

**Fire Policy Committee
Minutes (Draft)
September 15, 2009**

The Fire Policy Committee of the Board on Public Safety Standards and Training held a regular meeting at 9:00 a.m. on September 15, 2009 at the Oregon Public Safety Academy in Salem, Oregon. Chair Jim Whelan called the meeting to order at 9:00 a.m.

Attendees

Committee Members:

James Whelan, Oregon Volunteer Firefighters' Association, Chair
Kelly Bach, Oregon State Fire Fighters Council, Vice Chair
Larry Goff, Oregon Fire District Directors' Association
William Klein, Community College Fire Programs
John Klum, Portland Fire & Rescue
William Lafferty, Oregon Department of Forestry
Joe Seibert, Non-Management Firefighter
Rod Smith, Oregon Fire Instructors Association
Jim Walker, Office of Oregon State Fire Marshal (Representing Randy Simpson)

Committee Members Absent:

Mark Prince, Oregon Fire Chiefs' Association
Michelle Stevens, Oregon State Fire Marshal's Association

DPSST Staff:

Eriks Gabliks, Deputy Director
Julie Olsen-Fink, Senior Fire Certification Coordinator
Tina Diehl, Fire Certification Specialist
Allison Sebern, Fire Certification Support Specialist
Michelle Morin, Fire Certification Coordinator
Mark Ayers, Fire Training Supervisor
Marilyn Lorance, Standards & Certification Program Supervisor
Kristen Turley, Standards & Compliance Coordinator

Guests:

Michael Kincade, Forest Grove Fire & Rescue/OFIA
Chris Hunt, Corvallis Fire Department



1. Minutes from June 10, 2009 meeting

Kelly Bach moved to approve the minutes from the June 10, 2009 Fire Policy Committee meeting. Rod Smith seconded the motion. The motion carried in a unanimous vote.

2. Informational Update

Presented by Marilyn Lorance

With the implementation of OAR 259-009-0070 effective June 26, 2009, cases involving discretionary disqualifying convictions that occurred prior to January 15, 2003, no longer qualify for Fire Policy Committee (FPC) review. These pending cases have now been administratively closed.

On March 2, 2009, Adam Cole's case was presented to the FPC. The FPC recommended that Mr. Cole's certifications not be denied and the case was moved to the Board. On April 23, 2009, the Board discussed at length the reasoning behind the policy committee's decision. The majority of Board Members did not agree with the FPC recommendation and voted to return the case to the FPC for further review. Based on implementation of the new rule his case has been administratively closed.

3. Revocation/Denial Case Review for Paul F. Yegge DPSST #17985

Presented by Kristen Turley

ISSUE:

Should Paul YEGGE's NFPA Fire Fighter I certification be revoked and his NFPA Fire Instructor certification be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW:

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

On November 15, 2001, YEGGE was hired by the Fair Oaks RFPD.¹

On March 28, 2003, YEGGE was granted a NFPA Fire Fighter I certification.²

On April 10, 2009, YEGGE applied for the NFPA Fire Instructor certification.³

A routine records check showed YEGGE was convicted of Tampering with Drug Records (Class C Felony), a discretionary disqualifying crime, for purposes of certification.

¹ Ex A1

² Ex A1

³ Ex A2

*On or about March 19, 2007, YEGGE was arrested for Possession of a Controlled Substance and Tampering with Drug Records. On August 27, 2007, YEGGE was arraigned and the case was placed on hold pending an indictment. The case was dismissed on July 25, 2008, for failure to obtain a timely indictment. YEGGE was subsequently indicted on August 7, 2008, for the same charges and on a third count of Possession of a Controlled Substance that occurred on March 27, 2007. On February 6, 2009, YEGGE was convicted of Tampering with Drug Records. **This is a discretionary disqualifying crime, for purposes of certification.**⁴*

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 June 22, 2009, TURLEY mailed YEGGE a certified 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. This letter was sent both certified and regular mail. As a policy, DPSST also provides a Stipulated Order Revoking and Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.⁵

On or about July 10, 2009, TURLEY received the certified mail return receipt "Unclaimed" from YEGGE. The letter sent regular mail was not returned. On July 22, 2009, YEGGE's attorney responded in writing on his behalf.⁶

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT:

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.

⁴ Ex A5-A6

⁵ Ex A9

⁶ Ex A10

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 fairness and 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 characteristic of being just, impartial, or fair; integrity and honesty.

OAR 259-009-0070(4)(c) 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 the following crimes 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.

OAR 259-009-0070(7)(d) provides that the FPC will consider aggravating and mitigating circumstances, which include:

- (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.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to revoke and deny YEGGE's certifications 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 the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that YEGGE's conduct *does/does not* rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that YEGGE's certifications be *denied /not be denied*.

Part Two (to be considered if denial is recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the 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 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*.

Jim Walker moved that the committee adopts the staff report as the record on which their recommendations are based. Bill Lafferty seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify the conduct that is at issue:
Convicted of Tampering with Drug Records (Class C Felony), a discretionary disqualifying crime, for purposes of certification.
- b. The conduct ***did*** violate the core value of honesty.
- c. The conduct ***did*** violate the core value of professionalism.
- d. The conduct ***did not*** violate the core value of justice.

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

- The committee identified as mitigating circumstances the letters of support and that his use of prescriptions was to treat chronic pain and he was trying to save money.
- The committee identified as an aggravating circumstance the fact that his attempt to fill a duplicate prescription was intentional. They also noted that he attempted to run the second purchase through insurance and expressed concern over the number of pills taken in a short period of time.

John Klum moved that the committee finds that YEGGE's conduct does rise to the level to warrant denial and revocation of his certification(s), and therefore recommends to the Board that YEGGE's certifications be denied and revoked. Joe Seibert seconded the motion. The motion carried unanimously.

Kelly Bach moved that the committee recommends to the Board that the initial minimum period of ineligibility to re-apply for certification(s) will be 60 days. John Klum seconded the motion. The motion carried unanimously.

4. Revocation/Denial Case Review for Matthew R. Prentiss DPSST #24626

Presented by Kristen Turley

ISSUE:

Should Matthew R. PRENTISS' NFPA Fire Fighter and Wildland Interface certifications be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW

This case involves the following history, actions and processes related to PRENTISS:

On November 20, 2007, PRENTISS was hired by the West Valley Fire District.⁷

On or about April 17, 2008, PRENTISS applied for NFPA Fire Fighter certification.⁸

⁷ Ex A1

⁸ Ex A2

On or about May 9, 2008, PRENTISS applied for Wildland Interface certification.⁹

A routine records check showed PRENTISS was convicted of First Degree Theft (Class A Misdemeanor), a discretionary disqualifying crime, for purposes of certification.

*On or about May 8, 2007, PRENTISS was indicted for First Degree Theft related to his unlawful application for and receipt of unemployment benefits during the time period between 2005 and 2006. PRENTISS was convicted of this crime on June 29, 2007.¹⁰ **This is a discretionary disqualifying conviction 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).

A DMV address verification was completed for PRENTISS. On June 22, 2009, TURLEY mailed PRENTISS a certified 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. This letter was sent certified mail. As a policy, DPSST also provides a Stipulated Order Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.¹¹

On or about June 24, 2009, TURLEY received the certified mail return receipt from PRENTISS. On or about July 22, 2009 PRENTISS provided letters for the FPC's consideration.¹²

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.

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.

⁹ Ex A3

¹⁰ Ex A6

¹¹ Ex A11

¹² Ex A12-A13

DISCRETIONARY DISQUALIFYING CONDUCT

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

(A) Category I: **Honesty**. Honesty includes fairness and 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 characteristic of being just, impartial, or fair; integrity and honesty.

2. 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 the crimes identified in OAR 259-009-0070(4)(c) 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 is 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.

OAR 259-009-0070(7)(d) requires that the FPC to consider aggravating and mitigating circumstances in making a decision to authorize initiation of denial or revocation proceedings. Aggravating and mitigating circumstances include but are not limited to:

(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.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to deny PRENTISS' certifications 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 the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that PRENTISS' conduct *does/does not* rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that PRENTISS' certifications be *denied/not be denied*.

Part Two (to be considered if denial is recommended)

According to OAR 259-009-0070(7) upon determination to proceed with the denial or revocation 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 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*.

Jim Walker moved that the committee adopts the staff report as the record on which their recommendations are based. Rod Smith seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify the conduct that is at issue:
Convicted of First degree Theft (Class A Misdemeanor), a discretionary disqualifying crime, for purposes of certification.
- b. The conduct **did** violate the core value of honesty.
- c. The conduct **did** violate the core value of professionalism.
- d. The conduct **did** violate the core value of justice.

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

- The committee determined that mitigating circumstances included the time that has lapsed since his conviction, his compliance with the court order and the fact that he did not hold any certifications at the time of his conviction.
- The committee determined that aggravating circumstances included the fact that he admitted to receiving unemployment benefits for which he knew he was ineligible, over a significant period of time.

Jim Walker moved that the committee finds that PRENTISS' conduct does rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that PRENTISS' certifications be denied. Bill Lafferty seconded the motion. The motion carried unanimously.

Jim Walker moved that the committee recommends to the Board that the initial minimum period of ineligibility to re-apply for certification(s) would be July 1, 2011 based on the scheduled termination of his probation. Bill Klein seconded the motion. The motion carried unanimously.

5. Revocation/Denial Case Review for Brian D. Johnson DPSST #24170

Presented by Kristen Turley

ISSUE:

Should Brian D. JOHNSON's NFPA Fire Fighter and Hazardous Materials Responders certifications be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW

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

On March 22, 2007, JOHNSON was hired by the Falls City Fire Department.¹³

¹³ Ex A1

On or about April 9, 2009, JOHNSON applied for NFPA Fire Fighter certification.¹⁴

On or about June 4, 2009, JOHNSON applied for his Hazardous Materials Responders certification.¹⁵

A routine records check showed JOHNSON was convicted of Possession of a Controlled Substance-Methamphetamine (Class C Felony), a discretionary disqualifying crime, for purposed of certification.

On or about October 4, 1997, JOHNSON was arrested for Fourth Degree Assault, Harassment and Menacing. All charges were dismissed.¹⁶

*On or about March 24, 2005, JOHNSON was arrested for Burglary-Attempt, Possession of a Controlled Substance, Menacing, Criminal Mischief and Disorderly Conduct. JOHNSON was convicted of Menacing (Class A Misdemeanor) and Disorderly Conduct (Class B Misdemeanor) and granted a deferred sentence for Possession of a Controlled Substance-Methamphetamine on April 8, 2005. On September 19, 2005, JOHNSON was convicted of Possession of a Controlled Substance-Methamphetamine (Class C Felony) after violating his probation by use of controlled substances. **These are discretionary disqualifying convictions for purposes of certification.**¹⁷*

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).

A DMV address verification was completed for JOHNSON. On June 22, 2009, TURLEY mailed JOHNSON a certified 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. This letter was sent certified mail. As a policy, DPSST also provides a Stipulated Order Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.¹⁸

On or about June 24, 2009, TURLEY received the certified mail return receipt from JOHNSON. On or about July 16, 2009, TURLEY received a

¹⁴ Ex A2

¹⁵ Ex A3

¹⁶ Ex A7

¹⁷ Ex A8

¹⁸ Ex A15

response from JOHNSON which included several letters to the Committee.¹⁹

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

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

(A) Category I: **Honesty**. Honesty includes fairness and 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 characteristic of being just, impartial, or fair; integrity and honesty.

2. 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 the crimes identified in OAR 259-009-0070(4)(c) 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 is 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.

OAR 259-009-0070(7)(d) requires that the FPC to consider aggravating and mitigating circumstances in making a decision to authorize initiation of denial or revocation proceedings. Aggravating and mitigating circumstances include but are not limited to:

¹⁹ Ex A16-A22

- (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.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to deny JOHNSON's certifications 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 the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.

4. By vote, the Fire Policy Committee finds that JOHNSON's conduct *does/does not* rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that JOHNSON's certifications be *denied/not be denied*.

Part Two (to be considered if denial is recommended)

According to OAR 259-009-0070(7) upon determination to proceed with the denial or revocation 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 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*.

Rod Smith moved that the committee adopts the staff report as the record on which their recommendations are based. Jim Walker seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify the conduct that is at issue:
Convicted of Possession of a Controlled Substance-Methamphetamine (Class C Felony), a discretionary disqualifying crime, for purposes of certification.
- b. The conduct ***did*** violate the core value of honesty.
- c. The conduct ***did*** violate the core value of professionalism.
- d. The conduct ***did*** violate the core value of justice.

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

- The committee determined that mitigating circumstances included that he joined the Fire Department after his convictions, that his crimes appeared to be the result of his drug addiction, and that he successfully completed rehabilitation. They also stated as mitigating the letters of support and the amount of time that has elapsed since his last conviction.
- The committee determined that aggravating circumstances included the multiple Possession of a Controlled Substance charges, violation of his probation, statements made to police officers and victim, and his Menacing and Disorderly Conduct convictions.

Jim Walker moved that the committee finds that based on the mitigating circumstances, JOHNSON's conduct does not rise to the level to warrant denial of his certification(s), and therefore unanimously voted to recommend to the Board that JOHNSON's certifications not be denied. Larry Goff seconded the motion. The motion carried unanimously.

6. Revocation/Denial Case Review for Miles J. Hart DPSST #21065

Presented by Kristen Turley

ISSUE:

Should Miles J. HART's NFPA Fire Fighter, Wildland Interface Fire Fighter and First Responder Operations certifications be revoked and his NFPA Driver Apparatus Operator certification be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW

This case involves the following history, actions and processes related to HART:

On November 1, 2004, HART was hired by Lane County Fire District #1.²⁰

On or about May 24, 2005, HART was issued First Responder Operations certificate.²¹

On or about April 5, 2007, HART was issued a Wildland Interface Fire Fighter certificate.²²

On or about September 20, 2007, HART was issued a NFPA Fire Fighter I certificate.²³

On or about January 22, 2009, HART applied for NFPA Driver/Apparatus Operator certification.²⁴

A routine records check showed HART was convicted of two counts of Felon in Possession of a Firearm (Class C Felony), a discretionary disqualifying crime, for purpose of certification.

On or about June 12, 1997, HART was arrested for Driving While Suspended. HART was convicted on July 24, 1997. This crime is not a discretionary disqualifying event, for purposes of certification.²⁵

On or about August 4, 1997, HART was arrested for Driving While Suspended. HART was convicted on December 1, 1997. This crime is not a discretionary disqualifying event, for purposes of certification.²⁶

On or about September 13, 1997, HART was arrested for Aggravated Murder-Attempt, First Degree Assault-Attempt, Criminal Mischief, Pointing a Firearm at Another, Two Counts of Fourth Degree Assault and

²⁰ Ex A1

²¹ Ex A1

²² Ex A1

²³ Ex A1

²⁴ Ex A2

²⁵ Ex A5

²⁶ Ex A6

*Assault of a Public Safety Officer-Attempt. HART was convicted of First Degree Assault-Attempt, Criminal Mischief, Pointing a Firearm at Another, Two Counts of Fourth Degree Assault and Assault of a Public Safety Officer-Attempt. These are not discretionary disqualifying events for purposes of certification.*²⁷

*On or about June 22, 1998, HART was arrested for DUII. This led to a conviction. This is not a discretionary disqualifying event for purposes of certification.*²⁸

*On or about September 29, 2007, HART was arrested for two counts of Felon in Possession of a Firearm. HART pled guilty and was convicted of both counts on February 4, 2008. **This is a discretionary disqualifying conviction for purposes of certification.***²⁹

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).

*A DMV address verification was completed for HART. On January 27, 2009, KING mailed HART a certified 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. This letter was sent certified mail. As a policy, DPSST also provides a Stipulated Order Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.*³⁰

*On or about January 30, 2009, KING received the certified mail return receipt from HART. On or about February 25, 2009, KING received a response from HART which included a letter to the Committee.*³¹

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.

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.

²⁷ Ex A7

²⁸ Ex A8

²⁹ Ex A9

³⁰ Ex A12

³¹ Ex A13

DISCRETIONARY DISQUALIFYING CONDUCT

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

(A) Category I: **Honesty**. Honesty includes fairness and 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 characteristic of being just, impartial, or fair; integrity and honesty.

2. 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 the crimes identified in OAR 259-009-0070(4)(c) 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 is 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.

OAR 259-009-0070(7)(d) requires that the FPC to consider aggravating and mitigating circumstances in making a decision to authorize initiation of denial or revocation proceedings. Aggravating and mitigating circumstances include but are not limited to:

(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.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to revoke and deny HART's certifications 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 the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that HART's conduct *does/does not* rise to the level to warrant denial or revocation of his certification(s), and therefore recommends to the Board that HART's certifications be *denied and revoked/not be denied and revoked*.

Part Two (to be considered if denial is recommended)

According to OAR 259-009-0070(7) upon determination to proceed with the denial or revocation 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 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*.

Rod Smith asked that he be withdrawn from discussions on this matter due to conflict of interest.

Jim Walker moved that the committee adopts the staff report as the record on which their recommendations are based. Kelly Bach seconded the motion. The motion carried unanimously with one abstention.

By discussion and consensus:

- a. Identify the conduct that is at issue:
Convicted of two counts of Felon in Possession of a Firearm (Class C Felony), a discretionary disqualifying crime, for purposes of certification.
- b. The conduct did violate the core value of honesty.
- c. The conduct did violate the core value of professionalism.
- d. The conduct did violate the core value of justice.

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

- The committee determined that aggravating circumstances included the fact that he was a felon in possession of a firearm, the 1996 criminal convictions and his several instances of purchasing hunting tags.

Jim Walker moved that the committee finds that HART's conduct does rise to the level to warrant denial and revocation of his certification(s), and therefore recommends to the Board that HART's certifications be denied and revoked. Bill Klein seconded the motion. The motion carried unanimously with one abstention.

Bill Klein moved that the committee recommends to the Board that the initial minimum period of ineligibility to re-apply for certification would be March 1, 2011 based on the scheduled termination of his probation. John Klum seconded the motion. The motion carried unanimously with one abstention.

7. Revocation/Denial Case Review for Douglas J. Herring DPSST #23871

Presented by Kristen Turley

ISSUE:

Should Douglas HERRING's NFPA Driver Apparatus Operator certification be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW

This case involves the following history, actions and processes related to HERRING:

On January 20, 2007, HERRING was hired by the Central Cascades Fire & EMS.³²

³² Ex A1

On or about October 13, 2008, HERRING applied for NFPA Driver/Apparatus Operator certification.³³

A routine records check showed HERRING was convicted of two counts of Possession of a Controlled Substance (Class C Felony), Driving while Suspended (Class A Misdemeanor) and Felon in Possession of a Firearm (Class C Felony), discretionary disqualifying crimes, for purpose of certification.

On or about September 4, 1991, HERRING was arrested for DUII. This led to a diversion which was then dismissed.³⁴

On or about November 28, 1991, HERRING was arrested for Driving while Suspended. This was dismissed.³⁵

On or about June 10, 1996, HERRING was arrested for DUII. This was dismissed.³⁶

On or about July 13, 1998, HERRING was arrested for Criminal Mischief in the Third Degree. This led to a conviction. This crime is not a discretionary disqualifying event, for purposes of certification.³⁷

On or about August 7, 1998, HERRING was arrested for Violation of a Stalking Order. This was dismissed.³⁸

On or about September 24, 1998, HERRING was arrested for Violation of a Stalking Order. This was dismissed.³⁹

On or about September 16, 1999, HERRING was arrested on Possession of a Controlled Substance and DUII. HERRING was convicted of a lesser charge, Attempt Possession of a Controlled Substance and DUII. This is not a discretionary disqualifying event for purposes of certification.⁴⁰

On or about August 3, 2003, HERRING was arrested for DUII and Possession of a Controlled Substance. As a part of a plea agreement, the Possession charge was dismissed and HERRING was convicted of the DUII (Class A Misdemeanor). This is not a discretionary disqualifying event for purposes of certification.⁴¹

³³ Ex A2

³⁴ Ex A6

³⁵ Ex A7

³⁶ Ex A8

³⁷ Ex A9

³⁸ Ex A10

³⁹ Ex A11

⁴⁰ Ex A12

⁴¹ Ex A13

*On or about December 23, 2003, HERRING was arrested for Possession of a Controlled Substance (Class C Felony) and Possession of less than one ounce of Marijuana.⁴² HERRING was convicted of both of these crimes. **Possession of a Controlled Substance is a discretionary disqualifying conviction for purposes of certification.**⁴³*

*On or about October 8, 2004, HERRING was arrested for Driving while Suspended (Class A Misdemeanor) and Giving False Information to the Police. As a part of a plea agreement, Giving False Information was dismissed and HERRING pled guilty to Driving while Suspended. **This is a discretionary disqualifying conviction for purposes of certification.**⁴⁴*

On or about December 29, 2004, HERRING was arrested for Possession of a Controlled Substance. This was dismissed.⁴⁵

*On or about July 25, 2005, HERRING was indicted for Possession of a Controlled Substance (Class C Felony) and Felon in Possession of a Firearm (Class C Felony). HERRING was convicted of both of these crimes. **These are discretionary disqualifying convictions for purposes of certification.**⁴⁶*

*On or about July 26, 2005, HERRING was arrested for Manufacturing or Delivery of a Controlled Substance (Class C Felony).⁴⁷ HERRING was convicted of this crime. **This is a discretionary disqualifying conviction for purposes of certification.**⁴⁸*

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).

A DMV address verification was completed for HERRING. On October 27, 2008, KING mailed HERRING a certified 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. This letter was sent certified mail. As a policy, DPSST also provides a Stipulated Order Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.⁴⁹

⁴² ORS 475.992.4.b.and 475.992.4.f. were renumbered to 475.840 in the 2005 legislative session

⁴³ Ex A14

⁴⁴ Ex A17

⁴⁵ Ex A20

⁴⁶ Ex A22

⁴⁷ ORS 475.992.1.c. was renumbered to 475.840 in the 2005 legislative session.

⁴⁸ Ex A25

⁴⁹ Ex A28

On or about November 3, 2008, KING received the certified mail return receipt from HERRING. On or about November 25, 2008, KING received a response from HERRING which included a letter to the Committee.⁵⁰

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

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

(A) Category I: **Honesty**. Honesty includes fairness and 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 characteristic of being just, impartial, or fair; integrity and honesty.

2. 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 the crimes identified in OAR 259-009-0070(4)(c) 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 is 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.

⁵⁰ Ex A29

OAR 259-009-0070(7)(d) requires that the FPC to consider aggravating and mitigating circumstances in making a decision to authorize initiation of denial or revocation proceedings. Aggravating and mitigating circumstances include but are not limited to:

(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.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to deny HERRING'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 the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.

- d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that HERRING's conduct *does/does not* rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that HERRING's certification *be denied/not be denied*.

Part Two (to be considered if denial is recommended)

According to OAR 259-009-0070(7) upon determination to proceed with the denial or revocation 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 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*.

John Klum moved that the committee adopts the staff report as the record on which their recommendations are based. Rod Smith seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify the conduct that is at issue:
Convicted of two counts of Possession of a Controlled Substance (Class C Felony), Driving while Suspended (Class A Misdemeanor) and Felon in Possession of a Firearm (Class C Felony), discretionary disqualifying crimes, for purposes of certification.
- b. The conduct *did* violate the core value of honesty.
- c. The conduct *did* violate the core value of professionalism.
- d. The conduct *did* violate the core value of justice.

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

- The committee determined that mitigating circumstances included his successful completion of probation and his self-disclosure of a personal tragedy that did not lead to his reoffending. They also considered as mitigating the fact that he was not a member of the Fire Department at the time of the convictions.
- The committee determined that aggravating circumstances included the lengthy time during which he was involved with substance abuse, the number of DUII arrests and convictions, particularly due to the types of certifications for which he is applying.

Jim Walker moved that the committee finds that HERRING's conduct does rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that HERRING's certification be denied. Bill Lafferty seconded the motion. The motion carried unanimously.

Jim Walker moved that the committee recommends to the Board that the initial minimum period of ineligibility to re-apply for certification would be two (2) years. Bill Lafferty seconded the motion. The motion carried unanimously.

8. Revocation/Denial Case Review for Christine J. Friend DPSST #24076

Presented by Kristen Turley

ISSUE:

Should Christine J. FRIENDS's NFPA Fire Fighter certification be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW

This case involves the following history, actions and processes related to FRIEND:

On May 1, 2005, FRIEND was hired by Klamath County Fire District #3.⁵¹

On or about January 28, 2009, FRIEND applied for NFPA Fire Fighter certification.⁵²

A routine records check showed FRIEND was convicted of First Degree Theft, a discretionary disqualifying crime, for purpose of certification.

*On or about April 1, 2003, FRIEND was arrested for First Degree Theft. FRIEND was convicted of this crime on August 14, 2007. **This is a discretionary disqualifying conviction for purposes of certification.**⁵³*

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).

A DMV address verification was completed for FRIEND. On June 22, 2009, TURLEY mailed FRIEND a certified 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. This letter was sent certified mail. As a policy, DPSST also provides a Stipulated Order Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.⁵⁴

⁵¹ Ex A1

⁵² Ex A2

⁵³ Ex A5

⁵⁴ Ex A8

On or about June 29, 2009, TURLEY received the certified mail return receipt from FRIEND. On or about July 20, 2009, TURLEY received a response from FRIEND for the FPC's review.⁵⁵

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

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

(A) Category I: **Honesty**. Honesty includes fairness and 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 characteristic of being just, impartial, or fair; integrity and honesty.

2. 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 the crimes identified in OAR 259-009-0070(4)(c) 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 is 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.

OAR 259-009-0070(7)(d) requires that the FPC to consider aggravating and mitigating circumstances in making a decision to authorize initiation of denial or revocation proceedings. Aggravating and mitigating circumstances include but are not limited to:

⁵⁵ Ex A9-A10

- (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.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to deny FRIEND'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 the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.

4. By vote, the Fire Policy Committee finds that FRIEND's conduct *does/does not* rise to the level to warrant denial of her certification(s), and therefore recommends to the Board that FRIEND's certification be *denied/not be denied*.

Part Two (to be considered if denial is recommended)

According to OAR 259-009-0070(7) upon determination to proceed with the denial or revocation 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 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*.

Rod Smith moved that the committee adopts the staff report as the record on which their recommendations are based. John Klum seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify the conduct that is at issue:
Convicted of First Degree Theft, a discretionary disqualifying crime, for purposes of certification.
- b. The conduct ***did*** violate the core value of honesty.
- c. The conduct ***did*** violate the core value of professionalism.
- d. The conduct ***did*** violate the core value of justice.

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

- The committee identified as mitigating circumstances the letter of support from the Klamath County Fire District Board and that her conduct occurred prior to her joining the Fire Department.
- The committee identified as aggravating circumstances the Theft conviction and her unwillingness to accept responsibility for her role and active participation in the conduct underlying her conviction.

Bill Klein moved that the committee finds that FRIEND's conduct does rise to the level to warrant denial of her certification(s), and therefore recommends to the Board that FRIEND's certification be denied. Rod Smith seconded the motion. The motion carried 7 to 1.

Jim Walker moved that the committee recommends to the Board that the initial minimum period of ineligibility to re-apply for certification would be September 1, 2010 based on the scheduled termination of her probation. Bill Klein seconded the motion. The motion carried unanimously.

9. Revocation/Denial Case Review for Donald W. Gabbard DPSST #24874

Presented by Kristen Turley

ISSUE:

Should Donald W. GABBARD's NFPA Fire Fighter certification be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW

This case involves the following history, actions and processes related to GABBARD:

On November 20, 2007, GABBARD was hired by the John Day Fire Department.⁵⁶

On or about March 20, 2009, GABBARD applied for NFPA Fire Fighter certification.⁵⁷

A routine records check showed GABBARD was convicted of Second Degree Theft (Class A Misdemeanor), two counts of Fourth Degree Assault (Class A Misdemeanor) and Menacing (Class A Misdemeanor), discretionary disqualifying crimes, for purpose of certification.

*On or about January 7, 2002, GABBARD was arrested for Second Degree Theft (Class A Misdemeanor). GABBARD was convicted of this crime on January 14, 2004.⁵⁸ **This is a discretionary disqualifying conviction for purposes of certification.***

*On or about November 9, 2003, GABBARD was arrested for Fourth Degree Assault (Class A Misdemeanor), Two counts of Interfering with Making a Report (Class A Misdemeanor, Menacing (Class A Misdemeanor) and Harassment (Class B Misdemeanor). GABBARD was convicted of Fourth Degree Assault and Menacing on March 10, 2004.⁵⁹ **Fourth Degree Assault is a discretionary disqualifying conviction for purposes of certification.***

On or about November 20, 2006, GABBARD was arrested for Three Counts of Fourth Degree Assault (Class C Felony), Three Counts of Attempt to Assault a Public Safety Officer (Class A Misdemeanor), Strangulation (Class A Misdemeanor), Three Counts of Menacing (Class A Misdemeanor), Resist Arrest (Class A Misdemeanor), Recklessly Endanger Another (Class A Misdemeanor) & Four Counts of Harassment (Class B Misdemeanor). GABBARD was convicted of one count of Fourth Degree Assault & Attempt to Assault a Public Safety

⁵⁶ Ex A1

⁵⁷ Ex A2

⁵⁸ Ex A11

⁵⁹ Ex A14

Officer on February 15, 2007.⁶⁰ **Fourth Degree Assault is a discretionary disqualifying conviction for purposes of certification.**

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).

A DMV address verification was completed for GABBARD. On June 22, 2009, TURLEY mailed GABBARD a certified 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. This letter was sent certified mail. As a policy, DPSST also provides a Stipulated Order Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.⁶¹

On or about June 29, 2009, TURLEY received the certified mail return receipt from GABBARD. On or about July 21, 2009 GABBARD provided letters for the FPC's consideration.⁶²

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.

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.

DISCRETIONARY DISQUALIFYING CONDUCT

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

(A) Category I: **Honesty.** Honesty includes fairness and 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.

⁶⁰ Ex A17

⁶¹ Ex A20

⁶² Ex A21

(C) Category III: **Justice**. Justice includes just treatment, the quality or characteristic of being just, impartial, or fair; integrity and honesty.

2. 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 the crimes identified in OAR 259-009-0070(4)(c) 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 is 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.

OAR 259-009-0070(7)(d) requires that the FPC to consider aggravating and mitigating circumstances in making a decision to authorize initiation of denial or revocation proceedings. Aggravating and mitigating circumstances include but are not limited to:

- (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.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to deny GABBARDS'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 the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that GABBARDS's conduct *does/does not* rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that GABBARD's certification be *denied/not be denied*.

Part Two (to be considered if denial is recommended)

According to OAR 259-009-0070(7) upon determination to proceed with the denial or revocation 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 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*.

Rod Smith moved that the committee adopts the staff report as the record on which their recommendations are based. Larry Goff seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify the conduct that is at issue:

Convicted of two counts of Second Degree Theft (Class A Misdemeanor), two counts of Fourth Degree Assault (Class A Misdemeanor) and Menacing (Class), discretionary disqualifying crimes, for purposes of certification.
- b. The conduct *did* violate the core value of honesty.
- c. The conduct *did* violate the core value of professionalism.
- d. The conduct *did* violate the core value of justice.

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

- The committee identified as mitigating circumstances the letters of support submitted to the committee.
- The committee identified as aggravating circumstances the repeated assaults on his wife with the last assault occurring in front of a child, his multiple convictions and conduct while on probation.

Kelly Bach moved that the committee finds that GABBARD's conduct does rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that GABBARD's certification be denied. Joe Seibert seconded the motion. The motion carried unanimously.

John Klum moved that the committee recommends to the Board that the initial minimum period of ineligibility to re-apply for certification would be twelve (12) months. Jim Walker seconded the motion. The motion carried 7 to 1.

10. Round Table

Eriks Gabliks discussed DPSST updates.

- Last year Oregon Fire Instructors Association brought forward to FPC a proposal to have Live Fire Training standards. Staff has completed an aggressive awareness campaign. Each fire department has been sent a complete set of NFPA1403 as well as OR-OSHA requirements. That was followed up with two classes in partnership with the instructors offered here at DPSST free of charge: University of Illinois Fire Service Institute's Live Fire Train-the-Trainer class as well as the Florida State Fire College Live Fire Train-the-Trainer class.
- Look for updated standards that may be ready for the next meeting. Fire Officer has a task force coming together in October as well as Apparatus Operator.
- Wildland Interface comments are open for public comment.
- We are working with a number of organizations on Incident Management Team training standards.
- We are fully staffed now. Michelle Morin has joined the Fire Certification section and Jamie Mason has filled the northwest field office position.
- The Skid Avoidance Program is up and running and has been out on the statewide circuit and continues to be scheduled.
- We are doing outreach to approximately 60 of the small rural fire departments that don't currently train to NFPA Fire Fighter I and don't have the ability to get certifications.
- Staff will be taking 10-14 Furlough days over the next two years to offset the state budget revenue forecast. They will be staggered so there's not a lot of impact to our customers.
- The Fallen Fire Fighter Memorial is this Thursday at 1:00 pm so we encourage you to join us.
- We are working with the Oregon Fire Instructors Association with their strategic planning efforts that are starting next month.

- The E-Forms project which will allow fire departments to submit certification online to us is ready for a beta test the first week of October. We have 20 different users coming in to test, challenge the system.
- 2010 meeting dates will be coming out soon.
- The next scheduled FPC Meeting is November 20, 2009.

Meeting adjourned at 11:50 a.m.