

# Police Policy Committee Minutes November 13, 2007

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on November 13, 2007 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:31 p.m. by Chair Andrew Bentz.

## Attendees

### **Policy Committee Members:**

Andrew Bentz, Chair, Oregon State Sheriffs' Association  
Andrew Jordan, Oregon Association Chiefs of Police  
Raul Ramirez, Oregon State Sheriffs' Association  
Rob Gordon, Oregon State Sheriffs' Association - teleconference  
Mike Healy, Oregon Association Chiefs of Police  
Brian Martinek, Portland Police Bureau Assistant Chief  
Stuart Roberts, Oregon Association Chiefs of Police - teleconference  
Tim McLain, Superintendent, Oregon State Police  
Ray Gruby, Non-Management Law Enforcement  
Robert King, Non-Management Law Enforcement - teleconference  
Edward Mouery, Oregon State Police

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

Dan Nielsen, Federal Bureau of Investigation – Oregon  
Steven Piper, Non-Management Law Enforcement

### **DPSST Staff:**

Eriks Gabliks, Deputy Director  
Marilyn Lorance, Standards and Certification Supervisor  
Bonnie Salle, Certification Coordinator  
Lorraine Anglemier, Legal Services Coordinator  
Carolyn Kendrick, Administrative Assistant



### **1. Minutes of August 14, 2007 Meeting**

Approve minutes from the August 14, 2007 meeting.

*Andrew Jordan moved to approve the minutes from the August 14, 2007 meeting. Tim McLain seconded the motion. The motion carried unanimously by all present.*

### **2. Law Enforcement Memorial Wall Nomination**

Eriks Gabliks presented information.

**Action Item:** Determine whether Deputy Kelly Fredinburg's name will be included on the Law Enforcement Memorial Wall.

*Raul Ramirez moved to include Deputy Kelly Fredinburg's name on the Law Enforcement Memorial Wall. Michael Healy seconded the motion. The motion carried unanimously by all present.*

**3. Policy Discussion – Workgroup Update**

Recalled Certification – Maintenance Training Deficiency  
Information presented by Bonnie Salle.

*See Appendix A for further details.*

*The Committee asked if there were/are sanctions other than monetary that can be used by the Department. Staff clarified that the statute was extremely limiting and only provided for monetary sanctions. A few agencies did not respond to notification of certification recall. Each non-compliant agency was sent by certified mail the letter of recall as well as the individual being recalled.*

*There are still a number of law enforcement agencies that believe they are only responsible for getting an officer signed up for basic academy and the annual firearms qualifications. Those agencies think any continuing education is the sole responsibility of the employee. It would seem to make more sense to apply the monetary fine not to the law enforcement agency but to the governmental entity of which he/she belongs. Possibly the letter of recall should also go to the District Attorney's office.*

*Staff inquired of the Committee how to handle the situation when an officer retires with recalled certification. In order to be "honorably retired" means retiring in good standing with current certifications. Recall is an administrative process not a punitive process.*

*Some Committee members think that communication is key between the agency and the individual. If an individual states they've received notification, however they plan to retire in a month, then fulfilling the maintenance requirements is a waste of time for the individual as well as the agency. That makes a big difference as to whether retirement is in good standing or not.*

*Tim McLain moved to have staff go back to DOJ for legal advisement prior to proceeding to a decision on Question 1 and bring it back to the Committee. They will then vote to move all five action items forward to the Board. Brian Martinek seconded the motion. The motion carried unanimously by all present.*

**Action Item 1:** Determine whether to approve the workgroup's recommended response to Question 1 which imposes a monetary sanction on an agency when an officer fails to complete mandatory maintenance training, certification is recalled, and the officer remains employed with the same agency.

**Action Item 2:** Determine whether to approve the workgroup's recommend response to Question 2 which requires an officer with a recalled certification for up to 2 ½ years to complete maintenance training for the current period for which their certification was recalled if they remain with the same agency.

**Action Item 3:** Determine whether to approve the workgroup's recommended response to Question 3 which requires an officer who returns to a certifiable position from a recalled status of

up to five years to be required to complete an 8-hour firearms/use of force component within 30 days (as well as COD for those with recalled certifications between 2 ½ and 5 years).

**Action Item 4:** Determine whether to approve the workgroup’s recommend response to Question 4 which allows an officer with a lapsed or recalled certification to resume employment with a different employer without requiring the subsequent employer to make up the previous training deficiencies.

**Action Item 5:** Determine whether to approve the workgroup’s recommended response to Question 5 which allows an officer who resumes public safety after an absence to begin a current maintenance training cycle at the time of re-employment, but requires firearms proficiency within 30 days of employment.

**4. OAR 259-008-0060(17) – Proposed Administrative Rule Change**

Multi-Discipline Recall  
Information presented by Bonnie Salle.

*See Appendix B for further details.*

**Action Item 1:** Determine whether to recommend filing the proposed language for OAR 259-008-0060(17) 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(17) with the Secretary of State as a permanent rule if no comments are received.

*Raul Ramirez moved to recommend to the Board filing the proposed language for OAR 259-008-0060(17) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Andrew Jordan seconded the motion. The motion carried unanimously by all present.*

**Action Item 3:** Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

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

**5. OAR 259-008-0070 and OAR 259-008-0010 – Discussion**

Information presented by Marilyn Lorange.

*There was minimal discussion and the Committee moved forward to item 5a.*

**5a. OAR 259-008-0070 Proposed Administrative Rule Change**

Information presented by Marilyn Lorange.

*See Appendix C for further details.*

**Action Item 1:** Determine whether to recommend filing the proposed language for OAR 259-008-0070 with the Secretary of State as a proposed rule.

**Action Item 2:** Determine whether to recommend filing the proposed language for OAR 259-008-0070 with the Secretary of State as a permanent rule if no comments are received.

*Andrew Jordan moved to recommend to the Board filing the proposed language for OAR 259-008-0070 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Brian Martinek seconded the motion. The motion carried in a 10-1 vote with Robert King voting no.*

**Action Item 3:** Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

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

**6. OAR 259-008-0010 – Proposed Administrative Rule Change**  
Information presented by Marilyn Lorance.

*See Appendix D for further details.*

**Action Item 1:** Determine whether to recommend filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule.

**Action Item 2:** Determine whether to recommend filing the proposed language for OAR 259-008-0010 with the Secretary of State as a permanent rule if no comments are received.

*Tim McLain moved to recommend to the Board filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Raul Ramirez seconded the motion. The motion carried in a 10-1 vote with Robert King voting no.*

**Action Item 3:** Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

*It is the consensus of the Committee that there is no fiscal impact on small business.*

**7. OAR 259-008-0070(5) Proposed Administrative Rule Change**

Employment arbitration on revocation and denial cases

Information presented by Marilyn Lorance on behalf of Board Chair Harold Burke-Sivers.

*See Appendix E for further details.*

**Action Item 1:** Determine whether to recommend filing the proposed language for OAR 259-008-0070(5) with the Secretary of State as a proposed rule.

**Action Item 2:** Determine whether to recommend filing the proposed language for OAR 259-008-0070(5) with the Secretary of State as a permanent rule if no comments are received.

*Tim McLain moved to recommend to the Board filing the proposed language for OAR 259-008-0070(5) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Brian Martinek seconded the motion. The motion carried in a 10-1 vote with Robert King voting no.*

**Action Item 3:** Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

*It is the consensus of the Committee that there is no fiscal impact on small business.*

**8. OAR 259-008-0200 – Proposed Rule**

Civil Penalties

Information presented by Bonnie Salle.

*See Appendix F for further details.*

*Staff welcomes any input from the Committee and the Board in defining the amounts and usage of civil penalties. The Department sincerely wishes to reflect the intent of the Committee and Board on this issue. The statute gives formal authority to assess civil penalties to the Department not the Board. The Committee is concerned about how to administer the penalties fairly to everyone (large and small agencies) who ends up going through the process. Procedurally, this is a concept still being developed. The Committee is concerned about the continued separation of the Department and the Board and encouraged staff to consider ample face-to-face discussions with the Chiefs and Sheriffs to inform all of the civil penalties procedures being defined and adopted.*

**Action Item 1:** Determine whether to recommend filing the proposed language for OAR 259-008-0200 with the Secretary of State as a proposed rule.

**Action Item 2:** Determine whether to recommend filing the proposed language for OAR 259-008-0200 with the Secretary of State as a permanent rule if no comments are received.

*Ed Mouery moved to recommend to the Board filing the proposed language for OAR 259-008-0200 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Raul Ramirez seconded the motion. The motion carried unanimously by all present.*

**Action Item 3:** Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

*It is the consensus of the Committee that there is no fiscal impact on small business.*

**9. Additional Information**

Information presented by Eriks Gabliks.

**a.) Oregon Mayors' Association – ORPAT**

*Information was given to the Committee about the Oregon Mayors' Association's adopted position on ORPAT. Chair Andrew Bentz suggested placing this item on the agenda for the next Police Policy Committee meeting.*

*See Appendix G for further details.*

**b.) Sheriff Bernie Guisto has asked for and received an extension. His response is due Friday, November 16, 2007. The Department is taking care of media inquiries on the Committee's behalf. The release of public documents is scheduled for November 14<sup>th</sup>. These public documents are in digital form. The Committee will be receiving the**

*summary and exhibits (as hard copy) well in advance of the next scheduled meeting to allow for ample time to review the case.*

- c.) Partnership with Nike has been established. You may be aware they are looking into VO testing which corresponds well with the ORPAT training. The Academy will be beta testing tactical footwear for NIKE. They are moving into the development of footwear for military and public safety functions. Footwear will be issued to students coming here (both male and female) for the different programs. Students will sign an agreement stating that the footwear belongs to their agency after training to avoid ethical issues.*
- d.) In January, we start the 300<sup>th</sup> Basic Police class. Tim McLain's father was in the very first Basic Police class. Tim McLain will be the guest speaker for that class' graduation and his father should be in attendance. The Department is also trying to contact other members from the first Basic Police class to invite them to the event.*
- e.) Tim McLain announced that as of two weeks ago OSP's first class of lateral officers is out on the road and doing well.*
- f.) A bureau of OSP was renamed to Public Safety Services which includes Forensics, LEADS, and the Communications sections. Chris Brown has accepted the position of overseeing this bureau and will start January 1, 2008.*

*With no further business before the committee, the meeting was adjourned at 3:17 p.m.*

## Appendix A

### Department of Public Safety Standards and Training Memo

**Date:** October 9, 2007

**To:** Police Policy Committee

**From:** Bonnie Sallé  
Rules Coordinator

**Subject:** Policy Discussion – Workgroup Update  
Recalled Certification – Maintenance Training Deficiency

**Background:** On August 14, 2007, the Police Policy Committee met and requested that workgroup members be appointed to discuss staff's concerns relating to police officer maintenance training, specifically regarding those whose maintenance requirements were not met at the end of the maintenance period, as required by administrative rule. Workgroup members were appointed and provided a copy of staff's memo to the Policy Committee" (see Attachment "A") outlining the issues and requesting clarification and direction on five questions contained in the memorandum.

On September 17, 2007, the workgroup members met and discussed the questions contained in the August 14, 2007 Police Policy Committee memorandum (see Attachment "B" for workgroup meeting minutes). Consensus was reached among workgroup members to recommend the following responses to those questions:

**QUESTION 1:** Should the requirements for recertification following recall remain the same indefinitely if [an officer] remains employed with their agency; or should additional requirements be imposed? If a deadline is established and additional requirements developed, staff recommendation would be to require submission of an F-2 Medical Examination form, fingerprints, and an F-7 (Application for Certification), which is the current requirement for recertification following a lapse of a certification. These requirements would be in addition to verification that training deficiencies had been completed.

**ANSWER 1:** If an officer fails to complete mandatory maintenance training and certification is recalled, after an established time period, the Department should impose a monetary sanction on the agency if the officer remains employed with the same agency.

**QUESTION 2:** Should an officer with a recalled certification for up to 2 ½ years be required to complete maintenance training for the current period, within which their certification was recalled, if they remain with the same agency?

**ANSWER 2:** Yes. The officer should maintain the same cycle and be required to complete deficient maintenance training prior to re-certification.

**QUESTION 3:** Should officers who return to certifiable positions from a recalled status of up to five years be required to complete an 8-hour firearms/use of force component within 30 days (as well as

COD for those with recalled certifications between 2 ½ and 5 years), as is currently required of those returning to employment or returning from a leave lasting up to five years?

**ANSWER 3:** Yes. The officer should complete firearms within 30 days – should be compelled to meet the requirement to complete firearms/use of force for a lapsed or recalled certification upon re-employment.

**QUESTION 4:** Should an officer with a lapsed or recalled status who resumes employment with a different employer be required to complete any maintenance training deficiencies from a previous employer?

**ANSWER 4:** No. If an officer changes employment, the subsequent hiring agency should not be required to make up the previous training deficiencies.

**QUESTION 5:** What maintenance training cycle should an officer resume when re-entering public safety after an absence?

**ANSWER 5:** Notwithstanding the provisions of OAR 259-008-0065 for officers on leave of absence: Begin current cycle at time of re-employment and require firearms proficiency within 30 days of employment (same conditions as current required for an officer returning from military deployment)

## Appendix B

### Department of Public Safety Standards and Training Memo

**Date:** October 9, 2007

**To:** Police Policy Committee

**From:** Bonnie Sallé  
Rules Coordinator

**Subject:** OAR 259-008-0060(17) - Proposed Administrative Rule Change  
Multi-Discipline Recall

**Background:** All police officers, and any individual who holds certification in more than one discipline are currently required to complete maintenance training on an annual basis and report the training to the Department.

**Issue:** The current rule(s) in OAR 259-008-0064 relating to Telecommunicators and Emergency Medical Dispatchers provides that the *Department* may recall certifications for failing to complete, or timely report, annual maintenance training requirements. However, the language in OAR 259-008-0060 requires that recalls for failing to complete, or timely report, annual maintenance training requirements for individuals holding multi-discipline certification must be approved by the *Board*. Because the Board meets quarterly, this would allow a police officer who fails to complete mandatory multi-discipline maintenance training by July 1, to wait until the Board meets in October before the Department could begin the process to recall the individual's certification(s).

Certification recall is an administrative action imposed solely because an individual fails to meet one or more requirements to maintain certification. The requirement for Board approval of multi-discipline certification recalls is inconsistent with the recall process for telecommunicators, emergency medical dispatchers, as well as the maintenance recall process for police officers.

Staff is proposing to amend the language in OAR 259-008-0060 to reflect the same process that currently governs other certification recalls.

The following revised language contains recommended deletions (~~striketrough text~~) and additions (**bold and underlined text**):

**259-008-0060(17)**

\* \* \*

(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 the EMD certificate; a minimum of four (4) hours of training, specific to this discipline, must be reported annually on a Form F-15M.

(B) For the Telecommunicator certification, a minimum of twelve (12) hours of training, specific to this discipline, must be reported annually on a Form F-15M.

(C) For all other disciplines, a minimum of twenty (20) hours of training, specific to each discipline in which certification is held, must be reported annually 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) Failure to comply with subsection (c) of this rule shall result in the recall of the multi-discipline certification by the ~~Board~~ **Department**.

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

(18) 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.

## Appendix C

259-008-0070

### Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to insure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public nor respect of the profession is compromised.

#### Definitions

**(2) For purposes of this rule, the following definitions apply:**

**(a) “Denial” or “Deny” means the refusal to grant a certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.**

**(b) “Discretionary Disqualifying Misconduct” means misconduct identified in OAR 259-008-0070(4).**

**(c) “Revocation” or “Revoke” means to withdraw the certification of a public safety professional or instructor for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in section (9) of this rule.**

#### Grounds for Mandatory Denial or Revocation of Certification

~~(2)~~ **(3)** Mandatory Grounds for Denying or Revoking Certification of a Public Safety Professional or Instructor:

(a) The Department must deny or revoke the certification of any public safety professional or instructor after written notice and hearing, based upon a finding that:

(A) The public safety professional **or instructor** has been discharged for cause from employment as a public safety professional **or instructor**. For purposes of this rule, "discharged for cause," means an employer-initiated termination of employment for any of the following reasons:

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

**(ii) Disregard for the Rights of Others: Includes constitutional violations, violation of the Code of Ethics regarding fairness, respect for the rights of others, protecting the vulnerable and the fundamental duty to protect and serve;**

~~(i)~~ **(iii) Gross Negligence-Misconduct: means the public safety professional's an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the ~~department~~**

**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;

~~(v) Incompetence or Gross Misconduct: in determining what constitutes "incompetence or gross misconduct," sources the Department may take into account include but are not limited to practices generally followed in the profession, current teaching at public safety training facilities, and technical reports and literature relevant to the fields of law enforcement, telecommunications, or emergency medical dispatch.~~

**(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a public safety professional or instructor.**

~~(v) 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; or~~

**(vi) Misuse of Authority: Includes abuse of public trust, obtaining a benefit or avoidance of detriment, and actions under the color of office;**

(B) The public safety professional or instructor has been convicted in this state or any other jurisdiction of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(C) The public safety professional or instructor has been convicted of violating any law of this state or any other jurisdiction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug except the Department may deny certification for a conviction of possession of less than one ounce of marijuana, which occurred prior to certification; or

(D) The public safety professional or instructor has been convicted in this state of any of the following offenses, or of their statutory counterpart(s) in any other jurisdiction, designated under the law where the conviction occurred as being punishable as a crime:

162.075 (False swearing),

162.085 (Unsworn falsification),

162.145 (Escape in the third degree),

162.175 (Unauthorized departure),

162.195 (Failure to appear in the second degree),

162.235 (Obstructing governmental or judicial administration),

162.247 (Interfering with a peace officer),

162.257 (Interfering with a firefighter or emergency medical technician),

162.295 (Tampering with physical evidence),

162.305 (Tampering with public records),  
162.315 (Resisting arrest),  
162.335 (Compounding),  
162.365 (Criminal impersonation),  
162.369 (Possession of false law enforcement identification),  
162.375 (Initiating a false report),  
162.385 (Giving false information to a peace officer for a citation or arrest warrant),  
162.415 (Official misconduct in the first degree),  
163.200 (Criminal mistreatment in the second degree),  
**163.454 (Custodial sexual misconduct in the second degree),**  
163.687 (Encouraging child sexual abuse in the third degree),  
163.732 (Stalking),  
164.045 (Theft in the second degree),  
164.085 (Theft by deception),  
164.095 (Theft by receiving),  
164.125 (Theft of services),  
164.235 (Possession of a burglary tool or theft device),  
164.877 (Unlawful tree spiking; unlawful possession of substance that can damage certain wood processing equipment)  
165.007 (Forgery in the second degree),  
165.017 (Criminal possession of a forged instrument in the second degree),  
165.037 (Criminal simulation),  
165.042 (Fraudulently obtaining a signature),  
165.047 (Unlawfully using slugs),  
165.055 (Fraudulent use of a credit card),  
165.065 (Negotiating a bad check),

165.080 (Falsifying business records),  
165.095 (Misapplication of entrusted property),  
165.100 (Issuing a false financial statement),  
165.102 (Obtain execution of documents by deception),  
165.825 (Sale of drugged horse),  
166.065(1)(b) (Harassment),  
166.155 (Intimidation in the second degree),  
166.270 (Possession of weapons by certain felons),  
166.350 (Unlawful possession of armor-piercing ammunition),  
166.416 (Providing false information in connection with a transfer of a firearm),  
166.418 (Improperly transferring a firearm),  
166.470 (Limitations and conditions for sales of firearms),  
167.007 (Prostitution),

**Oregon Laws 2007, Chapter 869, Sec. 2 (Furnishing sexually explicit material to a child),**

~~167.065 (Furnishing obscene materials to minors),~~  
~~167.070 (Sending obscene materials to minors),~~  
167.075 (Exhibiting an obscene performance to a minor),  
167.080 (Displaying obscene materials to minors),  
167.132 (Possession of gambling records in the second degree),  
167.147 (Possession of a gambling device),  
167.222 (Frequenting a place where controlled substances are used),  
167.262 (Adult using minor in commission of controlled substance offense),  
167.320 (Animal abuse in the first degree),  
167.330 (Animal neglect in the first degree),  
167.332 (Prohibition against possession of domestic animal),

167.333 (Sexual assault of animal),

167.337 (Interfering with law enforcement animal),

167.355 (Involvement in animal fighting),

167.370 (Participation in dogfighting),

167.431 (Participation in cockfighting),

167.820 (Concealing the birth of an infant),

475.525 (Sale of drug paraphernalia),

**475.840 (Manufacture or deliver a controlled substance),**

**475.860 (Unlawful delivery of marijuana),**

**475.864 (Unlawful possession of marijuana),**

**475.906 (Distribution of controlled substance to minors),**

**475.910 (Application of controlled substance to the body of another person),**

**475.912 (Unlawful delivery of imitation controlled substance),**

**475.914 (Unlawful acts, registrant delivering or dispensing controlled substance),**

**475.916 (Prohibited acts involving records and fraud),**

**475.918 (Falsifying drug test results),**

**475.920 (Providing drug test falsification equipment),**

475.950 (Failure to report precursor substances transaction),

475.955 (Failure to report missing precursor substances),

475.960 (Illegally selling drug equipment),

475.965 (Providing false information on precursor substances report or record),

475.969 (Unlawful possession of phosphorus),

475.971 (Unlawful possession of anhydrous ammonia),

475.973 (Unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine; unlawful distribution),

475.975 (Unlawful possession of iodine in its elemental form),

475.976 (Unlawful possession of iodine matrix),

~~475.981 (Falsifying drug test results),~~

~~475.982 (Providing drug test falsification equipment),~~

~~475.986 (Application of controlled substance to the body of another person),~~

~~475.991 (Unlawful delivery of imitation controlled substance),~~

~~475.992 (Manufacture or deliver a controlled substance),~~

~~475.993 (Unlawful acts, registrant delivering or dispensing controlled substance),~~

~~475.994 (Prohibited acts involving records and fraud),~~

~~475.995 (Distribution of controlled substance to minors),~~

~~475.999 (Manufacture or delivery of controlled substance within 1,000 feet of school),~~

807.520 (False swearing to receive license),

807.620 (Giving false information to police officer),

Any offense involving any acts of domestic violence as defined in ORS 135.230.

(b) The Department must take action on a mandatory disqualifying conviction, regardless of when it occurred, unless the Department, or the Board, has previously reviewed the conviction and approved the public safety professional or instructor for certification under a prior set of standards.

**Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification**

~~(3)~~ **(4) Discretionary disqualifying misconduct as** Grounds for Denying or Revoking Certification **(s)** of a Public Safety Professional or Instructor:

**(a)** The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

~~(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

~~(b)~~ **(C)** The public safety professional or instructor has been convicted of an offense **listed in subsection (b)**, punishable as a crime, other than a mandatory disqualifying crime listed in section ~~(2)~~**(3) of this rule**, in this state or any other jurisdiction.

**(b) The following list identifies the offenses that constitute discretionary disqualifying misconduct and identifies their applicable category of misconduct, as defined in subsection (e) of this section:**

**162.405 (Official Misconduct in the Second Degree) – Category III,**

**162.425 (Misuse of Confidential Information) – Category III,**

**162.455 (Interfering with Legislative Operations) – Category V,**

**162.465 (Unlawful Legislative Lobbying) – Category I,**

**163.160 (Assault in the Fourth Degree) – Category II,**

**163.187 (Strangulation) – Category II,**

**163.190 (Menacing) – Category II,**

**163.195 (Recklessly Endangering Another Person) – Category IV,**

**163.212 (Unlawful Use of Stun Gun, Tear Gas or Mace in the Second Degree) – Category IV,**

**163.415 (Sexual Abuse in the Third Degree) – Category II,**

**163.435 (Contributing to the Sexual Delinquency of a Minor) – Category II,**

**163.445 (Sexual Misconduct) – Category II,**

**163.465 (Public Indecency) – Category II,**

**163.467 (Private Indecency) – Category II,**

**163.545 (Child Neglect in the Second Degree) – Category IV,**

**163.693 (Failure to Report Child Pornography) – Category IV,**

**163.575 (Endangering the Welfare of a Minor) – Category II**

**163.700 (Invasion of Personal Privacy) – Category II,**

**163.709 (Unlawful Directing of Light from a Laser Pointer) – Category IV,**

**164.043 (Theft in the Third Degree) – Category V,**

**164.132 (Unlawful Distribution of Cable Equipment) – Category V,**

**164.140 (Criminal Possession of Rented or Leased Personal Property) – Category V,**

**164.162 (Mail Theft or Receipt of Stolen Mail) – Category I,**

164.243 (Criminal Trespass in the Second Degree by a Guest) – Category V,

164.245 (Criminal Trespass in the Second Degree) – Category V,

164.255 (Criminal Trespass in the First Degree) – Category V,

164.265 (Criminal Trespass While in Possession of a Firearm) – Category IV,

164.272 (Unlawful Entry into a Motor Vehicle) – Category V,

164.278 (Criminal Trespass at Sports Event) – Category V,

164.335 (Reckless Burning) – Category IV,

164.345 (Criminal Mischief in the Third Degree) – Category V,

164.354 (Criminal Mischief in the Second Degree) – Category V,

164.373 (Tampering with Cable Television Equipment) – Category V,

164.377 (Computer Crime) – Category V,

164.775 (Deposit of Trash Within 100 Yards of Water) – Category V,

164.785 (Placing Offensive Substances in waters/on highways or property) – Category IV,

164.805 (Offensive Littering) – Category V,

164.813 (Unlawful Cutting and Transporting of Special Forest Products) – Category V,

164.815 (Unlawful Transport of Hay) – Category V,

164.825 (Cutting and Transport of Coniferous Trees without Permit/Bill of Sale) – Category V,

164.845 (FTA on Summons for ORS 164.813 or 164.825) – Category V,

164.863 (Unlawful Transport of Meat Animal Carcasses) – Category V,

164.865 (Unlawful Sound Recording) – Category V,

164.875 (Unlawful Video Tape Recording) – Category V,

164.887 (Interference with Agricultural Operations) – Category II,

165.107 (Failing to Maintain a Metal Purchase Record) – Category V,

165.109 (Failing to Maintain a Cedar Purchase Record) – Category V,

165.540 (Obtaining Contents of Communications) – Category V,

**165.555 (Unlawful Telephone Solicitation) – Category V,**

**165.570 (Improper Use of Emergency Reporting System) – Category IV,**

**165.572 (Interference with Making a Report) – Category II,**

**165.577 (Cellular Counterfeiting in the Third Degree) – Category I,**

**165.805 (Misrepresentation of Age by a Minor) – Category I,**

**166.025 (Disorderly Conduct in the Second Degree) – Category IV,**

**166.027 (Disorderly Conduct in the First Degree) – Category IV,**

**166.075 (Abuse of Venerated Objects) – Category II,**

**166.076 (Abuse of a Memorial to the Dead) – Category II,**

**166.090 (Telephonic Harassment) – Category II,**

**166.095 (Misconduct with Emergency Telephone Calls) – Category IV,**

**166.155 (Intimidation in the Second Degree) – Category II,**

**166.180 (Negligently Wounding Another) – Category IV,**

**166.190 (Pointing a Firearm at Another) – Category IV,**

**166.240 (Carrying a Concealed Weapon) – Category V,**

**166.250 (Unlawful Possession of a Firearm) – Category V,**

**166.320 (Setting of a Springgun or Setgun) – Category IV,**

**166.385 (Possession of Hoax Destructive Device) – Category IV,**

**166.425 (Unlawful Purchase of Firearm) – Category I,**

**166.427 (Register of Transfers of Used Firearms) – Category V,**

**166.480 (Sale or Gift of Explosives to Children) – Category IV,**

**166.635 (Discharging Weapon or Throwing Object at Trains) – Category IV,**

**166.638 (Discharging Weapon Across Airport Operational Surfaces) – Category IV,**

**166.645 (Hunting in Cemeteries) – Category V,**

**166.649 (Throwing Object off Overpass in the Second Degree) – Category IV,**

**167.122 (Unlawful Gambling in the Second Degree) – Category V,**

**167.312 (Research and Animal Interference) – Category II,**

**167.315 (Animal Abuse in the Second Degree) – Category IV,**

**167.325 (Animal Neglect in the Second Degree) – Category IV,**

**167.340 (Animal Abandonment) – Category IV,**

**167.351 (Trading in Nonambulatory Livestock) – Category V,**

**167.352 (Interfering with Assistance, Search and Rescue or Therapy Animal) – Category IV,**

**167.385 (Unauthorized Use of Livestock Animal) – Category II,**

**167.388 (Interference with Livestock Production) – Category II,**

**167.390 (Commerce in Fur of Domestic Cats and Dogs) – Category V,**

**167.502 (Sale of Certain Items at Unused Property Market) – Category V,**

**167.506 (Record Keeping Requirements) – Category V,**

**167.808 (Unlawful Possession of Inhalants) – Category IV,**

**167.810 (Creating a Hazard) – Category IV,**

**167.822 (Improper Repair Vehicle Inflatable Restraint System) – Category IV,**

**411.320 (Disclosure and Use of Public Assistance Records) – Category II,**

**468.922 (Unlawful disposal, storage or treatment of hazardous waste in the second degree) – Category V,**

**468.929 (Unlawful transport of hazardous waste in the second degree) – Category V,**

**468.936 (Unlawful Air Pollution in the Second Degree) – Category V,**

**468.943 (Unlawful Water Pollution in the Second Degree) – Category V,**

**468.956 (Refusal to Produce Material Subpoenaed by the Commission) – Category V,**

**471.410 (Providing Liquor to Person under 21 or to Intoxicated Person) – Category IV,**

**496.994 (Obstruction to the Taking of Wildlife) – Category V,**

**496.996 (Attempt to Take Wildlife Decoy) – Category V,**

**498.164 (Use of Dogs or Bait to hunt Black Bears or Cougars) – Category V,**

717.200 to 717.320 (Any violation) – Category V,

803.225 (Failure to Designate Replica.. Vehicle in Title or Registration Application) – Category I,

807.430 (Misuse of Identification Card) – Category I,

807.510 (Transfer of documents for the purpose of misrepresentation) – Category I,

807.530 (False Application for License) – Category I,

807.570 (Failure to Carry or Present License) – Category V,

807.580 (Using Invalid License) – Category I,

807.590 (Permitting Misuse of License) – Category I,

807.600 (Using Another’s License) – Category I,

811.060 (Vehicular Assault of Bicyclist or Pedestrian) – Category V,

811.140 (Reckless Driving) – Category IV,

811.172 (Improperly Disposing of Human Waste) – Category V,

811.182 (Criminal Driving While Suspended or Revoked) – Category V,

811.231 (Reckless Endangerment of Highway Workers) – Category IV,

811.540 (Fleeing or Attempt to Elude a Police Officer) – Category IV,

811.700 (Failure to Perform Duties of Driver when Property is Damaged) – Category V,

811.740 (False Accident Report) – Category I, and

813.010 (Driving Under the Influence of Intoxicants) – Category IV.

*Misconduct Categories and Initial Periods of Ineligibility*

(c) Upon determination to proceed with the denial or revocation of a public safety professional’s or instructor’s certification based on discretionary disqualifying misconduct, an initial minimum period of ineligibility to apply for certification will be determined based upon the category of misconduct (i.e., Dishonesty, Disregard for Rights, Misuse of Authority, Gross Misconduct, Misconduct or Insubordination).

(d) Following review and recommendation by a Policy Committee, the Board will determine the initial minimum period of ineligibility from the time frame identified within each of the following categories:

(A) Category I: Dishonesty (5 years to Lifetime). Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

**(B) Category II: Disregard for Rights of Others (5 years to 15 years). Includes constitutional violations, violation of the Code of Ethics regarding fairness, respect for the rights of others, protecting the vulnerable and the fundamental duty to protect and serve. In this category, a person is a victim;**

**(C) Category III: Misuse of Authority (5 years to 10 years). Includes abuse of public trust, obtaining a benefit or avoidance of detriment, and actions under the color of office;**

**(D) Category IV: Gross Misconduct (5 years to 10 years). Includes 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 would observe in similar circumstances; and**

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

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

***Eligibility to Reapply; Ineligibility Periods***

**(5) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for:**

**(a) Mandatory grounds identified in section (3) of this rule; or**

**(b) Discretionary Disqualifying Misconduct identified in section (4) of this rule that is determined to be a Category I lifetime disqualifier.**

**(6) Eligibility to reapply for certification:**

**(a) In determining the initial minimum period of ineligibility within any category for discretionary disqualifying misconduct listed in section (4) of this rule, the Board will take into consideration any mitigating or aggravating factors, subject to the provisions of section (9) of this rule.**

**(b) The initial minimum period of ineligibility will be included in any final Order of the Department.**

**(c) Any subsequent eligibility to apply for certification will be determined by the Board, after Policy Committee review, subject to the provisions of section (11) of this rule.**

***Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct***

**(7) In determining whether to take action on a conviction, the Department must use the following guidelines:**

~~(A)~~ **(a)** In making a decision on a discretionary denial or revocation, the Department will consider the implementation dates relating to new mandatory conviction notification requirements adopted in 2003 and statutory changes dealing with lifetime disqualifier convictions for public safety officers adopted in 2001.

~~(B)~~ **(b)** The Department will not take action on a ~~discretionary~~ conviction **constituting discretionary disqualifying misconduct** that occurred prior to January 1, 2001. However, the Department may consider such conviction as evidence that a public safety professional or instructor does not meet the established moral fitness guidelines.

~~(C)~~ **(c)** The Department may take action on any ~~discretionary disqualifying~~ conviction **constituting discretionary disqualifying misconduct** that occurred after January 1, 2001.

~~(D)~~ **(d)** The Board may reconsider any mandatory conviction which subsequently becomes a ~~discretionary~~ conviction **constituting discretionary disqualifying misconduct**, upon the request of the public safety professional or instructor.

~~(E)~~ **(e)** The length of ineligibility for training or certification based on a conviction begins on the date of conviction.

~~(F)~~ **(f)** Notwithstanding subsection ~~(2)(b)~~ **(b)** of this section, all denial and revocation standards must apply to public safety professionals and instructors.

~~(G)~~ **(g)** A public safety professional or agency will not be held accountable for failing to report a ~~discretionary~~ conviction **that constitutes discretionary disqualifying misconduct, if such conviction** that occurred prior to January 1, 2003.

~~(e)~~ **(h)** 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.

#### **Procedure for Denial or Revocation of a Certificate**

~~(4)~~ **(8)** Scope of Revocation. Whenever the Department ~~denies or~~ revokes the certification of any public safety professional **or instructor**, the ~~denial or~~ revocation will encompass all **public safety** certificates, **except fire certification(s)**, the Department has issued to that person.

~~(5)~~ **(9)** Denial and Revocation Procedure.

(a) ~~Employer Request~~ **Agency Initiated Review**: When **the entity utilizing** a public safety professional **or instructor**'s ~~employer~~ requests that a public safety professional's **or instructor's** certification be denied or revoked, ~~the employer~~ **it** must submit **in writing to the Department** the reason for the requested denial or revocation and all factual information supporting the request, ~~in writing, to the Department.~~

(b) Department Initiated ~~Request~~ **Review**: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the public safety professional's **or instructor's** certification be denied or revoked.

(c) Department Staff Review: When the Department receives information, from any source, that a public safety professional **or instructor** may not meet the established standards for Oregon public

safety professionals or instructors, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation the Department will notify the requestor.

(B) If the reason for the request does meet statutory and administrative rule requirements but is not supported by adequate factual information, the Department will request further information from the employer or conduct its own investigation of the matter.

~~(C) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.~~

~~(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying misconduct listed in subsection (34), the case may be presented to the Board, through a Policy Committee.~~

**(D) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.**

(d) Policy Committee and Board Review: The Policy Committees and Board ~~may~~ will consider mitigating and aggravating circumstances in making a decision to deny or revoke certification based on discretionary disqualifying misconduct, including the following:

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

~~(A)~~ **(B) Was a conviction:**

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

~~(B)~~ **(ii) How long ago did a conviction occur? The date of the conviction(s);**

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

~~(D) When did the conduct occur in relation to the public safety professional's employment in law enforcement (i.e., before, during, after)?~~

~~(E)~~ **(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration? If so, how long?**

~~(F)~~ **(v) If Whether restitution was involved ordered, has and whether the public safety professional or instructor met all obligations?;**

~~(G)~~ **(vi) Was Whether the public safety professional or instructor has ever been on parole or probation? If so, when did the date on which the parole/probation period expired or is set to expire; the parole or probation end? Is the public safety professional still on parole or probation?**

~~(I) (vii) Whether the~~ How many other convictions does this public safety professional **or instructor** has more than one conviction and if so, the period of time; ~~have? Over what period of time?~~

~~(J) (viii) Whether~~ Has the public safety professional **or instructor** has been convicted of the same conduct more than once, **and if so,** ? Is this a repeated violation or a single occurrence **the period of time;**?

~~(H) (C) Do~~ Whether the actions **of the public safety professional or instructor** violate the established moral fitness standards for Oregon public safety officers identified in OAR 259-008-0010(5), i.e., moral turpitude, dishonesty, fraud, deceit, misrepresentation, conduct prejudicial to the administration of justice, conduct that reflects adversely on the profession, or conduct that 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;?

~~(K) (D) Whether~~ Does the **misconduct** involved **d** domestic violence;?

~~(L) (E) Whether~~ Did the public safety professional **or instructor** self reported **the misconduct;**?

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

**(G) 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.**

(e) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(f) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with **OAR 137-003-0001** of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional **or instructor**.

(g) Response Time:

(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(B) A party who has been served with the "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file with the Department a written request for hearing.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0075(5).

(i) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(j) Proposed Order: The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(k) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(l) Final Order: A final order will be issued pursuant to OAR 137-003-0070 if a public safety professional **or instructor** fails to file exceptions and arguments in a timely manner.

(m) Stipulated Order Revoking Certification: **The Department may enter a stipulated order revoking the certification of a** Any public safety professional **or instructor upon the person's voluntary agreement to** who wishes to voluntarily terminate an administrative proceeding to revoke a certification, or **to voluntarily** relinquish a certification, ~~may enter a stipulated order with the Department, at any time, revoking his or her certification under the terms and conditions outlined in the stipulated order.~~

### **Appeals, Reapplication, and Eligibility Determinations**

~~(6)~~ **(10)** Appeal **Procedure** and Reapplication.

~~(a)~~ A public safety professional or instructor, aggrieved by the findings and order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final order of the department.

### **(11) Reapplication Process.**

~~(b)~~ **(a)** Any public safety professional or instructor ~~who has had a~~ **whose certification has been denied or** revoked pursuant to ORS 181.661, and 181.662 or subsection ~~(a)~~ of this 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,** ~~but not sooner than four years after the date on which the Order of the Department revoking certification became final.~~

**(b) Any public safety professional or instructor whose certification has been denied or revoked pursuant to section (9) of this rule 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 (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.**

## Appendix D

### Department of Public Safety Standards and Training Memo

**Date:** October 9, 2007  
**To:** Police Policy Committee  
**From:** Bonnie Sallé  
Rules Coordinator  
**Subject:** OAR 259-008-0010 - Proposed Administrative Rule Change  
Moral Fitness

**Background:** The Phase II Denial/Revocation Workgroup was tasked with reviewing and amending the current rule language relating to denial and revocation. As part of that group's efforts, changes to the definition of "moral fitness" were proposed. Please refer to the previous agenda item entitled "Proposed Changes to OAR 259-008-0070 and 259-008-0010" for a more complete discussion of this proposed rule change.

The following revised language contains the recommended additions (**bold and underlined text**) and deletions (~~striketrough text~~) to the current rule:

#### **259-008-0010**

#### **Minimum Standards for Employment as a Law Enforcement Officer**

\* \* \*

(6) Moral Fitness (~~Moral Character~~ **Professional Fitness**). All law enforcement officers must be of good moral fitness ~~as determined by a thorough background investigation.~~

(a) For purposes of this standard, lack of good moral fitness ~~means~~ **includes, but is not limited to:** ~~conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation.~~

(b) ~~The following are indicators of a lack of good moral fitness:~~

(A) ~~Illegal conduct involving moral turpitude~~ **Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or**

(B) ~~Conduct involving dishonesty, fraud, deceit, or misrepresentation~~ **Discretionary disqualifying misconduct as described in OAR 259-008-0070(4);**

~~(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;~~

~~(D) Conduct that is prejudicial to the administration of justice;~~

~~(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement officer. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the officer's performance on the job which makes the officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the officer's ability to perform competently.~~

~~(e) If reliable evidence is received by the Board or Department that a law enforcement officer lacks good moral fitness, a rebuttable presumption will be raised that the law enforcement officer does not possess the requisite moral fitness to be a law enforcement officer. The burden shall be upon the law enforcement officer to prove good moral fitness.~~

## Appendix E

### Memorandum

**DATE:** October 4, 2007

**TO:** Telecommunications Policy Committee – Meeting of 11/01/2007  
Police Policy Committee – Meeting of 11/13/2007  
Corrections Policy Committee – Meeting of 11/20/2007

**FROM:** Harold Burke-Sivers, Chair, Board on Public Safety Standards and Training

**SUBJECT:** Request to consider rule change

**Background:**

On May 11, 2007, I convened an emergency meeting of the Board on Public Safety Standards and Training to discuss concerns that had been raised before the 2007 Legislature. The Board agreed to establish a Certification Review Workgroup (CRW) tasked with reviewing and making recommendations regarding issues of concern. These included the make-up of the Board and Policy Committees, the definition of moral fitness found in DPSST's rules, and the impact of employment arbitration on revocation and denial cases. The CRW, consisting of three labor and three management members of the Board, met twice during May. I reported back to the Board on May 24, 2007 and requested guidance from the Board regarding:

1. The proposal to establish a standing Certification Review Committee as an independent Committee that would make all revocation and denial decisions without review or recommendations by the discipline-specific policy committees or the Board. A proposed legislative amendment would have established this Committee with two members (one management, one labor) from the corrections, fire, and police disciplines, and one citizen member.
2. The workgroup's consensus that "moral fitness" provisions were vague and left room for potential abuse, although no specific cases of abuse of authority were identified. The workgroup did not come to final consensus regarding new language, but reviewed the work that had been done to date by the Phase II Disqualifying Convictions Workgroup, agreed in concept with their direction and supported the idea of incorporating and further clarifying their proposed language within the moral fitness definition.
3. The workgroup's impasse regarding the issue of how or whether an employment arbitrator's ruling should impact DPSST, Committee, and Board decision-making in denial and revocation cases.

During discussion at the May 24, 2007 Board meeting, there was majority consensus (but not universal agreement) that the CRW's proposal to permanently establish a Certification Review Committee presented a number of challenges. These included decisions being made without sufficient representation or discussion by those within each discipline. Under the proposed structure, in some cases there would be no discipline-specific Committee representation at all prior to a revocation or denial decision, and no opportunity for Board review by those working within the affected individual's discipline. Consensus of the Board was that the current Committee and Board structure is working well, and revocation and denial matters are best addressed through the discipline-specific policy committees. There was also concern about the elimination of any Board

oversight over the proposed committee's decisions and the removal of a significant responsibility from the policy committees tasked with policy recommendations in their areas of expertise.

Board members were united in their support for continued work to clarify the moral fitness language to address the CRW's concern that the definitions were too ambiguous and subjective.

On the matter of arbitration the majority of Board members were firmly opposed to any effort to bind the Board to abide by arbitrators' rulings on matters of employment law and union contracts, which are completely distinct from the Board's and DPSST's minimum standards jurisdiction. However, respecting the significant differences among Board members on this issue, the Board determined to take no formal position before the Legislature on the subject of arbitration.

As the newly appointed Chair of the Board, I spoke with representatives of the Governor's office and testified before the Legislature on these issues during the legislative session, and have continued my discussions, through the Governor's office, since the session was adjourned. I have informed them of the CRW's discussions and the Board direction, confirmed the Board's recognition of the ambiguous provisions of the moral fitness language, and committed to continue working through the issues that had been raised.

**Discussion:**

Elsewhere in your agenda materials you will find proposed rule changes in the area of denial and revocation, based on the work of the Phase II Discretionary Disqualifications Workgroup. Their proposed changes to OAR 259-008-0010 and 259-008-0070 derive from the group's extensive meetings, the concerns raised by the Certification Review Workgroup, and advice from the Oregon Department of Justice.

From my preliminary review of the OAR 259-008-0010 and OAR 259-008-0070 agenda items, it appears as though the proposed changes not only reflect the concerns of the CRW related to vague or ambiguous language, but make substantial improvements over the earlier discussion drafts. I commend the Phase II group for its efforts and its proposals. The purpose of this memorandum, however, is to request Committee consideration of a third agenda item, related to the relationship between employment arbitrations and denial and revocation of certifications. I believe that this additional change will further improve the rules governing denial and revocation.

The area of employment arbitration was outside of the scope of the Phase II group's work, and their proposed rule changes do not include any recommendations in this area. However, during the CRW meetings, DPSST staff informed participants that staff does consider employment arbitrations as a matter of current practice, where the findings relate to the underlying conduct that falls within DPSST and Board jurisdiction over public safety certifications. Until this discussion, none of the CRW members were aware of this information. The CRW discussed the subject extensively, and staff developed a discussion draft of rule language for the group's consideration. Several of the CRW members believed that it would be appropriate to move this rule language forward in spite of our other differences in this area.

**Request:**

I believe that moving forward with adopting the administrative rule language in this area, as the CRW discussed, will accomplish several important objectives:

- 1) It will better inform constituents of the ways in which arbitration findings are currently a factor in the denial and revocation process.

- 2) It will identify the areas where employment arbitrators' findings may be relevant to DPSST and Board decisions regarding minimum standards for certification.
- 3) It will obligate DPSST staff to continue in the future what is currently practiced but not documented.

The attached rule language is based on the CRW discussions, with wording changed only for readability and consistency with existing rule language. I am requesting that each criminal justice policy committee review and discuss the language and determine whether you concur that this process should be included in OAR 259-008-0070 and should move forward with the other changes being proposed to that rule.

The proposed rule language is **underlined and in bold.** This language does not reflect the proposed rule changes recommended by the Phase II Discretionary Disqualifications Workgroup and submitted as separate agenda items in your packets. If all proposals move forward and are adopted as permanent rules, they will be renumbered as required to incorporate all changes.

## Appendix F

### Department of Public Safety Standards and Training Memo

**Date:** October 9, 2007  
**To:** Police Policy Committee  
**From:** Bonnie Sallé  
Rules Coordinator  
**Subject:** OAR 259-008-0200 – Proposed Rule  
Civil Penalties

**Background:** The 2005 legislative session enacted provisions in ORS 181.679 to allow the Department to impose a civil penalty on public safety agencies for violations of ORS 181.644, 181.652, 181.653 and 181.665. These statutes primarily outline the requirements for Basic certification for individuals working in the criminal justice disciplines.

**Issue:** The provisions of the legislation included a requirement for the Board to approve rule language to implement the Department's authority to impose a civil penalty under ORS 181.679. Staff has drafted proposed rule language to implement the civil penalty process and outline the procedures for issuing a notice of civil penalty as well as the due process requirements related to requesting a hearing.

The following language contains the recommended additions (**bold and underlined text**) to current Department rules:

#### **259-008-0200**

##### **Civil Penalties**

**(1) For purposes of this rule, "agency" means a law enforcement unit or public or private safety agency as defined in OAR 259-008-0005.**

**(2) The Department may impose a civil penalty on any agency for any violation of ORS 181.644, 181.652, 181.653 or 181.665. All civil penalties will be imposed in the manner provided by ORS 183.745.**

**(3) The amount of any civil penalty imposed under subsection (1) of this section may not exceed \$1,500 for any single violation.**

**Stat. Auth.: ORS 181.679, 183.745**

**Stats. Implemented: ORS 181.679, 183.745**

#### **259-008-0220**

## Sanctions, Generally

(1) Information collected by the Department may be used as a basis for any sanction imposed.

(2) The Department's use of any one sanction does not preclude the imposition of any other sanction(s) for the same violation.

(3) If the Department believes there is substantial evidence that a violation has occurred or is occurring, the Department may seek such remedial relief as may be appropriate, including voluntary compliance or notice as provided in 259-008-0250.

Stat. Auth.: ORS 181.679, 183.745

Stats. Implemented: ORS 181.679, 183.745

## 259-008-0250

### Notice of Civil Penalty

(1) Considerations. In determining the amount of a civil penalty the Department will consider:

(a) Any prior violation of statute or rule by the agency;

(b) The financial benefits, if any, realized by the agency as a result of the violation, such as costs avoided as a result of not having attended required training;

(c) The gravity of the violation; and

(d) The agency's history of correcting violations and preventing recurrence of violations.

(2) Single Violation Civil Penalties. A violation of any requirement within any part of the following statutes is a violation that may result in a civil penalty after a single occurrence. The violations include, but are not limited to:

(a) ORS 181.644 (Certification requirements for a Telecommunicator);

(b) ORS 181.644 (Certification requirements for an Emergency Medical Dispatcher);

(c) ORS 181.652 (Certification requirements for a Corrections Officer);

(d) ORS 181.652 (Failing to attend Basic Corrections training within required timeframe);

(e) ORS 181.652 (U.S. citizenship requirements for a Corrections Officer);

(f) ORS 181.653 (Certification requirements for a Parole & Probation Officer);

(g) ORS 181.653 (U.S. citizenship requirements for a Parole & Probation Officer);

(h) ORS 181.653 (Part-time Parole & Probation continuing education requirement);

**(i) ORS 181.665 (Certification requirements for a Police Officer);**

**(j) ORS 181.665 (Failing to attend Basic Police training within required timeframe);**

**(k) ORS 181.665 (U.S. citizenship requirements for a Police Officer).**

**(3) Amount of Civil Penalty:**

**(a) An agency found in violation of any requirement listed in section (2) of this rule is subject to a civil penalty of not more than \$1,500 per violation per day, unless otherwise provided by this section;**

**(b) The Department may reduce civil penalty amounts where mitigation is warranted, or resolved by stipulation as provided in section (9) of this rule.**

**(4) Payment to be Considered Admission of Violation. Unless the Department agrees otherwise, any payment of a civil penalty is considered as admission of violation of the statutes or rules cited in the civil penalty notice for which the civil penalty was paid.**

**(5) Notice. The Department's notice of its intent to impose a civil penalty will include a statement that if the agency fails to request a hearing within twenty (20) days of the date of service of the notice, the agency's right to a hearing is waived.**

**(6) Informal Conference. When the Department issues a notice of civil penalty, the agency will be entitled to an informal conference to respond to the notice. The conference must be held before a person authorized to issue an order or to make recommendations regarding issuance of an order. The Department must receive a request for an informal conference in writing within twenty (20) days of the date of service of the notice of civil penalty. If the agency fails to submit a timely request for a conference, the agency's right to a conference is waived.**

**(7) Hearing Request:**

**(a) Right to Hearing. If the Department issues a notice of intent to impose a civil penalty, the agency is entitled to a contested case hearing in accordance with the provisions of ORS Chapter 183;**

**(b) Request for Hearing. The Department must receive a request for a hearing in writing within twenty (20) days of the date the notice of intent to impose a civil penalty was served on the agency. The Department may extend the time allowed for submission of the admission/denial and affirmative defenses for up to 30 calendar days, if requested in writing.**

**(8) Default Order. If a hearing is not timely requested, or if an agency withdraws a hearing request or fails to appear at a scheduled hearing, the Department may enter a final order by default imposing the civil penalty. In the event of a default, the Department's file or files on the subject of the civil penalty automatically becomes a part of a contested case record for purposes of proving the Department's prima facie case.**

**(9) Department staff is authorized to seek resolution by stipulation, subject to Department acceptance and approval under the following conditions:**

**(a) The matter is resolved prior to entry of a final order assessing a civil penalty;**

**(b) The agency corrects or proceeds to correct all violations noted in a notice of intent to issue a civil penalty within a prescribed timeframe;**

**(c) The civil penalty amount agreed to is tendered in a certified check, bank draft, cashier's check or postal money order, made payable to the Department, along with the stipulation.**

**(10) A stipulation will not be accepted for less than the amount provided for in the notice of civil penalty if the violation is not corrected as part of the resolution.**

**Stat. Auth.: ORS 181.679, 183.745**

**Stats. Implemented: ORS 181.679, 183.745**

## **Appendix G**

### **Oregon Mayors Association Resolution September 26, 2007 Physical Ability Testing**

WHEREAS, the citizens of Oregon rely on municipal police officers and firefighters for protection in physically arduous circumstances; and

WHEREAS, poor health habits have led to a decreased life expectancy for police officers and firefighters; and

WHEREAS, police and fire departments that have instituted wellness initiatives have experienced fewer time loss injuries; and

WHEREAS, unfit police officers and firefighters jeopardize their own safety, the safety of their fellow employees and the public; and

WHEREAS, The United States Supreme Court has ruled that a city may be held liable for indifference to the physical fitness of police officers; and

WHEREAS, a city has the right and the responsibility to ensure that the police officers and firefighters it employs are physically able to perform essential job functions; and

WHEREAS, the Oregon Department of Public Safety Standards and Training has developed the Oregon Physical Ability Test to measure an individual's ability to meet the unique rigors of law enforcement; and

WHEREAS, the International Association of Firefighters and the International Association of Fire Chiefs have developed the Candidate Physical Agility Test to measure an individual's ability to meet the physical demands of firefighting;

NOW THEREFORE BE IT RESOLVED THAT, the health and wellness of police officers and firefighters is a priority of the Oregon Mayors Association; and

BE IT FURTHER RESOLVED THAT, the Oregon Mayors Association encourages the cities of Oregon to initiate fitness and wellness programs for police officers and firefighters; and

BE IT FURTHER RESOLVED THAT, the Oregon Mayors Association urges the Oregon Board of Public Safety Standards and Training to consider requiring police officers to pass the Oregon Physical Ability Test bi-annually; and

BE IT FURTHER RESOLVED THAT, the Oregon Mayors Association recommends that Oregon's fire departments consider requiring firefighters to pass the Candidate Physical Agility Test or similar test on a bi-annual basis.

ADOPTED by the Oregon Mayor's Association at its annual business meeting on September 27, 2007.