share this information with the committee to see if there are any questions, concerns, or thoughts. The class doesn't have a physical element, so it is not a requirement to have a physical exam prior to signing up for the class. If a person wants to take the class and subsequently become multidiscipline-certified, they are required to have a current physical in order to meet the standard. It would take a rule change to say that somebody could transfer disciplines without meeting the minimum physical standard for basic certification. Diana Simpson offered to work with Marilyn Lorange on this issue.

Sadly, this is Carolyn Kendrick's last meeting with us. She has accepted a position with the Department of Justice. Kristy Witherell is filling in on a temporary basis. For those of you outside the state, we cannot fill Carolyn's position until she is gone and that is only if a state panel approves our request.

The next Policy Committee meeting is scheduled during the Law Enforcement Memorial. The meeting will begin at 9:00am instead of 1:30pm.

Starting March 1<sup>st</sup>, the Corrections Policy Committee will not have a chair or a vice chair. The chair and the vice chair have to be Board members. You have the choice in selecting Brian Burger, Diana Simpson, Lisa Settell or the Director of DOC.

*Michael Gower moved to recommend Diana Simpson as the new chair. Nancy Howton seconded the motion. The motion carried unanimously. Michael Gower moved to recommend Lisa Settell as the new vice chair. Ida Rovers seconded the motion. The motion carried unanimously.*

**14. Next Scheduled Meeting – May 8, 2012 at 9:00am.**

*With no further business before the committee, the meeting adjourned at 3:47p.m.*

## Appendix A

# Corrections Policy Committee Minutes November 8, 2011

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting and executive session on Tuesday, November 8, 2011, in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. The executive session was held pursuant to ORS 192.660(2)(f) for the purpose of considering information or records that are exempt by law from public disclosure. Chair Todd Anderson called the meeting to order at 1:33 p.m.

### **Attendees:**

#### **Committee Members:**

Todd Anderson, Oregon State Sheriff's Association, Chair  
Brian Burger, Department of Corrections AFSCME Representative  
Erik Douglass, Non-Management Corrections Officer  
Michael Gower, Designee for Director of Department of Corrections  
Amanda Rasmussen, Non-Management Corrections Officer  
Ida Rovers, Department of Corrections, Women's Correctional Facility  
Lisa Settell, Parole and Probation Officer  
Diana Simpson, Oregon State Sheriff's Association  
Barbara Shipley, Oregon Sheriff's Jail Command Council  
Jeff Wood, Oregon Association of Community Corrections Directors

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

Raimond Adgers, Oregon Sheriff's Jail Command Council  
Tom Cramer, Department of Corrections Training Division Director  
Nancy Howton, Department of Corrections Security Manager

#### **Guests:**

Sean Riddell, Oregon Department of Justice  
Rob Kendall, Department of Corrections, Professional Development Unit

#### **DPSST Staff:**

Eriks Gabliks, Director  
Tammera Hinshaw, Executive Assistant  
Marilyn Lorance, Standards and Certifications Supervisor  
Theresa King, Professional Standards Coordinator/Investigator  
Bob Sigleer, DOC-BCC Auditor  
Leon Colas, Professional Standards Coordinator/Investigator  
Linsay Hale, Rules and Compliance Coordinator  
Sharon Huck, Job Task Analysis Coordinator  
Roger Eaton, Captain Survival Skills  
Ray Rau, Captain Academy Training  
Ryan Keck, Training Coordinator  
Kim Fulton, Training Coordinator



*Introductions of new committee members and meeting attendees were made.*

**1. Minutes (August 9, 2011)**

Approve the minutes of the August 9, 2011 Corrections Policy Committee meeting.

See Appendix A for details.

- *Michael Gower moved that the committee approve the minutes of the August 9, 2011 Corrections Policy Committee meeting. Diana Simpson seconded the motion. The motion carried unanimously.*

**2. Quarterly Review of DOC BCC by the DPSST Audit Team**

Presented by Theresa King

See Appendix B for details

*The policy committee agrees with staff's presentation of the Quarterly Review of Department of Corrections Basic Corrections Course.*

**3. BCL Expansion Overview**

Presented by Ryan Keck and Ray Rau

*Supporting materials are available for viewing upon request.*

The curriculum expansion if approved will extend the Basic Local Corrections Academy to six weeks rather than five. This has been a collaborative effort between DPSST and constituents across the state. This is a contemporary proficiency based program grounded in validated adult learning principals and aimed at improving student comprehension, job performance, and career confidence.

- *Diana Simpson moved that the Corrections Policy Committee recommend to the Board the approval of the new and improved Basic Corrections Local curriculum expansion. Michael Gower seconded the motion. The motion carried unanimously.*

**4. OAR 259-008-005 – Proposed Rule**

Definitions

Presented by Linsay Hale

See Appendix C for details.

- *Diana Simpson moved that the Corrections Policy Committee recommend to the Board filing the proposed language for OAR 259-008-0005 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Michael Gower seconded the motion. The motion carried unanimously.*

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

**5. OAR 259-008-0066 – Proposed Rule**

Maintenance of Certification for Part-Time Parole and Probation Officers

Presented by Linsay Hale

See Appendix D for details.

- *Michael Gower moved that the Corrections Policy Committee recommend to the Board filing the proposed language for OAR 259-008-0066 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Diana Simpson seconded the motion. The motion carried unanimously.*

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

**6. OAR 259-008-0100 – Proposed Rule**

Miscellaneous Activities of the Board or Department

Presented by Linsay Hale

See Appendix E for details.

- *Amanda Rasmussen moved that the Corrections Policy Committee recommend to the Board filing the proposed language for OAR 259-008-0100 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Lisa Settell seconded the motion. The motion carried unanimously.*

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

**7. Remediation of Skills Deficiencies**

Presented by Marilyn Lorance

See Appendix F for details.

*Staff is requesting policy guidance from the Corrections Policy Committee regarding appropriate time frame for remediation of deficient students of basic academies.*

- *Michael Gower moved that the Corrections Policy Committee recommends to the Board the approval of a six month remediation requirement for deficient students. Jeff Wood seconded the motion. The motion carried unanimously.*

*The Policy Committee convened in Executive Session at 2:18 p.m. to discuss matters exempt from public disclosure relating to the Pitman and Romayor cases and re-convened in Regular Session at 2:37 p.m. to take action on matters relating to said cases.*

**8. James Pitman – DPSST #22603**

Presented by Marilyn Lorance

See Appendix G for details.

- *Michael Gower moved that the Corrections Policy Committee recommends to the Board the approval of the proposed new order as written and that it be moved forward. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

9. **Reyes Romayor – DPSST #35861**

Presented by Marilyn Lorance

See Appendix H for details.

*Diana Simpson moved that the Corrections Policy Committee recommend to the Board the approval of the amended proposed order as written and that it be moved forward. Ida Rovers seconded the motion. The motion carried unanimously.*

10. **Stacie M. Bates, Oregon Department of Corrections – DPSST #37856**

Presented by Leon Colas

See Appendix I for details.

*Amanda Rasmussen and Michael Gower abstained from voting in this case.*

- *Diana Simpson moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Lisa Settell seconded the motion. The motion carried with Amanda Rasmussen and Michael Gower abstaining.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue:  
*Blatant insubordination—BATES had been talked to numerous times about boundary issues and dishonesty.*
  - b. The identified conduct did involve **Dishonesty**.  
*Dishonest by misleading and changing the facts (i.e. The incident where BATES wasn't supposed to talk to the inmate but went to the fence and spoke to him there and then tried to explain it wasn't as it appeared). BATES received permission to go across the street from OIC to see a staff member however met with an inmate instead. There is no reason for a staff member to leave a unit and then talk to inmate with whom the investigation was being conducted. This is also a form of dishonesty. In addition, it was stated the purpose for going to that unit was to conduct a check, however that check was not logged which is one more piece of deception.*
  - c. The identified conduct did not involve a **Disregard for the Rights of Others**
  - d. The identified conduct did involve **Misuse of Authority**.  
*Any time a position is used for some kind of personal gain it is a misuse of authority. With the emphasis of the Prison Rape Elimination Act, it should be quite plain to professionals that they cannot interact in personal relationships with clients or wards.*
  - e. The identified conduct did involve **Gross Misconduct based in gross deviation in the standard of care**. *Favoritism sets up both the guard and the inmate involved for possible dangerous situations from other inmates.*
  - f. The identified conduct did involve **Misconduct based on the conversation with the corporal which appears to be an admission of misconduct**.

- g. The identified conduct did involve **Insubordination**. *It is clear insubordination is involved based on BATES' failure to comply with rules and orders which compromised the efficient and safe operation of the agency. BATES was talked to multiple times about boundary issues with inmates.*
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee noted the letter BATES wrote is an aggravating circumstance in that she takes no responsibility and blames others. No mitigating circumstances were identified.*
  - *Erik Douglass moved that the Corrections Policy Committee finds BATES' conduct does rise to the level to warrant the revocation of her certification(s), and therefore recommends to the Board that these certification(s) be revoked. Lisa Settell seconded the motion. The motion carried unanimously with Amanda Rasmussen and Michael Gower abstaining.*
  - *The Corrections Policy Committee voted on the categories listed below and recommends to the Board that BATES conduct receive the following periods of ineligibility:*
    - Category I: Dishonesty (5 years to Lifetime). *Diana Simpson moved that the Corrections Policy Committee recommend to the Board a lifetime revocation based on dishonesty. Ida Rovers seconded the motion. The motion carried unanimously with Amanda Rasmussen and Michael Gower abstaining.*
    - Category III: Misuse of Authority (5 years to 10 years). *Lisa Settell moved that the Corrections Policy Committee recommend to the Board a 10 year revocation based on misuse of authority. Diana Simpson seconded the motion. The motion carried unanimously with Amanda Rasmussen and Michael Gower abstaining.*
- Diana Simpson moved that the Corrections Policy Committee recommend to the Board the BATES's misconduct encapsulated the highest end of Categories IV, V, and VI, the maximum time of ineligibility being 10 years. Jeff Woods seconded the motion. The motion carried unanimously with Amanda Rasmussen and Michael Gower abstaining*
- Category IV: Gross Misconduct (5 years to 10 years).
  - Category V: Misconduct (3 years to 7 years).
  - Category VI: Insubordination (3 years to 7 years).

*Since the Corrections Policy Committee voted for the highest level of the Dishonesty category—a lifetime disqualifier, BATES may never reapply for certification*

## **11. David E. Johnson, Oregon Department of Corrections – DPSST #40979**

Presented by Leon Colas

See Appendix J for details.

*Amanda Rasmussen abstained from voting on this case.*

- ***Michael Gower moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Diana Simpson seconded the motion. The motion carried unanimously with Amanda Rasmussen abstaining.***
- By discussion and consensus:
  - a. Identify the conduct that is at issue: ***Dishonesty—JOHNSON was interviewed three times and omitted information which subsequently came forth. Misconduct—having sex on while on duty in the Transport Office on Department of Corrections property.***
  - b. The identified conduct ***did*** involve ***Dishonesty based on JOHNSON’S changing story and letter written by JOHNSON.***
  - c. The identified conduct ***did*** involve a ***Disregard for the Rights of Others based on horseplay and subjecting others to their behavior and the possible exposure to bio-hazardous material.***
  - d. The identified conduct ***did not*** involve ***Misuse of Authority.***
  - e. The identified conduct ***did*** involve ***Gross Misconduct based on lack of efficient operation of an agency and creating a risk with exposure to body fluids.***
  - f. The identified conduct ***did*** involve ***Misconduct based on deviant behavior, practices not followed by public safety professionals, and violation of the Public Safety Code of Ethics.***
  - g. The identified conduct ***did not*** involve ***Insubordination.***
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. ***The only mitigating circumstance identified by the committee is that the other participating party was a supervisor. The committee noted JOHNSON’s letter, not taking responsibility for conduct, minimizing the behavior, and the fact sexual acts occurred on state property, as very aggravating circumstances.***
- ***Michael Gower moved that the Corrections Policy Committee finds JOHNSON’s conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) be revoked. Jeff Woods seconded the motion. The motion carried unanimously with Amanda Rasmussen abstaining.***
- ***Michael Gower moved that the Corrections Policy Committee recommend to the Board that JOHNSON’s conduct reaches the highest level of the categories noted above with a focus on the highest end of the Dishonesty category—a lifetime disqualifier. JOHNSON may never reapply for certification. Ida Rovers seconded the motion. The motion carried unanimously with Amanda Rasmussen abstaining.***

## **12. Sheri L. McKague, Umatilla County Community Corrections – DPSST #31829**

Presented by Leon Colas

See Appendix G for details.

- ***Due to missing materials in the committee packets, Chair Todd Anderson asked staff to hold this case until the next meeting so that committee members can be provided with all pertinent information.***

**13. Damian E. Palominos, Washington County Sheriff's Office – DPSST #48092**

Presented by Leon Colas

See Appendix H for details.

- *Amanda Rasmussen moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Lisa Settell seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue: *Dishonesty regarding failure to respond to directives regarding his reports, neglect of duty and insubordination despite receiving coaching by supervisors.*
  - b. The identified conduct did involve **Dishonesty based on his indication of keeping reports he was directed to keep when PALAOMINOS recreated said reports. He was also dishonest when stated he had turned in reports when he had not.**
  - c. The identified conduct did not involve a **Disregard for the Rights of Others.**
  - d. The identified conduct did not involve **Misuse of Authority.**
  - e. The identified conduct did not involve **Gross Misconduct**
  - f. The identified conduct did not involve **Misconduct**
  - g. The identified conduct did involve **Insubordination based on receipt of clear directions and PALOMINOS' refusal to follow them.**
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted that Sheriff Gordon provided PALOMINOS a second chance which he refused to take, was given specific boundaries. He took no responsibility, continued to be dishonest, and placed blame on others were aggravating circumstances.*

*No mitigating circumstances were identified by the policy committee.*

- *Amanda Rasmussen moved that the Corrections Policy Committee finds PALOMINOS' conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) be revoked. Diana Simpson seconded the motion. The motion carried unanimously.*
- *Diana Simpson moved that the Corrections Policy Committee recommend to the Board that PALOMINOS' conduct reaches the highest level of the categories noted above with a focus on the highest end of the Dishonesty category; a lifetime disqualifier. PALOMINOS may never reapply for certification. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

**14. Hector B. Torres, Oregon Department of Corrections – DPSST #38280**

Presented by Leon Colas

See Appendix I for details.

- *Michael Gower moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Amanda Rasmussen seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue: *Commission of Oregon equivalent of DUII.*
  - b. The identified conduct did not involve **Dishonesty.**
  - c. The identified conduct did not involve a **Disregard for the Rights of Others**
  - d. The identified conduct did not involve **Misuse of Authority.**
  - e. The identified conduct did involve **Gross Misconduct based on act which creates a danger or risk to persons or property.**
  - f. The identified conduct did involve **Misconduct based on violation of the law.**
  - g. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted as mitigating circumstances that TORRES was cooperative during the arrest, honest, and reported it to his supervisor. The letter on file from Two Rivers Correctional Institution was also noted as a mitigating circumstance by the policy committee.*
- *Michael Gower moved that the Corrections Policy Committee finds TORRES' conduct does not rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) not be revoked. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

15. Shelly E. Zehner, Oregon Department of Corrections – DPSST #35122

Presented by Leon Colas

See Appendix J for details.

*Amanda Rasmussen abstained from voting on this case.*

- *Lisa Settell moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Diana Simpson seconded the motion. The motion carried unanimously with Amanda Rasmussen abstaining.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue: *Dishonesty in regards to ZEHNER's denial of her relationship with another officer and having sex on duty. Misuse of authority by virtue of the fact she was a supervisor having a relationship with a subordinate.*
  - b. The identified conduct did involve **Dishonesty based on denial of relationship with subordinate and having sex on duty. Her story changed during interviews.**
  - c. The identified conduct did involve a **Disregard for the Rights of Others based on bio-hazard issues for other people in the office.**

- d. The identified conduct did involve **Misuse of Authority based on fact she was a supervisor having a relationship with a subordinate at the work place.**
  - e. The identified conduct did involve **Gross Misconduct based on dereliction of duty, interfering with the efficient operation of the agency, and the gross deviation of the standard of practice by a public safety professional**
  - f. The identified conduct did involve **Misconduct based on deviation of standards normally followed by public safety professionals.**
  - g. The identified conduct did involve **Insubordination based on substantial breach of supervisory duties.**
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted as aggravating circumstances the fact that she was a Sergeant and should know better, ZEHNER did not provide documentation of mitigating circumstances, and was less than cooperative and forthright during the investigation. No mitigating circumstances were identified by the committee.*
  - *Diana Simpson moved that the Corrections Policy Committee finds ZEHNER's conduct does rise to the level to warrant the revocation of her certification(s), and therefore recommends to the Board that these certification(s) be revoked. Lisa Settell seconded the motion. The motion carried unanimously with Amanda Rasmussen abstaining.*
  - *Michael Gower moved that the Corrections Policy Committee recommend to the Board that ZEHNER's conduct reaches the highest level of all categories noted above, with a focus on the Dishonesty category—a lifetime disqualifier. ZEHNER may never reapply for certification. Ida Rovers seconded the motion. The motion carried unanimously with Amanda Rasmussen abstaining.*

## 15. Additional Business

### Directors Report

This is an historic date for this committee with the approval of an additional week and complete revision to the Basic Corrections course for local agencies. Chair Todd Anderson (also chair of the Board) and the Board has approved moving the correction's course revision/expansion to the Executive Committee for approval for the upcoming BCL class in January.

Joint Chiefs/Sheriff conference: DPSST handed out the Line of Duty Death Resource Guide. DPPST will also be having discussions with DOC, State Police, and Oregon Youth Authority about an uptick in public safety officer suicides and how we may possibly help mitigate that.

Sheriff Todd Anderson has retired but will still serve on the Board and Committees until a replacement is confirmed by Oregon State Sheriffs Association, the Governor, and the Senate.

Brian Burger joins this Committee and the Board, representing the largest bargaining unit within the Department of Corrections.

Barbara Shipley has replaced Marie Tyler on this committee representing the Oregon Jail Command Council.

Joseph Pishionery has been appointed to fill the remaining vacant non-management seat on this committee and will become a member once approved by the Board at its January 2012 meeting.

On a more challenging note, DPSST has been asked to prepare for a 10.5% reduction for February depending on where the state economy is. That equates to 2.6 million dollars. The only possible avenue to fulfilling this requirement is to lose staff. DPSST will meet with the Executive Committee to discuss the impact these reductions will have. Obviously, training is very important for what we provide to your agencies as are professional standards. We have to decide where we mitigate that impact and how to continue providing services as well as maintaining a 212 acre facility.

**16. Next Scheduled Meeting – February 14, 2011 at 1:30 p.m.**

*With no further business before the committee, the meeting adjourned at 4:11 p.m.*

## Appendix B

### Department of Public Safety Standards and Training

**DATE:** February 14, 2012  
**TO:** Eriks Gabliks, Director  
**THRU:** Marilyn Lorange  
Standards and Certification Manager  
**FROM:** Theresa M. King  
DOC BCC Audits Unit Coordinator

**SUBJECT:** Quarterly Review of DOC BCC by DPSST Audit Team

**Issue:**

Is the DOC BCC meeting the established standards for Basic Corrections Training?

**Background:**

The concept of Oregon Department of Corrections (DOC) providing its own training as an alternative to the DPSST 200-hour Basic Corrections Course (BCC) was proposed in the 2009 Governors' Recommended Budget as a cost saving for DOC. This concept was given statutory approval for a period of four years with the requirement that it meets or exceeds the DPSST BCC, that DPSST audit the DOC BCC and that DPSST provide a written report to the legislature in 2011.

*Since 2011, the Audit Team has provided the Corrections Policy Committee with quarterly updates of the DOC BCC. Within the quarterly updates, the Audit Team has identified areas in which the DOC BCC has met the minimum standards or has exceeded the minimum standard. In cases in which the DOC BCC has not met the minimum standards, the Audit Team has identified the areas of non-compliance and the required remedy.*

*During this reporting period, **October through December 2011**, the Audit Team conducted a series of audits of the DOC BCC, which included Administrative Records Audits and On-Site Training Audits. The results were provided to DOC Professional Development Unit (PDU). Each audit includes Audit Team determinations of whether the training did not meet the standards, met the standards, or exceeded the standards. Additional observations and recommendations were made in areas of concern.*

## **Audit Program Overview**

### **DOC BCC Training**

#### ***DOC BCC in-session classes***

*During this reporting period, DOC BCC began three new BCC. A total of 11 BCC classes were in some phase of the BCC during this reporting period.*

#### ***DOC BCC training completed***

*During this reporting period, it is not known how many students have completed the DOC BCC program and are now working on their Field Training Manual.*

#### ***DOC COD***

*During this reporting period, DOC submitted no applications for Career Officer Development (COD) to DPSST.*

#### ***DOC BCC testing results***

*During this reporting period, the cumulative average for Test #1 was 87%. To date, the cumulative average for Test #2 is not known at this time.*

### **DOC BCC Training Failures/Remediation**

#### ***Academic***

*DOC PDU reports no academic failures requiring remediation. The Audit Team was unable to verify this because BCC 037 Test 2 scores were not provided.*

#### ***Skills***

*The Student Training Report provided by DOC reports no skills failures requiring remediation. This report is not consistent with DPSST records or other information provided by DOC;*

- 1. Because PDU includes only Defensive Tactics and Reality Based Training as a skill, this report does not reflect the failures in the skills area of Firearms.*
- 2. Based on the Audit Team's notes, there were 11 Firearms failures during this reporting period.*
- 3. Based on the 2011 DOC Remediation records provided by PDU, there was one Defensive Tactics Failure during this reporting period.*

## **Compliance concern**

#### ***Firearms***

*During this reporting period ten firearms training days were audited. Three of the audits resulted in a "minimally meets." The Audit Team continued to identify concerns relating to the DOC firearms training and the resultant high rate of students unable to successfully qualify at the conclusion of the initial training.*

*During this reporting period there has been an improvement in the rate of firearms failures; from a 35% failure rate during the prior reporting period down to 20% in this reporting period, with an annual 29% rate in 2011. Discussions with DOC are ongoing in this area.*

### **Basic Corrections Certifications**

#### ***DOC BCC Basic Corrections certifications issued***

*During this reporting period DPSST has issued no Basic Corrections certifications to DOC BCC students. To date, DOC has submitted 27 Applications for Certifications for officers who have*

*attended the DOC BCC. However, these officers cannot be certified until their class notebooks have been approved.*

### ***DOC Class Notebooks***

*Oregon law requires correctional officers to certify within one year of the date of hire, unless a request for extension is approved.*

*In compliance with DPSST requirements, when the portion of BCC that DPSST oversees concludes its training, DOC PDU is required to prepare a Class Notebook that is submitted to DPSST. This Class Notebook a prerequisite for Basic Corrections certification. PDU has submitted class notebooks for the classes attended by the officers for whom certification has been requested. However, not all of the required notebook information has been received for those classes. The Audit Team and PDU continue to working together to resolve this issue.*

### ***DOC “Temporary Employees”***

*Issues relating to DOC’s use of temporary employees have resulted in non-compliance with the statute governing regarding the timeframe to begin training and obtain certification. A comprehensive analysis was provided to DOC PDU regarding this issue in August 2010.*

*In December, during a monthly DPSST/DOC meeting, these non-compliance issues were again addressed and information was provided to DOC to allow them to seek extensions for those out of compliance. To date there have been four extensions requested; these are currently under review and staff anticipates approving them.*

### ***Curriculum/Instructors***

#### ***Current Curriculum Updates***

*During this reporting there have been no curriculum update requests from PDU. PDU has been piloting a new Firearms Course and had anticipated submitting it for review and approval during this reporting period.*

#### ***2012 Curriculum***

*DOC PDU anticipates submitting their 2012 BCC for the Audit Team’s review and analysis in March, in preparation for the May CPC meeting, with a July 1, 2012 implementation date.*

#### ***Instructor Training and Certification***

##### ***Instructor Development Courses***

*DOC PDU has delivered one Defensive Tactics and Reality Based Training class and one Field Training Officer class within this reporting period.*

#### ***Instructor Applications***

*A total 369 DOC instructors are now certified for the BCC program.*

### ***Audits***

#### ***Training On-Site Audits***

*During this reporting period, the Audit Team conducted 46 multi-day training on-site audits. Training on-site audits included observation of the training, review of the lesson plans, student handout materials, instructor presentation, student participation, and related areas. In general the DOC BCC training meets the state standards and in some*

*areas exceeds the state standards. There were instances in which the training did conditionally or minimally met the standard and remediation was required.*

### **Administrative Records Audits**

During this reporting period, the Audit Team began the process of two administrative records audits. Administrative records audits include reviewing the timekeeping records and shift assignments of both the trainees and the trainers, as well as training documentation. The two audits included **BCC 018** (Eastside) and **BCC 017** (Westside). However, not all of the information requested from DOC PDU has been provided, so the audits remain incomplete at this time.

### ***CORPAT Data Collection:***

*During this reporting period, three additional CORPAT were delivered for purposes of data collection.*

### ***Findings***

*In general the DOC BCC **meets** the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than the Department of Corrections, and exceeds the minimum standards in some areas; compliance concerns continue to be worked through on a case-by-case basis with DOC.*

## **Appendix C**

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

**Date:** December 20, 2011  
**To:** BPSST/DPSST Corrections Policy Committee  
**From:** Eriks Gabliks, Director  
**Subject:** Fallen Law Enforcement Officer Memorial Wall Nomination  
Officer Buddy Ray Herron – Department of Corrections - EOCI

#### **Background**

Officer Buddy Ray Herron (DPSST #49116) of the Department of Corrections/Eastern Oregon Correctional Institution was in route to work on November 28, 2011 when he stopped to assist a stranded motorist when he was fatally stabbed. The suspect was later apprehended. Officer Herron, age 42, leaves behind a wife and four children.

Buddy Ray Herron was a Corrections Officer with the Oregon Department of Corrections/Eastern Oregon Correctional Institution from 2007 to 2011. Before moving to Oregon, Officer Herron had served with the Arizona Department of Corrections for 12 years. Officer Herron had served in the United States Navy and was also a volunteer firefighter with the Helix (Oregon) Fire District.

In an email sent to members of the Public Safety Memorial Fund Board on December 1, 2011, DOC Director Max Williams said “Buddy was performing the duties as were both expected and required in fulfilling his public safety obligations and acting consistent with DOC's expectations of a public safety professional”.

#### **Staff Recommendation**

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

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

Determine whether Officer Buddy Ray Herron’s name will be added to the Oregon Fallen Law Enforcement Officer Memorial.

#### **OAR 259-008-0100 – Oregon Law Enforcement Officer Memorial** **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

## Appendix D

### Memorandum

**Date:** February 14, 2012

**To:** Corrections Policy Committee

**From:** Marilyn Lorange, Manager  
Standards and Certification Program

**Subject:** Status update re Ron Hager - proposed denial of certification

#### **Background:**

In August 2011 the Corrections Policy reviewed a professional standards case involving Ronald Hager, who was employed at that time by the Confederated Tribes of the Warm Springs in a certifiable corrections position. Based on the information provided, the Committee unanimously recommended the denial of his certification. Subsequent to that recommendation, the following occurred:

- DPSST served Mr. Hager with a Notice of Intent to Deny Certification;
- He requested a hearing to contest the information presented and the CPC recommendation.
- The CPC recommendation was included on the agenda for the October 27, 2011 meeting of the full Board, which approved the Committee's recommendation.
- During this period Mr. Hager was separated from employment in his certifiable position.
- Mr. Hager does not currently hold public safety certification in Oregon, and therefore DPSST no longer has jurisdiction over the matter reviewed by the CPC.
- The Notice of Intent to Deny Certification was withdrawn, and no hearing will be held at this time because there is no matter within DPSST jurisdiction.
- After receiving DPSST's Withdrawal of Notice, Mr. Hager provided additional information to DPSST Director Gabliks in a letter dated October 31, 2011, with attachment from Arizona Superior Court, Pima County.
- I responded to Mr. Hager in a letter dated November 29, 2011
- Mr. Hager wrote to me in a letter dated December 5, 2011, expressing concern regarding the information provided on-line in the published minutes of the Corrections Policy Committee meeting of August 2011. Mr. Hager identified that although he had requested a hearing to contest the Committee's recommendation, no hearing could be held due to DPSST's loss of jurisdiction, leaving the recommendations standing as the only record of the matter.
- In a letter dated December 14, 2011, I confirmed with Mr. Hager that we could not alter the public record of the August 2011 CPC meeting, but told him that we would provide the Committee with an update at its February 2012 meeting to ensure that the most current status of this matter is reflected in the public record.

#### **Action Requested:**

This memorandum and its attachments are provided to you so that the record can be appropriately updated to provide a complete record of actions in this matter. No further Committee action is required.

## Appendix E

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 14, 2012  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT: RYAN M. FERNANDEZ DPSST #45198**  
**Marion County Sheriff's Office**

#### **ISSUE:**

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

This case involves FERNANDEZ' resignation during an internal investigation for misconduct that included dishonesty.

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

1. *Between 2004 and 2011, FERNANDEZ was employed as a deputy sheriff, obtained his Basic and Intermediate Certifications and signed his Code of Ethics.*
2. *In December of 2010, DPSST received information that FERNANDEZ had resigned during an internal investigation. DPSST sought and obtained information relating to the resignation.*
3. *In December 2011, DPSST notified FERNANDEZ via certified mail that his case would be heard before the Corrections Policy Committee (CPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. FERNANDEZ has provided a response.*

#### **DISCUSSION:**

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

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

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

- (4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;*
- (B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or*
- (C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*

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

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

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

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

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

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

*(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.*

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Whether the misconduct involved domestic violence;

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

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

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

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

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

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

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

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case**.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds FERNANDEZ' conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy

Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

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

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

## Appendix F

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 14, 2012  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT: ROBERT A. GABLE DPSST #48832**  
**Department of Corrections – Oregon State Correctional Institution**

#### **ISSUE:**

Should Robert A. Gable's Basic Corrections certification be revoked, based on discretionary disqualifying conduct as defined in OAR 259-008-0070(4)(b), and as referenced in OAR 259-008-0010?

This case involves GABLE'S 2010 conviction for Contempt of Court and his 2010 conviction for Reckless Driving in a separate incident.

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

1. *Since October 7, 2007, GABLE has been employed as a corrections officer with the Department of Corrections – Oregon State Correctional Institution. He has obtained his Basic Corrections certification and signed his Code of Ethics.*
2. *In July 2010, DPSST received information that GABLE had been convicted of Contempt of Court. DPSST sought and received information on the charge and learned that GABLE had been arrested on February 24, 2010 after a domestic dispute. After a jury trial, GABLE was acquitted of two charges, and convicted of the Contempt of Court charge.*
3. *While investigating the Contempt of Court matter, DPSST learned that GABLE had been convicted of Reckless Driving in September of 2010 after pleading guilty to the charge. DPSST subsequently sought and received information on that case as well.*
4. *In December 2011, DPSST notified GABLE via certified mail that his case would be heard before the Corrections Policy Committee (CPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. GABLE provided a response.*

#### **DISCUSSION:**

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

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

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

- (4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;*
- (B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or*
- (C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*

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

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

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

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

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

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

*(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.*

#### **SPECIFIC TO THIS CASE:**

OAR 259-008-0070(4) (E) specifies the discretionary disqualifying misconduct of Contempt of Court as Category V, Misconduct. It carries a presumptive length of ineligibility for reconsideration of certification of three to seven years. The discretionary disqualifying misconduct of Reckless Driving is classified as Category IV, Gross Misconduct and carries a presumptive length of ineligibility for reconsideration of certification of five to 10 years.

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

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

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

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

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

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

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

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

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

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

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

- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;
- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

### STANDARD OF PROOF:

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

### ACTION ITEM 1:

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case**.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds GABLE's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).

(D) Category IV: Gross Misconduct (5 years to 10 years).

(E) Category V: Misconduct (3 years to 7 years).

(F) Category VI: Insubordination (3 years to 7 years).

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

## Appendix G

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 14, 2012  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT: CHRISTOPHER L. HILL DPSST #45247**  
**Department of Corrections – Snake River Correctional Institution**

#### **ISSUE:**

Should Christopher L. Hill's Basic Corrections certification be revoked, based on discretionary disqualifying conduct as defined in OAR 259-008-0070(4)(b), and as referenced in OAR 259-008-0010?

This case involves HILL's 2009 DUII criminal conviction and 2010 DUII and Driving Without Privileges criminal convictions in Idaho. The Driving Without Privileges crime is the equivalent of Oregon's misdemeanor Driving While Suspended.

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

1. *Since January 10, 2005, HILL has been employed as a corrections officer with the Department of Corrections – Snake River Correctional Institution. He has obtained his Basic Corrections certification and signed his Code of Ethics.*
2. *In April 2011, DPSST received information that HILL had been disciplined by his agency for criminal convictions of DUII and Driving Without Privileges in Idaho. DPSST sought and received further information on the charges and learned that HILL had been arrested on those charges on August 22, 2010 and convicted on February 3, 2011 after pleading guilty. The disciplinary action report also noted a 2009 DUII arrest which had not previously been reported to DPSST. DPSST subsequently sought information on that case as well. That arrest occurred on August 1, 2009 in Idaho, and HILL was found guilty on September 30, 2009. Judgment was withheld, and HILL received unsupervised probation for one year, among other sanctions. The second DUII occurred within that probation period, but HILL apparently was not charged with a probation violation.*
3. *In December 2011, DPSST notified HILL via certified mail that his case would be heard before the Corrections Policy Committee (CPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. HILL did not provide a response.*

#### **DISCUSSION:**

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

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

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

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

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

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

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

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

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

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

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

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

*(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.*

### **SPECIFIC TO THIS CASE:**

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of DUII as Category IV, Gross Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration of certification of five to ten years. The discretionary disqualifying misconduct of DWS, Oregon's equivalent to Idaho's Driving Without Privileges, is Category V, Misconduct, based on the elements of the crime, and carries a presumptive length of ineligibility for reconsideration of certification of three to seven years.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case**.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds HILL's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

## Appendix H

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 14, 2012  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT: ROBERT L. MYERS DPSST #42937**  
**Department of Corrections – Deer Ridge Correctional Institution**

#### **ISSUE:**

Should Robert Myers' Basic, Intermediate and Advanced Corrections certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

The issue in this case involves MYERS' resignation during an internal investigation.

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

1. *During the years of 2002 through 2010, MYERS worked as a corrections officer, attended the Basic Corrections course, signed his Code of Ethics and obtained his Basic Corrections Certification.*
2. *In April 2011, DPSST received information that MYERS had resigned during an investigation. Subsequently, DPSST requested and received the investigation that led to MYERS' resignation.*
3. *In June 2011, DPSST notified MYERS via certified mail that his case would be heard before the Corrections Policy Committee (CPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*
4. *In preparation for the August, 2011 CPC meeting, DPSST learned that MYERS was in Afghanistan, working with a private employer. In a series of e-mail communications, he requested an extension and requested that DPSST provide documentation on his case and the opportunity to provide his response to the CPC. Due to the change of investigators on this case, and MYERS' apparent difficulty in receiving communications in Afghanistan, and not having received a response from MYERS for the CPC as he indicated would be forthcoming, DPSST granted MYERS another extension for his case. DPSST sent MYERS notice that his case would be heard before the CPC at the February, 2012 meeting. Subsequently, MYERS submitted a response, with accompanying documents, for the CPC'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))

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

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

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

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

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

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

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

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

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

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

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

*(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.*

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Whether the misconduct involved domestic violence;

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

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

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

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

### **STANDARD OF PROOF:**

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

### **ACTION ITEM 1:**

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case**.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds MYERS' conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

(A) Category I: Dishonesty (5 years to Lifetime).

(B) Category II: Disregard for Rights of Others (5 years to 15 years).

(C) Category III: Misuse of Authority (5 years to 10 years).

(D) Category IV: Gross Misconduct (5 years to 10 years).

(E) Category V: Misconduct (3 years to 7 years).

(F) Category VI: Insubordination (3 years to 7 years).

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

## Appendix I

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 14, 2012  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT: UBALDO S. PEREZ DPSST #48545**  
**Department of Corrections – Two Rivers Correctional Institution**

#### **ISSUE:**

Should Ubaldo S. Perez' Basic Corrections certification be revoked, based on discretionary disqualifying conduct as defined in OAR 259-008-0070(4)(b), and as referenced in OAR 259-008-0010?

This case involves PEREZ' 2010 DWS violation conviction, which began as a criminal charge and was later reduced to a Class A violation by the court.

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

1. *Since July 16, 2007, PEREZ has been employed as a corrections officer with the Department of Corrections. He has obtained his Basic Corrections certification and signed his Code of Ethics.*
2. *In January 2010, DPSST received information that PEREZ had been charged with criminal Driving While Suspended in December, 2009. DPSST then sought and obtained the information regarding the charge. The information revealed that the incident actually occurred in September of 2009, and it was criminal DWS because of a DUII charge PEREZ received in August of 2009. The DUII ultimately was resolved through successful diversion. While obtaining the information, DPSST learned that PEREZ had pled guilty to a reduced charge of DWS – violation on January 12, 2010.*
3. *In December 2011, DPSST notified PEREZ via certified mail that his case would be heard before the Corrections Policy Committee (CPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. PEREZ has provided a response.*

#### **DISCUSSION:**

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

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

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

- (4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;*
- (B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or*
- (C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*

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

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

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

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

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

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

*(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.*

#### **SPECIFIC TO THIS CASE:**

OAR259-008-0070(4) specifies the discretionary disqualifying misconduct of DWS as Category V, Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration of certification of three to seven years. The comment in OAR 259-008-0070(4)(b)(E) specifies that the misconduct need not have resulted in a criminal conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Whether the misconduct involved domestic violence;

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

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

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

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

### **STANDARD OF PROOF:**

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

### **ACTION ITEM 1:**

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case**.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds PEREZ' conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

(A) Category I: Dishonesty (5 years to Lifetime).

(B) Category II: Disregard for Rights of Others (5 years to 15 years).

(C) Category III: Misuse of Authority (5 years to 10 years).

(D) Category IV: Gross Misconduct (5 years to 10 years).

(E) Category V: Misconduct (3 years to 7 years).

(F) Category VI: Insubordination (3 years to 7 years).

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

## Appendix J

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 14, 2012  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT: MATTHEW M. WILSON DPSST #31753**  
**Oregon Department of Corrections**

#### **ISSUE:**

Should Matthew M. Wilson's Basic and Intermediate Corrections certifications be revoked, based on discretionary disqualifying conduct as defined in OAR 259-008-0070(4)(b), and as referenced in OAR 259-008-0010?

This case involves WILSON's 2008 DUII criminal conviction.

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

- 1. Between 1995 and 1996, WILSON was employed as a deputy sheriff and between 1998 and 2001 he was employed as a corrections officer, obtained his Basic and Intermediate Corrections certifications and signed his Code of Ethics.*
- 2. In June 2011, DPSST received information that WILSON had been convicted of DUII in December of 2008 on a case that DPSST had been tracking. The original conviction was in May of 2008 through Beaverton Municipal Court, but was appealed to the Washington County Circuit Court. WILSON eventually pled guilty to the DUII and judgment was entered on December 19, 2008.*
- 3. In December 2011, DPSST notified WILSON via certified mail that his case would be heard before the Corrections Policy Committee (CPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. WILSON has provided a response.*

#### **DISCUSSION:**

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

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

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

- (4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;*
  - (B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or*
  - (C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*
- (b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:*

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

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

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

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

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

*(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.*

#### **SPECIFIC TO THIS CASE:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Whether the misconduct involved domestic violence;

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

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

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

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

### **STANDARD OF PROOF:**

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

### **ACTION ITEM 1:**

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case**.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds WILSON's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

(A) Category I: Dishonesty (5 years to Lifetime).

(B) Category II: Disregard for Rights of Others (5 years to 15 years).

(C) Category III: Misuse of Authority (5 years to 10 years).

(D) Category IV: Gross Misconduct (5 years to 10 years).

(E) Category V: Misconduct (3 years to 7 years).

(F) Category VI: Insubordination (3 years to 7 years).

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

## Appendix K

### Department of Public Safety Standards and Training Memorandum

**DATE:** February 14, 2012  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT: RICHARD W. WILSON DPSST #49156**  
**Marion County Sheriff's Office**

#### **ISSUE:**

Should Richard W. Wilson's Basic Corrections certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves WILSON's resignation through abandonment of his job.

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

1. *Between 2007 and 2010, WILSON was employed as a deputy sheriff, obtained his Basic Corrections certification and signed his Code of Ethics.*
2. *In December 2010, DPSST received information that WILSON had been discharged for cause. With that F-4 Personnel Action Report, the agency also sent a copy of a letter to WILSON indicating that, according to agency policy, he was considered to have resigned his position because of his failure to return from leave. DPSST sought and obtained information on the discharge, and later sought clarification on the discrepancy between the F-4 and the letter as to the form of the separation from employment.*
3. *In September 2011 the agency sent an amended form F-4 indicating WILSON's separation as 'Resignation – Other.' No new information was included with the amended form.*
4. *In December 2011, DPSST notified WILSON via certified mail that his case would be heard before the Corrections Policy Committee (CPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. WILSON did not provide a response.*

#### **DISCUSSION:**

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

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

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

- (4)(a) (A) *The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;*
- (B) *The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or*
- (C) *The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.*

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

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

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

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

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

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

*(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **STANDARD OF PROOF:**

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

### **ACTION ITEM 1:**

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify and articulate the **misconduct that is specific to this case**.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds WILSON's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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