

**Fire Policy Committee
Minutes
May 23, 2012**

The Fire Policy Committee of the Board on Public Safety Standards and Training held a regular meeting at 9:00 a.m. on May 23, 2012, at the Oregon Public Safety Academy in Salem, Oregon. Chair John Klum called the meeting to order at 9:00 a.m.

Attendees

Committee Members:

John Klum, Portland Fire & Rescue, Chair
Joe Seibert, Non-Management Firefighter, Vice-Chair
Dave Jones, Oregon Fire District Directors Association
Jeff Jones, Oregon Fire Chiefs Association
Johnny Mack, Community College Fire Programs
Dan Petersen, Oregon Fire Instructors Association
Scott Stanton, Oregon Volunteer Firefighters Association – via teleconference
Michelle Stevens, Oregon Fire Marshals Association
Mark Wallace, Oregon State Fire Marshal

Committee Members Absent:

Alan Ferschweiler, Oregon State Fire Fighters Council

DPSST Staff:

Eriks Gabliks, Director
Julie Olsen-Fink, Fire Certification Supervisor
Tina Diehl, Fire Certification Specialist
Allison Sebern, Fire Certification Coordinator
Theresa Mills, Fire Certification Support Specialist
Kristen Turley, Standards & Compliance Coordinator
Mark Ayers, Fire Training Program Supervisor

Guests:

Ryan Karjala, Sisters-Camp Sherman RFPD
Jeremy Ast, Sisters-Camp Sherman RFPD



1. Minutes from February 22, 2012 meeting

Johnny Mack moved to approve the minutes from the February 22, 2012 Fire Policy Committee meeting. Joe Seibert seconded the motion. The motion carried in a unanimous vote.

2. Public Comments - Wildland Interface OAR 259-009-0005 and OAR 259-009-0062

Presented by Julie Olsen-Fink

BACKGROUND:

The Fire Policy Committee and Board on Public Safety Standards and Training previously reviewed and approved filing a proposed permanent rule if no comments were received with the Secretary of State's office to amend the rules relating to National Wildfire Coordinating Group (NWCG) Wildland Interface standard. The proposed rules were filed with the Secretary of States' Office and opened for public comment. A total of three (3) public comments were received regarding OAR 259-009-0005 and OAR 259-009-0062 during the open comment period.

FINDING OF FACT:

1. On January 27, 2012 a Notice of Rulemaking was filed with the Secretary of State office.
2. On March 1, 2012 The Notice of Proposed Rulemaking was published in the Secretary of State's monthly publication.
3. During the month of March 2012, the Notice of Proposed Rulemaking was posted on the Department of Public Safety Standards and Training's website.
4. On March 21, 2012 the public comment period closed.

The Department provided notice of proposed rulemaking hearing to:

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

PUBLIC COMMENT #1

March 14, 2012

Julie Olsen-Fink
Fire Certification Supervisor
DPSST

Dear Mrs. Olsen-Fink:

As a long-time admirer of the outstanding work that your organization has done for the state, I feel privileged to receive an opportunity to comment on current pertinent issues related to the fire service community. As was indicated on line in regards to seeking input about two (2) proposed rule changes; I would like to take this time to share some thoughts on both OAR's (Proposed) 259-009-0005 & 259-009-0062. My reasons for commenting are so that we as a fire service can function more efficiently when interfacing with our other National Wildfire Coordination Group (NWCG) member agencies and we can bring

ourselves more in line with the national standards used by most of the States and Federal agencies.

This correspondence will hopefully outline the complete scope of what we should be doing and why.

REQUEST

Implement the NWCG model guidelines as outlined in the PMS 310-1 (Wildland Fire Qualification System Guide, which is supposed to be used by all NWCG member agencies). Reduce the unneeded and overbearing and training requirements that financially burden both career and volunteer agencies. Bring us back in line with the national standard so that we remain NIIMS compliant. Success of implementing the aforementioned recommendations will positively affect all fire agencies financially, improve morale of the volunteer firefighting forces, and increase the available pool of firefighters during conflagration wildfires.

CURRENT SCOPE OF REQUIRED TRAINING

1. In the last couple of years the state, through a recommendation from a DPSST policy committee changed the way we certify our wildland firefighting forces. This change was significant in scope and in my opinion, negatively affected the standards established by NWCG and the National Fire Protection Association (NFPA) in NFPA 1051 Standard for Wildland Firefighter Professional Qualifications. This deviation has caused several problems for training, certification and in terms of the Wildland Interface Fire Fighter qualification, poses an unprecedented potential for opportunity for firefighter to be in harm's way due to lack of experience for the position. Furthermore, some of the new certification standards raise several questions about NIMMS compliance in terms of ICS typing.

Bulleted below are the certifications that need to be reviewed and potentially changed back to meet the NWCG or NFPA 1051 standard(s). I understand that the only certification that is being reviewed is Wildland Interface Firefighter, but I feel that I would be remiss in not pointing out the other deviations observed in hopes that the policy committee will strongly consider adopting the requirements outlined in the PMS 310-1. Under each bullet I will provide a brief synopsis as to what the perceived issues are.

- Wildland Interface Firefighter

- i. The current standard deviates from the norm on many levels. Previously, the training that was required was S-130,190 which met the intent of an entry level firefighter or FFT2. Similar to that of a Structural Firefighter One (1), FFT2's are expected to be good at their jobs, be proficient in tasks and familiar with techniques required by the simple skills of fire line construction and engine crew operations. It is the basic level of training that is used by the park service, BIA, Forest Service, BLM and a host of other state agencies in the country. This standard has been consistent, tried, tested and very effective. In the last ten years two (2) changers were made. First, L-180 (Human Factors of Wildland Firefighting) was added to enhance the knowledge base of the entry level firefighter in understanding the challenges of human communications in challenging environments. The second change that was made was eliminating the task book for the FFT2. The task book was eliminated

because if the class was taught properly, all of the skills required of the position were covered in the classes.

ii. For some reason the policy committee that recommend the current training requirements missed the concept of the PMS 310-1 and NFPA 1510; and as a result the change that was made included elements that are consistent with skills and experience of a seasoned firefighter, not entry level. Generally, when making rules it is common that certain standards cannot be less stringent than the norm; however, they can be more restrictive, thus raising the bar and a higher level of competency. If this was the intention of the committee, I applaud them for their foresight, but unfortunately the situation that has been created deviates from that goal in several ways. In trying to raise the competency they have inadvertently skipped the most crucial element required of the higher standard. That element is experience.

1. In a structural fire setting, we do not take people off the street and immediately train them up the NFPA FF2 level. We would never expect an entry level firefighter to be responsible for others or act in a supervisory capacity. Moving from one position to the other comes with experience. I am sure that all of my colleagues would agree in principal to this notion. What we have done by combining the wildland FFT2 and FFT1 positions is put people on the fire line in a supervisory / competency based position without the requisite experience. It is this vital experience that is necessary for firefighters to make sound judgments. An example of this and relating it to the structural realm is you would not typically assign an entry level firefighter to act as the safety officer on a structure fire (or on a wildland fire, serve as a lookout without the experience to effectively serve in that capacity). While it does happen on occasion, it is not commonplace to put new people in a setting when critical assessments based on previous experience are necessary when looking over or after others to call out safety violations or condition changes. In a wildfire setting, which is a very dynamic setting (factors such as fuel, weather, topography and other variables) is not the place for someone with limited experience to make assessments for others. As an instructor of the science of wildland firefighting, it is stressed that we put our best firefighter in this position (lookout), not the newest or weakest. This variable must be considered and it is what I am asking the policy committee to use when re-evaluating this current rule.

2. When Oregon interface firefighters intermingle with others on fire assignments, there is an expectation that if you are trained to a certain level, you will be competent to that level. If you ask our Federal and Oregon Department of Forestry counterparts, they will all tell you that for someone to be at the wildland FFT1 level, you need to have a minimum of 1-3 years of wildland experience before moving to the next level. Our current standard eliminates the opportunity to gain the experience. This is very dangerous. It also will put structural firefighters at a disadvantage when assigned or get assigned as a squad boss. Nationally, through NIIMS and NWCG there has been a significant push to standardize positions, terminology and equipment typing. By doing what we are we are deviating from that standard. Our firefighters will not be competent as a result of lack of experience.

3. Another concern is the task book. First, most trainers do not know how to correctly fill out an NWCG task book. As a result, some firefighters are recommended for certification without following the appropriate steps. In addition, while the intention was to have all

certification levels in Oregon to have a corresponding task book, there can always be exceptions. In this case by simply bumping to the higher standard, the committee neglected to identify that a wildland FFT1 is a supervisor. That task book was never intended to cover entry level requirements.

4. There is a significant financial impact as a result of the higher standard. In these lean budget years, requiring extra training costs money. Money that most agencies don't have. Money that could potentially be lost by our volunteers as a result of having to miss work. This is unacceptable when the national standard does not require S-131.

5. In order for our firefighters, career and volunteer to have to attend this extra training, they in turn spend more time away from home away from families and other interests. Nationally we are facing a volunteer shortage crisis. The mere thought of adding unnecessary training is baffling when the resulting impact will be felt by lower numbers available for conflagration responses and decreased morale of the firefighter who is yearly asked to participate in more and more training. Again, there is a national standard, why deviate?

6. My recommendation is adopt the PMS 310-1. This will do two things. First, it will bring us back to the national standard. Second, if we adopt the national standard, DPSST and the policy committee will not have to continually put proposed rule changes in front of the legislature. We will simply evolve with the NWCG. This would be similar in a way to agencies that adopt the Oregon Fire Code. By adopting the code, they don't have to continuously go back to their governing bodies to adopt the most current standard.

- Strike Team Crew

i. As was stated above, if we are going to certify our firefighters based on wildland qualifications, we should follow the PMS 310-1. As I will state below, utilizing the statement thought process, one of the short comings of this new certification process is that the Task Force Leader certification was eliminated. From past State fire marshal response practices and dispatches to conflagration fires, most of the responses are as a Task Force. If we are to be consistent with NIIMS and the NWCG, we are remiss in sending out task forces led by Strike Team Leaders. Furthermore, in two publications from the Oregon State Fire Marshal's Office (2011 Mobilization Plan & 2012 Strike Team / Task Force Leader Guide), there is a position identified and known as the Task Force Leader. Previously, we used to have this certification. Without out it, there is an appearance that we are sending unqualified persons to fill that role. There is a huge difference between Strike Teams and Task Forces. The current certification does not reflect this. This needs to be changed.

- Strike Team Engine

i. If we are going to certify our firefighters based on wildland qualifications, we should follow the PMS 310-1. From past State fire marshal response practices and dispatches to conflagration fires, most of the responses are as a Task Force. If we are to be consistent with NIIMS and the NWCG, we are remiss in sending out task forces led by Strike Team Leaders. Furthermore, in two publications from the Oregon State Fire Marshal's Office (2011 Mobilization Plan & 2012 Strike Team / Task Force Leader Guide), there is a position identified and known as the Task Force Leader. Previously, we used to have this

certification. Without out it, there is an appearance that we are sending unqualified persons to fill that role. There is a huge difference between Strike Teams and Task Forces. The current certification does not reflect this. This needs to be changed.

2. Training

- I am a proponent of the ultimate goal of having our firefighters trained to the best and highest standards. Without the requisite knowledge from a qualified instructor, our future firefighters will be at a disadvantage. That being said, DPSST has accepted what NWCG and other agencies came up with which was the Cross Walk (sometimes referred to as Gap training). The intent of cross walk was to eliminate a lot of the redundancy that is generated in some of the S-courses established by NWCG. Most of the S-courses are geared to educate someone who does not have a structural firefighting background, and all of the requisite knowledge that is required to be a structural firefighter.

- While I personally do not use cross walk, it was approved and to the best of my knowledge is still approved.

- If one were to really delve into the course material of the S-131 curriculum, Unit 3 is a prime example of why a new or entry level firefighter should not be expected or trained to this standard. Tactical decision making is a learned skill, of which experience is the prime component. Tactical decision making, is taking the expectations of a firefighter to a level where there is a significant amount of responsibility and chance for error to occur. Looking at this from a logical perspective, if we train our firefighters consecutively in S-130, S-131, S-133, S-190, L-180 and then require them to take I-100, where are they afforded the opportunity to absorb what they learn.

- i. S-130 is a 32 hour class
- ii. S-190 is a 6 hour class
- iii. L-180 is 4-6 hours
- iv. S-133 is a 4 hour class

1. One could easily discern that for an entry level wildland firefighter to have to absorb 48 hours of varied training is over saturation. Can an adult learner really obtain all of that information successfully? Do ground pounders, or engine firefighters really need all of that training? I think the answer is no. The national standard does not call for that, and the training standards were never intended to include all of that information.

- Lastly, of great concern is the NWCG corresponding task book. There is no standard for length or amount of assignments in order for firefighters to successfully complete the requisite training and acquire experience for that level of certification. I have observed task-books with only one assignment completed and then firefighters recommended for certification. Additionally, referring back to an earlier statement, I have observed that there are a lot of people who are not familiar with the correct process for filling out the task-book. Here are a few examples:

- i. Evaluators' states not all assignments are complete needs another assignment. The task book appears to be completed and then the firefighter is somehow recommended for certification.

ii. Inside front cover is not signed off

iii. Firefighter completing two task-books for two different positions on the same incident

1. There are other examples that can be provided, but these are the three that stick out the most. Training is crucial, but it needs to be completed in a logical and methodical way that meets the national standards. Until we do this we are doing our firefighters a disservice, especially if we expect them to integrate them on teams or with other federal and state agencies.

CLOSING

As I have stated several times during my comments, I believe that the intent of the past standard was based on trying to train our firefighters to a high standard. There are several benefits to this. In order to get to that outcome, we need to not try and re-invent the wheel, not try and create a standard that does not follow logic. It is my hope that through these comments, we, the policy committee and everyone who participates in this process will arrive at the conclusion that we need to be a partner with everyone else when it comes to the standards. We see this more every year. Look at the National Registry of EMTS and what the Oregon Health Division is doing. They are meeting the national standard by adopting the National Registry. In terms of NIIMS and NIIMS compliance, we have been making huge strides and progress towards common terminology so that while on incidents there is a consistent standard used by all. We see this in our structural certifications. I truly hope that we as a state take a long hard look at what was done with the wildland standards decide to follow the national standards by adopting the PMS 310-1 or NFPA 1051. If others feel that we need a higher standard of training, then we should look to our agency partners and perhaps adopt something else. An example of this would be the USFS. They have adopted the PMS 310-1, but have added additional requirements documented in their operating manual called the 5109-17. If you look at their standards you will notice that the only deviation from the PMS 310-1 happens after the entry level firefighter training. Again, we should not re-invent the wheel. Thank you for the opportunity to share these thoughts.

Sincerely,

Jeff Pricher
Cascade Locks Fire and Rescue
Red Carded as: ICT3(T), DIVS, TFLD, FALC
NFPA Fire Officer II and Instructor III

PUBLIC COMMENT #2

Good Morning Julie,

I have a comment pertaining to the changes in the Wildland Interface Firefighter standard. I have heard the reason why the change is being made and have concerns. Why are we going to certify a level that has no way to document competency? The current Wildland Interface Firefighter standard matches NWCG FFT1 requirements and requires completion

of the NWCG FFT1 Task Book. The new standard requires only S-130, S-190, S-131, and I-100 and still requires the completion of the NWCG FFT1 Task Book since there is no longer a NWCG FFT2 Task Book. How do the applicants complete the task book without all the required classes? This change seems like a step backward to me. Thank you for the opportunity to voice my opinion.

Jim Whelan
Stanfield Fire Department
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PUBLIC COMMENT #3

Julie,

Sections iii (S-131) and V (Task Book) under FFT2 are additional requirements that we did not discuss and as such should be removed from rule in public comment. Thank you!

Ryan S. Karjala
Deputy Chief - Operations
Sisters-Camp Sherman R.F.P.D.
Office (541)549-0771
Cell (541)948-7426

ACTION ITEM I: Determine whether to recommend filing the proposed language for OAR 259-009-0005 and OAR 259-009-0062 with the Secretary of State as permanent rule.

Dan Petersen moved to recommend filing the proposed language for OAR 259-009-0005 and OAR 259-009-0062 with the Secretary of State as a permanent rule. Mark Wallace seconded the motion. The motion carried in a unanimous vote.

3. Denial Case Review for Gail Johnson #28436 – Siletz Fire Department

Presented by Kristen Turley

ISSUE:

Should Gail Johnson's application for NFPA Fire Apparatus Driver/Operator and NFPA Fire Fighter I be denied based on her discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW:

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

JOHNSON has served as a fire service professional since 2011.

On October 27, 2011, JOHNSON applied for a NFPA Fire Apparatus Driver/Operator certification.

On February 15, 2012, JOHNSON applied for a NFPA Fire Fighter I certification.

On or about June 14, 2002, JOHNSON was convicted of Driving While Revoked and Driving While Suspended. Based on the date of JOHNSON's convictions these crimes are not discretionary disqualifying events, for purposes of certification.

*On or about November 3, 2003, JOHNSON was convicted of Driving While Suspended. **Driving While Suspended is a discretionary disqualifying crime, for purposes of certification.***

*On or about April 17, 2007, JOHNSON was convicted of Driving While Suspended. **Driving While Suspended is a discretionary disqualifying crime, for purposes of certification.***

On April 18, 2012, DPSST contacted Lincoln County Circuit Court regarding any outstanding financial obligations JOHNSON has. JOHNSON is currently making monthly payments to the circuit court for the outstanding balance owed.

These convictions were compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter must be reviewed by the Fire Policy Committee (FPC).

On March 16, 2012, TURLEY mailed JOHNSON a letter advising her that her case would be heard before the FPC and allowed her an opportunity to provide mitigating circumstances for the Committee's consideration. As a policy, DPSST also provides a Stipulated Order Revoking and/or Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order, which ends the denial or revocation process.

On or about April 12, 2012, JOHNSON provided information for the FPC's consideration.

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-009-0070(4) specifies discretionary disqualifying conduct, which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that must be reviewed by the FPC.

In OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

(a) Category I: **Honesty**. Honesty includes straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

(c) Category III: **Justice**. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair.

OAR 259-009-0070(4)(c) provides that, pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of an "Attempt" to commit a Measure 11 crime has violated the core values of the fire service profession and may not be fit to receive or hold certification.

Staff Explanation: The above rule creates a presumption that if an individual has been convicted of any of the discretionary crimes, they have violated the core values of the fire service profession and may not be fit to receive or hold certification. To determine that the applicant may hold certification means that the FPC has determined that in the case of the subject individual, these convictions do not violate the core values.

SPECIFIC TO THIS CASE:

OAR 259-009-0070(4) specifies the discretionary disqualifying conviction of Driving While Suspended [ORS 811.182] as violating Category II, Professionalism, based on the elements of the crime.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, OAR 259-009-0070(7)(d) provides that the FPC and Board will consider aggravating and mitigating circumstances including, but not limited to the following:

(A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

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.

ACTION ITEM 1:

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to deny JOHNSON's certification by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their 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* violate the core value of **Honesty**.
 - c. The identified conduct *did/did not* violate the core value of **Professionalism**.
 - d. The identified conduct *did/did not* violate the core value of **Justice**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that JOHNSON's conduct, including the criminal conviction(s) and all mitigating and aggravating circumstances identified by the committee, *does/does not* rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that JOHNSON's certification be *denied/not denied*.

ACTION ITEM 2: (to be considered if denial and revocation are recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to re-apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

By vote, the Fire Policy Committee recommends a minimum initial period of ineligibility of time to be determined.



Jeff Jones moved that the Committee adopts the staff report as the record on which their recommendations are based. Dave Jones seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify and articulate the misconduct that is specific to this case. *Two counts of Driving While Suspended is a discretionary disqualifying crime, for purposes of certification.*
- b. The identified conduct **did** violate the core value of Honesty.
- c. The identified conduct **did** violate the core value of Professionalism.
- d. The identified conduct **did not** violate the core value of Justice.

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

The FPC identified the following conduct as mitigating circumstances:

- The letter from her Fire Chief.
- The fact that she has had no repeat incidents or convictions since 2007.

The FPC identified the following conduct as aggravating circumstances:

- Repeated citations for driving while suspended, driving while revoked and failure to appear.
- She has not paid all court ordered fines and fees.
- Her letter to the FPC stating that she has complied with court requirements and paid her fines.
- Her dishonesty with arresting officers in 2003.
- In her letter to the FPC, JOHNSON indicated that due to her son's medical issues, she needed to drive him to his health care appointments. However, during the 2003 incident, it did not appear to the FPC that her child was with her and that they were on their way to a medical appointment.

Michelle Stevens moved that the Committee finds that JOHNSON's conduct does rise to the level to warrant denial of her certifications, and therefore recommends to the Board

that JOHNSON's certifications be denied. Dave Jones seconded the motion. The motion carried unanimously.

Dan Petersen moved that the Committee recommends to the Board that JOHNSON's initial minimum period of ineligibility to re-apply for certifications would be two years. Joe Seibert seconded the motion. The motion carried unanimously.

4. Denial Case Review for Thomas Benschoter #30560 – Portland Fire & Rescue

Presented by Kristen Turley

ISSUE:

Should Thomas Benschoter's application for NFPA Fire Apparatus Driver/Operator be denied based on his discretionary disqualifying criminal conviction defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW:

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

BENSCHOTER has served as a fire service professional since 2011.

On February 13, 2012, BENSCHOTER applied for a NFPA Fire Apparatus Driver/Operator certification.

On or about December 16, 2002, BENSCHOTER was charged with Fourth Degree Assault and Harassment. On or about June 23, 2003, an Order of Dismissal of all charges was issued based on the District Attorney's failure to be ready to try the case.

*On or about October 4, 2007, BENSCHOTER was charged with Fourth degree Assault, Harassment, and Interfere with Making a Report. On or about April 1, 2008, BENSCHOTER pled guilty to and was convicted of Fourth Degree Assault and the remaining charges were dismissed. **Fourth Degree Assault is a discretionary disqualifying crime, for purposes of certification.***

This conviction was compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter must be reviewed by the Fire Policy Committee (FPC).

On March 16, 2012, TURLEY mailed BENSCHOTER a letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. As a policy, DPSST also provides a Stipulated Order Revoking and/or Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order, which ends the denial or revocation process.

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all

other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-009-0070(4) specifies discretionary disqualifying conduct, which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that must be reviewed by the FPC.

In OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

- (a) Category I: **Honesty**. Honesty includes straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.
- (b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.
- (c) Category III: **Justice**. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair.

OAR 259-009-0070(4)(c) provides that, pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of an “Attempt” to commit a Measure 11 crime has violated the core values of the fire service profession and may not be fit to receive or hold certification.

Staff Explanation: The above rule creates a presumption that if an individual has been convicted of any of the discretionary crimes, they have violated the core values of the fire service profession and may not be fit to receive or hold certification. To determine that the applicant may hold certification means that the FPC has determined that in the case of the subject individual, these convictions do not violate the core values.

SPECIFIC TO THIS CASE:

OAR 259-009-0070(4) specifies the discretionary disqualifying conviction of Fourth Degree Assault [ORS 163.160] as violating Category III, Justice, based on the elements of the crime.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, OAR 259-009-0070(7)(d) provides that the FPC and Board will consider aggravating and mitigating circumstances including, but not limited to the following:

(A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self-reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

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.

ACTION ITEM 1:

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to deny BENSCHOTER's certification by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their 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* violate the core value of **Honesty**.

- c. The identified conduct *did/did not* violate the core value of **Professionalism**.
 - d. The identified conduct *did/did not* violate the core value of **Justice**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
 4. By vote, the Fire Policy Committee finds that BENSCHOTER's conduct, including the criminal conviction(s) and all mitigating and aggravating circumstances identified by the committee, *does/does not* rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that BENSCHOTER's certification be *denied/not denied*.

ACTION ITEM 2: (to be considered if denial and revocation are recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to re-apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

By vote, the Fire Policy Committee recommends a minimum initial period of ineligibility of *time to be determined*.



Johnny Mack moved that the Committee adopts the staff report as the record (to include the added documents) on which their recommendations are based. Scott Stanton seconded the motion. The motion carried unanimously. For the record, John Klum indicated he has a potential conflict of interest and excused himself.

By discussion and consensus:

- a. Identify and articulate the misconduct that is specific to this case. *Fourth Degree Assault is a discretionary disqualifying crime, for purposes of certification.*
- b. The identified conduct **did not** violate the core value of Honesty.
- c. The identified conduct **did** violate the core value of Professionalism.
- d. The identified conduct **did** violate the core value of Justice.

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

The FPC identified the following conduct as mitigating circumstances:

- The letter of support from the agency.
- He accepted responsibility and disclosed the arrest and conviction to his agency.
- The evidence he provided that shows he completed the domestic violence requirement of his conviction.
- He has complied with all of the court requirements.

- The conduct that led to his conviction occurred prior to his entering the fire service.

The FPC identified the following conduct as aggravating circumstances:

- He served jail time and received probation.
- He was arrested in 2003 for the same crime. There was no conviction on that occasion.
- He failed to submit a letter to the FPC explaining his side of the story, leaving unanswered questions.

Mark Wallace moved that the Committee finds that BENSCHOTER's conduct does rise to the level to warrant denial of his certification, and therefore, based on his mitigating circumstances, recommends to the Board that BENSCHOTER's certification not be denied. Michelle Stevens seconded the motion. The motion carried unanimously.

5. Round Table/Staff Update

Mark Ayers reported:

- A Fire Fighter Safety Class for solar panels is scheduled for the end of July 2012 in Washington County in conjunction with a grant.
- Supporting classes for OVFA for their annual conference in Coos Bay.
- An NFA Target Hazards class is scheduled for September 2012 here at DPSST.
- Doug Bolthouse and Era Horton are working with Portland Fire & Rescue to identify another footprint to deliver the Code 3 Driving Program in September 2012 thru January 2013.

Julie Olsen-Fink reported:

- Maintenance Re-Certification packets will be mailed to 295 agencies on June 1, 2012.
- 120 agencies are now using the E-Forms/BOSS system now. The number of individuals who are participating in the process is increasing.
- The next round of task forces is being prepped.
- Getting things ready for the next Fallen Fire Fighter Memorial on September 20, 2012.

Eriks Gabliks reported:

- TVF&R has offered to video tape the solar panel class. It will be duplicated and sent out to all the fire agencies in Oregon.
- Oregon has been well represented on the Fire Act Grant review panels. Approximately 20 people have participated in each panel.
- Working with Oregon Department of Forestry (ODF) to find a replacement for Bill Lafferty on the FPC.
- DPSST Fire Trainers are working to get ready for wildfire season. DPSST has the commitment to train the National Guard if they are activated to support wildfire operations.
- DPSST is working with Chief Mark Wallace on the Fire Insurance Premium Tax.

- There are ten fire departments beta testing the IAFC Training Program that we are involved in which is on hydrogen, another alternative fuel.
- Skid Avoidance Code 3 Drivers Program was recognized in Washington, D.C. last month and received the Fire Service Leadership Award for Safety from CSFI.

6. Committee Vote on new Chair and Vice Chair

Scott Stanton moved to elect Joe Seibert as Chair of the Fire Policy Committee. Dan Petersen seconded the motion. The motion carried in a unanimous vote.

Dan Peterson moved to elect Jeff Jones as Vice Chair of the Fire Policy Committee. Joe Seibert seconded the motion. The motion carried in a unanimous vote.

The next scheduled meeting is August 22, 2012.

Meeting adjourned at 10:40 a.m.