

# 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 Lorange

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 Lorange

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 Lorange

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 Pishionary 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 A

# Corrections Policy Committee Minutes (Draft) August 9, 2011

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting and executive session on Tuesday, August 9, 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 1:30 p.m.

### **Attendees:**

#### **Committee Members:**

Todd Anderson, Oregon State Sheriff's Association, Chair  
Tom Cramer, Department of Corrections Training Division Director  
Michael Gower, Designee for Director of Department of Corrections  
Nancy Howton, Department of Corrections Security Manager  
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  
Marie Tyler, Oregon Sheriff's Jail Command Council

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

Raimond Adgers, Oregon Sheriff's Jail Command Council  
Erik Douglass, Non-Management Corrections Officer  
Jeff Wood, Oregon Association of Community Corrections Directors

#### **Guests:**

Steve Beck, Oregon Council of Police Associations

#### **DPSST Staff:**

Eriks Gabliks, Director  
Carolyn Kendrick, Administrative Specialist  
Marilyn Lorance, Standards and Certifications Supervisor  
Theresa King, Professional Standards Coordinator/Investigator  
Bob Sigleer, DOC-BCC Auditor  
Leon Colas, Professional Standards Coordinator/Investigator



### **1. Minutes (May 10, 2011)**

Approve the minutes of the May 10, 2011 Corrections Policy Committee meeting.

See Appendix A for details.

*Marie Tyler moved that the committee approve the minutes of the May 10, 2011 Corrections Policy Committee meeting. Amanda Rasmussen 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

*It is the consensus of the committee that DOC BCC meets and in some cases exceeds DPSST standards. Chair Todd Anderson shared appreciation for the great partnership between DOC and DPSST and that DOC has done very much work in a short time.*

3. **Terry L. Baker, Oregon Department of Corrections – DPSST #48529**

Presented by Theresa King

See Appendix C for details.

- *Diana Simpson moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Marie Tyler seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue: ***DUII conviction, alcohol issues, driving while suspended, fight, and reckless endangerment.***
  - b. The identified conduct did involve ***Dishonesty regarding BAKER's involvement in the fight, his lie by omission by not reporting his driving while suspended, and his lie about not receiving job related discipline.***
  - c. The identified conduct did involve a ***Disregard for the Rights of Others based on BAKER driving under the influence and the fight which created a danger or risk to others.***
  - d. The identified conduct did not involve ***Misuse of Authority.***
  - e. The identified conduct did involve ***Gross Misconduct. A DUII category 4 misconduct and leaving the scene of a crime is a gross deviation of the standard practiced by public safety personnel.***
  - 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 the fact BAKER wrote a letter could be a mitigating circumstance. However, the letter was a disservice to BAKER. The Policy Committee also noted BAKER's pattern of behavior and the fact so many negative things have happened with this 26 year old as aggravating circumstances.*
- *Diana Simpson moved that the Corrections Policy Committee finds BAKER'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.*

- *Ida Rovers moved that the Corrections Policy Committee recommends to the Board that BAKER's conduct reached the highest end of the Dishonesty category- a lifetime disqualifier; BAKER may never reapply for certification. There was no second.*
- *Marie Tyler amended the afore mentioned motion, moving that the Corrections Policy Committee recommends to the Board that BAKER's conduct rose to the highest level of all of the categories noted above with a focus on the highest end of the Dishonesty category- a lifetime disqualifier; BAKER may never reapply for certification. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

4. **Lauren J. Barrett, Washington County Sheriff's Office – DPSST #50426**

Presented by Theresa King

See Appendix D for details.

- *Michael Gower moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Tom Cramer seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue: *BARRETT lied about completing an assignment from her Sergeant and misdirected co-workers regarding her husband's military status for which she gained a benefit.*
  - b. The identified conduct did involve **Dishonesty regarding BARRETT's lies about completing an assignment from her Sergeant and misdirected co-workers regarding her husband's military status for which she gained a benefit.**
  - 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 deviation of standard of practice followed by public safety personnel. It is general practice to tell the truth.**
  - g. The identified conduct did involve **Insubordination based on non-compliance of a direct order by her supervisor.**
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The Policy Committee identified the following aggravating circumstances: Both of BARRETT's parents have been Portland Police officers and she has no excuse for not knowing the expectations of a public safety officer, BARRETT played on the sympathies of her co-workers regarding her husband's military status, and the statement in BARRETT's letter regarding "I didn't think the decision to fib..."*

*No mitigating circumstances were noted by the Policy Committee.*

- *Michael Gower moved that the Corrections Policy Committee finds BARRETT'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. Marie Tyler seconded the motion. The motion carried unanimously.*

- *Diana Simpson moved that the Corrections Policy Committee recommends to the Board that **BARRETT's conduct does rise to the highest level of all of the categories noted above with a focus on the highest end of the Dishonesty category- a lifetime disqualifier; BARRETT may never reapply for certification. Amanda Rasmussen seconded the motion. The motion carried unanimously.***

**5. Kenneth Beck, Oregon Department of Corrections – DPSST #48673**

Presented by Theresa King

See Appendix E for details.

*The Policy Committee convened in Executive Session at 2:07 p.m. to discuss matters exempt from public disclosure relating to the BECK case.*

*The Policy Committee re-convened in Regular Session at 2:16 p.m. to take action on matters relating to the BECK case.*

- *Marie Tyler 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 the conduct that is at issue: *dishonesty*
  - b. The identified conduct did involve **Dishonesty**. *BECK lied about what he was doing, lied in an interview about not having prior law enforcement experience, lied about his whereabouts when he was supposed to be duty stationed at home, and lied about his doctor going to Chicago.*
  - c. The identified conduct did involve a **Disregard for the Rights of Others**. *BECK created a danger or risk to co-workers, and potentially the inmates and public with bio-hazardous material.*
  - d. The identified conduct did not involve **Misuse of Authority**.
  - e. The identified conduct did involve **Gross Misconduct**. *BECK created a danger or risk to co-workers, and potentially the inmates and public with bio-hazardous material and affected the efficient operation of the agency.*
  - f. The identified conduct did involve **Misconduct based on BECK's dishonesty and action which was a significant deviation of standard of practice**.
  - g. The identified conduct did involve **Insubordination**. *BECK went to work when he was duty stationed at home. He received a letter of expectation—BECK knew what he was to do.*
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The Policy Committee noted BECK's letter as an aggravating circumstance stating, he took time to write much but say little, BECK minimized*

*his behavior, and included untruthful statements about management. Also noted as aggravating is the recurring behavior.*

*No mitigating circumstances were identified.*

- *Marie Tyler moved that the Corrections Policy Committee finds BECK'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. Lisa Settell seconded the motion. The motion carried unanimously.*
- *Diana Simpson moved that the Corrections Policy Committee recommends to the Board that BECK's conduct reaches the highest level of all of the categories noted above with a focus on the highest end of the Dishonesty category- a lifetime disqualifier; BECK may never reapply for certification. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

**6. Rafael Bedolla, Umatilla County Sheriff's Office – DPSST #35974**

Presented by Theresa King

See Appendix F for details.

- *Amanda Rasmussen moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Marie Tyler seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue: *BEDOLLA's 2010 Assault IV and Menacing (felony in front of children)*.
  - b. The identified conduct did not involve **Dishonesty**.
  - c. The identified conduct did involve a **Disregard for the Rights of Others based on BEDOLLA's involvement in an assault in front of his children. His children were vulnerable and in fear of their father.**
  - d. The identified conduct did not involve **Misuse of Authority**.
  - e. The identified conduct did not involve **Gross Misconduct**.
  - f. The identified conduct did involve **Misconduct based on violation of the law**.
  - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The Policy Committee identified as aggravating circumstances the fact BEDOLLA's 3 children (ages 5-11) picked up broken chair pieces to use as protection from him, his sister-in-law was injured and in significant pain, and BEDOLLA never provided a response to DPSST. The Policy Committee noted as mitigating the fact BEDOLLA's assault was dismissed as civil compromise.*
- *Diana Simpson moved that the Corrections Policy Committee finds BEDOLLA's conduct does rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) be revoked. Marie Tyler seconded the motion. The motion carried unanimously.*

- *Based on the fact children were impacted, Nancy Howton moved that the Corrections Policy Committee recommend to the Board that BEDOLLA's conduct reaches the highest level of the categories noted above with a focus on the highest end of the Disregard for the Rights of Others category. BEDOLLA may reapply for certification fifteen years from the date of revocation. Ida Rovers seconded the motion. The motion carried unanimously.*

7. **Ronald B. Hager, Oregon Department of Corrections – DPSST #49731**

Presented by Theresa King

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. Amanda Rasmussen seconded the motion. The motion carried unanimously. The Policy Committee noted there were pages missing from one of the exhibits however that did not sway any member's decision.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue: *Computer tampering, known association with a Mexican Cartel, and public corruption.*
  - b. The identified conduct did involve *Dishonesty based on the numerous times HAGER's story changed, his claim he didn't remember who notarized the title, and his claim he did not share the information with his wife.*
  - c. The identified conduct did involve a *Disregard for the Rights of Others based on the danger or risk created for agents working the case due to HAGER's provision of information to the Cartel.*
  - d. The identified conduct did involve *Misuse of Authority based on HAGER's use of an agency computer to gain information for the Cartel and the documents notarized due to the fact he was a high ranking officer.*
  - e. The identified conduct did involve *Gross Misconduct based on gross deviation of the standard of practice followed by a public safety officer.*
  - f. The identified conduct did involve *Misconduct based on HAGER's conviction and dishonesty.*
  - 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. *HAGER's 40-page letter trying to minimize his conduct, and his knowledge of his wife's involvement with the Cartel prior to their marriage (with 30 years in law enforcement, he knew better) were noted as aggravating circumstances by the Policy Committee.*

*No mitigating circumstances were identified.*

- *Michael Gower moved that the Corrections Policy Committee finds HAGER's conduct does rise to the level to warrant the denial of his application for training and subsequent certification(s), and therefore recommends to the Board that this application for training be denied. Diana Simpson seconded the motion. The motion carried unanimously.*

- *Michael Gower moved that the Corrections Policy Committee recommend to the Board that HAGER's conduct encapsulated all of the categories noted above with a focus on the highest end of the dishonesty category – a lifetime disqualifier; HAGER may never reapply for certification. Diana Simpson seconded the motion. The motion carried unanimously.*

8. **Trevor N. Hines, Oregon Department of Corrections – DPSST #43247**

Presented by Theresa King

See Appendix H 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 the conduct that is at issue: *Provision of contraband, narcotics arrest in Nevada, large personal use of marijuana, and the large web of money transfer.*
  - b. The identified conduct did involve **Dishonesty**. *HINES lied about bringing contraband into the institution. He did not advise his employer of his arrest in Nevada. The act of bringing contraband into the institution in itself is dishonest.*
  - c. The identified conduct did involve a **Disregard for the Rights of Others**. *HINES created a danger or risk to co-workers and inmates with the narcotic contraband as well as providing outside communication to inmates.*
  - d. The identified conduct did involve **Misuse of Authority**. *HINES used his position and power to gain monetary benefit and attempted to avoid detriment by identifying himself as a corrections officer to police.*
  - e. The identified conduct did involve **Gross Misconduct based on created danger or risk to co-workers and inmates and the gross deviation of standard of practice by public safety personnel.**
  - f. The identified conduct did involve **Misconduct based on HINES sharing his personal pharmaceuticals with inmates.**
  - g. The identified conduct did involve **Insubordination based on HINES' defiance of clearly written directives about bringing contraband into the institution and his refusal to report his arrest.**
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The Policy Committee noted the sheer volume of contraband moved through the institution and HINES' arrogance during the interviews as aggravating circumstances.*

*No mitigating circumstances were identified.*

- *Marie Tyler moved that the Corrections Policy Committee finds HINES' 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. Michael Gower seconded the motion. The motion carried unanimously.*

- *Based on egregious behavior and the volume of contraband, Marie Tyler moved that the Corrections Policy Committee recommend to the Board that HINES' conduct reaches the highest level of the categories noted above with a focus on the highest end of the Dishonesty category; a lifetime disqualifier. HINES may never reapply for certification. Nancy Howton seconded the motion. The motion carried unanimously.*

**9. Michael J. Morgan, Oregon Department of Corrections – DPSST #24828**

Presented by Theresa King

See Appendix I for details.

- *Amanda Rasmussen 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: *Drunk driving incidents, failure to appear in court on original DUII, rudeness to hospital staff and officers, and lied about completing diversion.*
  - b. The identified conduct did involve **Dishonesty**. *MORGAN lied about the amount of alcohol consumed, about working in Afghanistan, and about being medically unable to respond to officers.*
  - c. The identified conduct did involve a **Disregard for the Rights of Others based on his driving drunk and causing a significant crash and the disrespect for hospital staff and officers.**
  - d. The identified conduct did involve **Misuse of Authority**. *MORGAN implied his being in the same line of work and gave his DPSST number to avoid detriment.*
  - e. The identified conduct did not involve **Gross Misconduct**.
  - f. The identified conduct did involve **Misconduct based on violation of the law—DUI's and failure to appear.**
  - 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 MORGAN's letter proclaiming alcoholism and his issues with PTSD, his 20 years with the department, and his stated days of sobriety which shows determination to change.*

*The Policy Committee noted MORGAN's egregious attitude towards officers and hospital staff as an aggravating circumstance.*

- *Diana Simpson moved that the Corrections Policy Committee finds MORGAN'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. Marie Tyler seconded the motion. The motion carried 7 to 2 with Amanda Rasmussen and Lisa Settell voting no.*
- *Marie Tyler moved that the Corrections Policy Committee recommend to the Board that MORGAN'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. MORGAN may never reapply for certification. Diana Simpson seconded the motion. The motion failed 3 to 6 with Todd Anderson, Marie Tyler, and Diana Simpson voting yes.*

- *Nancy Howton moved that the Corrections Policy Committee recommend to the Board that MORGAN's conduct encompasses the lowest level of all categories noted above with a focus on the lowest level of Dishonesty. MORGAN may reapply for certification five years from the date of revocation. Diana Simpson seconded the motion. The motion failed 3 to 6 with Lisa Settell, Nancy Howton, and Michael Gower voting yes.*
- *Todd Anderson moved that the Corrections Policy Committee recommend to the Board that MORGAN's conduct encapsulated all categories noted above with the period of ineligibility being 10 years. MORGAN may reapply for certification 10 years from the date of revocation. Diana Simpson seconded the motion. The motion carried 6 to 3 with Lisa Settell, Amanda Rasmussen, and Ida Rovers voting no.*

**10. Kelly A Neibert, Multnomah County Sheriff's Office – DPSST #23939**

Presented by Theresa King

See Appendix J for details.

- *Amanda Rasmussen 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:*
  - Identify the conduct that is at issue: DUII arrests and failure to appear in 2010.*
  - The identified conduct did involve **Dishonesty**. NEIBERT lied about what he drank.*
  - The identified conduct did involve a **Disregard for the Rights of Others based on NEIBERT drinking and driving which created a risk or danger to others**.*
  - The identified conduct did not involve **Misuse of Authority**.*
  - The identified conduct did not involve **Gross Misconduct**.*
  - The identified conduct did involve **Misconduct based on violation of the law and failure to appear in court**.*
  - The identified conduct did involve **Insubordination**.*
- *By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. The Policy Committee noted NEIBERT's letter talking about medical issues and divorce as a mitigating circumstance.*

*NEIBERT's aggression issues were noted as aggravating by the Policy Committee.*

- *Diana Simpson moved that the Corrections Policy Committee finds NEIBERT'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. Michael Gower seconded the motion. The motion carried unanimously.*
- *Diana Simpson moved that the Corrections Policy Committee recommend to the Board that HINES' conduct reaches the seven year minimum on the Misconduct, ten year*

*minimum on Disregard for the Rights of others, with a focus on a ten year minimum in the Dishonesty category. NEIBERT may reapply for certification ten years after the date of revocation. Nancy Howton seconded the motion. The motion carried unanimously.*

**11. John W. Pittman, Oregon Department of Corrections – DPSST #45394**

Presented by Theresa King

See Appendix K 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: *DUII's*
  - b. The identified conduct did not involve **Dishonesty**.
  - c. The identified conduct did involve a **Disregard for the Rights of Others based on driving drunk which creates a danger or risk to others.**
  - d. The identified conduct did not involve **Misuse of Authority**.
  - e. The identified conduct did not involve **Gross Misconduct**.
  - f. The identified conduct did involve **Misconduct based on violation of the law.**
  - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances. *The Policy Committee noted that PITTMAN cooperated with officers, acknowledged the embarrassment caused to the agency, and the fact that he followed through with rehabilitation as mitigating circumstances.*

*No aggravating circumstances were identified.*

- *Michael Gower moved that the Corrections Policy Committee finds PITTMAN's conduct does not rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) not be revoked. Ida Rovers seconded the motion. The motion carried unanimously.*

**12. James M. Thompson, Oregon Department of Corrections – DPSST #35847**

Presented by Theresa King

See Appendix L for details.

- *Lisa Settell moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Nancy Howton seconded the motion. The motion carried unanimously.*
- By discussion and consensus:

- a. Identify the conduct that is at issue: *Shoplifting in uniform.*
  - b. The identified conduct did involve **Dishonesty**. *The mere act of stealing is dishonest.*
  - c. The identified conduct did involve a **Disregard for the Rights of Others**. *Everyone has a right to not be a victim of theft.*
  - d. The identified conduct did involve **Misuse of Authority**. *Thompson stole while in uniform.*
  - e. The identified conduct did involve **Gross Misconduct based on gross deviation of standard of practice followed by public safety personnel.**
  - f. The identified conduct did involve **Misconduct based 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 that THOMPSON used strong medication while at work and the fact he stole while in uniform was especially aggravating.*

*No mitigating circumstances were identified.*

- *Michael Gower moved that the Corrections Policy Committee finds THOMPSON'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. Amanda Rasmussen seconded the motion. The motion carried unanimously.*
- *Lisa Settell moved that the Corrections Policy Committee recommend to the Board that THOMPSON'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. THOMPSON may never reapply for certification. Diana Simpson seconded the motion. The motion carried unanimously.*

### **13. Thomas Campbell, Linn County Sheriff's Office – DPSST #42398**

Presented by Theresa King

See Appendix M for details

- *After reviewing the CAMPBELL case per Board direction, Diana Simpson moved that the Corrections Policy Committee recommends to the Board that the initial period for CAMPBELL's revocation, without the Disregard for the Rights of Others, remains the same. Ida Rovers seconded the motion. The motion carried unanimously.*

### **14. David Johnson, Linn County Sheriff's Office – DPSST #35096**

Presented by Theresa King

See Appendix N for details

- *After reviewing the JOHNSON case per Board direction, Diana Simpson moved that the Corrections Policy Committee recommends to the Board that the initial period for JOHNSON's revocation without the Disregard for the Rights of Others, remains the same. Ida Rovers seconded the motion. The motion carried unanimously.*

## **16. Additional Business**

### **Directors Report**

#### **2011-2013 Budget Recap**

The Oregon Legislative Assembly has completed its work on DPSST's 2011-2013 budget. The largest reduction was in the Criminal Fines and Assessments Account with a reduction of 13 employees and two Basic Police classes. In its original budget reduction proposal, DPSST had proposed elimination of the DOC Audit Program. As the legislative process unfolded, DPSST was able to find other reductions that allowed this valuable program to remain intact. DPSST was able to mitigate much of the impact of the personnel cuts by keeping vacant positions open. Unfortunately three positions were lost due to lay-offs. The Legislature did give DPSST permission to request the restoration of the lost Basic Police Classes if hiring trends require additional classes be offered at the Academy. The Fire and 9-1-1 Programs did not take any reductions as they are from dedicated funds. The fee increase proposed in the Private Security licenses was approved by the Legislature but at a lesser amount than approved by the constituents. The amount will allow the DPSST Private Security Program to remain whole during the 2011-2013 biennium. Eriks thanked all of the CPC members and the various public safety organizations for their support of DPSST programs and employees during the session.

#### **2011 Legislative Session Recap**

There were two bills that DPSST was involved in that had an impact on the Corrections Policy Committee. Senate Bill 76 was introduced by DOC and DPSST to address an issue with the statutory definition of Corrections Officer. Under the current definition in DPSST's ORS, once a corrections officers moves to an upper level position and no longer has direct oversight of an inmate, they are not eligible to retain their certification. This is an issue for DOC and also for larger sheriff's offices. DPSST and DOC worked with the legislature to craft a solution to this issue and allow corrections management staff to retain their certification. The other bill was House Bill 2362 which was introduced by the Association of Oregon Corrections Employees (AOCE). This bill would have required that BPSST establish maintenance of certification standards for corrections officers. Both DPSST and DOC were supportive of the legislation and the bill passed out of the House Judiciary Committee but did not make it out of the Ways & Means Committee because the legislature did not have the funds necessary for DOC to implement the program.

#### **Expansion of Basic Corrections Course**

DPSST staff has been working with the Oregon State Sheriffs Jail Command Council on the curriculum for the Basic Corrections Course. The five week format does not give DPSST staff enough hours to properly train an entry-level corrections officer for the challenges they will encounter in a correctional institution. The Curriculum Sub-Committee is developing an additional week of training that will address this need. DPSST has also been working with DOC to ensure that the proposed changes do not have a negative impact on their training course and also to ensure that there continues to be reciprocity between the two courses (DPSST and DOC). There has been support for this addition statewide and the Sub-Committee should be ready to make its report at the next Corrections Policy Committee meeting.

#### **Listening Tour**

Members of the DPSST Leadership Team recently visited more than a dozen communities across the state to meet with stakeholders. The attendance was very good as was the information that was provided. DPSST asked what it was doing well, what needed to be improved, and what we were not currently doing that we should consider. The comments are being transcribed into a comprehensive

document and will be shared with constituents as soon as they are completed. DPSST will provide feedback to the attendees and also post the comments received as well as actions either taken or in progress to address what was heard from the field. One area of concern statewide was the current process used for Supervision and Middle-Management training. Based on the feedback, DPSST staff is working on solutions that will address the concerns and improve the process.

### **Certification Matrix Work Group**

DPSST Staff continues to work with police, corrections, parole and probation, and telecommunications professions to review and update the certification matrix used to award upper levels of certification (Intermediate, Advanced, Supervisor, etc.). This issue was raised during our last Listening Tour and a number of work groups have been working on this for over two years. A meeting is schedule on August 17, 2011 at DPSST to discuss progress as well as challenges. It is important to note that no changes have been made to date and that the respective committees and the Board will see any proposals before they are sent out for public comment as part of the Administrative Procedures Act.

### **Instructor Standards**

At last week's meeting of the Board, a question arose regarding DPSST's oversight of instructors. The issue came-up because an instructor provided incorrect information to an agency which potentially exposed them to liability. DPSST staff only has oversight over instructors that have either DPSST certification as an officer or those who instruct in mandated classes. Due to budget reductions, DPSST no longer certifies non-mandated DPSST classes or instructors. DPSST staff continues to provide information to agencies statewide reminding them that they need to vet the instructors they are using to ensure that they are qualified and capable to deliver the class.

### **Transition of CPC Members**

DPSST staff is working to fill a current and future vacancy on the CPC. Staff is working with various statewide organizations to canvas applicants interested in serving as non-management representatives on the CPC. This is to fill the position recently vacated by David Nielsen. DPSST staff is also working with the Oregon State Sheriff's Jail Command Council to find a jail manager interested in taking Marie Tyler's seat on the CPC when her second two year term concludes in October.

### **Fallen Public Safety Officer License Plates**

While not a DPSST issue, Eriks gave an update on the Fallen Public Safety Officer License Plate Program that provides financial assistance to family members of firefighters and law enforcement officers (including corrections and parole & probation officers) killed in the line of duty when they attend the national ceremony when their loved one is added. The license plates have been available for almost six months, and under the leadership of Mary Nunnenkamp and the use of social media, over \$35,000 has been raised to date for this fund. The fund is managed by DPSST, but is under the oversight of a 501C3 Board of Directors.

## **17. Next Scheduled Meeting – November 8, 2011 at 1:30 p.m.**

*With no further business before the committee, the meeting adjourned at 4:35 p.m.*

## **Appendix B**

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

**DATE:** November 8, 2011  
**TO:** Eriks Gabliks, Director  
**THRU:** Marilyn Lorance  
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. In each report, the Audit Team found that the DOC BCC met the minimum standards as an equivalent to the DPSST Basic Corrections Course, and in some areas exceeded the minimum standard.*

*During this reporting period, **July through September 2011**, the Audit Team conducted a series of audits of the DOC BCC, which included Administrative Records Audits, Administrative on-site Audits, and Training On-Site Audits. The results were provided to DOC Professional Development Unit (PDU) for review. 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 six new BCC. A total of 117 students attended some phase of the BCC.*

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

*During this reporting period, 37 students have completed the DOC BCC program and are now working on their Field Training Manual. These students must submit to a nine-month internal review conducted by field training officers, the field training supervisor, and command staff to determine, based on the students' progress and achievements, whether they will continue in their trial service. It is at the 12-month mark that DOC will submit the F-7 along with documentation for DPSST Basic Corrections certification. It is important to note that after Test #2 all of the requirements of the DOC BCC have been met, for purposes of DPSST certification. While completion of the Field Training*

*Manual is a requirement for certification, the methodology used is at the discretion of DOC, as it is with any other public safety agency.*

*During this reporting period SRCI graduated two classes: BCC 009 and BCC 016, with a total of 16 officers.*

*During this reporting period DPSST has issued three Basic Corrections certifications to DOC BCC students signifying they have completed their training and are now certified.*

### ***DOC COD***

*During this reporting period, DOC submitted one application for Career Officer Development (COD) to DPSST.*

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

*The cumulative average for Test #1 was 89% with 88 % being the lowest score and 90% being the highest score. To date, the cumulative average for Test #2 is 89% with 87% being the lowest score and 90% being the highest score.*

### ***DOC Training Failures***

#### ***Academic***

*DOC BCC has experienced two academic failures requiring remediation.*

#### ***Skills***

*DOC BCC has experienced seven skills (Defensive Tactics or Reality Based Training) failures requiring remediation*

#### ***Firearms***

*DOC has experienced 36 Firearms failures. There has been an improvement in the rate of firearms failures during this reporting period; from 50% failure down to 35% in this report. The Auditors believe this is due, in part, to a number of DOC-selected firearms instructors attending a DPSST Firearms Instructor Development Course in February or April; the course focus was on training individuals who had never handled a firearm, versus training basic corrections students returning from DPSST Basic Corrections who had some familiarity with firearms. DOC PDU is also working on an updated Firearms curriculum which will reflect training methodology consistent with the DPSST firearms curriculum for the novice shooter and is continuing to refine their firearms training.*

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

*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. DPSST retains the notebook based on its Records Retention Schedule, similar to all other mandatory classes that are a prerequisite for Basic Corrections certification.*

*In December 2010, DOC PDU was advised no future certifications would be issued without receipt of the Class Notebook for students within a class seeking certification.*

*On July 7, 2011, DOC PDU submitted all class notebooks for completed classes to the Audit Team for review. Once these class notebooks are reviewed and approved, officer*

*certifications can be issued. Eleven students from the prior reporting period have submitted their applications for certification but cannot be certified until their class notebooks have been approved. Within the current reporting period, 16 students have submitted their applications for certification but cannot be certified until their class notebooks have been approved. These individuals have been notified by Julie Johnson, DPSST Scheduling and Certification Specialist.*

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

*During this reporting there have been no curriculum update requests from PDU. PDU is piloting a new Firearms Course and will be submitting this for a curriculum update in the next reporting period.*

### ***2012 Curriculum and Course Hour Updates***

*The Audit Team, DOC Professional Development , and DPSST Academy Training are meeting generally on a monthly basis to review 2012 updates to the Basic Corrections course, hours and training methodology.*

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

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

*DOC PDU has delivered one FTEP course which included 15 attendees.*

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

*A total 327 DOC instructors are now certified for the BCC program.*

### **Administrative Records Audits**

During this reporting period, the Audit Team conducted 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 016** (Eastside) and **BCC 010** (Westside).

#### **Administrative Records Audit Findings:**

##### **BCC 016 (Eastside)**

In general, for purposes of documentation of training, the recordkeeping meets standards.

##### **BCC 010 (Westside)**

In general, for purposes of documentation of training, the recordkeeping meets standards.

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

*During this reporting period, the Audit Team conducted numerous 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.*

**Training On-site Audit Findings:**

*DOC BCC Training On-site Audits resulted in ultimate determinations that the training meets or exceeds the DPSST BCC course. The concept of “learn, practice, demonstrate” is being carried throughout the training phases of the DOC BCC program and the six-month phase culminates in a week-long class that includes Reality Based Training (RBT).*

**CORPAT Data Collection:**

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

**Compliance concerns**

*During this reporting period, no non-compliance letter were issued.*

*As previously noted, there is an administrative rule requirement to ensure correctional officers are certified within one year of the date of hire. Although not directly in the purview of the Audit Team, this issue has been referred to the appropriate Standards and Certification staff for follow-up.*

**Student Surveys**

*During this reporting period, four student surveys were conducted. The surveys assessed students' confidence level based on training received and effectiveness of the training received. The survey continues to demonstrate an increased level of confidence in students' abilities to perform the tasks of a correctional officer as the training phases continue. Similar surveys have been conducted within the Basic Corrections Local classes and a comparison is attached.*

**Findings**

*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 several areas.*

**Attachments:**

- Ex 1 DOC BCC Consistency Trending Amended*
- Ex 2 DOC BCC Consistency Trending - Update*
- Ex 3 Charts Percentage of DOC BCC Student Firearms Remediation*
- Ex 4 DOC BCC Firearms Training/Failures/Remediation*
- Ex 5 DOC BCC 2011 Master Calendar - DOC IDC July/September - DOC IDC October/December*
- Ex 6 DOC BCC Remediation Tracking*
- Ex 7 DOC BCC Student Progress Report*
- Ex 8 DOC BCC Audit Team Number of Audits 2011*
- Ex 9 DOC BCC Audit Team Audit Tracking*
- Ex 10 Administrative Audit BCC 010*
- Ex 11 Administrative Audit BCC 016*
- Ex 12 Audit 07/11/11 BCC 025 Firearms Training Classroom*
- Ex 13 Audit 07/12-07/13 2011 BCC 025 Firearms Training Day 2 Reinf.*
- Ex 14 Audit 07/14/11 BCC 025 Firearms Training Day 3 Mastery*
- Ex 15 Audit 07/19/11 BCC 034 Supervision of Inmates*
- Ex 16 Audit 07/19/11 BCC 034 Basic Security Practices*
- Ex 17 Audit 07/20/11 BCC 034 IPC 2 Communicating With Inmates*

*Ex 18 Audit 07/20/11 BCC 034 Intro to Mental Health*  
*Ex 19 Audit 07/21/11 BCC 034 CPR / AED*  
*Ex 20 Audit 07/21/11 BCC 034 Evidence Handling and Crime Scene Preservation*  
*Ex 21 Audit 07/22/11 BCC 034 Health and Fitness Part 1*  
*Ex 22 Audit 07/22/11 BCC 034 Employee Wellness Part 1*  
*Ex 23 Audit 07/25/11 BCC 034 DT 2*  
*Ex 24 Audit 07/25/11 BCC 034 DT2 RBT*  
*Ex 25 Audit 07/29/11 BCC 034 Health and Fitness Part 2*  
*Ex 26 Audit 08/02/11 BCC 037 Use of Force - Classroom*  
*Ex 27 Audit 08/02/11 BCC 037 Security Threat Management*  
*Ex 28 Audit 08/04/11 BCC 037 PREA*  
*Ex 29 Audit 08/04/11 BCC 037 IPC Pt 1*  
*Ex 30 Audit 08/ 05/11 BCC 037 Communicable Disease/Bloodborne Patho*  
*Ex 31 Audit 08/05/11 BCC 037 Defensive Tactics 1*  
*Ex 32 Audit 08/05/11 BCC 034 Defensive Tactics Ground Defense*  
*Ex 33 Audit 08/05/11 BCC 034 Defensive Tactics Ground Defense RBT*  
*Ex 34 Audit 08/08/11 BCC 037 Supervision of Inmates*  
*Ex 35 Audit 08/08/11 BCC 037 Basic Security Practices*  
*Ex 36 Audit 08/10/11 BCC 037 IPC Part 2*  
*Ex 37 Audit 08/10/11 BCC 037 Introduction to Mental Health*  
*Ex 38 Audit 08/12/11 BCC 037 Employee Wellness Part 1*  
*Ex 39 Audit 08/15/11 BCC 034 Defensive Tactics RBT*  
*Ex 40 Audit 08/15/11 BCC 037 Defensive Tactics*  
*Ex 41 Audit 08/16/11 BCC 037 Report Writing*  
*Ex 42 Audit 08/17/11 BCC 037 Defensive Tactics Weapon Retention*  
*Ex 43 Audit 08/17/11 BCC 037 Defensive Tactics RBT*  
*Ex 44 Audit 08/17/11 BCC 037 O.C.*  
*Ex 45 Audit 08/19/11 BCC 037 Health and Fitness Pt 2*  
*Ex 46 Audit 08/24/11 BCC 025 Firearms Day 2*  
*Ex 47 Audit 08/26/11 BCC 037 Defensive Tactics Ground Defense*  
*Ex 48 Audit 08/30/11 BCC 026 Defensive Tactics Edged Weapons*  
*Ex 49 Audit 08/30/11 BCC 026b Defensive Tactics Edged Weapons*  
*Ex 50 Audit 08/31/11 BCC 026b Medical Escorts and Restraints*  
*Ex 51 Audit 08/31/11 BCC 026b CORPAT*  
*Ex 52 Audit 09/01/11 BCC 026b IPC 2*  
*Ex 53 Audit 09/01/11 BCC 026b RBT Day 1*  
*Ex 54 Audit 09/02/11 BCC 026b RBT Day 2*  
*Ex 55 Audit 09/12/11 BCC 038 Orientation*  
*Ex 56 Audit 09/12/11 BCC 031 Medical Escorts and Restraints*  
*Ex 57 Audit 09/13/11 BCC 038 Security Threat Management*  
*Ex 58 Audit 09/13/11 BCC 038 Oregon Accountability Model*  
*Ex 59 Audit 09/13/11 BCC 038 Respectful Workplace*  
*Ex 60 Audit 09/13/11 BCC 031 Defensive Tactics Edged Weapons*  
*Ex 61 Audit 09/13/11 BCC 031 Defensive Tactics Edged Weapons RBT*  
*Ex 62 Audit 09/14/11 BCC 031 IPC 3*  
*Ex 63 Audit 09/14/11 BCC 038 Use of Force*  
*Ex 64 Audit 09/14/11 BCC 031 CORPAT*  
*Ex 65 Audit 09/15/11 BCC 031 RBT Day 1*  
*Ex 66 Audit 09/16/11 BCC 031 RBT Day 2*

*Ex 67 Audit 09/20/11 BCC 039 Security Threat Management*  
*Ex 68 Audit 09/20/11 BCC 039 Oregon Accountability Model*  
*Ex 69 Audit 09/20/11 BCC 039 Respectful Workplace*  
*Ex 70 Audit 09/20/11 BCC 035a Firearms Day 2*  
*Ex 71 Audit 09/21/11 BCC 039 Basic Security Practices*  
*Ex 72 Audit 09/21/11 BCC 035a Firearms Day 3*  
*Ex 73 Audit 09/21/11 BCC 039 Use of Force*  
*Ex 74 Audit 09/22/11 BCC 039 Inmate Prohibited Conduct*  
*Ex 75 Audit 09/22/11 BCC 039 IPC Pt 1*  
*Ex 76 Audit 09/27/11 BCC 035b Firearms Day 2*  
*Ex 77 Audit 09/28/11 BCC 035b Firearms Day6 3*  
*Ex 78 CORPAT Times*  
*Ex 79 Student Participant Survey*

## Appendix C

### Department of Public Safety Standards and Training Memo

**Date:** November 8, 2011  
**To:** Corrections Policy Committee  
**From:** Linsay Hale  
Rules & Compliance Coordinator  
**Subject:** OAR 259-008-0005 – Proposed Rule  
Definitions

**Issue:** The 2011 legislative session saw many changes to DPSST definitions. SB 76 updated the definition of correctional officer to include supervisors and managers of correctional officers. SB 405 and SB 412 expanded the definition of law enforcement unit and police officer to include universities with police departments and tribal governments.

All definitions have been reviewed to ensure consistency between ORS 181.610 and Oregon Administrative Rule. As a result, district attorney's offices/investigators and animal care agencies/agent were added to the definition of law enforcement unit/police officer and certified reserve officers were added to the definition of public safety professional.

Finally, housekeeping changes were made for clarity. The acronym "DPSST" was defined, because it is used through the criminal justice rule set. Also, the definition of "recall" was updated to include any administrative requirements that might be required to restore certification.

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

#### **259-008-0005**

##### **Definitions**

- (1) "Assistant Department Head" means an officer occupying the first position subordinate to a Department Head, ~~and~~ **who** is primarily responsible for supervision of middle managers and/or supervisors.
- (2) "Board" means the Board on Public Safety Standards and Training.
- (3) "Casual employment" means employment that is occasional, irregular, or incidental ~~and~~ **for which** the employee does not receive seniority rights ~~nor~~ fringe benefits.
- (4) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.
- (5) "Commissioned" means ~~an authorization granting the power~~ **being authorized** to perform various acts or duties of a police officer **or reserve officer** and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.
- (6) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including, ~~but not limited to,~~ vocational or technical education programs or lower division collegiate programs.

(7) "Corrections Officer" means an officer or member of employed full-time by a law enforcement unit who ~~is employed full-time thereby and~~

(a) Is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles;

(b) Has been certified as a corrections officer described in paragraph (a) of this subsection and has supervisory or management authority for corrections officers as described in paragraph (a) of this subsection; or

(c) Is ~~and~~ any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(8) "Department" and "DPSST" mean the Department of Public Safety Standards and Training.

(9) "Department Head" means the chief of police, sheriff, or chief executive of a law enforcement unit or a public or private safety agency directly responsible for the administration of that unit.

(10) "Director" means the Director of the Department of Public Safety Standards and Training.

(11) "Educational Credits" are credits earned for studies satisfactorily completed at an accredited post-secondary education institution recognized under OAR 259-008-0045.

(12) "Emergency ~~m~~Medical ~~d~~Dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(13) "First-Level Supervisor" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between the operational level and the middle manager position who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.

(14) "Full-time employment" means the employment of a person ~~who has the responsibilities as defined in ORS 181.610(3), (5), (9), (13), (14), (18) of this rule,~~ who has the responsibility for, and is paid to perform the duties ~~described in the above statute and administrative rule~~ of a public safety professional for more than 80 hours per month for a period of more than 90 consecutive calendar days. For purposes of this rule, any employment that meets the definition of seasonal, casual, or temporary employment is not considered full-time employment as a public safety professional.

(15) "High School" is a school accredited as a high school by the Oregon Department of Education, ~~or~~ a school accredited as a high school by the recognized regional accrediting body, or a school accredited as a high school by the state university of the state in which the high school is located.

(16) "Law Enforcement Officers" ~~as used throughout this manual collectively~~ means all police, corrections, and parole and probation officers ~~who are included~~ as described in the Public Safety Standards and Training Act ~~as described in ORS 181.610, and 181.651.~~

(17)(~~a~~) "Law Enforcement Unit" means:

(a) A police force or organization of the state, a city, university that has established a police department under Oregon Law 2011, Chapter 506, port, school district, mass transit district, county, county service district authorized to provide enhanced law enforcement services under ORS 451.010, ~~Indian reservation~~ tribal government as defined in Oregon Law 2011, Chapter 644 that employs authorized tribal police officers as defined in Oregon Law 2011, Chapter 644, Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, or common carrier railroad ~~whose~~ the primary duty of which, as prescribed by law, ordinance, or directive, is ~~any~~ one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control, or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision, and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation;

(b) ~~"Law enforcement unit" also means a~~ A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area ~~whose~~ the employees of which are commissioned by a county sheriff;

**(c) A district attorney's office; or**

**(d) A private, nonprofit animal care agency that has maintained an animal welfare investigation department for at least five years and has had officers commissioned as special agents by the Governor.**

(18) "Leave" means **a leave granted to a public safety professional by their employing public or private safety agency.**

~~(a) a leave granted to a law enforcement officer from a law enforcement unit; or~~

~~(b) a leave granted to a telecommunicator or emergency medical dispatcher from a public or private safety agency.~~

(19) "Middle Manager" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between first-level supervisor and department head position and is primarily responsible for management and/or command duties. A middle manager position does not include a position with limited, or acting middle management duties.

(20) "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties **of a public safety professional** ~~described in statutes and administrative rules for public safety personnel~~ for 80 hours **or less** per month, ~~or less,~~ for a period of more than 90 consecutive calendar days.

(21) "Parole and Probation Officer" means:

(a) Any officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers; or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; ~~or~~

(b) Any officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation; **or**

**(c) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.**

(22) "Police Officer" means an officer, ~~or~~ member **or employee** of a law enforcement unit ~~who is~~ employed full-time as a peace officer **who is:**

**(a) (A) e**Commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide ~~enhanced~~ law enforcement services under ORS 451.010, ~~Indian reservation~~ **tribal government as defined in section 2011 OR SB 412**, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, **a university that has established a police department under 2011 OR SB 405**, ~~or the Governor, or a member of the Department of State Police; and~~

**(B) who is r**Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;

**(b) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or another state;**

**(c) An authorized tribal police officer as defined in Oregon Law 2011, Chapter 644; or**

**(d) and a**Any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.651.

(23) "Public or private safety agency" means ~~any~~

**(a) A law enforcement unit; or**

**(b) A** unit of state or local government, a special purpose district or a private firm ~~which~~ **that** provides, or has authority to provide, ~~police~~, ambulance or emergency medical services.

(24) "~~Public safety personnel~~" and "~~Public safety professional~~" **"Public Safety Personnel," "Public Safety Officer," and "Public Safety Professional"** include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, **certified reserve officers**, and telecommunicators.

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

(26) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public ~~s~~afety Academy.

(27) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181.690, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses incurred while officers attend approved training courses certified by the Department.

(28) "Reserve Officer" means an officer or member of a law enforcement unit **who is:**

(a) ~~Who is a~~ **A** volunteer or ~~who is~~ employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, ~~Indian reservation~~ **tribal government as defined in Oregon Law 2011, Chapter 644**, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, ~~or the Governor,~~ or ~~who is a member of the Department of State Police~~ **who is;**

(b) ~~Who is a~~ **A**Armed with a firearm; and

(c) ~~Who is r~~**R**esponsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(29) "Seasonal ~~e~~**E**mployment" means employment that can be carried on only at certain seasons or fairly definite portions of the year, with defined starting and ending dates based on a seasonally determined need.

(30) "Staff" means those employees occupying full-time, part-time, ~~and~~ or temporary positions with the Department.

(31) "Telecommunicator" means:

(a) any A person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 403.105-; **or**

**(b) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.**

(32) "Temporary employment" means employment that lasts no more than 90 consecutive calendar days and is not permanent.

(33) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.715).

(34) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

\*\*\*

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

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

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

## Appendix D

### Department of Public Safety Standards and Training Memo

**Date:** November 8, 2011  
**To:** Corrections Policy Committee  
**From:** Linsay Hale  
Rules Coordinator

**Subject:** OAR 259-008-0066 – Proposed Rule  
Maintenance of Certification for Part-Time Parole and Probation Officers

**Issue:** This rule change clarifies the maintenance process for part-time parole and probation officers. The language and procedures are updated to mirror the language and procedures used for police officers and telecommunicators/EMD maintenance cycles.

The following revised language for OAR 259-008-0066 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

#### **259-008-0066**

#### **Maintenance of Certification for Part-time Parole and Probation Officers**

(1) Basic Certification. —All certified parole and probation officers who have ~~already~~ obtained basic certification and ~~worked~~ **employment** as a full-time parole and probation officer for a minimum of one year may continue certification if:

**(a) That that officer begins working as a parole and probation officer in a part-time capacity, as defined in OAR 259-008-0005(13) and ORS 181.610, without having their certification lapsed, denied, or revoked, within three (3) months of leaving a full-time position; and**

**(b) The employing agency notifies the Department of all personnel actions involving part-time parole and probation officers whose certification is to be continued on a Personnel Action Report (DPSST Form F-4) as required under OAR 259-008-0020.**

(2) In order to maintain certification, ~~(a) The part-time parole and probation officers shall~~ **must** annually complete **at least** 20 hours of **maintenance** training **annually**. The content of the training is determined by the agency head of the employing agency:

**(a) The annual maintenance training cycle for part-time parole and probation officers begins on January 1<sup>st</sup> and ends on December 31<sup>st</sup> of each year.**

**(b) The employing agency shall must maintain documentation of all required maintenance training for each part-time parole and probation officer; and**

**(c) The employing agency shall must notify DPSST of all part-time parole and probation officers employed annually, and provide documentation to the Department as to of training completed status by submitting a DPSST Form F-15P to DPSST by from January 1<sup>st</sup> through December 31st of each year.**

**(3) On or after December 31st of each year, the Department will identify all part-time parole and probation officers who are deficient in maintenance training hours according to Department records and provide notification of deficiency to the employing agency.**

**(a) Within the 30 days identified in the notification of deficiency, the agency must submit a Part-Time Parole & Probation Officer Maintenance Training Log (Form F-17) to the Department**

**identifying the maintenance training hours completed during the previous one (1) year reporting period for each officer identified as deficient.**

~~(e b) Failure to submit the completed Form F-17 to the Department complete the training for officers with identified training deficiencies will result in a notification of recall letter being sent to the agency head and officer. and/or submit the completed Form F-15P before the deadline date shall result in the lapse of the part-time parole and probation officer's certification.~~

**(c) Maintenance training hours reported to the Department on a Form F-17 will be used solely to verify completion of maintenance training requirements and will not be added to the officer's training record. A Form F-6 (Course Attendance Roster) must be forwarded to the Department to have training hours added to an officer's record.**

**(4) The Department will recall a part-time parole and probation officer's certification for:**

**(a) Failure to complete or report any required maintenance training identified in section (2) above on or before December 31<sup>st</sup> of each year; or**

**(b) Failure to submit a completed Form F-17 within the 30 days identified in the notification in (3) above.**

**(5) Recertification following a recall may be obtained at the approval of the Department by submitting the following to the Department:**

**(a) A written request from the employing agency head requesting recertification, along with a justification of why the required maintenance training hours were not reported; and**

**(b) Verification that maintenance training hours were completed.**

**(6) Upon written request from the head of an employing agency, the Department may grant an extension for the completion of maintenance training hours if an officer was on an extended leave of absence or the Department finds there is other good cause to grant an extension. The granting of such an extension is within the sole discretion of the Department.**

~~(4) The person whose certification has lapsed may apply for re-certification in the manner provided in ORS 181.610 to 181.712.~~

\*\*\*

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

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

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

## Appendix E

### Department of Public Safety Standards and Training Memo

**Date:** November 8, 2011  
**To:** Corrections Policy Committee  
**From:** Linsay Hale  
Rules Coordinator

**Subject:** OAR 259-008-0100 – Proposed Rule  
Miscellaneous Activities of the Board or Department

**Issue:** This rule update clarifies the process for retired public safety professionals to receive Retirement Cards.

The following revised language for OAR 259-008-0100 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

#### **259-008-0100**

##### **Miscellaneous Activities of the Board or Department**

\*\*\*

(6) The Department may, on request, issue Retirement Cards to those ~~Department-certified DPSST certified law enforcement officers~~ **public safety professionals** who have honorably served the citizens of Oregon and who have **honorably** retired from their agency ~~under honorable conditions~~.

(a) For the purposes of this rule, "**honorably** retired" means reaching the **State of Oregon's** recognized retirement age **and retiring in good standing from a certified position as a public safety professional** with a minimum of five (5) years of full-time ~~law enforcement~~ **public safety** experience in Oregon.

(b) An ~~officer~~ **public safety professional** who has sustained a permanent disability that prevents a return to ~~law enforcement~~ **their certifiable position** may qualify for a Retirement Card if the ~~officer~~ **public safety professional** has served a minimum of five (5) years as a full-time ~~law enforcement officer~~ **public safety professional** in Oregon.

(c) The request for a Retirement Card ~~shall~~ **must** be made by the agency ~~in~~ **with** which the ~~officer~~ **public safety professional** was last employed. The request ~~shall~~ **must** be made **using a FORM XXXX** ~~in writing~~.

**(d) The Department will issue only one Retirement Card per qualifying public safety professional.**

**(e) If a Retirement Card is lost or damaged, the Department may issue a replacement Card if requested by the applicable public safety professional.**

\*\*\*

**ACTION ITEM 1:** Determine whether to recommend filing the proposed language for OAR 259-008-0100 with the Secretary of State as a proposed rule.

**ACTION ITEM 2:** Determine whether to recommend filing the proposed language for OAR 259-008-0100 with the Secretary of State as a permanent rule if no comments are received.

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

## Appendix F

### Memorandum

**Date:** November 8, 2011  
**To:** Corrections Policy Committee  
**From:** Marilyn Lorance, Manager  
Standards and Certification Program  
**Subject:** Recommended time frame for remediation of skills deficiencies

#### **Background:**

There are times when Basic students are not able to meet the standards in one or more required skills during their basic training. These students are allowed to return to the Academy or to their DOC training venue to remediate the skill(s) and demonstrate their ability to perform the task prior to their deadline to obtain certification. These students are not given credit for having completed their Basic course until they have successfully remediated their deficiency. When remediation is complete, the student is identified as having successfully completed their Basic course.

Although not common, there have been occasions when a student with deficiencies has been completely removed from their work or training environment for a period of time prior to their remediation. Some examples are medical or military leaves that may last for many months, or occasionally for longer than a year.

A concern has been raised, both internally and by constituent agencies, about the ability of new police or corrections officers to retain newly learned critical and essential knowledge and skills when they have no opportunity to practice or apply them in the workplace. If knowledge and skills are not retained, then there may be significant risk in the following areas:

- To DPSST or DOC when providing training at the time of remediation.
- To DPSST when certifying that the student has mastered all critical and essential skills required of Basic students, when training has been interrupted for an extended period of time.
- To the employer when returning a student to full duties based on their completion of the requirements of Basic training.
- To the officer who may no longer possess the current knowledge, skills and abilities to safely begin or resume their field training and serve in their institution.

Based on these concerns, Steve Winegar, DPSST's Research Analyst, was asked to conduct the needed research and make a recommendation regarding how much time a trainee should be given to remediate a skills deficiency before the student would need to re-take the full Basic course. His memorandum and recommendation are attached.

**Action Requested:** Staff requests that the Policy Committee review the attached information and determine whether to concur with the recommendation of a six-month maximum period to remediate skills deficiencies, if the student has not been working at their agency in their certifiable position prior to remediation.

## **Appendix G**

### **Memorandum**

**Date:** November 8, 2011  
**To:** Corrections Policy Committee  
**From:** Marilyn Lorance  
Standards & Certification Program Manager

**Subject:** **Executive Session to Consider Confidential Legal Advice**  
Amended Proposed Order in the Matter of James Pitman, DPSST # 22603

**Note: This memorandum and attachments will be the subject of an Executive Session to consider the work product of our Department of Justice legal counsel. The documents and discussion are to be discussed only in an executive session of the Corrections Policy Committee, should not be reproduced, and are exempt from disclosure under Oregon Public Records Law.**

#### **Background:**

On February 17, 2009, the Corrections Policy Committee unanimously voted to recommend the revocation of the Basic, Intermediate, and Advanced Corrections Certifications of James Pitman. On April 23, 2009 the Board unanimously affirmed the Policy Committee recommendation. Following issuance of a Notice of Intent to Revoke Certifications, Officer Pitman requested a hearing. In October 2009 the Department of Justice (DOJ) referred the hearing request to the Office of Administrative Hearings. A hearing was held in June 2010, and in August 2010 Administrative Law Judge (ALJ) Rick Barber issued a Proposed Order. A copy of that Order is provided as “**Attachment A.**” The Proposed Order proposed reversing the Notice of Intent and allowing Pitman to retain certification as a Corrections Officer.

As DPSST reviewed the Proposed Order, we identified a number of concerns, including its statement of the Issue; a number of the Findings of Fact; the citing of the incorrect Administrative Rule as the legal standard; misstatements regarding the Department’s procedures and Policy Committee deliberations and conclusions; and the statement of the basis of the legal conclusion. Based on our concerns, we contacted our DOJ legal counsel for advice. Following extensive review by DOJ legal counsel in both the Criminal Justice and the Appellate Divisions, DOJ concluded that there was clear and convincing evidence in the record to warrant amending the Proposed Order to propose that the Notice of Intent be affirmed and Pitman’s certifications be denied and revoked. Legal counsel in the DOJ Appellate Division undertook that work, and an Amended Proposed Order was finalized for Department consideration in September 2011. A copy of the DOJ Amended Proposed Order is provided as “**Attachment B.**”

#### **Applicable Administrative Rules:**

DPSST Administrative Rule OAR 259-008-0070(9) provides the following:

(9) Denial and Revocation Procedure.

\* \* \*

(k) Final Order:

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

Office of Administrative Hearings Administrative Rule OAR 137-008-0655 provides the following:

\* \* \*

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

\* \* \*

(b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

**Action Requested:**

The Department requests that the Corrections Policy Committee review the Amended Proposed Order that has been prepared for Department review by DOJ legal counsel, and determine whether to approve the Department's issuing the Amended Proposed Order to James Pitman.

*Information only: Because the Amended Proposed Order reverses the Proposed Order issued by the ALJ, Officer Pitman will have the opportunity to review it and file exceptions, and to present written argument in support of his exceptions, before a Final Order will be issued in this matter.*

## **Appendix H**

### **Memorandum**

**Date:** November 8, 2011  
**To:** Corrections Policy Committee  
**From:** Marilyn Lorance  
Standards & Certification Program Manager

**Subject:** **Executive Session to Consider Confidential Legal Advice**  
Amended Proposed Order in the Matter of Reyes Romayor, DPSST # 35861

**Note:** This memorandum and attachments will be the subject of an Executive Session to consider the work product of our Department of Justice legal counsel. The documents and discussion are to be discussed only in an executive session of the Corrections Policy Committee, should not be reproduced, and are exempt from disclosure under Oregon Public Records Law.

#### **Background:**

On August 19, 2008, the Corrections Policy Committee unanimously voted to recommend the revocation of the Basic Corrections Certificate and denial of the Intermediate Corrections Certificate of Reyes Romayor. On October 23, 2008 the Board unanimously affirmed the Policy Committee recommendation. Following issuance of a Notice of Intent to Deny and Revoke Certifications, Officer Romayor requested a hearing. In March 2009 the Department of Justice (DOJ) referred the hearing request to the Office of Administrative Hearings. A hearing was held in May 2010, and in July 2010 Administrative Law Judge (ALJ) Rick Barber issued a Proposed Order. A copy of that Order is provided as “**Attachment A.**” The Proposed Order proposed reversing the Notice of Intent and allowing Romayor to retain certification as a Corrections Officer.

As DPSST reviewed the Proposed Order, we identified a number of concerns, including its statement of the Issue; a number of the Findings of Fact; the citing of the incorrect Administrative Rule as the legal standard; misstatements regarding the Department’s procedures and Policy Committee deliberations and conclusions; and the statement of the basis of the legal conclusion. Based on our concerns, we contacted our DOJ legal counsel for advice. Following extensive review by DOJ legal counsel in both the Criminal Justice and the Appellate Divisions, DOJ concluded that there was clear and convincing evidence in the record to warrant amending the Proposed Order to propose that the Notice of Intent be affirmed and Romayor’s certifications be denied and revoked. Legal counsel in the DOJ Appellate Division undertook that work, and an Amended Proposed Order was finalized for Department consideration in September 2011. A copy of the DOJ Amended Proposed Order is provided as “**Attachment B.**”

#### **Applicable Administrative Rules:**

DPSST Administrative Rule OAR 259-008-0070(9) provides the following:

(9) Denial and Revocation Procedure.

\* \* \*

(k) Final Order:

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

Office of Administrative Hearings Administrative Rule OAR 137-008-0655 provides the following:

\* \* \*

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

\* \* \*

(b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

**Action Requested:**

The Department requests that the Corrections Policy Committee review the Amended Proposed Order that has been prepared for Department review by DOJ legal counsel, and determine whether to approve the Department's issuing the Amended Proposed Order to Reyes Romayor.

*Information only: Because the Amended Proposed Order reverses the Proposed Order issued by the ALJ, Officer Romayor will have the opportunity to review it and file exceptions, and to present written argument in support of his exceptions, before a Final Order will be issued in this matter.*

## Appendix I

### Department of Public Safety Standards and Training Memorandum

**DATE:** November 8, 2011  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT: STACIE M. BATES DPSST #37856**  
**Dept. of Corrections – Coffee Creek**

#### **ISSUE:**

Should Stacie M. Bates' 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 BATES' resignation during an internal investigation.

#### **BACKGROUND and OVERVIEW**

1. In 1999, BATES was hired by the Oregon Department of Corrections as a corrections officer, signed her Code of Ethics, and ultimately obtained her Basic, Intermediate and Advanced Corrections Certifications.
2. In October, 2010, BATES was discharged for cause from employment. An employment arbitration hearing resulted in her reinstatement with the Department of Corrections.
3. In June, 2011, BATES resigned from the Dept. of Corrections. DPSST learned that BATES resigned during an investigation.
4. In August, 2011, DPSST notified BATES via certified mail that her case would be heard before the Corrections Policy Committee (CPC) and allowed her an opportunity to provide mitigating circumstances for the Committee's consideration.
5. BATES 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 BATES' 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 BATES' conduct *does/does not* rise to the level to warrant the revocation of her 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:** November 8, 2011  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT: DAVID E. JOHNSON DPSST #40979  
Oregon Department of Corrections**

#### **ISSUE:**

Should David E. Johnson's 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 JOHNSON'S resignation during an internal investigation.

#### **BACKGROUND and OVERVIEW**

1. *In 2001, JOHNSON was hired as a corrections officer, and signed his Code of Ethics. In subsequent years he attended the Basic Corrections course, and ultimately obtained his Basic, Intermediate and Advanced Corrections certifications.*
2. *On June 7, 2011, JOHNSON resigned during an internal investigation. Subsequently, DPSST sought and obtained information relating to his resignation.*
3. *In August, 2011, DPSST notified JOHNSON 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. *On September 6, 2011 JOHNSON telephoned me and asked if he would be able to be certified as a firefighter if his corrections certifications were revoked. I provided a written response to his question.*
5. *In September, 2011 JOHNSON provided a response for the Committee's consideration.*

#### **DISCUSSION:**

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

#### **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;*

(l) *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 JOHNSON'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 JOHNSON's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

## Appendix K

### Department of Public Safety Standards and Training Memorandum

**DATE:** November 8, 2011  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator

**SUBJECT: DAMIAN E. PALOMINOS DPSST #48092**  
**Washington County Sheriff's Office**

#### **ISSUE:**

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

The issue in this case involves Palominos' resignation in lieu of termination.

#### **BACKGROUND and OVERVIEW**

1. *During the years of 2007 through 2011, PALOMINOS worked as a corrections officer, attended the Basic Corrections course, signed his Code of Ethics and obtained his Basic Corrections Certification.*
2. *In June 2011, DPSST received information that PALOMINOS had resigned in lieu of termination. Subsequently, DPSST requested and received the investigation that led to PALOMINOS' resignation.*
3. *In August 2011, DPSST notified PALOMINOS 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. *PALOMINOS 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 PALOMINOS' 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 PALOMINOS' 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 L

### Department of Public Safety Standards and Training Memorandum

**DATE:** November 8, 2011  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinators

**SUBJECT: HECTOR B. TORRES DPSST #38280**  
**Department of Corrections – Two Rivers Correctional Institution**

**ISSUE:**

Should Hector B. TORRES' Basic Corrections certification revoked, and his application for Intermediate and Advanced Corrections certifications be denied, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4), and as referenced in OAR 259-008-0010?

The issue in this case involves TORRES' 2010 conviction for Negligent Driving 1 in Washington State, the equivalent of Oregon's DUII criminal offense.

#### **BACKGROUND and OVERVIEW**

- 1. In November 1999, TORRES was hired as a corrections officer by the Department of Corrections. He ultimately attended the Basic Corrections course, signed his Code of Ethics, and was granted a Basic Corrections Certification.*
- 2. In May 2011, DPSST received TORRES' Application for Certification for Intermediate and Advanced Corrections Certifications. On this form he acknowledged he had been convicted of a crime. Subsequently, DPSST sought and obtained the information leading to TORRES's conviction.*
- 3. In September 2011, DPSST notified TORRES 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. TORRES 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 a 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.**

**DUII is the Oregon equivalent to Washington's Negligent Driving in the First Degree.**

#### **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 TORRES' certification based on discretionary disqualifying misconduct:

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 TORRES' 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 M

### Department of Public Safety Standards and Training Memorandum

**DATE:** November 8, 2011  
**TO:** Corrections Policy Committee  
**FROM:** Leon S. Colas  
Professional Standards Investigator/Coordinator  
**SUBJECT:** **SHELLY E. ZEHNER DPSST #35122**  
**Dept. of Corrections**

#### **ISSUE:**

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

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

#### **BACKGROUND and OVERVIEW**

1. During the years 1998 through 2011, ZEHNER was employed by the Oregon Department of Corrections as a corrections officer, signed her Code of Ethics, and ultimately obtained her Basic and Intermediate Corrections Certifications.
2. In May 2011, ZEHNER resigned during an internal investigation. Subsequently, DPSST sought and received the investigative documents that led to ZEHNER's resignation.
3. In July 2011, DPSST notified ZEHNER via certified mail that her case would be heard before the Corrections Policy Committee (CPC) and allowed her an opportunity to provide mitigating circumstances for the Committee's consideration. ZEHNER did not provide a response. However, on October 3, 2011, ZEHNER telephoned me and asked if she could submit a late response, since it had been due by October 1. I advised her to still send her response if she desired to do so.

#### **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 ZEHNER'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 ZEHNER's conduct *does/does not* rise to the level to warrant the revocation of her 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.