

**OREGON DPSST**  
***ETHICS BULLETIN***  
**Volume No. 46**



The Board on Public Safety Standards and Training (BPSST) has the legislative mandate to establish and enforce the physical, mental, and moral fitness standards for all law enforcement officers, telecommunicators and emergency medical dispatchers in the state. This requirement also defines the procedure for the Department and Board to use when denying or revoking certification of an officer, telecommunicator or emergency medical dispatcher who has fallen below the moral fitness standards.

The Ethics Bulletin is published to provide insight into the types of misconduct that could result in revocation or denial of certification. The following cases of resulted in consideration of **revocation or denial** of certifications by DPSST in **June 2007**.

The Department continues to ensure that certified public safety officers and those seeking certification who abuse the public's trust will be held accountable for their actions.

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**June Statistics**

<b>CASES OPENED:</b>	<b>17</b>	<b>OF THE 34 CASES CLOSED:</b>	
<b>Cases Closed:</b>	<b>34</b>	<b>Revoked:</b>	<b>3</b>
<b>Cases Pending:</b>	<b>141</b>	<b>Denied:</b>	<b>00</b>
		<b>No Action:</b>	<b>31</b>

**Case 1**

**Officer A** resigned and voluntarily signed a Stipulated Order revoking his certifications. In this case on more than one occasion Officer A made contact with known prostitutes for other than legitimate or professional purposes. This conduct ended Officer A's 18-year career.

**Officer A's Basic, Intermediate Advanced and Supervisory Police Certifications were Revoked.**

**Case 2**

**Officer B** resigned after an internal investigation revealed that he violated a number of agency policies which included truthfulness, unauthorized use of agency information, fraternization with inmates or prisoners who are in custody, using LEDS for other than criminal justice purposes, using CCH for other than criminal justice purposes, performance of duty, professional conduct and misconduct relating to social visitors. Officer B was notified that his case would be heard before the Corrections Policy Committee and that he could provide in writing any mitigating circumstances he wished to have considered. Officer B voluntarily signed a Stipulated Order Revoking Certification. Officer B's misconduct ended his 1-year career.

**Officer B's Basic Corrections Officer Certification was Revoked.**

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### Case 3

**Officer C** was discharged for cause after an internal investigation revealed that he was involved in an incident involving force used against a prisoner and did not truthfully document the event. Officer C was issued a Notice of Intent to Revoke Certifications and DPSST agreed to “stay” the case pending arbitration. Ultimately the employer prevailed. Officer C then entered the active military service and as such was protected against administrative action by the Service members’ Civil Relief Act. Once discharged from the military, the DPSST filed a Motion for Ruling on Legal Issues (Summary Judgment) with the Administrative Law Judge (ALJ), asserting that there was no genuine issue as to any material fact that is relevant to resolution of the legal issue for which a decision is sought. Officer C, through his attorney, provided a Reply to the Motion. The ALJ issued a Proposed Order revoking Officer C’s certification. Through his attorney, Officer C filed exceptions. After review, DPSST adopted the Judge’s Proposed Order in its entirety and filed a Final Order. Officer C’s misconduct ended his 10-year career.

### **Officer C’s Basic Corrections Certification was Revoked**

#### **Prevailing case law of Huesties v. BPST, what does it mean?**

*By District Attorney Timothy Thompson, Union County*

DPSST is required, by statute and administrative rule, to insure that all certified public safety personnel meet minimum standards of physical, emotional, intellectual and moral fitness. ORS 181.610, 181.640 (1)(a). The agency’s activities are limited to establishing standards and training for public safety personnel and enforcing those standards. Mandatory grounds for revocation or denial of certification include any “discharge for cause,” or conviction of any felony, drug, domestic violence or other identified crime. OAR 259-008-0070.

If DPSST becomes aware of circumstances involving a “discharge for cause,” DPSST staff must *independently* review the action to determine whether the employer’s decision “was or could have been” for cause sufficient to implicate DPSST’s minimum fitness standards. Huesties v. BPST, 95 Or App 17 (1989). If DPSST’s standards are implicated, the agency’s staff investigates the factual basis underlying the fitness issues. The investigation may consist of a review of any previous investigations and may be supplemented by additional investigations.

If DPSST staff determines that minimum standards of fitness are involved in the employer’s “discharge for cause” determination, administrative action may be initiated by the agency. Due process requires that the public safety officer be given appropriate notice and an opportunity to be heard regarding any action involving their certification. If requested by the officer, a contested hearing is held before an independent Administrative Law Judge (ALJ).

The scope of the contested case hearing is limited to the issue of the certificate holder’s conduct and relationship to DPSST’s minimum standards of fitness. The hearing is not a forum to litigate “employment rights” issues (e.g., collective bargaining issues, retaliatory conduct allegations, procedural issues, etc.), as these issues are beyond the authority of DPSST. The Court of Appeals recognized the limited scope of DPSST’s authority in Huesties v. BPST, supra at page 21, stating “... to impute a broader scope to ORS 181.610 et seq would be to set those statutes on a collision course with other statutory and regulatory schemes. See ORS 243.650 et seq.”

*DA Thompson served as the District Attorney for Josephine County from 1987 to 1999. DA Thompson then served as a Senior Assistant Attorney General for the Oregon Department of Justice in the Organized Crime Criminal Division from 1999 to 2006 when he was appointed by Governor Kulongoski as the District Attorney of Union County.*

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