

# Police Policy Committee

## Minutes

### August 11, 2009

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on August 11, 2009 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:35 p.m. by Chair Andrew Bentz.

#### Attendees

##### **Policy Committee Members:**

Andrew Bentz, Chair, Oregon State Sheriffs' Association  
Stuart Roberts, Vice-Chair, Oregon Association Chiefs of Police  
Robert Gordon, Oregon State Sheriffs' Association  
Larry O'Dea, Assistant Chief, Portland Police Bureau  
Tim McLain, Superintendent, Oregon State Police  
Kent Barker, Oregon Association Chiefs of Police  
Michael Healy, Oregon Association Chiefs of Police  
Steven Piper, Non-Management Law Enforcement  
Holly Driver Russell, Oregon State Sheriffs' Association

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

Robert King, Non-Management Law Enforcement  
Brandon Kaopuiki, Non-Management Law Enforcement  
Rich Evans, Oregon State Police

##### **DPSST Staff:**

Eriks Gabliks, Deputy Director  
Marilyn Lorange, Standards and Certification Supervisor  
Bonnie Narvaez, Certification Coordinator  
Theresa King, Professional Standards Coordinator  
Scott Willadsen, Professional Standards Coordinator  
Roger Eaton, Training Captain-Survival Skills  
Carolyn Kendrick, Administrative Specialist



#### **1. Minutes of May 12, 2009 Meeting**

Approve minutes from the May 12, 2009 meeting.

*See Appendix A for details*

*Kent Barker moved to approve the minutes from the May 12, 2009 meeting. Tim McLain seconded the motion. The motion carried unanimously.*

#### **2. Minutes of June 4, 2009 Special Meeting**

Approve minutes from the June 4, 2009 special meeting.

*See Appendix B for details*

*Kent Barker moved to approve the minutes from the June 4, 2009 meeting. Larry O'Dea seconded the motion. The motion carried unanimously.*

3. **OAR 259-008-0060(18) – Proposed Rule**

Multi-Discipline – Maintenance Training Report  
Presented by Bonnie Narvaez

See Appendix C for details

*Robert Gordon moved to recommend filing the proposed language for OAR 259-008-0060(18) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Tim McLain seconded the motion. The motion carried unanimously.*

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

4. **The Committee DID NOT Convene in Executive Session and Took Action on the Following Three Cases:**

**Brian D. Hubbard – DPSST #32024**

Presented by Theresa King

See Appendix D for details

- *Tim McLain moved that the policy committee adopts the Staff report as the record upon which its recommendations are based. Kent Barker seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue. *Off-duty crash and arrest for DUII*
  - b. The identified conduct *did not* involve **Dishonesty**.
  - c. The identified conduct *did* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did not* involve **Misuse of Authority**.
  - e. The identified conduct *did* involve **Gross Misconduct**.
  - f. The identified conduct *did* involve **Misconduct**.
  - g. The identified conduct *did not* involve **Insubordination**.
- By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances. *As mitigating circumstances the committee identified the letter and support by his current Chief, HUBBARD's great record, and his apologetic attitude.*
- *Robert Gordon moved that the policy committee finds HUBBARD's conduct does not rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that his certification(s) not be revoked. Larry O'Dea seconded the motion. The motion carried unanimously.*

**John L. Lovik– DPSST #21892**

Presented by Theresa King

See Appendix E for details

- *Robert Gordon moved that the policy committee adopts the Staff report as the record upon which its recommendations are based. Larry O'Dea seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue.
  - b. The identified conduct *did not* involve **Dishonesty**.
  - c. The identified conduct *did* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did not* involve **Misuse of Authority**.

- e. The identified conduct *did* involve **Gross Misconduct**.
- f. The identified conduct *did* involve **Misconduct**.
- g. The identified conduct *did not* involve **Insubordination**.
- By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances. *The committee agreed that the matter was handled by the Sheriff.*
- *Tim McLain moved that the policy committee finds LOVIK's conduct does not rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that LOVIK's certifications not be revoked. Larry O'Dea seconded the motion. The motion carried unanimously.*

#### Travis Patterson – DPSST #45201

Presented by Theresa King

See Appendix F for details

- *Kent Barker moved that the policy committee adopts the Staff report as the record upon which its recommendations are based. Robert Gordon seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue.
  - b. The identified conduct *did* involve **Dishonesty**.
  - c. The identified conduct *did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did* involve **Misuse of Authority**. *Canine officer given authority to write policy, officer would not then share the policy he wrote with another officer; Incorrect timesheets; Misuse of public trust; Receipt of benefit through fraud.*
  - e. The identified conduct *did* involve **Gross Misconduct**.
  - f. The identified conduct *did* involve **Misconduct**.
  - g. The identified conduct *did not* involve **Insubordination**.
- By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances. *Aggravating circumstances include theft, and no responsibility or justification provided by PATTERSON. The committee concurred there were no mitigating circumstances.*
- *Kent Barker moved that the policy committee finds PATTERSON's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that his certification(s) be revoked. Robert Gordon seconded the motion. The motion carried unanimously.*
- *Tim McLain moved that the committee recommends to the Board that PATTERSON's misconduct was a lifetime disqualifier; he may never reapply to the Police Policy Committee seeking certification. Kent Barker seconded the motion. The motion carried unanimously.*

#### 5. Nicholas E. Bielenberg – DPSST #42412

Presented by Theresa King

See Appendix G for details.

- *Tim McLain moved that the committee adopts the staff report as the record upon which its recommendations are based. Rob Gordon seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a.) Identify the conduct that is at issue.
  - b.) The identified conduct did involve **Dishonesty. Falsification of reports, lied to supervisor, dishonesty regarding evidence.**
  - c.) The identified conduct did not involve a **Disregard for the Rights of Others.**
  - d.) The identified conduct did not involve **Misuse of Authority.**
  - e.) The identified conduct did involve **Gross Misconduct.**
  - f.) The identified conduct did involve **Misconduct.**
  - g.) The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. *The committee agreed there were no mitigating circumstances.*
- *Holly Driver Russell moved that the committee finds that BIELENBERG's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that BIELENBERG's certification(s) be revoked. Robert Gordon seconded the motion. The motion carried unanimously.*
- *Tim McLain moved that the committee recommends to the Board that BIELENBERG's misconduct was a lifetime disqualifier; he may never reapply to the Police Policy Committee seeking certification. Kent Barker seconded the motion. The motion carried unanimously.*

6. Kevin D. Carter – DPSST #43794

Presented by Theresa King

*See Appendix H for details.*

- *Larry O'Dea moved that the committee adopts the staff report as the record upon which its recommendations are based. Kent Barker seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue.
  - b. The identified conduct did involve **Dishonesty. Dishonest by omission regarding the affair and knowledge of location of officer.**
  - c. The identified conduct did involve a **Disregard for the Rights of Others. Missed calls as a result of affair.**
  - d. The identified conduct did involve **Misuse of Authority. His affair with a reserve officer.**
  - e. The identified conduct did not involve **Gross Misconduct.**
  - f. The identified conduct did involve **Misconduct.**
  - g. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. *The committee did not identify any mitigating or aggravating circumstances.*
- *Tim McLain moved that the committee finds CARTER's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to*

*the Board that CARTER's certification(s) be revoked. Larry O'Dea seconded the motion. The motion carried unanimously.*

- *Robert Gordon moved that the committee recommends to the Board that CARTER's misconduct was a lifetime disqualifier; he may never reapply to the Police Policy Committee seeking certification. Larry O'Dea seconded the motion. The motion carried unanimously.*

7. **James Leffmann – DPSST #04520**

Presented by Theresa King

See Appendix I for details.

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

10. **Shawn L. Parsons – DPSST #44959**

Presented by Theresa King

See Appendix J for details.

- *Kent Barker moved that the committee adopts the Staff report as the record upon which its recommendations are based. Michael Healy seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue.
  - b. The identified conduct did involve **Dishonesty**. *Lied about not remembering the event yet remembered taking a taxi home.*
  - c. The identified conduct did involve a **Disregard for the Rights of Others**.
  - d. The identified conduct did involve **Misuse of Authority**.
  - e. The identified conduct did not involve **Gross Misconduct**.
  - f. The identified conduct did involve **Misconduct**.

- g. The identified conduct **did not** involve **Insubordination**.
- By discussion and consensus, the committee must identify and consider any mitigating and aggravating circumstances. *The committee did not state any mitigating or aggravating circumstances.*
- *Michael Healy moved that the committee finds PARSON's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that PARSON's certification(s) be revoked. Tim McLain seconded the motion. The motion carried unanimously.*
- *Tim McLain moved that the committee recommends to the Board that PARSON's misconduct was a lifetime disqualifier; he may never reapply to the Police Policy Committee seeking certification. Kent Barker seconded the motion. The motion carried unanimously.*

#### 11. Matthew T. Sherwood – DPSST #42235

Presented by Theresa King

See Appendix K for details

- *Kent Barker moved that the policy committee adopts the Staff report as the record upon which its recommendations are based. Robert Gordon seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue.
  - b. The identified conduct **did not** involve **Dishonesty**.
  - c. The identified conduct **did not** involve a **Disregard for the Rights of Others**.
  - d. The identified conduct **did not** involve **Misuse of Authority**.
  - e. The identified conduct **did not** involve **Gross Misconduct**.
  - f. The identified conduct **did not** involve **Misconduct**.
  - g. The identified conduct **did not** involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee did not identify any mitigating or aggravating circumstances.*
- *Kent Barker moved that the policy committee finds SHERWOOD's eligibility to apply for public safety certification be restored and recommends such to the Board. Tim McLain seconded the motion. The motion carried unanimously.*

#### 12. Anthony F. Smith – DPSST #44959

Presented by Theresa King

See Appendix J for details.

- *Kent Barker moved that the policy committee adopts the Staff report as the record upon which its recommendations are based. Tim McLain seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a.) Identify the conduct that is at issue.
  - b.) The identified conduct **did** involve **Dishonesty**.
  - c.) The identified conduct **did** involve a **Disregard for the Rights of Others**.
  - d.) The identified conduct **did** involve **Misuse of Authority**.
  - e.) The identified conduct **did** involve **Gross Misconduct**.
  - f.) The identified conduct **did** involve **Misconduct**.

g.) The identified conduct *did not* involve **Insubordination**.

- By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances. *The committee stated the three letters of support could be mitigating. Also stated were aggravating circumstances including manipulation, and predatory mannerisms.*
- *Stuart Roberts moved the policy committee finds SMITH's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that his certification(s) be revoked. Tim McLain seconded the motion. The motion carried unanimously.*
- *Larry O'Dea moved that the committee recommends to the Board that SMITH's misconduct was a lifetime disqualifier; he may never reapply to the Police Policy Committee seeking certification. Robert Gordon seconded the motion. The motion carried unanimously.*

### 13. Jason B. Zanni – DPSST #31384

Presented by Theresa King

*See Appendix M for details*

- *Kent Barker moved that the policy committee adopts the Staff report as the record upon which its recommendations are based. Tim McLain seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
  - a. Identify the conduct that is at issue.
  - b. The identified conduct *did* involve **Dishonesty**. *Lied regarding use of sick leave and lied about delivering subpoenas.*
  - c. The identified conduct *did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did not* involve **Misuse of Authority**.
  - e. The identified conduct *did not* involve **Gross Misconduct**.
  - f. The identified conduct *did* involve **Misconduct**.
  - g. The identified conduct *did not* involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee stated the letter could be considered a mitigating circumstance.*
- *Robert Gordon moved that the policy committee finds ZANNI's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that his certification(s) be revoked.*
- *Robert Gordon moved that the committee recommends to the Board that ZANNI's misconduct was a lifetime disqualifier; he may never reapply to the Police Policy Committee seeking certification. Tim McLain seconded the motion. The motion carried unanimously.*

### 14. Robert L. Burk – DPSST #27390

Presented by Theresa King

*See Appendix N for details*

The Board requested the policy committee reconsider the proposed minimum period of certification revocation previously reviewed at the Police Policy Committee meeting on May 12, 2009. After further review of the BURK case, the policy committee came to the conclusions listed below.

- By discussion and consensus:
  - a. Identify the conduct that is at issue.
  - b. The identified conduct *did* involve **Dishonesty**. *Dishonest in his communication with this committee in regards to his knowledge of the charges.*
  - c. The identified conduct *did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did not* involve **Misuse of Authority**.
  - e. The identified conduct *did not* involve **Gross Misconduct**.
  - f. The identified conduct *did* involve **Misconduct**.
  - g. The identified conduct *did not* involve **Insubordination**.
- By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances. *The committee did not identify any mitigating or aggravating circumstances.*
- *Robert Gordon moved that the policy committee finds BURK's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that BURK's certification(s) be revoked. Larry O'Dea seconded the motion. The motion carried unanimously.*
- *Robert Gordon moved that based on the finding that BURK was dishonest to this committee, the committee recommends to the Board that BURK's misconduct was a lifetime disqualifier; he may never reapply to the Police Policy Committee seeking certification. Larry O'Dea seconded the motion. The motion carried unanimously.*

## **15. Use of Force Curriculum Update**

Presented by Roger Eaton

*See Appendix O for details*

...The use of force curriculum has utilized a force matrix or continuum to address student learning in regards to levels of force. The continuum, wheel, ladder, or as more recently referred to a force matrix, in DPSST's curriculum was originally developed as a training tool to help students visualize concepts for force being taught. The intended purpose of the matrix was to be a model of presentation for students to assist them in understanding the levels of force available to them in reference to the resistance offered by identified threats...

...After careful consideration and analysis, it was determined that DPSST would remove the use of force continuum/matrix from its use of force curriculum. In reaching this decision, DPSST is committed to the "best practice" philosophy, which will keep us cutting edge current and legally defensible. DPSST will teach that the standards of "objective reasonableness" and the "totality of the circumstances" are the only standards for decisions regarding use of force. This will give a consistency to our curriculum in the legal, survival skills, and tactical venues and is in complete congruence with state and federal court decisions...

*The committee fully supported staff's recommended change of eliminating the force matrix in DPSST's basic police curriculum.*

## **16. Additional Business**

Presented by Eriks Gabliks

### **Legislative Recap:**

- The Board Bill (HB2790) was approved as previously shared. There will be two additional non-management committee members coming on board after the first of the year. We are in the recruiting process right now.
- The Public Records Bill (HB2315) was approved. Once our draft investigative reports are no longer drafts and are released to the committee, they will be available to the public as well.
- Oregon Health Sciences University (OHSU) had a statute approved (SB658) that would make their security officers University police. They will be certified and trained by DPSST through the Basic Police course but unable to carry weapons while on duty at the University. OHSU will be sending approximately 80 officers through DPSST—2-3 at a time over the next few years.
- Oregon Humane Society Animal Cruelty Investigators will be allowed to be certified by DPSST as law enforcement officers under SB303. This clarifies an issue they have regarding the difficulty in recruiting retirees or laterals to join their ranks because they were not going to be able to retain their certification.
- Budget—Criminal Fines and Assessments: DPSST took a 19 percent reduction which resulted in the loss of 29 full-time employees at the agency. All the lay-offs and bumping has been completed. These reductions will result in fewer basic police classes being offered over the biennium, 50% reduction in DPSST's regional training program, elimination of DPSST's supervision and middle management training programs, delays in processing training records by Standards and Certifications, and reductions in custodial and security services on campus.

Marilyn Lorange introduced Scott Willadsen to the committee. He is the Professional Standards Coordinator filling Theresa King's position while she is on job rotation.

Eriks Gabliks introduced new committee members Holly Driver Russell, representing Oregon State Sheriffs' Association; Rich Evans, representing Oregon State Police; and Arthur Balizan, representing the Oregon Federal Bureau of Investigation.

### **17. The Next Police Policy Committee Meeting is Tuesday, November 10, 2009 at 1:30 p.m.**

*With no further business before the committee, the meeting adjourned at 3:39 p.m.*

## Appendix A

# Police Policy Committee Minutes (Draft) May 12, 2009

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

### Attendees

#### **Policy Committee Members:**

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

#### **Committee Members Absent**

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

#### **Guests:**

Kenneth Herbst  
Linda Ellington

#### **DPSST Staff:**

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



#### **1. Minutes of February 10, 2009 Meeting**

Approve minutes from the February 10, 2009 meeting.

*See Appendix A for details*

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

#### **2. OAR 259-001-0005 – Proposed Rule**

Rulemaking Notice - Electronically  
Presented by Bonnie Narvaez

See Appendix B for details

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

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

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

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

Presented by Bonnie Narvaez

See Appendix C for details

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

4. **Michael L. Perkins – DPSST #42637**

Presented by Theresa King

See Appendix D for details

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

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

5. **Patrick S. Vaughn – DPSST #29202**

Presented by Theresa King

*See Appendix E for details.*

**ACTION ITEM 1:**

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

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

**ACTION ITEM 2:**

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

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

***Tim McLain moved that the committee recommends to the Board that the minimum period of ineligibility to reapply for certification(s) will be ten years from the date of revocation.***

*Dave Miller seconded the motion. The motion carried unanimously by all voting with Robert King abstaining.*

**6. Robert L. Burk – DPSST #27390**

Presented by Theresa King

*See Appendix F for details.*

**ACTION ITEM 1:**

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

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

**ACTION ITEM 2:**

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

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

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

**8. Lawrence C. Raglione – DPSST #06181**

Presented by Theresa King

See Appendix G for details.

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

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

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

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

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

#### **ACTION ITEM 2:**

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

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

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

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

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

**18. Gary L. Welberg – DPSST #30083**

Presented by Theresa King

*See Appendix H for details.*

**ACTION ITEM 1:**

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

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

**ACTION ITEM 2:**

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

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

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

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

**19. Kenneth C. Herbst – DPSST #24485**

Presented by Kristen Turley

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

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

**20. Law Enforcement Memorial Wall Nomination**

Philip W. Bureau, Oregon State Police

Presented by Eriks Gabliks

*See Appendix I for details.*

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

**21. Additional Business**

Presented by Eriks Gabliks

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

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

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

**22. Next Regularly Scheduled Police Policy Committee Meeting**

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

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

## Appendix B

### **Police Policy Committee Minutes (Draft) June 4, 2009**

The Police Policy Committee of the Board on Public Safety Standards and Training held a special meeting on June 4, 2009 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:03 p.m. by Chairman Andrew Bentz.

#### Attendees

##### **Policy Committee Members:**

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

##### Committee Members Absent

Steven Piper, Non-Management Law Enforcement  
Raul Ramirez, Oregon State Sheriffs' Association  
Rob Gordon, Oregon State Sheriffs' Association  
Michael Healy, Oregon Association Chiefs of Police

##### Guests:

Kenneth Herbst  
Linda Ellington  
Maxine Bernstein, The Oregonian

##### DPSST Staff:

Eriks Gabliks, Deputy Director  
Marilyn Lorange, Standards and Certification Supervisor  
Kristen Turley, Professional Standards Coordinator  
Cameron Campbell, Training Division Director  
Carolyn Kendrick, Administrative Specialist



#### **1. Kenneth C. Herbst – DPSST #24485**

Presented by Kristen Turley

*See Appendix A for details*

*Kent Barker stated for the record that he would abstain from voting because of his previous working relationship with Kenneth Herbst.*

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

Staff requests the Police Policy Committee review the matter and make a recommendation to the Board whether or not to revoke HERBST's certifications, based on violation of the established moral fitness standards, using the following guidelines:

*Following extensive discussion regarding the elements of this case, the following decisions occurred:*

- *Brandon Kaopuiki moved that the committee does adopt the staff report and related documents, including the audio tape of the 911 call, as the record on which their recommendation is based. Tim McLain seconded the motion. The motion carried unanimously with Kent Barker abstaining.*
- By discussion:
  - a. Identify the conduct that is at issue.
  - b. The identified conduct did involve **Dishonesty** (*the committee agreed with a 6-2 vote with Robert King and Brandon Kaopuiki voting no*).
  - c. The identified conduct did/did not involve a **Disregard for the Rights of Others** (*the committee was split with a 4-4 vote with Robert King, Brandon Kaopuiki, Ed Mouery, and Stuart Roberts voting no*).
  - d. The identified conduct did not involve **Misuse of Authority** (*unanimous decision*).
  - e. The identified conduct did not involve **Gross Misconduct** (*the committee agreed with a 7-1 vote with Tim McLain voting yes*).
  - f. The identified conduct did involve **Misconduct** (*the committee agreed with a 6-2 vote with Robert King and Brandon Kaopuiki voting no*).
  - g. The identified conduct did not involve **Insubordination** (*unanimous decision*).
- By discussion, the committee must identify and consider any mitigating and aggravating circumstances. *The committee noted HERBST's long career and the fact that there were two people involved with different stories, and not a lot of witnesses as mitigating. The aggravating circumstance noted was the violated restraining order.*
- *Robert King moved that the committee finds HERBST's conduct does not rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that HERBST's certifications not be revoked. Brandon Kaopuiki seconded the motion. The motion failed with a 2-6 vote, with Tim McLain, Dave Miller, Ed Mouery, Larry O'Dea, Stuart Roberts, and Andrew Bentz voting no and Kent Barker abstaining.*
- *Tim McLain made an alternate motion that the committee finds HERBST's conduct does rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that HERBST's certifications be revoked. Larry O'Dea seconded the motion. The motion carried with a 6-2 vote, with Robert King and Brandon Kaopuiki voting no and Kent Barker abstaining.*

#### **ACTION ITEM 2:**

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

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

*Brandon Kaopuiki moved that the committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be five years from the date of*

*revocation. Ed Mouery seconded the motion. The motion carried with a 6-2 vote with Robert King and Tim McLain voting no and Kent Barker abstaining.*

**2. Next Regularly Scheduled Police Policy Committee Meeting**

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

*With no further business before the committee, the meeting adjourned at 2:55 p.m.*

## Appendix C

### Department of Public Safety Standards and Training Memo

**Date:** July 14, 2009  
**To:** Police Policy Committee  
**From:** Bonnie Narváez  
**Subject:** OAR 259-008-0060(18) – Proposed Rule  
Multi-Discipline - Maintenance Training Reporting

**Issue:** The Department is seeking to update and simplify the process for reporting maintenance training for law enforcement officers who also hold certification as telecommunicators or emergency medical dispatchers. Staff is seeking a series of rule changes related to this process. As part of our review, staff identified an inconsistency in the use of the term “multi-discipline certification” within our administrative rules. Although the rule discusses “multi-discipline certification” in relation to an individual’s employment by a law enforcement unit, the rule currently includes requirements related solely to those who are certified as both a telecommunicator and an emergency medical dispatcher.

Staff requests a technical clean-up to OAR 259-008-0060(18) to eliminate the reference to those with telecommunications and EMD certification within the portion of the rule that is designed to address law enforcement officers’ multi-discipline certification requirements.

We are also recommending changes to the references to reporting maintenance training, for consistency with the changes being requested elsewhere, and with the current practices for reporting police maintenance training. Additional housekeeping changes are made for clarity.

The following revised language for OAR 259-008-0060 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~). For ease of review, only the relevant portion of the rule has been provided.

#### **259-008-0060**

##### **Public Safety Officer Certification**

\* \* \*

(18) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer ~~shall~~ **must** meet the following requirements for the award of multi-discipline certification:

(a) Basic certification: A ~~person~~ **law enforcement officer** who is certified in one discipline may apply for multi-discipline certification, if employed in or transferred to another discipline within the same law enforcement unit. The applicant ~~shall~~ **must** demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification: Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification, and meeting

the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the EMD discipline since it only exists at the basic certification level.

(c) Retention of Multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For **a law enforcement officer who also holds the EMD certification certificate**; a minimum of four (4) hours of training, specific to **this the EMD discipline**, must be reported annually **on a Form as required under OAR 259-008-0064 F-15M.**

(B) For **a law enforcement officer who also holds the Telecommunicator certification**, a minimum of twelve (12) hours of training, specific to **this the Telecommunicator discipline**, must be reported annually **as required under OAR 259-008-0064. on a Form F-15M.**

(C) ~~For all other disciplines, a~~ **A** minimum of twenty (20) hours of training, specific to each **law enforcement discipline** in which certification is held, must be reported annually **as required under subsections (h) through (l) of this rule on a Form F-15M.**

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

**(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1<sup>st</sup> of each year and ends on June 30<sup>th</sup> the following year.**

**(f) The employing agency must maintain documentation of all required maintenance training completed.**

**(g) If reported on an F-6 Course Roster, required maintenance training must be submitted to the Department by June 30<sup>th</sup> of each year. Training reported on an F-6 will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by an F-6 Course Roster.**

**(h) On or after July 1 of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records and provide notification to the individual and his/her employing agency.**

**(i) Within 30 days of receipt of the notification in (h) above, the agency or individual must:**

**(A) Notify the Department of the training status of any law enforcement officer identified as deficient in submitting a Form F-15M or F-15T to the Department; and**

**(B) Submit an F-15M, or F-15T if multi-discipline includes certification as a telecommunicator or emergency medical dispatcher, identifying the maintenance training completed during the previous one (1) year reporting period.**

**(C) Maintenance training hours reported to the Department on an F-15M or F-15T will be used solely to verify completion of maintenance training requirements and will not be added to an officer's DPSST training record.**

**(j) Failure to notify the Department of completion of any required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.**

**(k) The Department will recall a law enforcement officer's certification for:**

**(A) Failure to complete or report any required maintenance training identified in section (c) above on or before June 30<sup>th</sup> of each year; or**

**(B) Failure to submit a Form F-15M or F-15T within 30 days after a warning notification letter has been sent.**

**(l) A law enforcement officer with a recalled certification is prohibited from being employed in any position that has been recalled.**

~~(e) Failure to comply with subsection (c) of this rule shall result in the recall of the multi-discipline certification by the Board.~~

~~(f)~~ **(m)** Upon documentation of compliance with subsection ~~(e)~~ **(i)** of this rule, a law enforcement officer may reapply for single or multi-discipline certification as outlined by this rule.

(19) Certificates Are Property of Department. Certificates and awards are the property of the Department, and the Department shall have the power to revoke or recall any certificate or award as provided in the Act.

[ED. NOTE: Forms & Tables referenced are available from the agency.]

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665

Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665

**ACTION ITEM 1:** Determine whether to recommend filing the proposed language for OAR 259-008-0060 with the Secretary of State as a proposed rule.

**ACTION ITEM 2:** Determine whether to recommend filing the proposed language for OAR 259-008-0060 with the Secretary of State as a permanent rule if no comments are received.

**ACTION ITEM 3:** Determine whether there is a significant fiscal impact on small businesses (see form attached).

## Appendix D

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** Brian D. Hubbard DPSST #32024

#### **ISSUE:**

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

**Note: This Staff Report contains personal medical information that, if discussed, must be discussed during an Executive Session.**

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to HUBBARD:*

*HUBBARD was employed by the Portland Police Bureau in 1996 and remains employed there. In 1997 HUBBARD was issued a Basic Police certificate.*

*In February 2009 HUBBARD was arrested for DUII and Reckless Driving. Ultimately HUBBARD received a DUII Diversion and pled guilty to Reckless Driving, a Class A Misdemeanor. This conviction must be reviewed by the Police Policy Committee (PPC).*

*On May 21, 2009, DPSST mailed HUBBARD a letter advising him that his case would be heard before the PPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent by regular and certified mail and was returned as "not deliverable." This letter was sent to an updated address and DPSST received a signed Certified Mail Return Receipt.*

*On June 26, 2009, DPSST received a letter and attachments from HUBBARD. DPSST reviewed HUBBARD's state file, requested and received his required F11 Criminal Justice Code of Ethics on July 8, 2009.*

#### **DISCUSSION:**

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

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

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

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

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

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

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

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

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

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

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

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

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

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

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

**POLICY COMMITTEE AND BOARD REVIEW:**

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

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

**ACTION ITEM 1:**

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

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

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

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

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

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

## Appendix E

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** John L. Lovik DPSST #21892

#### **ISSUE:**

Should John L. LOVIK's Basic Corrections and Basic, Intermediate, Advanced and Supervisory Police Certifications be revoked based on his discretionary disqualifying misconduct defined in OAR 259-008-0070, and as referenced in OAR 259-008-0010?

**Note: This Staff Report contains personal medical information that, if discussed, must be discussed during an Executive Session.**

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to LOVIK:*

*In 1986 LOVIK was employed as a corrections officer with the Oregon Department of Corrections (ODOC). In 1988 LOVIK resigned from ODOC and was then employed with the Linn County Sheriff's Office (LCSO) as a corrections officer. In 1988 LOVIK signed his Criminal Justice Code of Ethics. In 1989 LOVIK obtained his Basic Corrections certificate. In 1990 LOVIK was reclassified to a police officer with the LCSO. LOVIK continues to serve with LCSO and has obtained his Basic, Intermediate, Advanced and Supervisory Police certificates.*

*In February 2009 LOVIK was convicted of Physical Harassment, a Class B Misdemeanor. This is a discretionary conviction and must be reviewed by the Police Policy Committee. DPSST sought and obtained the underlying criminal investigation that led to the conviction.*

*In April 2009, DPSST mailed LOVIK a letter advising him that his case would be heard before the Police Policy Committee and invited him to provide mitigating circumstances on his behalf for the Committee's consideration. LOVIK's employer was also notified of the Policy Committee review. On LOVIK's behalf, his employer provided information for the Policy Committee review.*

#### **DISCUSSION:**

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

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

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

**ACTION ITEM 1:**

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

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

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

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

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

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

## Appendix F

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** Travis L Patterson DPSST #45201

#### **ISSUE:**

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

**Note: This Staff Report contains personal medical information that, if discussed, must be discussed during an Executive Session.**

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to PATTERSON:*

*In 2004 PATTERSON was employed with the Warm Springs Police Department as a police officer. In 2005 PATTERSON received his basic police certification. PATTERSON signed his F11, Criminal Justice Code of Ethics in 2005.*

*DPSST sought and received the underlying investigations that led to PATTERSON's resignation and determined that this matter must be reviewed by the Police Policy Committee.*

*In April 2009, DPSST mailed PATTERSON a letter advising him that his case would be heard before the Police Policy Committee and invited him to provide mitigating circumstances on his behalf for the Committee's consideration. PATTERSON has provided a response for the Committee's consideration.*

*In June 2009 DPSST requested and received clarifying information from the employer.*

#### **DISCUSSION:**

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

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

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

- (c) For purposes of this standard, lack of good moral fitness includes, but is not limited to:
  - (E) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

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

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

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

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

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

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

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

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

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

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

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

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

**POLICY COMMITTEE AND BOARD REVIEW:**

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

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

**ACTION ITEM 1:**

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

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

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

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

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

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

## Appendix G

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** Nicholas E. Bielenberg DPSST #42412

#### **ISSUE:**

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

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to BIELENBERG:*

*In 2002 BIELENBERG was employed with the Silverton Police Department (SPD) as a Reserve Officer. In 2003 BIELENBERG became a fulltime police officer with SPD and he continued to serve for six (6) years until he resigned in lieu of termination in February 2009. BIELENBERG signed his F11, Criminal Justice Code of Ethics in 2004. BIELENBERG holds a Basic Police certification.*

*In March 2009, DPSST mailed a letter to SPD seeking the underlying investigation that led to BIELENBERG's resignation. In April 2009, DPSST received and reviewed SPD's internal investigation and determined that this matter must be reviewed by the Police Policy Committee.*

*In April 2009, DPSST mailed BIELENBERG a letter advising him that his case would be heard before the Police Policy Committee and invited him to provide mitigating circumstances on his behalf for the Committee's consideration. To date DPSST has not received a written response from BIELENBERG for the Policy Committee's review.*

#### **DISCUSSION:**

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

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

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

- (d) For purposes of this standard, lack of good moral fitness includes, but is not limited to:
  - (G) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or
  - (H) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

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

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

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

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

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

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

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

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

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

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

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

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

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

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

### **ACTION ITEM 1:**

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

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

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

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

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

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

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

## Appendix H

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Scott Willadsen  
Professional Standards Coordinator  
**SUBJECT:** Kevin D. Carter DPSST #43794

#### **ISSUE:**

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

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to CARTER:*

*In 2003 CARTER was hired by the Jefferson County Sheriff's Office as a reserve officer. In 2006, CARTER became a police officer with the same agency and obtained his Police certification in 2007. CARTER signed his F11, Criminal Justice Code of Ethics in 2006. In 2008 CARTER resigned during an investigation.*

*DPSST sought and received the underlying investigations that led to CARTER's resignation and determined that this matter must be reviewed by the Police Policy Committee.*

*In May 2009, DPSST mailed CARTER a letter advising him that his case would be heard before the Police Policy Committee and invited him to provide mitigating circumstances on his behalf for the Committee's consideration. To date DPSST has not received a written response from CARTER for the Policy Committee's review.*

*In June 2009 DPSST sought and received follow-up information regarding prior untruthfulness of CARTER.*

#### **DISCUSSION:**

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

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

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

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

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

**ACTION ITEM 1:**

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

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

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

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

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

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

## Appendix I

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** James Leffmann aka Leffman DPSST #04520

#### **ISSUE:**

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

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to LEFFMANN:*

*LEFFMANN was employed by the Portland Police Bureau in 1973 and resigned in 1975. In 1974 LEFFMANN was issued a Basic Police certificate.*

- 1. In 1996 LEFFMANN was arrested for DUII. This case was ultimately dismissed in 1997 under the diversion program.*
- 2. In 1999 LEFFMANN was arrested for DUII. This case led to a conviction in 2000.*
- 3. In 2001 LEFFMANN was arrested for DUII. This case led to a conviction in 2001.*
- 4. In 2008 LEFFMANN was arrested for DUII. This case led to a conviction in 2009.*

*On January 27, 2009, DPSST mailed LEFFMANN a letter advising him that his case would be heard before the Police Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent by regular and certified mail. To date LEFFMANN has not provided a response for the committee's consideration.*

#### **DISCUSSION:**

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

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

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

- (f) For purposes of this standard, lack of good moral fitness includes, but is not limited to:
- (K) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or
  - (L) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

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

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

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

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

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

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

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

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

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

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

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

**POLICY COMMITTEE AND BOARD REVIEW:**

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

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

### **ACTION ITEM 1:**

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

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

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

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

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

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

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

## Appendix J

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** Shawn L. Parsons DPSST #44959

#### **ISSUE:**

Should Shawn PARSONS' Basic Telecommunicator, Emergency Medical Dispatcher and Police Certifications be revoked based on his discretionary disqualifying misconduct defined in OAR 259-008-0070, and as referenced in OAR 259-008-0010?

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to PARSONS:*

*In 2005 PARSONS was employed with the Hood River County Sheriff's Office as a telecommunications officer and emergency medical dispatcher. In 2006 PARSONS received certifications in these two disciplines. In 2007, PARSONS became a police officer with the same agency and obtained his Police certification in 2008. PARSONS signed his F11, Criminal Justice Code of Ethics in 2005. In 2009 PARSONS resigned during an investigation.*

*DPSST sought and received the underlying investigations that led to PARSONS' resignation and determined that this matter must be reviewed by the Police Policy Committee.*

*In May 2009, DPSST mailed PARSONS a letter advising him that his case would be heard before the Police Policy Committee and invited him to provide mitigating circumstances on his behalf for the Committee's consideration. To date DPSST has not received a written response from PARSONS for the Policy Committee's review.*

*In June 2009 DPSST sought and received clarifying information from the employer regarding the authorship of several documents (A8 – A11).*

#### **DISCUSSION:**

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

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

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

- (g) For purposes of this standard, lack of good moral fitness includes, but is not limited to:
  - (M) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

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

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

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

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

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

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

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

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

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

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

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

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

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

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

**ACTION ITEM 1:**

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

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

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

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

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

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

## Appendix K

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** Matthew T. Sherwood DPSST #42235

#### **ISSUE:**

Should Matthew Sherwood's eligibility to apply for public safety certification be restored under OAR 259-008-0070(11) and through incorporation of OAR 259-008-0010?

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to SHERWOOD:*

*In 2004 SHERWOOD was employed with the Warm Springs Police Department where he served until he was discharged in 2006. SHERWOOD signed his Criminal Justice Code of Ethics and obtained his Basic Police Certification in 2005.*

*In August 2006, DPSST received correspondence from attorney Henkels who had located a 1995 Theft 2 conviction which SHERWOOD had not reported to DPSST, nor had DPSST located this conviction prior to issuing SHERWOOD's certification.*

*DPSST sought and obtained verification of the Theft 2 conviction. This conviction is a mandatory disqualifying crime, for purposes of certification or denial of an Oregon public safety officer's certification. On September 7, 2006, DPSST notified SHERWOOD's employer and issued a Notice of Intent to Revoke Certification (NOI). SHERWOOD made a timely request for a hearing.*

*Based on the NOI, SHERWOOD's employer discharged SHERWOOD from the Warm Springs Police Department. SHERWOOD made a timely request for a hearing.*

*Upon review by DPSST's legal counsel, Oregon Department of Justice, a Motion for Summary Judgment (MSJ) was filed on November 7, 2006, accompanied by the required Affidavit and exhibits. On November 16, 2006, Administrative Law Judge Richard Seideman was assigned this case. On November 15, 2006, SHERWOOD's legal counsel requested a 30-day extension to respond to DPSST's MSJ. DPSST granted the extension. On December 5, 2006, SHERWOOD spoke with DPSST about signing a Stipulated Order Revoking Certification. This Order was prepared and sent to SHERWOOD, via email, for his consideration. DPSST had subsequent communication with SHERWOOD's employer in December. On December 26, 2006, DPSST communicated with SHERWOOD about the Order and SHERWOOD advised that the Order was forthcoming. On December 26, 2006, SHERWOOD signed and forwarded the Order to DPSST. On December 29, 2006, DPSST Deputy Director Eriks Gabliks countersigned the Order and the case was finalized and closed.*

*In February 2009, SHERWOOD contacted DPSST seeking to have his revoked certification reviewed for a re-eligibility determination. The basis of SHERWOOD's request was that he had his conviction set aside.*

*In its Notice of Intent to Revoke the Basic Police Certification of SHERWOOD, DPSST cited within the Statement of Matters Asserted and Charged the chronological events. These included SHERWOOD's attempt to have his conviction expunged in 2002 and his subsequent responses to the conviction questions on his F5, Application for Training, and*

*F7, Application for Certification. The basis of the Notice, however was the mandatory disqualifying conviction of Theft 2; the discretionary issue of falsification of documents submitted to DPSST was not addressed because of the mandatory nature of the conviction.*

**DISCUSSION:**

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

**STANDARD OF PROOF:**

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

**DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the

intent of this rule that “Contempt of Court” meets the definition of Misconduct within this category; or

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

OAR 259-008-0070(11) details the reapplication process:

(a) Any public safety professional or instructor whose certification has been denied or revoked pursuant to section (4) of this rule, may reapply for certification within the applicable timeframes described in sections (4) through (6) of this rule. The initial minimum ineligibility period will begin on the date an Order of the Department denying or revoking certification becomes final. The initial minimum ineligibility period will cease when the applicable timeframe stated in the Order has been satisfied.

(b) Any public safety professional or instructor whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until after the maximum initial period of ineligibility identified in (4) of this rule has been satisfied.

(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and a Policy Committee has recommended that a public safety professional’s or instructor’s eligibility to apply for public safety or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the public safety professional’s or instructor’s request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section 9(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through a Policy Committee, may determine that the individual’s eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The public safety professional or instructor is employed or utilized by a public safety agency; and

(D) All requirements for certification have been met.

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

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);
- (B) If the misconduct resulted in a conviction:
  - (i) Whether it was a misdemeanor or violation;
  - (ii) The date of the conviction(s);
  - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;
  - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;
  - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;
  - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;
  - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;
- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

**ACTION ITEM:**

Staff requests the Police Policy Committee review the matter and make a recommendation to the Board whether SHERWOOD's eligibility to apply for public safety certification should be restored.

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. By discussion and consensus:
  - a. Identify the conduct that is at issue.
  - b. The identified conduct *did/did not* involve **Dishonesty**.
  - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
  - d. The identified conduct *did/did not* involve **Misuse of Authority**.
  - e. The identified conduct *did/did not* involve **Gross Misconduct**.
  - f. The identified conduct *did/did not* involve **Misconduct**.
  - g. The identified conduct *did/did not* involve **Insubordination**.

3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds Matthew Sherwood's eligibility to apply for public safety certification *be restored/not be restored* and recommends such to the Board.

## Appendix L

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** Anthony F. SMITH DPSST #38134

#### **ISSUE:**

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

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to SMITH:*

*SMITH was employed by the Douglas County Sheriff's Office in 1999. SMITH signed his Criminal Justice Code of Ethics in 2000. SMITH resigned in lieu of termination in 2009. SMITH holds Basic, Intermediate and Advanced Police certificate.*

*In January through March 2009 DPSST sought and obtained information that led to SMITH's resignation.*

*On June 8, 2009, DPSST mailed SMITH a letter advising him that his case would be heard before the PPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent by regular and certified mail.*

*On July 9, 2009, SMITH provided a letter and supporting documents for the Committee's Consideration.*

#### **DISCUSSION:**

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

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

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

- (i) For purposes of this standard, lack of good moral fitness includes, but is not limited to:
  - (Q) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or
  - (R) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

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

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

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

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

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

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

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

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

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

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

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

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

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

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

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

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

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

**ACTION ITEM 1:**

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

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

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

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

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

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

## Appendix M

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** Jason B. ZANNI, DPSST #31384

#### **ISSUE:**

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

#### **BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to ZANNI:*

*ZANNI was employed with the Winston Police Department as a police officer in 1995 and resigned in 1998. ZANNI was employed with the Douglas County Sheriff's Office (DCSO) in 1998 as a police officer and resigned in lieu of termination in 2009. ZANNI holds Basic, Intermediate and Advanced Police certifications. ZANNI signed his Criminal Justice Code of Ethics in 2003.*

*DPSST sought the investigation that led to ZANNI's discharge. DCSO provided copies of the internal investigation against ZANNI.*

*In June 2009, DPSST mailed ZANNI a letter advising him that his case would be heard before the Police Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent by regular and certified mail. June 18, 2009 ZANNI contacted DPSST regarding the letter he had received and discussed the internal investigation that led to his resignation.*

*On July 9, 2009, ZANNI provided a letter for the Committee's Consideration.*

#### **DISCUSSION:**

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

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

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

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

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

**ACTION ITEM 1:**

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

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

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

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

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

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

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

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

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

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

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

## Appendix N

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 11, 2009  
**TO:** Police Policy Committee  
**FROM:** Scott Willadsen  
Professional Standards Coordinator  
**SUBJECT:** Robert L. Burk DPSST #27390

#### **ISSUE:**

On July 23, 2009, the Board of Public Safety Standards and Training (BPSST) met and, after reviewing the facts of the case, Chief SIZER of the Portland Police Bureau asked to pull BURK's file from the consent agenda. The matter at issue is the proposed minimum period of certification revocation of three (3) years. This matter was previously reviewed by the Police Policy Committee (PPC) at its May 12, 2009 meeting. The Board (BPSST) voted unanimously to have BURK's case reconsidered by the PPC.

#### **RECOMMENDATION:**

On May 12, 2009, the Police Policy Committee (PPC) met and, after reviewing the facts of the case, voted unanimously that BURK's certifications should be revoked for a minimum period of three (3) years.

- In substance, the PPC adopted the Staff Report and associated documents as the record on which their recommendation was based.
- The PPC determined that BURK's conduct involved *Misconduct* when he engaged in a series of inappropriate personal contacts and activities while on duty, during which time he was also failing to perform the duties of a police officer.
- The PPC determined that BURK's conduct also involved *Misconduct* when he engaged in inappropriate or unwanted off-duty personal contacts, and that alcohol appeared to be a common factor.
- The PPC identified BURK's long tenure as a police officer as aggravating because he had enough experience to know his conduct was wrong. However, they also identified as mitigating that this misconduct appeared to be confined to a single time period during his years of service.
- Also mitigating was BURK's letter, in which he explained and accepted responsibility for his actions. Committee members believed his comments were genuine and would impact their decision about length of ineligibility.
- The PPC determined that BURK's conduct rises to the level that warrants revocation and that the initial minimum period of ineligibility to re-apply for certification would be three (3) years.

#### **BACKGROUND and OVERVIEW**

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

*In 1995 BURK was employed with the Cannon Beach Police Department where he served less than one year and resigned. BURK signed his Criminal Justice Code of Ethics in 1995. BURK obtained his Basic Police Certification. In 1995 BURK then became employed with the Clatsop County Sheriff's Office (CCSO) where he served for*

*over 14 (fourteen) years before he resigned. During his tenure with the CCSO BURK obtained his Intermediate and Advanced Police Certifications. In 2007 BURK then became employed with the Baker City Police Department where he served for over one year and resigned during an internal investigation.*

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

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

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

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

#### **DISCUSSION:**

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

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

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

#### **DISCRETIONARY DISQUALIFYING MISCONDUCT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, including, but not limited to:

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

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

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

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

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

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

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

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

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

(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about

the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;

(E) Whether the misconduct involved domestic violence;

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

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

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

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

**ACTION REQUESTED:**

Staff requests the Board review the recommendation of the Police Policy Committee and either affirm or overturn their recommendation.

## Appendix O



**Oregon**  
Theodore R. Kulongoski, Governor

**Department of Public Safety Standards and Training**

4190 Aumsville Hwy SE

Salem, OR 97317-8983

503-378-2100

### **Memorandum**

**Date: August 11, 2009**

**To: Police Policy Committee**

**From: Captain Roger Eaton**

**Supervisor of Survival Skills DPSST**

**Subject: Elimination of the Use of Force Continuum/Matrix**

The DPSST Use of Force curriculum is taught in the classroom in three phases. The first two phases are taught prior to any defensive tactics, confrontational simulation, firearms, or scenarios training. Use of Force Application I is a four hour class, Use of Force Application II is a two hour class, and Use of Force Application III is a two hour review class that includes an analysis of actual force situations. Students are reminded that “objective reasonableness” and the “totality of the circumstances” are the Supreme Court standards which are taught in Use of Force Application I and II as well as in Procedural Law and Use of Force Law. These constitutionally applied standards control when analyzing use of force decisions made by police officers primarily in civil law suits.

The Use of Force curriculum has utilized a force matrix or continuum to address student learning in regards to levels of force. The continuum, wheel, ladder, or as more recently referred to a force matrix, in DPSST’s curriculum was originally developed as a training tool to help students visualize concepts of force being taught. The intended purpose of the matrix was to be a model of presentation for students to assist them in understanding the levels of force available to them in reference to the resistance offered by identified threats.

The process of eliminating the force matrix has been a vision within the Survival Skills Section and the Legal Section of DPSST for a good number of years. Within the last year there has been a more intense interest in seeing this vision become a reality. Before making any changes there was considerable research conducted in the area of use of force continuums. There were articles which were researched relating to use of force continuums, and there were statutes as well as case law matters that were reviewed. Additionally, the DPSST staff who instruct use of force matters were surveyed about eliminating the force matrix and there was found to be unanimous support for such a change.

The decision to make a change was significantly influenced by the articles and teaching of John Bostain, the Senior Use of Force instructor for the Federal Law Enforcement Training Center for Homeland Security. Mr. Bostain has authored a number of articles related to force continuums. The articles which were reviewed were “Use of Force: Are Continuums Still Necessary?”, “Training without force continuums: Learn to Love the Law”, and “A Legal Guide to Dispelling the Myths of Use of Force”. The first article is included with this memo and the others are referenced for future perusal.

After personally hearing Mr. Bostain at the most recent Oregon Association of Chiefs of Police conference 2009 in Eugene, the decision was made to move forward with changing our Use of Force curriculum. This change will have some impact upon our constituent agencies who have adopted DPSST curriculum for their agency's use of force policy. As such, this change will be in conflict with those policies.

The benefit to eliminating the force matrix is that it will potentially reduce officer hesitation when split second uses of force decisions are called for. Hesitation is often caused by an officer trying to apply a rigid, structured and unyielding cognitive tool to a stressful, fluid, continually changing use of force incident. A second benefit is that it will reduce the confusion of students who learn the force matrix only to be told two months later in training that it was only a teaching tool and students should forget it when they get on the street or in the courtroom. To further exacerbate the instructional force matrix perplexity, students are caught trying to comprehend not using the force matrix in light of their agency policies which may still embrace the force matrix.

Mr. Bostain noted in his presentation to the OACP, that the first thing most defense attorneys attempt to do, when representing police officers in civil law suits, is have the force matrix or continuum removed from the case in chief so they do not have to explain how the force matrix is not the constitutional standard for use of force. It is a topic that only confuses the jury. The force matrix has become a courtroom offensive weapon for the plaintiff's attorney in trying to impeach the use of force decision that is made by officers in the blink of an eye. The force matrix was never intended to be used for this type of 20/20 microscopic hindsight examination. Even the Supreme Court has held that use of force matters are not to be judged by a strict immovable standard.

After careful consideration and analysis, it was determined that DPSST would remove the use of force continuum/matrix from its use of force curriculum. In reaching this decision, DPSST is committed to the "best practice" philosophy, which will keep us cutting edge current and legally defensible. DPSST will teach that the standards of "objective reasonableness" and the "totality of the circumstances" are the only standards for decisions regarding use of force. This will give a consistency to our curriculum in the legal, survival skills and tactical venues and is in complete congruence with state and federal court decisions.

Based on the above information, it is the recommendation of Captain Eaton that the Police Policy Committee support the change in DPSST's basic police curriculum eliminating the force matrix.

#### Bibliography:

"Use of Force: Are Continuums Necessary?" by John Bostain, FLETC Journal D Fall 2006, pp 33-37;

"Force Continuums: A Liability to Law Enforcement" by George T. Williams, FBI Law Enforcement Bulletin, June 2002, pp 14-19;

"Training without force continuums: Learn to Love the Law" by John Bostain, PoliceOne.com News, March 19, 2009;

"A Legal Guide to Dispelling the Myths of Use of Force" by John Bostain, Oregon Chiefs of Police Association conference 2009, March of 2009.

# Use of Force: Are Continuums Still Necessary?

by John Bostain

Those of us in the law enforcement community know them by many names, such as Use of Force Continuum, Use of Force Model, Use of Force Ladder, or Use of Force Matrix. Regardless of what they are called, visual models depicting progressive escalation and de-escalation of force have become a mainstay in the law enforcement community. There is a legitimate debate among police trainers, administrators and attorneys as to whether Use of Force continuums still serve a vital function in the modern law enforcement agency. The purpose of this article is not to take sides on the issue, but rather to examine the facts, and allow the reader to make an informed decision as to whether continuums still serve a purpose in their agency.

Use of Force Continuums have been used in law enforcement training for many years. According to Bruce Siddle, founder of PPCT Management Systems and author of "Sharpening the Warrior's Edge", the first Use of Force models were based on early models found in U.S. Army Military Police Manuals from the early 1960's.<sup>1</sup> Siddle also indicated that those models may have been based on models developed by France in the mid 1940's. According to police defense expert George Williams, "in the late 1960s, law enforcement trainers who sincerely desired to assist officers in properly employing force developed force continuums."<sup>2</sup> The Federal Law Enforcement Training Center (FLETC) first developed its own Use of Force Model as a result of the Use of Force project which began in September 1990.

Regardless of when they were developed, Use of Force Continuums have been a foundational element of law enforcement training for the past twenty years.

Whether one is for or against the use of continuums in training, an objective look at most continuums will reveal a number of pitfalls that may limit their usefulness. The most obvious pitfall is that Use of Force Continuums are not typically based upon the standard established by the U.S. Supreme Court in Graham vs. Connor<sup>3</sup>. The *Graham* court established the standard for Use of Force that applies to all American police officers, regardless of jurisdiction. The *Graham* court held that Use of Force used by police officers is judged upon the "objective reasonableness" standard of the Fourth Amendment and incorporates the concept of the totality of the circumstances. In *Graham* the court specifically stated "the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application"<sup>4</sup>, but that is exactly what Use of Force Continuums attempt to do. Additionally, most Use of Force Continuums do not address the

concept of the totality of circumstances. Most continuums are structured in such a way that a specific subject action equates to a specific officer response, regardless of the totality of circumstances known to

the officer at the moment force was used. Experienced law enforcement officers know that Use of Force incidents do not occur in a vacuum. There are factors such as known violent history of the suspect, duration

See the Use of Force Charts  
inside front and back covers  
of this issue.

of the action, officer/subject variables, and other facts that make up the totality of circumstances. Rather than a specific response to a subject's actions, there may be a wide range of reasonable responses from which an officer may choose.

Another problem is there is no consensus on the definitions used in the various models. Passive resistance may mean many different things to many different officers. One officer may view passive resistance as a protestor who refuses to stand up, while another officer perceives that same protestor as actively resistant. Who is right? Active resistance is generally defined as threatening an officer;<sup>5</sup> shoving, striking, wrestling with, and even biting an officer.<sup>6</sup> In contrast, passive resistance is described by the following suspect actions: (1) remaining seated, refusing to move, and refusing to bear weight;<sup>7</sup> (2) protestors going limp, or persons chaining themselves together and covering their hands with maple syrup to impede the use of handcuffs;<sup>8</sup> (3) protestors employing lock-down devices that immobilize their arms and prevent their separation by police, although the protestors could disengage themselves from the devices.<sup>9</sup> In many instances, continuums define actions as active resistance which the courts have defined as passive resistance. These inconsistencies only add to the confusion an officer may experience when trying to apply concepts taught by a model in a dynamic Use of Force incident.

Finally, most Use of Force continuums are just not practical from an application standpoint. While they may certainly have benefit in explaining Use of Force to juries in a sterile, quiet courtroom environment, they hardly represent the "tense, uncertain and rapidly evolving"<sup>10</sup> circumstances faced by police officers in the field. Linear models, progressive models, or whatever name one may call them, encourage the officer to try to find the minimal amount of force necessary to control a subject's actions. What happens when that minimal amount of force fails to control the subject?

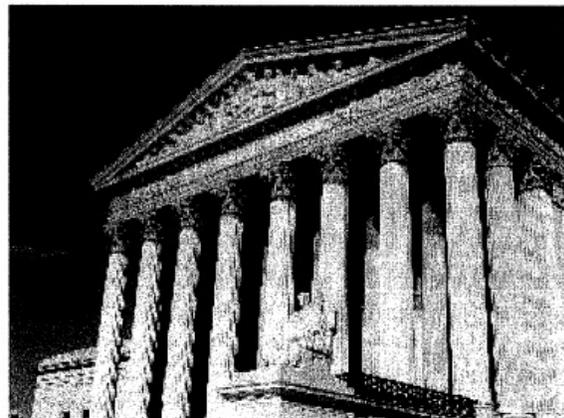
The officer now has to use even more force to control the subject, which is likely to lead to more injuries to both the officer and the subject who is resisting arrest. At a recent law enforcement trainer's conference this analogy was used:

"If there was a fire at your home, would you want the responding firefighters to attempt to calculate the minimal amount of water that is necessary to put out the flames, or would you prefer them to use the reasonable amount it would take to get the fire out? If they attempt to use the minimum amount of water, and it doesn't work, the fire will most certainly get worse"<sup>11</sup>

**Reduce hesitation  
by teaching officers what they can  
do rather than what they cannot.**

I think most of us agree that if it is our house burning to the ground, we want the firefighters to use the reasonable amount of water, not the minimal amount.

Some trainers attempt to compensate for this obvious flaw with continuums by employing what is often called the "one plus rule", which means the officer should employ a response that is one level above the subject's resistance. Under that theory, it could be argued that an officer would be justified in using deadly force against every assaultive subject. Such confusion does little to help officers to make reasonable decisions. There is little purpose for a Use



of Force continuum, if it requires modification such as the “one plus rule” to be useful. It should also be remembered that the “one plus rule” is yet another concept in Use of Force training, while longstanding, is not founded upon the prevailing case law set forth by the Supreme Court.

So how do we reduce the confusion that some officers feel when using force? The Federal Law Enforcement Training Center (FLETC) has dramatically changed its approach to Use of Force training in recent years. A visitor to the FLETC may notice that the FLETC Use of Force Model has been removed from the walls of the classrooms, mat rooms and firing ranges. They are being replaced by posters which show the constitutional standard regarding Use of Force as held by the Supreme Court in Graham vs. Connor and Tennessee vs. Garner. The FLETC approach is designed to encourage officers to make objectively reasonable decisions based upon the facts of a situation, rather than the subjective principles defined in the Use of Force Model.

Recognizing the potential pitfalls of using models and continuums, the FLETC approach helps students focus on making Use of Force decisions based upon the same facts that will be used by the courts to determine the reasonableness of a particular Use of Force.

The first step in the FLETC approach is legal understanding. All Use of Force training at FLETC is founded upon the U.S. Supreme Court case Graham vs. Connor and Tennessee vs. Garner. Rather than attempt to scare students with the threat of liability for using force, FLETC instead focuses on the pro-law enforcement language used by the *Graham* court, to teach students what the law tells them they can do, rather than what they cannot. FLETC instructors attempt to dispel the various myths regarding Use of Force such as “officers can never shoot someone in the back,”<sup>12</sup> “officers can never shoot an unarmed person,”<sup>13</sup> and “officers must exhaust all lesser means before using deadly force” by providing case law examples of where courts have determined such actions were reasonable based upon the totality of circumstances. Further myths that are

dispelled are “officers must give a verbal warning prior to using deadly force,”<sup>14</sup> “officers cannot use deadly force on suspects wielding an edged weapon until they are within 21 feet,”<sup>15</sup> and “officers must be in fear for their lives before using deadly force”. By dispelling these types of myths through the use of case law, students are less likely to hesitate during a Use of Force incident. A legal foundation, through the use of applicable case law, is the basis for the entire FLETC Use of Force approach.

The second step in the FLETC approach is to teach students to be mentally prepared to use force. Building upon the legal foundation, officers are encouraged to be proactive rather than reactive in their application of force. Students are taught that the early (proactive)

application of reasonable force will result in less overall force used, fewer injuries to suspects, and fewer injuries to officers. This is based upon the premise that if the subject is controlled earlier, the situation does not have a chance to deteriorate to a point where more force is

needed to control the subject. The mental preparation portion of the training also teaches officers to be aware of the factors that may cause them to unnecessarily hesitate in a critical incident. An unfounded fear of liability, overly restrictive agency policy, fear of the media, and personal beliefs are all factors that may cause hesitation in a Use of Force incident. Students are taught how to resolve these issues in order to make better decisions under stress.

The third step in the FLETC approach focuses on report writing. This aspect of the program is important, because it relates to reducing the officers exposure to civil or criminal liability. Many law enforcement reports are unintentionally filled with conclusions rather than facts. Officers tend to use “police language” to describe their actions rather than facts. Look at the following excerpt from a police Use of Force report:

“When I told the suspect he was under arrest he became non-compliant. When I attempted to handcuff him he became actively resistant. I

**Verbal warnings  
are Not  
Always Required.**



deployed my OC spray, which was ineffective, and caused the subject to become assaultive. At this time I deployed my baton and struck him three times, which caused him to go to the ground, where he was handcuffed”

Not a bad report, right? It could be better, but it has the basic facts, right? The problem with the above excerpt is that it actually contains very few facts. It uses conclusions such as “non-compliant”, “actively resistant” and “assaultive” to justify the officer’s actions. During report writing exercises, FLETC instructors specifically look for these types of conclusions, and make the officers rewrite the reports and articulate the facts upon which the conclusions are made. When they are finished, the report may look like this:

“When I told the suspect he was under arrest, he turned to me and stated ‘I’m not going back to jail’. As he faced me, his hands became clenched, and he was staring at me like he was looking right through me. His right leg was set back from his left, in what appeared to be a stance used by a boxer. I approached the suspect in an attempt to control him for handcuffing. When I touched his arm, he quickly pulled his arm away from me, and raised his fist up to nearly his eye level. I sprayed him with O/C spray to which he replied, ‘that ain’t gonna work on me,’ and rapidly closed the distance between us, with his fist still raised. I pulled

out my baton, opened it, and struck the suspect approximately three times, which caused his leg to bend, and go down to the ground. I then went in and handcuffed him.”

Is that a perfect report? Maybe not, but which report best illustrates the true nature of the event? By training officers to explain their actions by articulating facts, and not merely stating conclusions, they will stand a much better chance of obtaining a favorable outcome if faced with civil or criminal action.

In addition to articulating facts rather than conclusions, the FLETC report also makes the students articulate the factors outlined by the Supreme Court in Graham vs. Connor and Tennessee vs. Garner. The FLETC Use of Force form has blanks that make students articulate the severity of the crime, whether the subject was an immediate threat, active resistance of the subject and whether the subject was attempting to evade arrest by flight. It also contains an entire page dedicated to articulating the totality of circumstances known to the officer at the moment force was used. Each of the elements in the Use of Force form is designed to help the student articulate the incident consistently with the standards provided by the Supreme Court.

The fourth step in the FLETC process is practical application of the classroom information through the use of reality-based training. In addition to all of the other reality-based training they receive throughout their program, students have a four hour Use of Force laboratory, which is designed to test Use of Force skills specifically. Students respond to four scenarios, which require a wide array of force response options to be used. The students are purposely placed into situations that are designed to overcome some of the various myths previously discussed in the classroom. One scenario is designed to see if the students, when provided with adequate justification, will shoot a suspect in the back. Another scenario requires the students to be proactive in their Use of Force. If the student is not proactive, the situation develops into a shooting situation. At the conclusion of the four scenarios, students complete the Use of Force form. They receive immediate feedback from the instructors if they use conclusions rather than facts

in their report. The instructors also reinforce the case law that applies to their particular scenario.

In addition to the scenarios, students also participate in what are known as transition drills. These drills are designed to teach students how to move, shoot, and transition between their various force response options, all while fending off an attacker. Using Non Lethal Training Ammunition (NLTA), students make decisions and transitions under high stress, in close quarters. Again, the emphasis is on teaching them to be proactive. If they hesitate to use force, the situation generally deteriorates and becomes more difficult to control. Through the use of the scenarios and transition drills, students reinforce the legal and mental preparation principles they learned in the classroom.

All of the training in the FLETC program occurs without using a Use of Force Model or continuum. Rather than introduce a model that may potentially cause confusion and hesitation, the FLETC instead focuses on the standards provided by the Supreme Court: objective reasonableness based upon the totality of circumstances. All of the scenarios, drills, and report writing are designed to help students articulate themselves in accordance with the standards established in Graham vs. Connor and Tennessee vs. Garner.

The training is also designed to reduce hesitation by teaching officers what they can do rather than what they cannot. This philosophy negates the need for a "model". The debate over whether continuums are still necessary is not likely to end soon. They may still serve a legitimate purpose for some agencies. Clearly the FLETC approach is just one way of teaching Use of Force, not the only way. But hopefully, an open debate of the issue will only result in better training for all law enforcement officers.

<sup>1</sup> Phone interview with Bruce Siddle, 06/07/2006

<sup>2</sup> Williams, George Force Continuums: A Liability to Law Enforcement?, FBI Law Enforcement Bulletin, June 2002 (p14-19)

<sup>3</sup> Graham vs. Connor, 490 U.S. 386 (1989).

<sup>4</sup> Id.

<sup>5</sup> Draper v. Reynolds, 369 F.3d 1270, (11<sup>th</sup> Cir. 2004)

<sup>6</sup> Hinton v. City of Elwood, 997 F.2d 774 (10<sup>th</sup> Cir. 1993).

<sup>7</sup> Forrester v. City of San Diego, 25 F.3d 804 (9<sup>th</sup> Cir. 1994).

<sup>8</sup> "Amnesty America v. Town of West Hartford, 361 F.3d 113 (2<sup>nd</sup> Cir. 2004).

<sup>9</sup> Headwaters Forest Defense v. County of Humboldt, 276 F.3d 1125 (9<sup>th</sup> Cir. 2002).

**About the author:** Instructor John Bostain is a Senior Instructor at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. He is the Senior Instructor for use of force for FLETC basic programs. John has been a law enforcement trainer for the past ten years, and has instructed a variety of law enforcement topics such as use of force, defensive tactics, firearms, defensive driving and others. John was previously with the Hampton Police Division in Virginia where he served as a uniform patrol officer, police academy instructor, patrol supervisor and SWAT team member. He is also an advisory board member of the International Law Enforcement Educators and Trainers Association (ILEETA).

