

Corrections Policy Committee

Minutes

May 14, 2013

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, May 14, 2013, in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. Chair Diana Simpson called the meeting to order at 1:30 p.m.

Attendees:

Committee Members:

Diana Simpson, Oregon State Sheriff's Association, Chair
Rick Angelozzi, Department of Corrections Superintendent
Daryl Borello, Department of Corrections Training Division
Erik Douglass, Non-Management Corrections Officer
Michael Gower, Designee for Director of Department of Corrections
Andy Long, Oregon State Sheriff's Association
Joseph Pishioneri, Non-Management Law Enforcement
Amanda Rasmussen, Non-Management Corrections Officer
Lisa Settell, Parole and Probation Officer
Barbara Shipley, Oregon Sheriff's Jail Command Council
Linda Yankee, Oregon Sheriff's Jail Command Council

Committee Members Absent:

Brian Burger, Department of Corrections AFSCME Representative
Tami Jackson, Non-Management DOC
Jeff Wood, Oregon Association of Community Corrections Directors

DPSST Staff:

Todd Anderson, Training Division Director
Debbie Anderson, Administrative Specialist
Leon Colas, Professional Standards Coordinator/Investigator
Theresa King, Professional Standards Coordinator/Investigator
Linsay Hale, Certification Coordinator
Sharon Huck, JTA Coordinator
Kristy Witherell, Administrative Support

Guests:

Steve Beck, Oregon Council of Police Association



1. Minutes of February 12, 2013 Meeting

Approve the minutes of the February 12, 2013 Corrections Policy Committee meeting.

To see a complete record of the February 12, 2013 Corrections Policy Committee minutes, please go to:

http://www.oregon.gov/dpsst/BD/Policy_Committee_Minutes/CPC_Minutes/CPC021213.pdf

- *Rick Angelozzi moved that the committee approve the minutes of the February 12, 2013 Corrections Policy Committee meeting. Joseph Pishioneri seconded the motion. The motion carried unanimously.*

2. OAR 259-008-0070 – Proposed Rule

Presented by Linsay Hale

See Appendix A for details.

- *Brian Burger moved that the Corrections Policy Committee recommends 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. Andy Long seconded the motion. The motion carried unanimously.*

It is the consensus of the committee there is no fiscal impact on small business.

3. Quarterly Review of DOC Basic Corrections Course by the DPSST Audit Team

Presented by Theresa King

See Appendix B for details.

- *The reporting period was January through March of 2013.*
- *The 2013 audit of the DOC BCC program meets the minimum training standards for certification of corrections officers.*
- *The professional development unit continues to refine the BCC and develop its instructors. This is evident by demonstration of the student's application of knowledge. That knowledge is shown through the student's reality based training.*
- *The surveys show that the students have confidence in their training and instructors.*

4. Beau A. Amundson – DPSST #49594

Presented by Leon Colas

See Appendix C for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the Staff report as the record upon which its recommendations are based. Lisa Settell seconded the motion. The motion carried unanimously.*

- By discussion and consensus:
 - a. Identify and articulate the misconduct that is specific to this case. ***Failure to perform the duties of a driver involved in an accident. AMUNDSON pled guilty to Hit and Run.***
 - b. The identified conduct ***did*** involve ***Dishonesty based on AMUNDSON not being truthful during questioning and avoiding the subject when asked how much alcohol he consumed. He was untruthful when interviewed about his timeline of events that lead to the hit and run accident.***
 - c. The identified conduct ***did*** involve a ***Disregard for the Rights of Others based on AMUNDSON damaging property and not reporting it.***
 - d. The identified conduct ***did not*** involve ***Misuse of Authority.***
 - e. The identified conduct ***did*** involve ***Gross Misconduct based on AMUNDSON's failure to act which created a danger/risk to others.***
 - f. The identified conduct ***did*** involve ***Misconduct based on AMUNDSON's hit and run conviction.***
 - g. The identified conduct ***did not*** involve ***Insubordination.***

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

The committee noted as mitigating circumstances AMUNDSON admitting that he hit the vehicle when questioned. He did complete his alcohol classes. AMUNDSON did admit he was drinking.

The committee noted as aggravating circumstances AMUNDSON's statement in regard to his level of intoxication was so far out of line. His statement, "I wasn't that drunk", was aggravating. The officers smelled alcohol on AMUNDSON's breath the next morning. He did not turn himself in when he knew the police were looking for him to question him about the accident.

- ***Andy Long moved that the Corrections Policy Committee finds AMUNDSON's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Amanda Rasmussen seconded the motion. The motion carried unanimously.***
- ***Joseph Pishioneri moved that the Corrections Policy Committee recommends to the Board that AMUNDSON's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore, recommending a lifetime disqualifier; AMUNDSON may never reapply for certification. Michael Gower seconded the motion. The motion carried unanimously.***

5. **David R. Buchanan, Washington County Sheriff's Office – DPSST #34821**

Presented by Leon Colas

See Appendix D for details.

- *Amanda Rasmussen moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Michael Gower seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: *BUCHANAN's failure to properly supervise inmates, violation of agency policies, untruthfulness, failure to complete security rounds, cell searches, and pat downs, allowing inmates in same cell as suicidal inmates, falsifying logs, and allowing cross gender inmates in the same area.*
 - b. The identified conduct did involve **Dishonesty based on BUCHANAN's untruthfulness with why the inmate orientation class had not been completed. He lied about cell checks and cell searches being completed and he falsified his logs.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others based on BUCHANAN's lack of fundamental duty to protect. He did not check on the suicidal inmates when doing his rounds. He had cross gender inmates in the same area which could create a great risk to the inmates. He did not perform pat downs which created a risk to the staff's safety.**
 - d. The identified conduct did not involve **Misuse of Authority.**
 - e. The identified conduct did involve **Gross Misconduct based on BUCHANAN's failure to meet the statutory requirements of an officer. He failed to make cell checks on time. He had cross gender inmates in the same area unsupervised. BUCHANAN did not check on the inmate who was on suicide watch. He did not search inmates or their cells.**
 - f. The identified conduct did involve **Misconduct based on BUCHANAN's violation of practices and standards in the public safety profession and his violation of multiple department policies.**
 - g. The identified conduct did involve **Insubordination based on BUCHANAN not complying with orders relating to the orderly, efficient, and safe operation of the facility. He had a prior verbal reprimand for violation of policies.**

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

The committee noted as mitigating circumstances BUCHANAN's 28-year marriage was dissolving. He wasn't there mentally. The video doesn't cover all of the cells that the investigators said they watched. He apologized for his actions.

The committee noted as aggravating circumstances BUCHANAN shown on video committing the same several offenses on multiple dates. He allowed instruments in the same area as a suicidal inmate. BUCHANAN was untruthful when investigated. He was a 13-year employee and knew how important it was to perform pat downs, shake downs, and cell checks on inmates.

- *Joseph Pishioneri moved that the Corrections Policy Committee finds BUCHANAN's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Rick Angelozzi seconded the motion. The motion carried unanimously.*
- *Michael Gower moved that the Corrections Policy Committee recommends to the Board that BUCHANAN's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore, recommending a lifetime disqualifier; BUCHANAN may never reapply for certification. Daryl Borello seconded the motion. The motion carried unanimously.*

6. Steven P. Fitzgerald, Lane County Sheriff's Office – DPSST #32582

Presented by Leon Colas

See Appendix E for details.

- *Amanda Rasmussen moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Andy Long seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: *FITZGERALD's 2009 and 2012 DUII convictions.*
 - b. The identified conduct did not involve **Dishonesty**.
 - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
 - d. The identified conduct did not involve **Misuse of Authority**.
 - e. The identified conduct did involve **Gross Misconduct based on FITZGERALD's 2012 DUII conviction.**
 - f. The identified conduct did involve **Misconduct based on FITZGERALD's 2012 DUII conviction.**
 - g. The identified conduct did not involve **Insubordination**.

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

The committee noted as mitigating circumstances FITZGERALD made it a priority to quit drinking. He has a long career as a Parole and Probation Officer along with a great work history. FITZGERALD reported the DUII to his agency right away. He took responsibility for his actions.

The committee noted as aggravating circumstances FITZGERALD was a supervisor at his agency. He made a last chance agreement after his previous DUII conviction. He denied needing treatment. FITZGERALD was convicted of two DUII's within three years. His BAC was .17 and .15.

- *Amanda Rasmussen moved that the Corrections Policy Committee finds FITZGERALD's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Daryl Borello seconded the motion. The motion carried unanimously.*
- *Andy Long moved that the Corrections Policy Committee recommends to the Board that FITZGERALD's conduct encapsulated the lowest end of the categories noted above with a focus on GROSS MISCONDUCT, therefore, recommending a five-year disqualifier; FITZGERALD may reapply for certification in five years. Barbara Shipley seconded the motion. The motion carried unanimously.*

7. Tim L. Graves – DPSST #10583

Presented by Leon Colas

See Appendix F for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Rick Angelozzi seconded the motion. The motion carried unanimously.*
- *By discussion and consensus:*
 - a. Identify the conduct that is at issue: **GRAVES' 2012 Contempt of Court and his 2005 Criminal Trespass I conviction.***
 - b. The identified conduct did not involve **Dishonesty**.*
 - c. The identified conduct did involve a **Disregard for the Rights of Others based on GRAVES entering his rental property without permission.***
 - d. The identified conduct did not involve **Misuse of Authority**.*
 - e. The identified conduct did involve **Gross Misconduct based on GRAVES' conviction of Criminal Trespass I.***
 - f. The identified conduct did involve **Misconduct based on GRAVES' Contempt of Court conviction stemming from his nonpayment of child support.***
 - g. The identified conduct did not involve **Insubordination**.*
- *By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.*

The policy committee noted as mitigating circumstances GRAVES turning himself in to the authorities.

The policy committee noted as aggravating circumstances GRAVES causing an embarrassment to Crook County Sheriff's Office. They had to bring in a neighboring

agency to conduct the investigation. **GRAVES deflected his Contempt of Court warrant. He didn't see it as a problem not paying his child support and blamed the economy for failure to pay.**

- **Joseph Pishioneri moved that the Corrections Policy Committee finds GRAVES' conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Andy Long seconded the motion. The motion carried unanimously.**
- **Andy Long moved that the Corrections Policy Committee recommends to the Board that GRAVES' conduct encapsulated the highest end of the categories noted above with a focus on **DISREGARD FOR THE RIGHTS OF OTHERS**, therefore, recommending a 15-year disqualifier; GRAVES may reapply for certification in 15 years. Amanda Rasmussen seconded the motion. The motion carried unanimously.**

8. John McMiller JR, Columbia County Sheriff's Office – DPSST #38847

Presented by Leon Colas

See Appendix G for details.

- **Joe Pishioneri moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Michael Gower seconded the motion. The motion carried unanimously.**
- By discussion and consensus:
 - a. Identify the conduct that is at issue: **McMiller's improper use of county computers which included graphic content and nudity. He was in violation of sexual harassment in the workplace. He failed to perform his assigned duties.**
 - b. The identified conduct did not involve **Dishonesty**.
 - c. The identified conduct did involve a **Disregard for the Rights of Others based on McMiller showing a lack of respect for others in a workplace.**
 - d. The identified conduct did involve **Misuse of Authority based on McMiller's abuse of public trust. He was surfing the internet on the county's time.**
 - e. The identified conduct did involve **Gross Misconduct based on McMiller surfing the internet instead of working. He interfered with the efficient operation of an agency. McMiller created a danger/risk to other staff by not properly supervising the inmates.**
 - f. The identified conduct did involve **Misconduct based on what was stated above under Gross Misconduct. McMiller misused county resources. He was in violation of a respectful workplace.**
 - g. The identified conduct did not involve **Insubordination**.

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

The committee noted as mitigating circumstances McMiller admitting to looking at inappropriate sites.

The committee noted as aggravating circumstances McMiller was a supervisor and was there to be an example to subordinates. He had a history of below standard work history. McMiller went through multiple trainings when bouncing from agency to agency and knew better. He was looking ta grossly inappropriate material and was sharing it with other staff.

- *Michael Gower moved that the Corrections Policy Committee finds McMiller’s conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Rick Angelozzi seconded the motion. The motion carried unanimously.*
- *Michael Gower moved that the Corrections Policy Committee recommends to the Board that McMiller’s conduct encapsulated the highest end of the categories noted above with a focus on **DISREGARD FOR THE RIGHTS OF OTHERS**, therefore, recommending a 15-year disqualifier; McMiller may reapply for certification in 15 years. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

9. David E. Neal JR, DOC – Warner Creek Correctional Facility – DPSST #47068

Presented by Leon Colas

See Appendix H for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Michael Gower seconded the motion. The motion carried unanimously with Rick Angelozzi abstaining.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: *NEAL’s abuse of sick leave, falsifying logs, and his failure to supervise the housing unit.*
 - b. The identified conduct did involve **Dishonesty based on NEAL lying about conducting tier checks, falsifying his logs, and abuse of sick leave.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others in regard to NEAL failing to conduct mandatory tier checks. He put the inmates and staff at risk.**
 - d. The identified conduct did not involve **Misuse of Authority.**
 - e. The identified conduct did involve **Gross Misconduct based on NEAL not conducting hourly tier checks. He left the agency shorthanded when he abused his sick leave which interfered with the efficient operation of the agency.**
 - f. The identified conduct did involve **Misconduct based on NEAL’s multiple policy violations. He failed to perform the duties of an officer. He falsified legal documents. NEAL failed to perform the standard of care expected in his position.**

- g. The identified conduct did involve **Insubordination based on NEAL being directed by the security manager three times to provide a memo and he refused to do so.**

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

The committee noted as mitigating circumstances NEAL's resignation letter in which he states he has medically documented stress and anxiety which worsened given his working environment.

The committee noted as aggravating circumstances NEAL speaking to four different Lieutenants about getting that particular day off even though he was already told no. Instead, he called in sick. On the day he called in sick, he was working a book fair with a coworker and the Superintendent saw him. NEAL stated that he faithfully read and signed his post orders every month.

Joseph Pishioneri moved that the Corrections Policy Committee finds NEAL's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Amanda Rasmussen seconded the motion. The motion carried unanimously with Rick Angelozzi abstaining

- *Andy Long moved that the Corrections Policy Committee recommends to the Board that NEAL's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore, recommending a lifetime disqualifier; NEAL may never reapply for certification. Linda Yankee seconded the motion. The motion carried unanimously with Rick Angelozzi abstaining.*

10. Shari L. Shaw, Yamhill County Sheriff's Office – DPSST #41197

Presented by Leon Colas

See Appendix I for details.

- *Daryl Borello moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Andy Long seconded the motion. The motion carried unanimously with Erik Douglass abstaining.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: *SHAW falsified official records and was untruthful.*
 - b. The identified conduct did involve **Dishonesty based on SHAW submitted false documents that cell searches were completed. She was untruthful during questioning.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others based on SHAW's own words she stated that she endangered her coworkers. She was assigned to high risk inmates.**
 - d. The identified conduct did not involve **Misuse of Authority.**

- e. The identified conduct did involve **Gross Misconduct based on SHAW's failure to do her job created which a risk to the efficient operation of the agency. Her failure to conduct cell checks violated state law.**
- f. The identified conduct did involve **Misconduct based on SHAW's violation of agency policy and state law. She failed to perform critical duties.**
- g. The identified conduct did not involve **Insubordination.**

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

The committee did not find any mitigating circumstances.

The committee noted as aggravating circumstances SHAW continuing to lie throughout the investigation. She minimized the issues. She was able to properly outline what a shakedown consists of. SHAW went to great lengths to falsify logs. The investigation found 12 documented shakedowns that she did not conduct.

Andy Long moved that the Corrections Policy Committee finds SHAW's conduct does rise to the level to warrant the revocation of her certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Rick Angelozzi seconded the motion. The motion carried unanimously with Erik Douglass abstaining.

- *Rick Angelozzi moved that the Corrections Policy Committee recommends to the Board that SHAW's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore recommending a lifetime disqualifier; SHAW may never reapply for certification. Barbara Shipley seconded the motion. The motion carried unanimously with Erik Douglass abstaining.*

11. Captare Swafford – DPSST #38090

Presented by Leon Colas

See Appendix J for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Rick Angelozzi seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: **SWAFFORD's 2010 DUII conviction, 2011 restraining order violation, Criminal Trespass II conviction, and probation violation stemming from the 2011 DUII conviction.**
 - b. The identified conduct did not involve **Dishonesty.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others based on SWAFFORD violating a restraining order.**
 - d. The identified conduct did not involve **Misuse of Authority.**

- e. The identified conduct did involve **Gross Misconduct based on SWAFFORD's restraining order violation and DUII conviction.**
- f. The identified conduct did involve **Misconduct based on what was stated above under Gross Misconduct.**
- g. The identified conduct did not involve **Insubordination.**

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

The committee noted as mitigating circumstances SWAFFORD's obvious case of mental health issues. He was a war veteran. The responding paramedic knew him and stated that he suffered from PTSD. SWAFFORD was no longer employed in public safety.

The committee noted as aggravating circumstances SWAFFORD's BAC was .22 and .19. His restraining violation involved him asking for his guns back. SWAFFORD has had multiple contacts with law enforcement.

Joseph Pishioneri moved that the Corrections Policy Committee finds SWAFFORD's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Linda Yankee seconded the motion. The motion carried unanimously.

- *Joseph Pishioneri moved that the Corrections Policy Committee recommends to the Board that SWAFFORD's conduct encapsulated the highest end of the categories noted above with a focus on **DISREGARD FOR THE RIGHTS OF OTHERS**, therefore recommending a 15-year disqualifier; SWAFFORD may reapply for certification in 15 years. Rick Angelozzi seconded the motion. The motion carried unanimously.*

12. Staff Update

- *The implementation of the pre-employment 12th grade reading and writing test for Basic Correction applicants will be discussed during the next policy committee meeting.*
- *Three names were added to the Memorial wall during the May 7, 2013 Law Enforcement Memorial. All officers were from the Portland Police Bureau and were found by the Portland Police Historical Society.*
- *DPSST is currently in the process of filling the Parole and Probation Coordinator position. Five people assessed for the position. Currently, one person is in background.*
- *DPSST made its budget presentation to the Ways and Means Committee.*
- *A bill that was introduced at the request of the Judiciary Committee which would establish the Center for Policing Excellence at DPSST has moved from the Judiciary Committee to Ways and Means. This bill would restore the Criminal Justice Leadership Training Program at DPSST, embrace evidence-based policing theories and practices, and would also bolster the Criminal Justice Regional Training*

Program. The fiscal impact for this bill is approximately 1.2 million dollars for four full-time employees and program-related services and supplies.

- *Sheriff Diana Simpson is stepping down from her position as the Corrections Policy Committee Chair. Sheriff Simpson will be retiring at the end of June. Amanda Rasmussen is also stepping down from her position on the Corrections Policy Committee. She has accepted a Lieutenant position at her department.*
- *At the next Board meeting, a new Chairperson for the Corrections Policy committee will be voted in and confirmed.*
- *Training Director Anderson thanked Sheriff Simpson and Amanda Rasmussen for their service on the Corrections Policy Committee.*

13. Next Scheduled Meeting – August 13, 2013 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 3:40 p.m.

Appendix A

**Department of Public Safety Standards and Training
Memo**

Date: May 14, 2013
To: Corrections Policy Committee
From: Linsay Hale
Rules Coordinator
Subject: OAR 259-008-0070 – Proposed Rule
2012 HB 2712 – Mandatory/Discretionary Disqualifying Crimes

Issue: HB 2712 (Oregon Laws, Chapter 597) updates and simplifies the current statutory revenue and distribution structure related to criminal fines, assessments and other financial penalties imposed on convictions for felonies, misdemeanors and violations other than parking infractions.

The passage of HB 2712 brought to light a large, previously unknown universe of primarily “regulatory” misdemeanor and felony crimes and classified or reclassified a number of crimes as well. DPSST’s legal services coordinator has identified the crimes and made recommendations about possible presumptive categories for each of them, based on reasoning of the earlier criminal justice workgroup that developed the current list.

On October 2, 2012 and again on December 7, 2012 a workgroup comprised of various members of the Telecommunications, Corrections and Police Policy Committees was convened to review these identified crimes and the staff recommendations.

This proposed rule update contains additions to the discretionary disqualifying crimes list and the presumptive categories as recommended by the workgroup members. Additionally, because all criminal convictions meet the definition of Misconduct, crimes with a presumptive category of Misconduct (Category V) are not included on the discretionary list and any crime previously determined to be Misconduct only are removed. Finally, language is added to allow for summary staff disposition or administrative closure for crimes with a presumptive category of only Misconduct (Category V) if the conviction occurred over seven years prior to the date of review and it represents the sole criminal conviction in the officer’s history.

The following revised language for OAR 259-008-0070 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0070

Denial/Revocation

Grounds for Mandatory Denial or Revocation of Certification

(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 after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the public safety professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.

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

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

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

(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a public safety professional or instructor that remedial measures have been unable to correct.

(v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse 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:

25.785(3) (False Submission of a Statement Regarding Social Security Number),

106.041(5) (Intentional False Statement on Marriage License; Application)

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),

165.118(1) (Unlawfully Altering Metal Property),

165.118(2)(a)(b) (False Statement on a Metal Property Record),

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),
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),

305.815 (False Swearing of Return, Statement or Other Tax Document),

307.990 (Willful False Statement to Property Tax Assessment Officer),

398.224 (Refusal to Appear to Testify),

462.415(2) (Racing a Prohibited Animal),

462.420 (Stimulating or Depressing Participating Animal),

462.430 (Influencing the Results of Races),

462.450 (Possession, Transportation or Use of Drugs at Race Course),

462.460 (Racing an Animal Under Name or Designation Other than Registered Name or Designation or Altering License),

462.470 (Aiding or Abetting Racing Animal Under Name or Designation Other than Registered Name or Designation),

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),

657.300 (False Statements or Failure to Report Material Fact By Employer),

657.495 (Fraudulently Lowering Contributions),

658.415 (False Swearing or Affirmation of Application of License, Proof of Insurance and Financial Responsibilities of Farm Labor Contractors),

659.810 (Filing a False Statement with Employment Agency to Secure Labor),

679.170 (3) (Fraudulent Alteration of Diploma, Certificate or Transcript),

679.170(5) (Willful False Statement to Oregon Board of Dentistry),

689.995 (Willfully Furnishing False Information; Pharmacists, Drug Outlets; Drug Sales),

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

(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) 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 has engaged in conduct that fails to meet the applicable minimum standards as described in subsection (b), minimum training or the terms and conditions established under ORS 181.640;

(C) The public safety professional or instructor has engaged in conduct that resulted in the conviction of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; or

(D) A public safety professional failed to attend at least one session with a mental health professional within six months after the public safety professional was involved in using deadly physical force, as required by ORS 181.789.

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

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

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

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

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

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

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

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime **NOTE: Those criminal convictions not listed below are presumptively considered Misconduct (Category V):**

25.260 (Unlawful Disclosure of Confidential Records of Child Support Division) – Category II,

~~97.931 (Registration of Salesperson for Endowment Care Cemeteries, Pre-construction Sales and Prearrangement Sales) – Category V,~~

~~97.933 (Certification of Provider of Prearrangement or Preconstruction) – Category V,~~

~~97.937 (Deposit of Trust Funds made by Endowment Care Cemeteries) – Category V,~~

~~97.941 (Prearrangement or Preconstruction Trust Fund Deposits) – Category V,~~

~~97.990(4) (Maintaining a Nuisance) – Category V,~~

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 III,
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 IV,
~~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 IV,
~~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 IV,
~~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 **IV**,
166.250 (Unlawful Possession of a Firearm) — Category **IV**,
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 **IV**,
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,

241.525 (Corrupt Practices) – Category III,

Chapter 319 (Any Violation Involving a False Statement – Motor Vehicle and Aircraft Fuel Tax) – Category I,

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 IV,
471.410 (Providing Liquor to Person under 21 or to Intoxicated Person) — Category IV,
~~Chapter 496—498 (When treated as a misdemeanor crime) — Category based on the elements of the specific crime,~~
609.341 (Permit Requirement for Keeping of Exotic Animals; Breeding of Animals) — Category V,

~~609.405 (Requirement for Destroying Dog or Cat) — Category V,~~

~~609.505 (Unlawfully Obtaining Dog or Cat) — Category V,~~

~~609.520(c) (Animal Dealer Failing to Turn Over Dog or Cat) — Category V,~~

609.805 (Misrepresentation of Pedigree; Mutilation of Certificate or Proof of Pedigree) – Category I,

609.990(3)(a) (Violation of ORS 609.098 – Maintaining a Dangerous Dog) – Category IV,

632.470 (False Representation as to Raising, Production or Packing) – Category I,

632.475 (Possession of Unlabeled, Falsely Labeled or Deceptively Packed Products) – Category I,

657.295 (Violation of Unemployment Insurance Witness Fees, Disputed Claims Expenses and Counsel Fees) – Category I,

659.800 (Use of Force or Misrepresentation to Prevent Employment) - Category I,

659.805 (Blacklisting and Blackmailing) – Category II,

659.815 (Deceptive Representations or Advertisements by Persons Employing Labor) – Category I,

659.845 (Fraudulently Accepting Advancement and Refusing to Work) – Category I,

661.040 (Violation of Limitations of Fees Charged Laborers by Collective Bargaining Agents) – Category I

661.260 (False Filing or Fraudulent Filing) – Category I,

688.120 (Fraudulent Representation as a Physical Therapist or Physical Therapist Assistant) – Category I,

~~717.200 to 717.320 (Any violation) — Category V,~~

731.260 (False or Misleading Filings; Insurance Code) – Category I,

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 **IV**,
811.140 (Reckless Driving) — Category IV,
~~811.172 (Improperly Disposing of Human Waste) — Category V,~~
811.182 (Criminal Driving While Suspended or Revoked) — Category **IV**,
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 **IV**,
811.740 (False Accident Report) — Category I, ~~and~~
813.010 (Driving Under the Influence of Intoxicants) — Category IV.

825.990(3)(d) (False Material Statement or Representation in any Application, Label, Manifest, Record, Report, Permit or Other Document Filed, Maintained or Used for Purposes of Compliance) – Category I,

825.990(3)(e) (Failure to Include Material Information Required by Department of Transportation) – Category I,

830.035(2) (Fleeing; Attempts to Elude) — Category IV,
830.053 (False or Fraudulent Report of Theft of Boat) — Category I,
830.315(1) (Reckless Operation) — Category IV,
830.325 (Operation a Boat while Under the Influence of Intoxicating Liquor or Controlled Substance) — Category IV,
~~830.383 (Person Required to Remedy Especially Hazardous Condition) — Category V,~~
~~830.460(2) (Prohibited Activities — Operating a Vessel that Fails to Comply with Equipment Requirements) — Category V,~~
~~830.460(3) (Prohibited Activities — Operating a Vessel without Liability Protection) — Category V,~~

830.475(1) (Failure to Perform the Duties of an Operator at Accident) — Category **IV**,

830.730 (False Information) — Category I,

~~830.909 (Abandoning Boat, Floating Home, or Boathouse) — Category V,~~

~~830.955(1) (Prohibition of Installation of Submersible Polystyrene Device) — Category V,~~

~~830.992 (Purchase of a Boat or Equipment from which Hull or Component Identification Number Removed) — Category V,~~

830.994 (Operates a Boat in Violation of a Court Order) – Category **IV**,

837.080 (Prohibited Operation of an Aircraft) – Category IV

Initial Periods of Ineligibility

(d) Upon determination to proceed with the denial or revocation of a public safety professional's or instructor's certification based on discretionary disqualifying misconduct identified in subsection (a), 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 of Others, Misuse of Authority, Gross Misconduct, Misconduct or Insubordination).

(e) Following review and recommendation by a Policy Committee, the Board will determine the initial minimum period of ineligibility for discretionary disqualifying misconduct identified in subsection (a) from the time frame identified below for each category of discretionary disqualifying misconduct:

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

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

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

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

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

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

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) 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) The Department will not take action on a 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) The Department may take action on any conviction constituting discretionary disqualifying misconduct that occurred after January 1, 2001, **however, crimes with a presumptive category of only Misconduct (Category V) may be appropriate for summary staff disposition or administrative closure if the conviction occurred seven years or more prior to the date of review and it represents the sole criminal conviction in the public safety professional's or instructor's history.**

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

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

(f) The Department will not take action against a public safety professional, instructor, or agency for failing to report, prior to January 1, 2003, a conviction that constitutes discretionary disqualifying misconduct.

(g) The Department may take action against a public safety professional, instructor, or agency for failing to report, after January 1, 2003, any conviction that constitutes discretionary disqualifying misconduct.

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.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses.

Attachments:

Attachment A – Workgroup Staff Memo, Dated October 2, 2012

Attachment B – Workgroup Staff Memo, Dated December 7, 2012

Appendix B

Department of Public Safety Standards and Training

DATE: May 14, 2013

TO: Eriks Gabliks, Director

FROM: Theresa M. King
DOC BCC Audits Unit Coordinator

SUBJECT: Quarterly Review of DOC BCC by DPSST Audit Team

Issue:

Is the DOC BCC meeting the established standards for Basic Corrections Training?

Background:

The concept of Oregon Department of Corrections (DOC) providing its own training as an alternative to the DPSST 200-hour Basic Corrections Course (BCC) was proposed in the 2009 Governors' Recommended Budget as a cost saving for DOC. This concept was given statutory approval for a period of four years with the requirement that it meets or exceeds the DPSST BCC, that DPSST audit the DOC BCC and that DPSST provide a written report to the legislature in 2011.

Since 2010, the Audit Team has provided the Corrections Policy Committee with quarterly updates of the DOC BCC. Within the quarterly updates, the Audit Team has identified areas in which the DOC BCC has met the minimum standards or has exceeded the minimum standard. In cases in which the DOC BCC has not met the minimum standards, the Audit Team has identified the areas of non-compliance and the required remedy.

During this reporting period, **January 2013 through March 2013**, the Audit Team conducted a series of audits for the 2013 DOC BCC.¹ During the prior reporting period, the first two classes under the newly approved curriculum occurred. The Audit Team did not audit these for equivalency, but provided observations and recommendations in areas of concern and remedial expectations. These were outlined in five memorandums, which were included in the January CPC Audit Team Quarterly Staff Report. In substance, four of the five areas were adequately addressed by the DOC Professional Development Unit (PDU) and are currently considered

¹ Exhibits 1 - 91

resolved. The last area, Test 2, has not been resolved; this has resulted in a Non-Compliance notification, which will allow PDU an additional six months to remedy. The following is a recap of the results:

1. **BCC hours reconciled in documents.**

- a. **Issue:** The BCC Subject Hour Breakdown identifies all training and associated hours to ensure equivalency for purposes of Basic Corrections certification. The BCC training schedule Week at a Glance (WAAG) for classes 059 and 060 did not reconcile to the Subject Hour Breakdown.
- b. **Resolution:** Ensure the Subject Hour Breakdown hours (approved training) reconcile with the WAAG (training schedule).
- c. **Outcome: Resolved.** Although the WAAG training hours do not reconcile to the Subject Hour Breakdown training hours, PDU has provided a Year at a Glance (YAAG) which provides a visual of the additional online training and learning event training that occurs between Week 4 and the conclusion of the BCC. The YAAG will be accepted as the training schedule.

2. **BCC participatory learning.**

- a. **Issue:** The new six-week Basic Corrections curriculum requires that 80% of the classes must include participatory learning activities. The Audit Team conducted an analysis of the new BCC curriculum and determined that 85% of the classes included participatory learning activities.
- b. **Resolution: No resolution required.**
- c. **Outcome:** N/A

3. **BCC Scenarios.**

- a. **Issue:** The new six-week Basic Corrections curriculum added 40 hours of which included a total of 51 hours of reality-based scenarios and eight hours of problem based learning. The scenarios allow the student to demonstrate prior learning of technical and non-technical skills, such as communications, officer safety and situation awareness. The Audit Team identified the scenarios that had structural concerns and the appropriate remedies.
- b. **Resolution:** Resolve structural concerns which include lack of inmate role player scenarios and are solely technical skill-based.
- c. **Outcome: Resolved.** In general, PDU has improved the scenarios to ensure role-player inmate interaction and debriefing by FTOs, which covers both technical and non-technical skills. The Audit Team anticipates that the scenarios will become more effective as PDU continues to update the scenarios in areas such as guidance to the role-player inmate to allow the officer to demonstrate their prior learning and providing guidelines for the FTOs to focus debriefing on.

4. **BCC Learning Events.**

- a. **Issue:** Learning Events are DOC policies that are reviewed by students, either in a block of instruction outlined on the BCC training schedule (WAAG) or after

their first four weeks of training, and prior to their Skills Week. Because the Learning Events were presented by PDU as part of a “total package” beyond the successful completion of a quiz on each, the students must demonstrate their knowledge, typically in subsequent reality based training or scenarios.

- b. **Resolution:** Structure the BCC so that students can demonstrate their knowledge based on Learning Events in scenarios. Reflect the Learning Events in the training schedule.
- c. **Outcome: Resolved.** The Audit Team analyzed the Learning Events and the correlation to subsequent scenarios. This resulted in confirmation that, in substance, the Learning Events are demonstrated in the scenarios and reality based training during the Skills Week.

5. BCC Test 2

- a. **Issue:** Test 2 (Final Test) must be a cumulative assessment of the knowledge the students have learned. The Audit Team analyzed DOC BCC Test 2 and found that all 100-test questions were derived from DOC policies based on Learning Events. Only 38 of the test questions related to Learning Events that were accepted as part of the 2012 BCC and 62 questions were associated with Learning Events not accepted as a part of the BCC. Test 2 included seven areas which were cumulative, which means the content was from areas covered prior to, and after, Test 1.
- b. **Resolution:** Test 2 only requires 90 questions. These questions must be a representative sample of learning outcomes from training topics that are a part of DOC BCC.
- c. **Outcome: Not Resolved.** PDU has not provided the Audit Team with an updated Test to comply with the above requirements. A non-compliance letter was issued and PDU will have six months to meet the minimum standards of equivalency in this area. Shortly after the Test 2 memorandum was provided to PDU, they experienced an increase in their BCC classes which required significant staff focus. This additional six months will allow PDU to meet the cited standards.

Audit Program Overview

DOC BCC Training

During this reporting period, DOC BCC began two new classes using the 2012 DOC BCC curriculum.² Two classes were still in progress at some phase of their 2012 BCC training.³

² BCC 063 and 064

³ BCC 059 and 060

DOC COD

During this reporting period, DOC submitted no applications for Career Officer Development (COD) to DPSST.

DOC BCC Testing Results

During this reporting period, the cumulative average for Test #1 was 87%⁴ and the cumulative average for Test #2 was 87.5%.⁵

DOC Training Failures requiring remediation

During this reporting period, there was no academic failure, one firearms failure, one defensive tactics and two Reality Based Training failures. These failures either have been successfully remediated or are scheduled to be remediated.⁶

Firearms

During this reporting period DOC's firearms failure rate continued to decrease.⁷

Basic Corrections Certifications

DOC BCC Basic Corrections certifications issued

During this reporting period, DOC PDU has submitted 3 new applications for certification and 30 pending Basic Corrections certifications granted.

Curriculum

2012 DOC BCC Curriculum

On August 14, 2012, the CPC reviewed and approved the new six-week 2012 DOC BCC. This new program was subsequently approved by the Executive Committee. See pages 1 - 3 of this Report for current updates.

Instructor Training and Certification

Instructor Development Courses

DOC PDU delivered no Instructor Development classes within this reporting period.⁸

Instructor Applications

During this reporting period, 98 BCC instructors were certified for the 2012 BCC program, for total of 315 BCC instructors.

⁴ BCC 063 and 064

⁵ BCC 059 and 060

⁶ Ex 95, provided by DOC PDU CAC

⁷ Ex 93, Audit Team analysis FA Overview

⁸ Ex 98 provided by DOC

Audits

Training On-Site Audits

During this reporting period, the Audit Team conducted multiple on-site audits of training. These included observation of the training, review of the lesson plans, student handout materials, instructor presentation, student participation, skills sheets or online courses and student surveys.⁹

Administrative Records Audits

During this reporting period, the Audit Team conducted no administrative records audit.

CORPAT Data Collection:

During this reporting period, four CORPAT were delivered and the data collected.

Findings

With the exception of Test 2, in general, the 2012 DOC BCC *meets* the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than the Department of Corrections.

The DOC Professional Development Unit continues to refine the BCC and develop its instructors; this is evidenced by the demonstration of the students' application of knowledge and their confidence in the training.

⁹ Ex 1- 91 and 92

Attachments:

- Ex 1 BCC 063 Pre-CORPAT
- Ex 2 BCC 063 CCM
- Ex 3 BCC 063 OAM
- Ex 4 BCC 063 Ethics & Professionalism
- Ex 5 BCC 063 Communicable Diseases
- Ex 6 BCC 063 Blood Borne Pathogens
- Ex 7 BCC 063 Interpersonal Communications 1
- Ex 8 BCC 063 PREA
- Ex 9 BCC 063 Prohibited Inmate Conduct
- Ex 10 BCC 063 Report Writing
- Ex 11 BCC 063 Use of Force
- Ex 12 BCC 063 Defensive Tactics Basics
- Ex 13 BCC 063 Evidence and Crime Scene Preservation
- Ex 14 BCC 063 CPR/First Aid
- Ex 15 BCC 063 Mental Health and Disabilities
- Ex 16 BCC 063 Interpersonal Communications 2
- Ex 17 BCC 063 Suicide Awareness and Intervention
- Ex 18 BCC 063 Legal Issues
- Ex 19 BCC 063 Health & Fitness 2
- Ex 20 BCC 063 Security Threat Management
- Ex 21 BCC 063 OC Spray
- Ex 22 BCC 063 Reality Based Training 1
- Ex 23 BCC 063 Defensive Tactics 3
- Ex 24 BCC 063 Online Training
- Ex 25 BCC 063 Decision Making RBS
- Ex 26 BCC 063 Security Procedures RBS
- Ex 27 BCC 063 Inmate Supervision RBS
- Ex 28 BCC 063 Emergency Preparedness RBS
- Ex 29 BCC 063 Inmate Health Care RBS
- Ex 30 BCC 063 Security Procedures RBS

- Ex 31 BCC 063 Online Training
- Ex 32 BCC 063 Security Procedures RBS
- Ex 33 BCC 063 Problem Based Learning Event
- Ex 34 BCC 064 Ethics and Professionalism
- Ex 35 BCC 064 Respectful Workplace
- Ex 36 BCC 064 Health & Fitness 1
- Ex 37 BCC 064 Employee Wellness
- Ex 38 BCC 064 Blood Borne Pathogens
- Ex 39 BCC 064 Communicable Diseases
- Ex 40 BCC 064 PREA
- Ex 41 BCC 064 Prohibited Inmate Conduct
- Ex 42 BCC 064 Report Writing
- Ex 43 BCC 064 Interpersonal Communications 1
- Ex 44 BCC 064 Use of Force
- Ex 45 BCC 064 Mental Health and Disabilities
- Ex 46 BCC 064 Interpersonal Communications 2
- Ex 47 BCC 064 Evidence Handling and Crime Scene Preservation
- Ex 48 BCC 064 Supervision of Inmates
- Ex 49 BCC 064 Maintaining Your Boundaries
- Ex 50 BCC 064 Basic Security Practices
- Ex 51 BCC 064 Suicide Awareness & Prevention
- Ex 52 BCC 064 Legal Issues
- Ex 53 BCC 064 Security Procedures RBS
- Ex 54 BCC 064 Inmate Health Care RBS
- Ex 55 BCC 064 Emergency Preparedness RBS
- Ex 56 BCC 064 Inmate Supervision RBS
- Ex 57 BCC 064 Defensive Tactics 4
- Ex 58 BCC 064 Reality Based Training 2
- Ex 59 BCC 059a Health & Fitness 6
- Ex 60 BCC 059a Interpersonal Communications 3
- Ex 61 BCC 059a Cell Extraction

- Ex 62 BCC 059a Test 2
- Ex 63 BCC 059a Defensive Tactics 5
- Ex 64 BCC 059a Medical Escorts & Restraints
- Ex 65 BCC 059a Post-CORPAT
- Ex 66 BCC 059a Online Training
- Ex 67 BCC 059a Reality Based Training 4
- Ex 68 BCC 059a Security Procedures RBS
- Ex 69 BCC 059a Problem Based Learning Event
- Ex 70 BCC 059a Interpersonal Communication 3
- Ex 71 BCC 059a Firearms
- Ex 72 BCC 059b Defensive Tactics 5
- Ex 73 BCC 059b Employee Wellness 2
- Ex 74 BCC 059b Post-CORPAT
- Ex 75 BCC 059b Medical Escorts and Restraints
- Ex 76 BCC 059b Reality Based Training 3
- Ex 77 BCC 059b Cell Extraction
- Ex 78 BCC 059b Medical Escorts & Restraints RBS
- Ex 79 BCC 059b Reality Based Training 4
- Ex 80 BCC 059b Problem Based Learning 2 & 3
- Ex 81 BCC 059b Firearms
- Ex 82 BCC 060 Medical Escorts and Restraints
- Ex 83 BCC 060 Defensive Tactics 5
- Ex 84 BCC 060 Post-CORPAT
- Ex 85 BCC 060 Cell Extraction
- Ex 86 BCC 060 Reality Based Training 3
- Ex 87 BCC 060 Security Procedures RBS
- Ex 88 BCC 060 Problem Based Learning 2 & 3
- Ex 89 BCC 060 Reality Based Training 4
- Ex 90 BCC 060 Firearms
- Ex 91 Audit Log
- Ex 92 Student Survey

- Ex 93 Firearms Remediation Overview
- Ex 94 DOC BCC Master Calendar (2013)
- Ex 95 DOC BCC Corrective Action Classes
- Ex 96 DOC BCC Student Progress Reports
- Ex 97 DOC BCC Student Training
- Ex 98 DOC BCC Instructor Development Courses

Appendix C

Department of Public Safety Standards and Training Memorandum

DATE: May 14, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: BEAU A. AMUNDSON DPSST #49594

ISSUE:

Should Beau A. Amundson's Basic Corrections certification be revoked, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4) and as referenced in OAR 259-008-0010?

This case involves Amundson's conduct surrounding his 2012 conviction for Failure to Perform the Duties of a Driver Involved in an Accident.

BACKGROUND and OVERVIEW:

1. *On April 28, 2008, AMUNDSON was hired by the Department of Corrections as a corrections officer.¹⁰ He attended training, signed his Code of Ethics,¹¹ and obtained a Basic Corrections certification.¹² AMUNDSON resigned from the Department of Corrections in May of 2011 and is not currently employed in a certified public safety position in Oregon.¹³*
2. *In April 2012, DPSST received information via LEDS that AMUNDSON had been arrested for Reckless Driving and Hit & Run – Property Damage. DPSST sought and obtained the information relating to the arrest.¹⁴*
3. *DPSST monitored the case through the Pendleton Municipal Court, and learned that AMUNDSON eventually was convicted of the Hit & Run offense upon his plea of guilty. It appears that the Reckless Driving charge was not charged.¹⁵*

¹⁰ Ex A1

¹¹ Ex A2

¹² Ex A1

¹³ Ex A1

¹⁴ Ex A3

¹⁵ Ex A4

4. *In February 2013, DPSST notified AMUNDSON via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.*¹⁶
5. *AMUNDSON did not provide a response.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT:

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

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

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

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

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

¹⁶ Ex A5

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

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

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

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

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

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

* * *

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of Failure to Perform the Duties of a Driver When Property is Damaged as Category V, Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration for certification of three to seven years.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

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

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

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke AMUNDSON's certification(s) based on violation of the established moral fitness standards:

2. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

3. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

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

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

5. By vote, the Policy Committee finds AMUNDSON's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

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

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix D

**Department of Public Safety Standards and Training
Memorandum**

DATE: May 14, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: DAVID R. BUCHANAN DPSST #34821
Washington County Sheriff's Office**

ISSUE:

Should David R. Buchanan's Basic Corrections certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves Buchanan's resignation in lieu of termination after an internal investigation sustained violations of agency policies related to competent performance of duties and truthfulness.

BACKGROUND and OVERVIEW:

6. *On October 17, 1997, BUCHANAN was hired by the Department of Corrections as a corrections officer.¹⁷ He attended training, signed his Code of Ethics,¹⁸ and obtained a Basic Corrections certification.¹⁹ BUCHANAN resigned from the Department of Corrections on September 7, 1999, and on September 14, 1999, he was hired by the Washington County Sheriff's Office as a deputy sheriff.²⁰*
7. *In December 2012, DPSST received a form F-4 Personnel Action Report showing that BUCHANAN had resigned from the Washington County Sheriff's Office in lieu of termination.²¹ DPSST sought and obtained the information relating to the resignation.²²*

¹⁷ Ex A1

¹⁸ Ex A2

¹⁹ Ex A1

²⁰ Ex A1

²¹ Ex A3

²² Ex A4, A5

8. *In February 2013, DPSST notified BUCHANAN via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.*²³
9. *BUCHANAN did not provide a response.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT:

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

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

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

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

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

²³ Ex A6

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

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

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

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

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

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke BUCHANAN's certification(s) based on violation of the established moral fitness standards:

6. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

7. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

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

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

9. By vote, the Policy Committee finds BUCHANAN's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

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

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix E

**Department of Public Safety Standards and Training
Memorandum**

DATE: May 14, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: STEVEN P. FITZGERALD DPSST #32582
Lane County Sheriff's Office**

ISSUE:

Should Steven P. Fitzgerald's Basic Police, Basic, Intermediate, Advanced, Supervisory and Management Parole & Probation certifications, and Instructor certification be revoked, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4) and as referenced in OAR 259-008-0010?

This case involves Fitzgerald's conduct surrounding his 2012 conviction for DUII and related department policy violations.

BACKGROUND and OVERVIEW:

10. On June 26, 1997, FITZGERALD was hired by the Douglas County Sheriff's Office as a deputy sheriff.²⁴ He attended training, signed his Code of Ethics,²⁵ and obtained a Basic Police certification.²⁶ FITZGERALD resigned from the Douglas County Sheriff's Office in February of 2000 and was hired by the Department of Corrections/Douglas County Community Corrections as a parole & probation officer. In February 2004, FITZGERALD resigned from the DOC/Douglas County Community Corrections, and in March 2004 he was hired by the Lane County Community Corrections Department as a supervisor. That position was transferred to the Lane County Sheriff's Office in 2008. During his time with these agencies he ultimately obtained Basic, Intermediate, Advanced, Supervisory and Management Parole & Probation certifications as well as an Instructor certification.²⁷

²⁴ Ex A1

²⁵ Ex A2

²⁶ Ex A1

²⁷ Ex A1

11. In May of 2012, DPSST received information from the Lane County Sheriff's Office that FITZGERALD had been convicted of Driving Under the Influence of Intoxicants. DPSST sought and obtained the information relating to the conviction.²⁸ DPSST withheld taking action on the conviction pending an internal investigation by the Sheriff's Office.
12. In August 2012, DPSST received a Form F-4 Personnel Action Report showing that FITZGERALD had resigned from the Lane County Sheriff's Office in lieu of resignation.²⁹ DPSST sought and received the information related to the resignation.³⁰
13. In February 2013, DPSST notified FITZGERALD via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.³¹
14. FITZGERALD provided a response.³²

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT:

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

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

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

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements

²⁸ Ex A3

²⁹ Ex A4

³⁰ Ex A5 – A6, with sub-exhibits

³¹ Ex A7

³² Ex A8

of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

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

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

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

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

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

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

NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

ORS 813.010 (DUII) – Category IV

** * **

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of DUII as Category IV, Gross Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration for certification of five to ten years.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke FITZGERALD's certification(s) based on violation of the established moral fitness standards:

10. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

11. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

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

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

13. By vote, the Policy Committee finds FITZGERALD's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Attachments

*Information Only - **SUBSEQUENT DUE PROCESS:***

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix F

**Department of Public Safety Standards and Training
Memorandum**

DATE: May 14, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: TIM L. GRAVES DPSST #10583

ISSUE:

Should Tim L. Graves' Basic Corrections certification be revoked, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4) and as referenced in OAR 259-008-0010?

This case involves Graves' conduct surrounding his 2012 conviction for Contempt of Court and his 2005 conviction for Criminal Trespass in the First Degree.

BACKGROUND and OVERVIEW:

15. *On June 10, 1978, GRAVES was hired by the Deschutes County Sheriff's Office as a deputy sheriff.³³ He attended training, signed his Code of Ethics,³⁴ and obtained a Basic Corrections certification.³⁵ GRAVES was discharged from the Deschutes County Sheriff's Office in July, 1980.³⁶ He was hired by the Prineville Police Department on July 19, 1986 as a corrections officer, and was laid off from that position on April 30, 1997. On May 1, 1997, GRAVES was hired by the Crook Co. Sheriff's Office as a deputy sheriff, and he retired from that position on September 20, 2003. GRAVES is not currently employed in a certified public safety position in Oregon.³⁷*
16. *In April 2012, DPSST received information via LEDS that GRAVES had been arrested for Contempt of Court. DPSST monitored the case through the Crook County Court, and*

³³ Ex A1

³⁴ Ex A2

³⁵ Ex A1

³⁶ Ex A1 (This discharge was reviewed by DPSST in 2005. No revocation action was taken and the case was closed administratively. See Notes section, bottom of page 3 of this exhibit.)

³⁷ Ex A1

learned that GRAVES eventually was convicted of Contempt of Court on July 25, 2012 upon his plea of no contest.³⁸

- 17. An OJIN check subsequent to the LEDS notification revealed that GRAVES had been convicted in 2005 for Criminal Trespass in the First Degree.³⁹ DPSST sought and obtained the information relating to that arrest and conviction.⁴⁰*
- 18. In February 2013, DPSST notified GRAVES via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.⁴¹*
- 19. GRAVES provided a response.⁴²*
- 20. As background information, in 2010 GRAVES was also investigated by the Crook County Sheriff's Office on complaints of Compelling Prostitution, Engaging in Prostitution, Coercion and Attempted Coercion. The investigative report is included here, but the case was not prosecuted by the Crook County District Attorney's Office, apparently due to insufficient evidence and witnesses not being credible.⁴³*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT:

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

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

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

³⁸ Ex A3

³⁹ Ex A4

⁴⁰ Ex A5

⁴¹ Ex A6

⁴² Ex A7

⁴³ Ex A8

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

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

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

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

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

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

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

NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to

the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

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

** * **

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of Contempt of Court as Category V, Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration for certification of three to seven years. Criminal Trespass in the First Degree is also a Category V, Misconduct offense.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke GRAVES' certification(s) based on violation of the established moral fitness standards:

14. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

15. By discussion and consensus:

- a. Identify and articulate the **misconduct that is specific to this case.**

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not involve* **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

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

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

17. By vote, the Policy Committee finds GRAVES' conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix G

Department of Public Safety Standards and Training Memorandum

DATE: May 14, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JOHN MCMILLER JR. DPSST #38847
Columbia County Sheriff's Office**

ISSUE:

Should John McMiller Jr.'s Basic Police certification and Basic, Intermediate and Advanced Corrections certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves McMiller's retirement in lieu of termination after an internal investigation sustained violations of numerous agency policies related to competent performance and inappropriate use of County internet services, among others.

BACKGROUND and OVERVIEW:

21. On January 6, 2000, MCMILLER was hired by the Portland Police Bureau as a police officer.⁴⁴ He attended training and signed his Code of Ethics.⁴⁵ On July 6, 2001, MCMILLER resigned from the Portland Police Bureau and on December 10, 2001 he was hired by the Tualatin Police Department as a police officer.⁴⁶ He obtained a Basic Police certification.⁴⁷ MCMILLER resigned from the Tualatin Police Department on May 9, 2002.⁴⁸ On July 21, 2003, MCMILLER was hired by the Washington County Sheriff's Office as a deputy sheriff, signed his Code of Ethics⁴⁹ and resigned from that agency on February 17, 2004.⁵⁰ On October 28, 2004, MCMILLER was hired by the Columbia County Sheriff's

⁴⁴ Ex A1

⁴⁵ Ex A2

⁴⁶ Ex A1

⁴⁷ Ex A1

⁴⁸ Ex A1

⁴⁹ Ex A1

⁵⁰ Ex A1

Office as a deputy sheriff. He attended training and ultimately obtained Basic, Intermediate and Advanced Corrections certifications.⁵¹

22. *In May 2012, DPSST received a form F-4 Personnel Action Report showing that MCMILLER had retired from the Columbia County Sheriff's Office in lieu of termination.⁵² DPSST sought and obtained the information relating to the retirement.⁵³*
23. *In November 2012, DPSST notified MCMILLER via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.⁵⁴*
24. *MCMILLER did not provide a response.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT:

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

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

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

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

⁵¹ Ex A1

⁵² Ex A3

⁵³ Ex A4, A5, with sub-exhibits

⁵⁴ Ex A6

* * *

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

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

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

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

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

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

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the

applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

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

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke MCMILLER's certification(s) based on violation of the established moral fitness standards:

18. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

19. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

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

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

21. By vote, the Policy Committee finds MCMILLER's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix H

Department of Public Safety Standards and Training
Memorandum

DATE: May 14, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: DAVID E. NEAL JR. DPSST #47068
Department of Corrections – Warner Creek Correctional Facility

ISSUE:

Should DAVID E. NEAL's Basic Corrections certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves NEAL's resignation during an internal investigation into violations of agency policies related to abuse of sick leave and falsifying post information logs.

BACKGROUND and OVERVIEW:

25. *On June 25, 2006, NEAL was hired by the Department of Corrections as a corrections officer.⁵⁵ He attended training, signed his Code of Ethics,⁵⁶ and obtained a Basic Corrections certification.⁵⁷*
26. *In September 2012, DPSST received a form F-4 Personnel Action Report showing that NEAL had resigned from the Department of Corrections during an investigation.⁵⁸ DPSST sought and obtained the information relating to the resignation.⁵⁹*
27. *In February 2013, DPSST notified NEAL via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.⁶⁰*
28. *NEAL did not provide a response.*

⁵⁵ Ex A1

⁵⁶ Ex A2

⁵⁷ Ex A1

⁵⁸ Ex A3

⁵⁹ Ex A4, A5 with sub-exhibits

⁶⁰ Ex A6

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT:

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

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

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

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

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

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

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the

principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

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

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

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

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke NEAL's certification(s) based on violation of the established moral fitness standards:

22. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

23. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

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

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

25. By vote, the Policy Committee finds NEAL's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix I

Department of Public Safety Standards and Training
Memorandum

DATE: May 14, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: SHARI L. SHAW DPSST #41197
Yamhill County Sheriff's Office

ISSUE:

Should Shari L. Shaw's Basic and Intermediate Corrections certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves SHAW's resignation during an internal investigation that sustained violations of agency policies related to cell searches, institution logs, and truthfulness.

BACKGROUND and OVERVIEW:

29. On September 10, 2006, SHAW was hired by the Marion County Sheriff's Office as a deputy sheriff.⁶¹ She attended training, signed her Code of Ethics,⁶² and ultimately obtained a Basic Corrections certification.⁶³ She was released from her employment by probationary discharge on September 12, 2007.⁶⁴
30. On April 9, 2008, SHAW was hired by the Yamhill County Sheriff's Office as a deputy sheriff. She attended training and ultimately obtained Basic and Intermediate Corrections certifications.⁶⁵
31. In January 2013, DPSST received a Personnel Action Report Form F-4 showing that SHAW had resigned in lieu of termination.⁶⁶ DPSST sought and obtained information relating to the resignation.⁶⁷

⁶¹ Ex A1

⁶² Ex A2

⁶³ Ex A3

⁶⁴ Ex A1

⁶⁵ Ex A1

⁶⁶ Ex A3

⁶⁷ Ex A4 – A5

32. *In February 2013, DPSST notified SHAW via certified mail that her case would be heard before the Corrections Policy Committee (CPC), and allowed her an opportunity to provide mitigating circumstances for the Committee's consideration.*⁶⁸
33. *SHAW did not provide a response.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT:

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

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

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

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

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

⁶⁸ Ex A6

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

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

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

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

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

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke SHAW’s certification(s) based on violation of the established moral fitness standards:

26. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

27. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not involve* **Gross Misconduct**.

f. The identified conduct *did/did not involve* **Misconduct**.

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

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

29. By vote, the Policy Committee finds SHAW's conduct *does/does not* rise to the level to warrant the revocation of her certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix J

**Department of Public Safety Standards and Training
Memorandum**

DATE: May 14, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: CAPTARE SWAFFORD DPSST #38090

ISSUE:

Should Captare Swafford's Basic Corrections certification be revoked, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4) and as referenced in OAR 259-008-0010?

This case involves Swafford's conduct surrounding his 2011 conviction for DUII and his 2012 conviction for Criminal Trespass in the Second Degree.

BACKGROUND and OVERVIEW:

34. *On July 6, 1999, SWAFFORD was hired by the Department of Corrections as a corrections officer.⁶⁹ He attended training, signed his Code of Ethics,⁷⁰ and obtained a Basic Corrections certification.⁷¹ SWAFFORD resigned from the Department of Corrections in May of 2006 and is not currently employed in a certified public safety position in Oregon.⁷²*
35. *In August of 2010, DPSST received information via LEDS that SWAFFORD had been arrested for Driving Under the Influence of Intoxicants. DPSST sought and obtained the information relating to the arrest.⁷³*
36. *DPSST monitored the case through the Umatilla County Circuit Court, and learned that SWAFFORD eventually was convicted of DUII charge after a jury trial in September of 2011.⁷⁴*

⁶⁹ Ex A1

⁷⁰ Ex A2

⁷¹ Ex A1

⁷² Ex A1

⁷³ Ex A3 – A4

⁷⁴ Ex A5

37. *Prior to the conviction on this DUII charge, SWAFFORD was arrested for DUII (Drug), Recklessly Endangering Another, and Reckless Driving in May of 2011. DPSST sought and received the information on this case.⁷⁵ Because this new case was pending, DPSST did not take revocation action on SWAFFORD's first DUII conviction, instead awaiting the outcome of the second case.*
38. *Shortly after SWAFFORD was convicted of the first DUII charge, he was charged with probation violation for failing to contact the court and failing to complete his community service obligation. After then complying with the requirement, the probation violation charge was dismissed.⁷⁶*
39. *In August of 2011, SWAFFORD was arrested for violating a restraining order.⁷⁷ DPSST monitored this new case through the Umatilla County Circuit Court. Again, because another criminal case was now pending, DPSST did not take action on the first DUII case. In April of 2012, SWAFFORD pled guilty to and was convicted of Criminal Trespass 2 after the restraining order charge was amended to that charge.⁷⁸*
40. *On May 15, 2012, the Umatilla County District Attorney's Office dismissed SWAFFORD's second DUII and related charges for insufficient evidence.⁷⁹*
41. *To recap the sequence of these matters:*
- a. August 2010, first DUII arrest;*
 - b. May 2011, second DUII arrest;*
 - c. August 2011, arrest on Restraining Order violation;*
 - d. September 2011, convicted of first DUII;*
 - e. October 2011, charged with violating probation on first DUII;*
 - f. November 2011, probation violation dismissed;*
 - g. April 2012, convicted of Trespass 2 from the restraining order violation case;*
 - h. May 2012, second DUII case dismissed.*
42. *In February 2013, DPSST notified SWAFFORD via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.⁸⁰*
43. *SWAFFORD did not provide a response.*

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For

⁷⁵ Ex A6 – A7

⁷⁶ Ex A5, pp 5-6

⁷⁷ Ex A8

⁷⁸ Ex A9

⁷⁹ Ex A10

⁸⁰ Ex A11

all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

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

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

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

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

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

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

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

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

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

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

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

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

** * **

ORS 813.010 (DUII) – Category IV

** * **

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of DUII as Category IV, Gross Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration for certification of five to ten years. Criminal Trespass in the Second Degree is a Category V, Misconduct crime. It carries a presumptive length of ineligibility for reconsideration for certification of three to seven years.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke SWAFFORD’s certification(s) based on violation of the established moral fitness standards:

30. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

31. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

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

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

33. By vote, the Policy Committee finds SWAFFORD's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

for certification, using the following ineligibility grid:

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

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

Attachment:

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

