

OREGON DPSST
ETHICS BULLETIN
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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 have resulted in consideration of **revocation or denial** of certifications by DPSST in **November 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.

November Statistics

Cases Opened	37	Of the 49 Cases Closed:	
Cases Closed	49	Revoked	10
Cases Pending	163	Denied	0
		No Action	39

Case 1

Officer A resigned and was subsequently convicted of Official Misconduct in the First Degree. In this criminal case, Officer A forced a citizen to perform oral sex on him during a ride-along. Officer A was also convicted of Sexual Abuse. In a separate criminal case Officer A sexually abused a 17-year old female he met on duty. Officer A was sent a Notice of Intent to Revoke. He did not make a timely request for a hearing. Officer A's misconduct ended his 4-year career.

Officer A's Basic Police Certification was Revoked.

Case 2

Officer B was discharged for cause after an internal investigation revealed he violated numerous agency policies. Officer B's union declined to take Officer B's case to arbitration. One example of Officer B's misconduct included his misrepresentation to people that he was an undercover officer assigned to a Task Force, which he was not. Officer B was sent a Notice of Intent to Revoke. Officer B made a timely request for a hearing. 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. The ALJ issued a Proposed Order revoking Officer B's Basic and Intermediate Police certifications. Officer B filed exceptions to

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the Proposed Order, which DPSST considered. DPSST adopted the Judge's Proposed Order in its entirety and filed a Final Order. Officer B's misconduct ended his 4-year career.

Officer B's Basic and Intermediate Police Certifications were Revoked.

Case 3

Officer C resigned and was subsequently convicted of Strangulation, a Class A Misdemeanor. In this case several officers witnessed Officer C using excessive force when taking a suspect into custody and notified a supervisor. Officer C voluntarily signed a Stipulated Order Revoking Certification. Officer C's misconduct ended his 7-year career.

Officer C's Basic Police Certification was Revoked.

Case 4

Officer D was discharged for cause after an internal investigation revealed that she was unfit for duty and unable to perform the essential functions of a corrections officer. The employer's determination included more than one suicide attempt by Officer D while employed as a corrections officer. Officer D was sent a Notice of Intent to Revoke. Officer D did not make a timely request for a hearing. Officer D's conduct ended her 4-year career.

Officer D's Basic Corrections Certification was Revoked.

Case 5

Officer E was terminated and subsequently convicted of three counts of Official Misconduct in the First Degree, four counts of Sexual Abuse in the Third Degree and four counts of Harassment. Officer E used his official position of trust and authority against multiple victims to subject them to unwanted sexual contact. Officer E was sent a Notice of Intent to Revoke. Officer E did not make a timely request for a hearing. Officer E's misconduct ended his 25-year career.

Officer E's Basic, Intermediate, Advanced, Supervisory, Management and Executive Police, Corrections, Telecommunications and Emergency Medical Dispatcher Certifications were Revoked.

Case 6

Officer F received a probationary discharge and was subsequently convicted of two counts of Official Misconduct in the First Degree. Officer F used his official position of trust and authority against more than one inmate victim to subject them to unwanted sexual contact. Officer F was sent a Notice of Intent to Revoke. Officer F did not make a timely request for a hearing. Officer F's misconduct ended his 1-year career.

Officer F's Basic Corrections Certification was Revoked

Case 7

Officer G resigned and was subsequently convicted of Perjury, a Class C Felony, and three counts of Official Misconduct in the First Degree. In this case Officer G stopped and subsequently arrested a citizen and then testified in grand jury that the citizen had tried to assault him. A review of Officer G's patrol vehicle video camera determined an assault did not occur. During the citizen's three-day incarceration, Officer G searched the citizen's vehicle without a warrant. Officer G was sent a Notice of Intent to Revoke. Officer G did not make a timely request for a hearing. Officer G's misconduct ended his 5-year career.

Officer G's Basic Police Certification was Revoked.

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www.dpsst.state.or.us 503-378-2305 – November 2007 Ethics Bulletin

Page 2 of 4

Case 8

Officer H resigned, was subsequently convicted of Official Misconduct in the Second Degree, and agreed with a sentencing condition that he not contest the DPSST revocation of his certification. In this case Officer H used his official position of trust and authority to engage in inappropriate contact with a female citizen while on duty. Officer H was sent a Notice of Intent to Revoke. Officer H did not make a timely request for a hearing. Officer H's misconduct ended his 13-year career.

Officer H's Basic, Intermediate and Advanced Police Certifications were Revoked

Case 9

Officer I resigned and was subsequently convicted of Official Misconduct in the First Degree and Harassment – Touching the intimate parts of another person. In this case Officer I used her official position of trust and authority to engage in inappropriate contact with a female inmate while on duty. Officer I was sent a Notice of Intent to Revoke. Officer I did not make a timely request for a hearing. Officer I's misconduct ended her 3-year career.

Officer I's Basic Corrections Certification was Revoked.

Case 10

Officer J resigned and was later convicted of two counts of Sexual Abuse in the First Degree. In this case, Officer J engaged in inappropriate sexual contact with a minor child over a period of several years. Officer J was sent a Notice of Intent to Revoke. Officer J did not make a timely request for a hearing. Officer J's misconduct ended his 28-year career.

Officer J's Basic, Intermediate and Advanced Police Certifications were Revoked.

Because there has been a recent increase in revocations based on the crime of Official Misconduct, we have included an overview and analysis of Official Misconduct in this month's Ethics Bulletin. We encourage our constituent agencies to use this material as in-service training.

"What is Official Misconduct?" by Lorraine Anglemier

Official Misconduct in the First Degree, ORS.162.415, a class A misdemeanor, is defined as follows: "A public servant commits the crime of official misconduct in the first degree if with intent to obtain a benefit or to harm another: (a) The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or (b) The public servant knowingly performs an act constituting an unauthorized exercise in official duties." The majority of appellate cases reported involve prosecutions under subsection (b) of the statute.

The Oregon Supreme Court, in State v. Florea, 296 Or 500 (1984), explained how to analyze this subsection for its required elements: "(1) The defendant must be a "public servant." (2) He or she must knowingly perform an act. (3) The act must be performed "in" his or her official duties; that is to say, in the defendant's official capacity, exercising the powers or opportunities available by virtue of his or her official position. (4) The act must be an unauthorized exercise of this official capacity, power, or opportunity. (5) The act must be done "with intent to obtain a benefit or to harm another." Id. at 503-504. In Florea, a police chief was alleged to have appropriated a firearm for his personal disposition, which was seized during an investigation.

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The Court of Appeals, in State v. Davis, provides a helpful summary of official misconduct cases which affirmed convictions obtained under subsection (b):

“See, e.g., State v. Gove, 128 Or.App. 239, 241 (1994) (police officer solicited sexual relations from a citizen while in the course of performing or representing that he was performing his duties); State v. Moffitt, 104 Or.App. 340, 342 (1990) (on-duty police officer ordered woman to get into his police car, then demanded that she have sexual contact with him); State v. Gortmaker, 60 Or.App. 723, 747 (1982), *aff'd*, 295 Or. 505 (1983), *cert. den.*, 465 U.S. 1066 (1984) (jury could find from evidence that defendant, in asking subordinates to perform research for him on work time that related to a private matter, made the request while acting in his official capacity as district attorney).” Davis, 189 Or App 436, 443 (2003)(unofficial citators omitted).

In State v. Barker, defendant sheriff’s deputy was alleged to have “knowingly perform[ed] an act, to-wit: worked on a private job while on duty as a Sheriff’s Deputy, which act constituted an unauthorized exercise of his official duties, with intent to obtain a benefit, to-wit: financial gain.” The Court of Appeals ruled these facts sufficiently charged the crime of official misconduct in the first degree. See Barker, 140 Or App 82, 84 (1996).

In State v. Rodda, 56 Or App 580 (1982), the court ruled that it is not necessary for the public servant to obtain a personal benefit to be guilty of official misconduct in the first degree. It is sufficient that the public servant act with intent to obtain the benefit for a third person. Id. at 583-584. And further, regarding a possible “benefit,” by revisiting State v. Gove, cited above, we learn “it is the intent to obtain sexual gratification, or another benefit, not the success of the attempt, that is the element of the crime.” Gove at 243 (emphasis in original).

The defendant in State v. Moine was convicted under subsection (a) of the Official Misconduct statute. The jury found he “received gifts and gratuities with an aggregate value exceeding \$100 from a single source...and by accepting these gifts and gratuities, the defendant intended to obtain a benefit, and he knowingly failed to perform a duty to decline such gifts and gratuities, which is a duty that is imposed by law and is inherent in the nature of defendant’s office.” State v. Moine, 128 Or App 530, 534 (1994). In upholding the conviction, the Court of Appeals found no fault with the prosecution’s charging language, which substantially tracked language relating to violations of government employee ethics statutes, found in ORS Chapter 244.

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