

Police Policy Committee Minutes November 15, 2012

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on November 15, 2012 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:30 p.m. by Chair Kent Barker.

Attendees

Policy Committee Members:

Kent Barker, Chair, Oregon Association Chiefs of Police
Tom Bergin, Oregon State Sheriffs' Association
Larry Blanton, Oregon State Sheriffs' Association
Craig Halupowski, Non-Management Law Enforcement
Eric Hendricks, Portland Police Bureau (Designee for Chief Mike Reese)
Ryan Humphrey, Non-Management Law Enforcement
James Hunter, Oregon Association Chiefs of Police
Joel Lujan, Oregon State Police Command Staff Representative
Holly Russell, Oregon State Sheriffs' Association
Glen Scruggs, Non-Management Law Enforcement
Mathew Workman, Oregon Association Chiefs of Police

Committee Members Absent:

Larry Blanton, Oregon State Sheriffs' Association
Richard Evans, Oregon State Police, Superintendent
Marc Tisher, Non-Management Law Enforcement
Mike Wells, Non-Management Law Enforcement

DPSST Staff:

Eriks Gabliks, Director
Marilyn Lorange, Standards and Certification Program Manager
Leon Colas, Professional Standards Coordinator/Investigator
Sharon Huck, JTA Coordinator
Kristy Witherell, Administrative Support



1. Minutes of August 16, 2012 Meeting

Approve minutes from the August 16, 2012 meeting.

See Appendix A for details

- *Mathew Workman moved to approve the minutes from the August 16, 2012 Police Policy Committee meeting. Ryan Humphrey seconded the motion. The motion carried unanimously.*

2. **Richard L. Coufal, Multnomah County Sheriff's Office – DPSST #25208**

Presented by Leon Colas

See Appendix B for details

- *Tom Bergin moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Joel Lujan seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case. *Falsifying overtime slips.***
 - b. The identified conduct ***did*** involve **Dishonesty based on COUFAL falsifying overtime slips. He was untruthful to his sergeant.**
 - c. The identified conduct ***did not*** involve a **Disregard for the Rights of Others.**
 - d. The identified conduct ***did not*** involve **Misuse of Authority.**
 - e. The identified conduct ***did not*** involve **Gross Misconduct.**
 - f. The identified conduct ***did*** involve **Misconduct based on COUFAL collecting unearned overtime.**
 - 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 COUFAL being honest when interviewed. He took the time to respond to DPSST.

The committee noted as aggravating circumstances COUFAL referring to the allegations in his letter but did not take responsibility for his actions. He would schedule court dates so he would receive overtime.

Ryan Humphrey moved that the Police Policy Committee finds COUFAL'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. Holly Russell seconded the motion. The motion carried unanimously.

- *Craig Halupowski moved that the Police Policy Committee recommends to the Board that COUFAL's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore recommending a lifetime revocation; COUFAL may never reapply for certification. Ryan Humphrey seconded the motion. The motion carried unanimously.*

3. **John. T. Jayne, Hillsboro Police Department – DPSST #44146**

Presented by Leon Colas

See Appendix C for details

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Ryan Humphrey seconded the motion. The motion carried unanimously with Kent Barker abstaining.*
- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case. *The Police Policy committee does not find conduct that rises to revocation.***
 - b. The identified conduct **did not** involve **Dishonesty in a 5-4 vote.**
 - c. The identified conduct **did not** involve a **Disregard for the Rights of Others.**
 - d. The identified conduct **did not** involve **Misuse of Authority.**
 - e. The identified conduct **did not** involve **Gross Misconduct.**
 - f. The identified conduct **did not** involve **Misconduct.**
 - g. The identified conduct **did not** involve **Insubordination.**
- *The Police Policy Committee did not find conduct that rises to warrant revocation, therefore, recommends to the Board that JAYNE's certification(s) not be revoked.*

4. **Michael C. Pratt, Tualatin Police Department – DPSST #47013**

Presented by Leon Colas

See Appendix D for details

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Ryan Humphrey seconded the motion. The motion carried unanimously with Kent Barker abstaining.*
- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case. *Misconduct based on socializing with known problem individuals and insubordination based on not following through with calling out on calls when repeatedly instructed to.***

- b. The identified conduct ***did not*** involve **Dishonesty**.
- c. The identified conduct ***did not*** involve a **Disregard for the Rights of Others**.
- d. The identified conduct ***did not*** involve **Misuse of Authority**.
- e. The identified conduct ***did not involve*** **Gross Misconduct**.
- f. The identified conduct ***did*** involve **Misconduct based on PRATT socializing with friends at a known “problem house” and unauthorized use of a department computer by accessing Facebook**.
- g. The identified conduct ***did*** involve **Insubordination based on PRATT being told repeatedly by his sergeant to call out on calls and he did not do that. When conducting bar checks, he would socialize with patrons**.

By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances.

The committee did not note any mitigating circumstances.

The policy committee noted as aggravating circumstances PRATT not responding to DPSST. His behavior showed that he was on a path down a wrong road. He would log onto Facebook while on duty. He was warned about the lack of discretion and did not listen.

- *Glen Scruggs moved that the Policy Committee finds PRATT’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. Craig Halupowski seconded the motion. The motion carried unanimously.*
- *Glen Scruggs moved that the Police Policy Committee recommends to the Board that PRATT’s conduct encapsulated the highest end of the categories noted above with a focus on MISCONDUCT, therefore recommending a seven year revocation; PRATT may reapply for certification in seven years. Ryan Humphrey seconded the motion. The motion carried unanimously with Kent Barker abstaining.*

5. John P. Shadron, Portland Police Bureau – DPSST #37126

Presented by Leon Colas

See Appendix E for details

- *Ryan Humphrey moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.*
- By discussion and consensus:

- a. Identify the conduct that is at issue, specific to this case: ***DUII and reckless driving conviction.***
- 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 his DUII conviction.**
- f. The identified conduct ***did*** involve **Misconduct based on his DUII 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 policy committee found as mitigating circumstances the letter written by the chief in support of SHADRON. He was disciplined at work. SHADRON went through the court process. It was the consensus that the bureau handled the incident appropriately.

The policy committee did not find any aggravating circumstances.

- *Craig Halupowski moved that the Police Policy Committee finds SHADRON's conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Glen Scruggs seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.*

6. Dennis T. Swanberg, Canby Police Department – DPSST #13706

Presented by Leon Colas

See Appendix F for details

- *Ryan Humphrey moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case.**
Dishonesty based on SWANBERG being deceptive while interviewed.

- b. The identified conduct did involve **Dishonesty in a 7-2 vote, based on SWANBERG being deceptive when interviewed; he omitted facts and was evasive.**
- c. The identified conduct did involve a **Disregard for the Rights of Others in a 7-2 vote, based on SWANBERG not taking action to protect one from another.**
- d. The identified conduct did not involve **Misuse of Authority.**
- e. The identified conduct did not involve **Gross Misconduct.**
- f. The identified conduct did involve **Misconduct based on SWANBERG not following policies and procedures and not taking a report of abuse.**
- 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 aggravating circumstances SWANBERG received training in Karly's Law two weeks prior. He was a 28-year veteran of law enforcement and knows that he needs to write reports.

The committee did not identify any mitigating circumstances.

- *Craig Halupowski moved that the Police Policy Committee finds SWANBERG'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. Eric Hendricks seconded the motion. The motion carried in an 8-1 vote.*
- *Eric Hendricks moved that the Police Policy Committee recommends to the Board that SWANBERG's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore recommending a lifetime revocation; SWANBERG may never reapply for certification. Craig Halupowski seconded the motion. The motion carried in a 7-3 vote.*

7. **Randy B. Vanderhoof, Portland Police Bureau – DPSST #25521**

Presented by Leon Colas

See Appendix G for details

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Joel Lujan seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.*
- By discussion and consensus:

- h. Identify the conduct that is at issue, specific to this case: *DUII conviction*.
- i. The identified conduct *did not* involve **Dishonesty**.
- j. The identified conduct *did not* involve a **Disregard for the Rights of Others**.
- k. The identified conduct *did not* involve **Misuse of Authority**.
- l. The identified conduct *did* involve **Gross Misconduct based on his DUII conviction**.
- m. The identified conduct *did* involve **Misconduct based on his DUII conviction**.
- n. The identified conduct *did not* involve **Insubordination**.

By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances.

The policy committee found as mitigating circumstances the letter written by the chief in support of VANDERHOOF. He was disciplined at work. He went through alcohol classes. VANDERHOOF was cooperative with the arresting officer. Discipline was handled internally. VANDERHOOF participated to make a video to raise awareness of driving under the influence.

The policy committee did not find any aggravating circumstances.

- *Craig Halupowski moved that the Police Policy Committee finds VANDERHOOF's conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Tom Bergin seconded the motion. The motion carried unanimously with Eric Hendricks abstaining.*

8. Staff Report

By Eriks Gabliks

DPSST will be hosting two classes in the next quarter. The International Association of Chiefs of Police is hosting a class about working with Alzheimer's. This class is slated for May. The next class we are hosting is the Below 100 Training Program. It is a national outreach to bring the number of law officers killed down around the country.

The Board approved the changes that the committee moved forward in regard to the Basic Police 16 week curriculum. This will take effect in the January class, BP 335.

The Board approved the changes to the intermediate and advanced matrix for certifications.

There has been an uptick in hiring by the larger agencies from around the state. OSP is looking to potentially hire 40 in the spring. The down side is it's attrition hiring. There has

not been any growth in jobs. DPSST has added another class in the spring to accommodate the hiring.

There has been interest in running another Police to Corrections class. As of right now, there haven't been enough students interested to run a class yet.

Klamath County elected a Sheriff that will be attending the 16 week academy due to his absence in law enforcement for over 20 years.

The Field Training Evaluation Program review committee met to update the training manual. Two sections that will be added to the manual will be Ethics and Health and Wellness. DPSST will be beefing up local mental health services, homeless contacts, and handcuffing the mentally ill.

The Portland City Council has approved a training facility for the City of Portland Police Bureau. It is not in competition with DPSST. It will be an in-service facility.

Marilyn Lorange is retiring at the end of December. She has agreed to stay on in a limited basis during the legislative session to help with the transition.

Marilyn:

The workgroup representing telecommunications, corrections, and police met and reviewed the content of all of the crimes that had been identified as a part of HB2712 and made recommendations that will be coming back to the committees. In the course of the conversation, they wanted to answer a more global question about whether there will be a way to better address crimes that are only in the misconduct category. That required Lorraine Anglemier to go back and work on comparing existing crimes that are only in the misconduct category. They are in the category because they violate the law, not the other minimum standards definitions. Lorraine is still doing the comparison work. We hope to have information by early December for the workgroup members to make decisions that will come back to the policy committees in February.

9. Next Police Policy Committee Meeting –February 21, 2013 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 3:24 p.m.

Appendix A

Police Policy Committee Minutes August 16, 2012

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on August 16, 2012 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:40 p.m. by Glen Scruggs.

Attendees

Policy Committee Members:

Larry Blanton, Oregon State Sheriffs' Association
Richard Evans, Oregon State Police Command Officer
Craig Halupowski, Non-Management Law Enforcement
Eric Hendricks, Portland Police Bureau (Designee for Chief Mike Reese)
Ryan Humphrey, Non-Management Law Enforcement
James Hunter, Oregon Association Chiefs of Police
Glen Scruggs, Non-Management Law Enforcement
Marc Tisher, Non-Management Law Enforcement
Mike Wells, Non-Management Law Enforcement
Mathew Workman, Oregon Association Chiefs of Police

Committee Members Absent:

Kent Barker, Chair, Oregon Association Chiefs of Police
Tom Bergin, Oregon State Sheriffs' Association
Holly Russell, Oregon State Sheriffs' Association

DPSST Staff:

Eriks Gabliks, Director
Todd Anderson, Training Division Director
Marilyn Lorange, Standards and Certification Program Supervisor
Leon Colas, Professional Standards Coordinator/Investigator
Linsay Hale, Rules and Compliance Coordinator
Kristy Witherell, Administrative Support

Guests:

Steve Beck, Oregon Council of Police Associations
Anthony Barnett, Umatilla Tribal Police Department
Tim Addleman, Umatilla Tribal Police Department
Paul Johnson, University of Phoenix



10. Minutes of May 17, 2012 Meeting

Approve minutes from the May 17, 2012 meeting.

See Appendix A for details

- *James Hunter moved to approve the minutes from the May 17, 2012 Police Policy Committee meeting. Mike Wells seconded the motion. The motion carried unanimously.*

11. House Bill 2712

Presented by Leon Colas

See Appendix B for details

- *DPSST requests the Police Policy Committee identify two members to participate in a single workgroup meeting to review the recommendations and report back to the Policy Committee in November.*
- *Ryan Humphrey and Joel Lujan volunteered to participate in the workgroup.*
- *Marilyn Lorange will contact everyone involved in the workgroup to set up a meeting in September.*
- *The proposal will come back to the committee in November for formal approval of the proposed rule.*

12. OAR 259-008-0005, 259-008-0060, 259-008-0065 – Proposed Rules

Presented by Linsay Hale

See Appendix C for details

- *Larry Blanton moved that the Police Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0005, 259-008-0060, & 259-008-0066 with the Secretary of State as proposed rules and make them permanent if no comments are received. Ryan Humphrey seconded the motion. The motion carried unanimously.*

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

13. Update from the Curriculum Review Committee

Presented by Todd Anderson

See Appendix D for details.

- *Rich Evans moved that the Police Policy Committee recommends to the Board approval of the proposed new curriculum as presented by the Curriculum Review Committee. Mike Wells seconded the motion. The motion carried unanimously.*

14. Anthony L. Barnett, La Grande Police Department – DPSST #37913

Presented by Leon Colas

See Appendix E for details

- *Ryan Humphrey moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Rich Evans seconded the motion. The motion carried unanimously with Mike Wells abstaining.*
- By discussion and consensus:
 - h. Identify and articulate the **misconduct that is specific to this case. Violation of the last chance agreement, untruthfulness, harassment, sexual harassment, immoral conduct, and unprofessional conduct.**
 - i. The identified conduct did not involve **Dishonesty; determined in an 8-2 vote.**
 - j. The identified conduct did not involve a **Disregard for the Rights of Others.**
 - k. The identified conduct did not involve **Misuse of Authority; determined in a 6-4 vote.**
 - l. The identified conduct did involve **Gross Misconduct; determined in a 6-4 vote based on BARNETT's behavior which was a civil liability to the department. BARNETT's failure to act created a danger/risk to persons. Barnett failed to follow the last chance agreement.**
 - m. The identified conduct did involve **Misconduct based on BARNETT's inappropriate sexually-based conversations in the workplace. BARNETT made sexually descriptive comments with other employees while on duty. BARNETT ran vehicle plates for personal reasons.**
 - n. The identified conduct did involve **Insubordination based on BARNETT's violation of his last chance agreement.**

By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances BARNETT being in attendance for the policy committee meeting and his letter to the committee. BARNETT has a wealth of support from his current employer and his former Chief. BARNETT was hired by another agency after he was fired by La Grande Police Department.

The committee noted as aggravating circumstances the age of the female BARNETT was inappropriate with. BARNETT violated his last chance agreement. This behavior was on going by BARNETT.

- *Larry Blanton moved that the Police Policy Committee finds BARNETT'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. Rich Evans seconded the motion. The motion carried in a 7-3 vote.*
- *The Police Policy Committee voted on the categories listed below and recommends to the Board that BARNETT's conduct receive the following periods of ineligibility:*
 - Category IV: Gross Misconduct (5 years to 10 years). *Rich Evans moved that the Police Policy Committee recommend to the Board a five year revocation based on Gross Misconduct. Larry Blanton seconded the motion. The motion carried in a 7-3 vote.*
 - Category V: Misconduct (3 years to 7 years). *Larry Blanton moved that the Police Policy Committee recommend to the Board a three year revocation based on Misconduct. Rich Evans seconded the motion. The motion carried unanimously.*
 - Category VI: Insubordination (3 years to 7 years). *Rich Evans moved that the Police Policy Committee recommend to the Board a three year revocation based on Insubordination. Mathew Workman seconded the motion. The motion carried unanimously.*
- *Since the Police Policy Committee voted for the lowest level of the Gross Misconduct category—a five year revocation, BARNETT may reapply for certification in five years.*

15. Daniel R. Grice, Springfield Police Department – DPSST #45505

Presented by Leon Colas

See Appendix F for details

- *Rich Evans moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify and articulate the **misconduct** that is specific to this case. *GRICE's 2011 DUII conviction.*
 - 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 GRICE's DUII arrest**.
- 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 policy committee must identify and consider any mitigating and aggravating circumstances.
The committee noted as mitigating circumstances the letter of support from Chief Smith. GRICE took responsibility for his actions. GRICE completed alcohol treatment.

The policy committee did not identify any aggravating circumstances.

- *Craig Halupowski moved that the Police Policy Committee finds GRICE's conduct **does not** rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) **not be revoked**. Mike Wells seconded the motion. The motion carried unanimously.*

16. Adam Hartlaub, Washington County Sheriff's Office – DPSST #49788

Presented by Leon Colas

See Appendix G for details

- *Craig Halupowski moved that the Police Policy Committee **adopts** the staff report as the record upon which its recommendations are based. Joel Lujan seconded the motion. The motion carried unanimously with Rich Evans abstaining.*
- By discussion and consensus:
 - h. Identify and articulate the **misconduct that is specific to this case**. *Violation of Agency Policy*
 - i. The identified conduct **did not** involve **Dishonesty in an 8-1 vote**.
 - j. The identified conduct **did not** involve a **Disregard for the Rights of Others**.
 - k. The identified conduct **did not** involve **Misuse of Authority**.
 - l. The identified conduct **did not** involve **Gross Misconduct**.

- m. The identified conduct did involve **Misconduct based on HARTLAUB cheating on a test.**
- n. 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 HARTLAUB being 25 years old when the offense happened. He was a three-year deputy. His Sheriff supports him. HARTLAUB was honest when he was confronted with cheating on the test.

The policy committee did not identify any aggravating circumstances.

- *Craig Halupowski moved that the Policy Committee finds HARTLAUB's conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Larry Blanton seconded the motion. The motion carried unanimously.*

17. Kip D. Oswald, North Bend Police Department – DPSST #08674

Presented by Leon Colas

See Appendix H for details

- *Rich Evans moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - h. Identify and articulate the **misconduct that is specific to this case.**
Untruthfulness based on OSWALD forging a doctor's note.
 - i. The identified conduct did involve **Dishonesty based on OSWALD being deceptive about forging the doctor's note.**
 - j. The identified conduct did not involve a **Disregard for the Rights of Others.**
 - k. The identified conduct did not involve **Misuse of Authority.**
 - l. The identified conduct did not involve **Gross Misconduct.**
 - m. The identified conduct did involve **Misconduct based on OSWALD forging the doctor's note and taking sick days when he was not sick.**
 - n. 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 aggravating circumstances OSWALD stated he did not want to return to work. The letter submitted by the Chief was aggravating.

The committee did not identify and mitigating circumstances

- *Mike Wells moved that the Police Policy Committee finds OSWALDS'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. Craig Halupowski seconded the motion. The motion carried unanimously.*
- *The Police Policy Committee voted on the categories listed below and recommends to the Board that BARNETT's conduct receive the following periods on ineligibility:*

Category I: Dishonesty (5 years to lifetime). *James hunter moved that the Police Policy Committee recommend to the Board a five year revocation based on Dishonesty. Larry Blanton seconded the motion. The motion carried in a 6-4 vote.*

Category V: Misconduct (3 years to 7 years). *Larry Blanton moved that the Police Policy Committee recommend to the Board a three year revocation based on Misconduct. Craig Halupowski seconded the motion. The motion carried in a 9-1 vote.*

- *Since the Police Policy Committee voted for the lowest level of the Dishonesty category—a five year revocation, OSWALD may reapply for certification in five years.*

18. John H. Thorndike, Umatilla Tribal Police Department – DPSST #42494

Presented by Leon Colas

See Appendix I for details

- *Rich Evans moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.*
- *Mike Wells moved that the new evidence provided does not have enough information to change the previous vote which was not to revoke certifications. Craig Halupowski seconded the motion. The motion carried unanimously.*

19. Daniel E. Woodring, Douglas County Sheriff's Office – DPSST #45529

Presented by Leon Colas

See Appendix J for details

- ***Rich Evans moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Ryan Humphrey seconded the motion. The motion carried unanimously.***
- By discussion and consensus:
 - o. Identify the conduct that is at issue, specific to this case: ***Insubordination.***
 - p. The identified conduct ***did not*** involve **Dishonesty**
 - q. The identified conduct ***did not*** involve a **Disregard for the Rights of Others**
 - r. The identified conduct ***did not*** involve **Misuse of Authority**
 - s. The identified conduct ***did not*** involve **Gross Misconduct**
 - t. The identified conduct ***did not*** involve **Misconduct**
 - u. The identified conduct ***did*** involve **Insubordination based on WOODRING not following directions from a supervisor. WOODRING did not follow up with finishing a report when directed to.**

By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances.

The policy committee did not identify and mitigating or aggravating circumstances.

- ***Craig Halupowski moved that the Police Policy Committee finds WOODRING's conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. James Hunter seconded the motion. The motion carried unanimously.***

20. Additional Business

Director's Report:

Former Board Chair Todd Anderson is on staff as our new Training Division Director.

We have phased back in one Basic Police class because of an uptick of hiring. The class starts October 15th.

DPSST will be hosting the Leadership Symposium in October. This is done in partnership with the Chiefs and Sheriffs, OEDI, DOC, and State Police.

The matrix for intermediate and advanced certification is going out for public comment. This process should go pretty smoothly.

Mike Wells:

OPOA is having its awards banquet in November. OPOA is looking for more awards submissions from around the state.

21. Next Police Policy Committee Meeting – November 15, 2012 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 3:45 p.m.

Appendix B

Department of Public Safety Standards and Training Memorandum

DATE: November 15, 2012

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: RICHARD L. COUFAL DPSST #25208
Multnomah County Sheriff's Office**

ISSUE:

Should Richard L. Coufal's Basic, Intermediate and Advanced Police 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?

The issue in this case involves Coufal's conduct surrounding his retirement while under investigation for allegations of falsifying court overtime and untruthfulness during the investigation.

BACKGROUND and OVERVIEW:

1. *On November 20, 1990, COUFAL was hired by the Multnomah County Sheriff's Office as a deputy sheriff.¹ He signed his Criminal Justice Code of Ethics² and ultimately obtained Basic, Intermediate and Advanced Police certifications.³*
2. *In April 2012, DPSST received an F-4 Personnel Action Report, showing COUFAL had retired on April 16, 2012 while under investigation.⁴ DPSST sought and obtained the information relating to the retirement.⁵*
3. *In September 2012, DPSST notified COUFAL via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.⁶*

¹ Ex A1

² Ex A2

³ Ex A1

⁴ Ex A3

⁵ Ex A4

⁶ Ex A5

4. COUFAL provided a response.⁷

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; (Comment: Conduct underlying the mandatory disqualifying misdemeanors involving these elements in Subsection (D) and the Category I offenses in section (4), is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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. (Comment: Conduct underlying the

⁷ Ex A6

Category II offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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.

(Comment: Conduct underlying the Category III offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category IV offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category V offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.) 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, 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 COUFAL’s certifications 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 COUFAL'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):

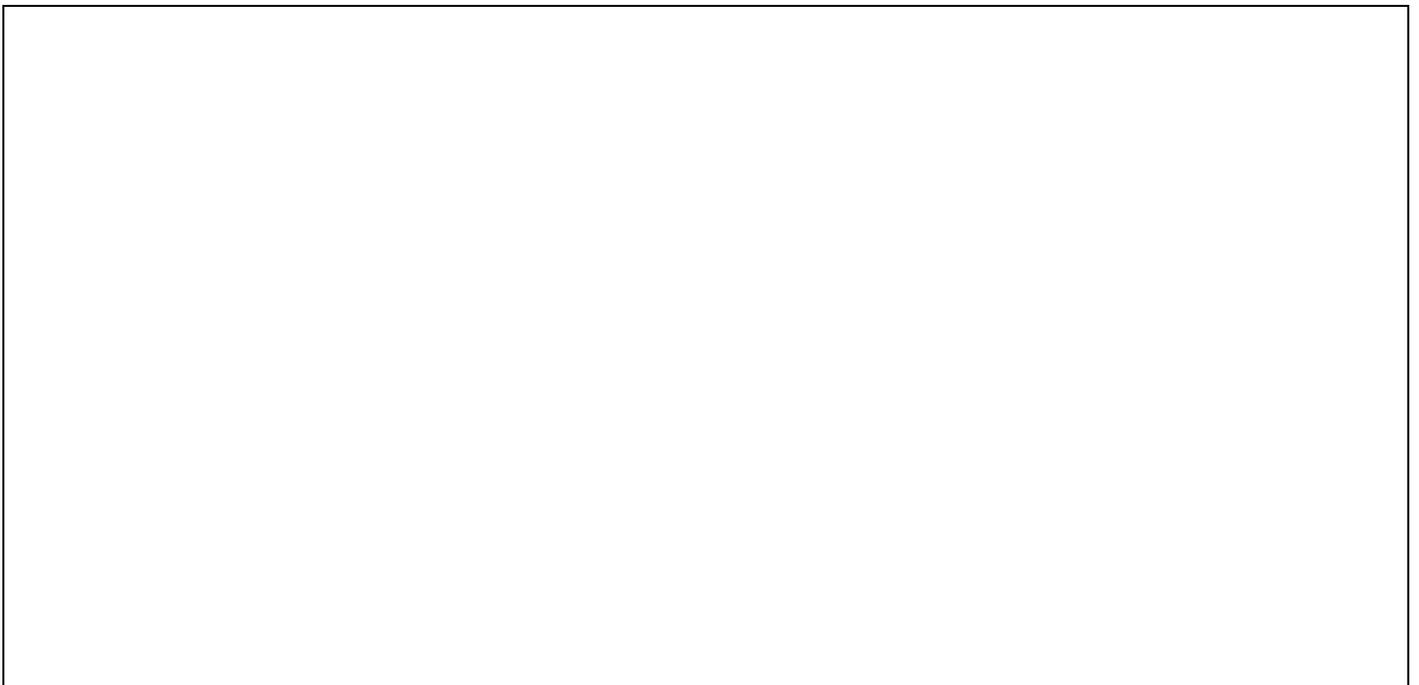
Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the

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.

Attachments

A large empty rectangular box with a black border, intended for attachments. It occupies the lower half of the page.

Appendix C

Department of Public Safety Standards and Training Memorandum

DATE: November 15, 2012

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JOHN T. JAYNE DPSST #44146
Hillsboro Police Department**

ISSUE:

Should John T. Jayne's Basic and Intermediate Police 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?

The issue in this case involves Jayne's conduct surrounding his probationary discharge subsequent to a call he made while off-duty to report missing firearms.

BACKGROUND and OVERVIEW:

5. *On March 22, 2004, JAYNE was hired by the Tualatin Police Department as a police officer.⁸ He signed his Criminal Justice Code of Ethics⁹ and ultimately obtained Basic and Intermediate Police certifications.¹⁰ On November 4, 2011, JAYNE resigned from the Tualatin Police Department and on November 8, 2011 he was hired by the Hillsboro Police Department as a police officer.¹¹*
6. *In December 2011, DPSST received an F-4 Personnel Action Report, showing JAYNE had received a probationary discharge on November 23, 2011.¹² DPSST sought and obtained information relating to the probationary discharge.¹³*

⁸ Ex A1

⁹ Ex A2

¹⁰ Ex A1

¹¹ Ex A1

¹² Ex A3

¹³ Ex A4

7. *In September 2012, DPSST notified JAYNE via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*¹⁴
8. *JAYNE provided a response.*¹⁵

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; (Comment: Conduct underlying the mandatory disqualifying misdemeanors involving these elements in Subsection (D) and the Category I offenses in section (4), is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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

¹⁴ Ex A5

¹⁵ Ex A6

fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public. (Comment: Conduct underlying the Category II offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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. (Comment: Conduct underlying the Category III offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category IV offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category V offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.) 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, 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 JAYNE's certifications 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 JAYNE'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.

Attachments

Appendix D

Department of Public Safety Standards and Training
Memorandum

DATE: November 15, 2012

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: MICHAEL C. PRATT DPSST #47013
Tualatin Police Department**

ISSUE:

Should Michael C. Pratt's Basic Police 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?

The issue in this case involves Pratt's conduct surrounding his resignation while under investigation for violations of department policies including Performance, Enforcement, and Documentation of Activity, as well as allegations of dishonesty during the investigation.

BACKGROUND and OVERVIEW:

9. *On January 22, 2008, PRATT was hired by the Tualatin Police Department as a police officer.¹⁶ He signed his Criminal Justice Code of Ethics¹⁷ and ultimately obtained his Basic police certification.¹⁸*
10. *In May 2012, DPSST received an F-4 Personnel Action Report, showing PRATT had resigned effective May 10, 2012 during an internal investigation.¹⁹ DPSST sought and obtained the information relating to the resignation.²⁰*
11. *In September 2012, DPSST notified PRATT via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.²¹ PRATT did not provide a response.*

¹⁶ Ex A1

¹⁷ Ex A2

¹⁸ Ex A1

¹⁹ Ex A3

²⁰ Ex A4

²¹ Ex A5

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; (Comment: Conduct underlying the mandatory disqualifying misdemeanors involving these elements in Subsection (D) and the Category I offenses in section (4), is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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. (Comment: Conduct underlying the Category II offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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.

(Comment: Conduct underlying the Category III offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category IV offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category V offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.) 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, 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 PRATT's certification 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 PRATT'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*.

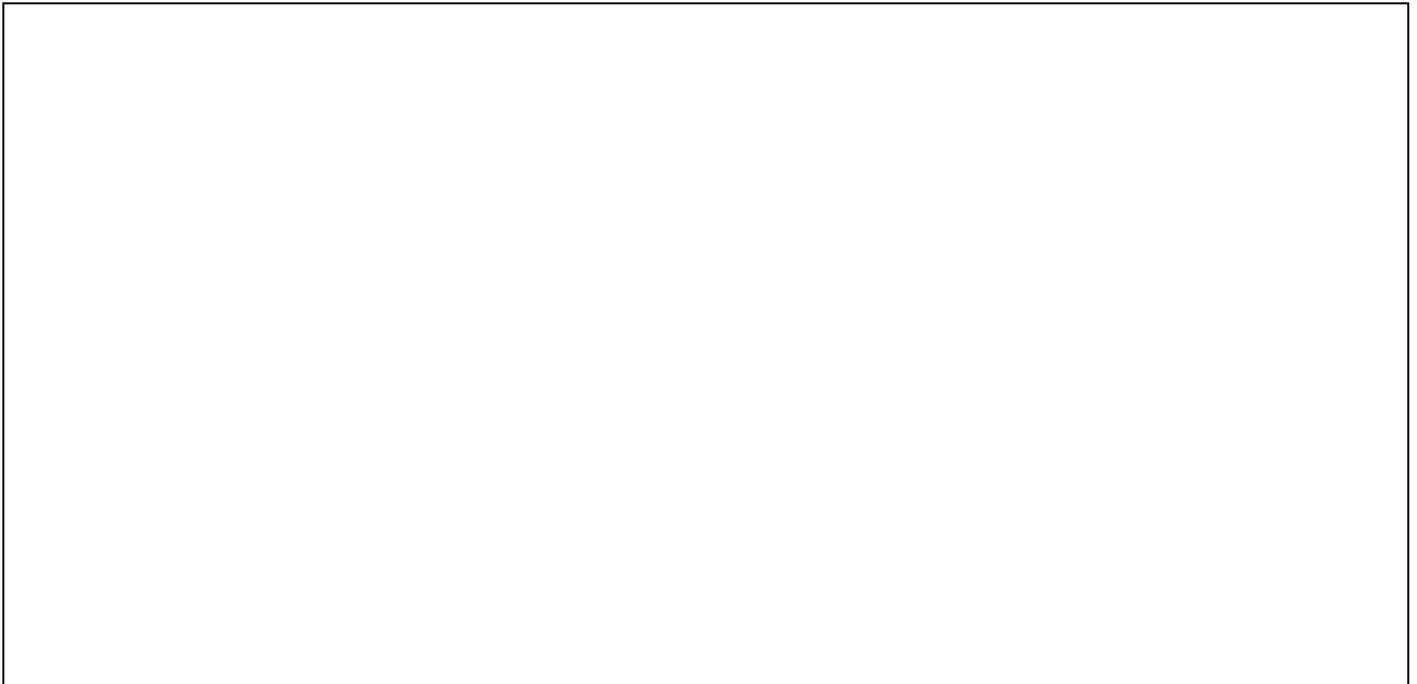
ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

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.

Attachments

A large, empty rectangular box with a thin black border, intended for attachments. It occupies the lower half of the page.

Appendix E

Department of Public Safety Standards and Training Memorandum

DATE: November 15, 2012

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JOHN P. SHADRON DPSST #37126
Portland Police Bureau**

ISSUE:

Should John P. SHADRON's Basic, Intermediate and Advanced Police certifications be revoked based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4), and as referenced in OAR 259-008-0010?

The issue in this case involves SHADRON's conduct surrounding his 2011 conviction for DUII and Reckless Driving.

BACKGROUND and OVERVIEW

- 1. In February 1999, SHADRON was hired as a police officer by the Portland Police Bureau.²² He signed his Code of Ethics,²³ and ultimately obtained his Basic, Intermediate and Advanced Police certifications.²⁴*
- 2. In July 2011, DPSST received information that SHADRON had pled guilty to DUII and Reckless Driving in Multnomah County Circuit Court.²⁵ Subsequently, DPSST sought and obtained the information leading to SHADRON's convictions.²⁶ SHADRON had originally*

²² Ex A1

²³ Ex A2

²⁴ Ex A1

²⁵ Ex A3

²⁶ Ex A4, A5

*been charged with seven counts of criminal conduct, but five of those were dismissed pursuant to civil compromise, resulting in the two convictions.*²⁷

3. *In August 2011, DPSST notified SHADRON via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*²⁸
4. *SHADRON provided a response.*²⁹
5. *This matter was scheduled to be heard by the PPC on November 17, 2011. Prior to that meeting, the agency requested that DPSST hold the matter pending resolution of the agency's internal investigation and discipline, if any. DPSST agreed to pend the case.*
6. *In September 2012, DPSST received the final documents regarding the internal investigation as well as the documentation from the Independent Police Review Board.*³⁰
7. *In September 2012, DPSST notified SHADRON via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*³¹
8. *SHADRON provided a new response for the PPC.*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

²⁷ Ex A3, A4, A5

²⁸ Ex A6

²⁹ Ex A7

³⁰ Ex A10

³¹ Ex A11

³² Ex A12

(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; (Comment: Conduct underlying the mandatory disqualifying misdemeanors involving these elements in Subsection (D) and the Category I offenses in section (4), is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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. (Comment: Conduct underlying the Category II offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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. (Comment: Conduct underlying the Category III offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category IV offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category V offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.) 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:

** * **

811.140 (Reckless Driving) – Category IV.

** * **

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

** * **

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of both DUI and Reckless Driving as Category IV, Gross Misconduct, based on the elements of the crimes. They carry a presumptive length of ineligibility for reconsideration of 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;*

(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 SHADRON's certification(s) based on discretionary disqualifying misconduct:

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 a **Disregard for the Rights of Others.**

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

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

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

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

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

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

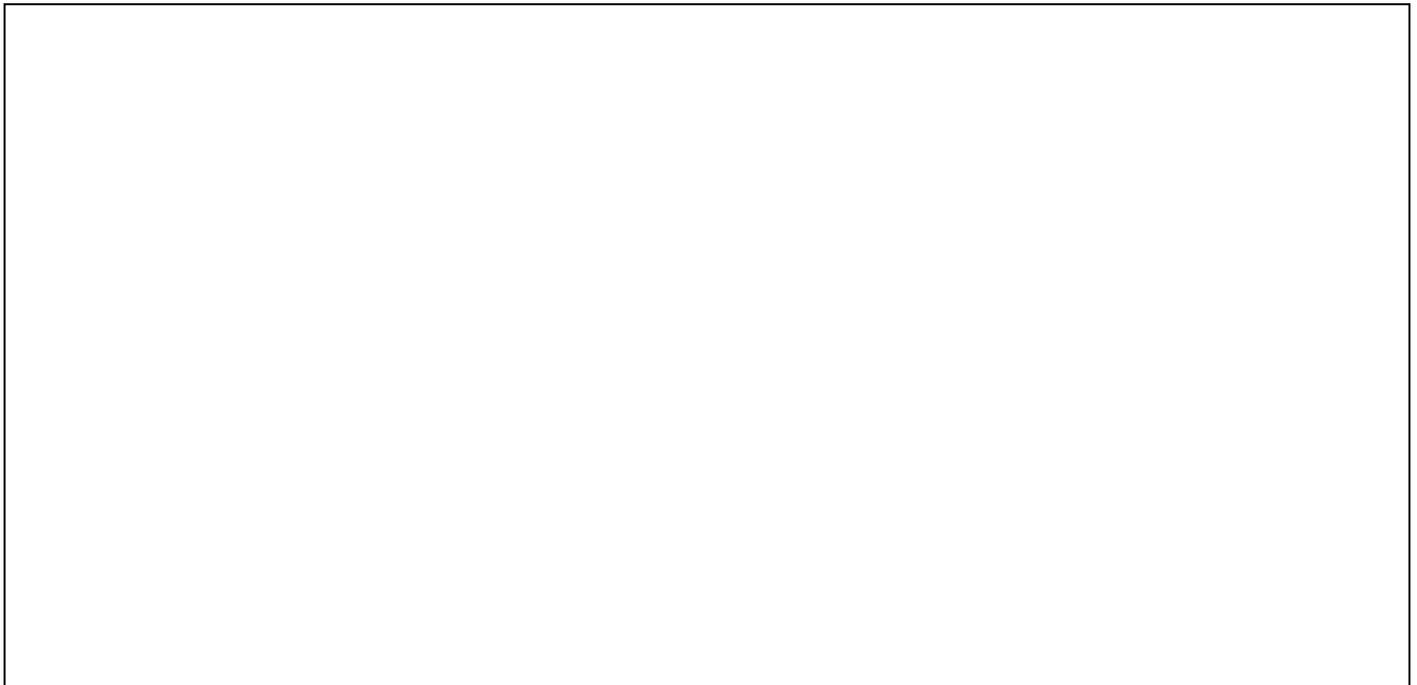
ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

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



Appendix F

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

DATE: November 15, 2012

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: DENNIS T. SWANBERG DPSST #13706
Canby Police Department**

ISSUE:

Should Dennis T. Swanberg's Basic, Intermediate, Advanced and Supervisory Police 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?

The issue in this case involves Swanberg's conduct surrounding his retirement while under investigation for violations of department policies relating to standards of conduct, professional ethics and standards, performance, and truthfulness.

BACKGROUND and OVERVIEW:

12. *On May 1, 1995, SWANBERG was hired by the Canby Police Department as a police officer.³³ He signed his Criminal Justice Code of Ethics³⁴ and ultimately obtained Basic, Intermediate, Advanced and Supervisory Police certifications.³⁵*
13. *In June 2012, DPSST received an F-4 Personnel Action Report, showing SWANBERG had retired on June 18, 2012 while under an internal investigation.³⁶ DPSST sought and obtained the information relating to the resignation.³⁷*
14. *In September 2012, DPSST notified SWANBERG via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.³⁸*

³³ Ex A1

³⁴ Ex A2

³⁵ Ex A1

³⁶ Ex A3

³⁷ Ex A4 - A5

³⁸ Ex A6

15. SWANBERG provided a response.³⁹

16. After receipt of SWANBERG's response, DPSST followed up on some of his assertions and obtained more information from the agency to respond to those assertions.⁴⁰

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; (Comment: Conduct underlying the mandatory disqualifying misdemeanors involving these elements in Subsection (D) and the Category I offenses in section (4), is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

³⁹ Ex A7

⁴⁰ Ex A8

(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. (Comment: Conduct underlying the Category II offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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. (Comment: Conduct underlying the Category III offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category IV offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category V offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.) 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, 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 SWANBERG's certifications 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 SWANBERG'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*.

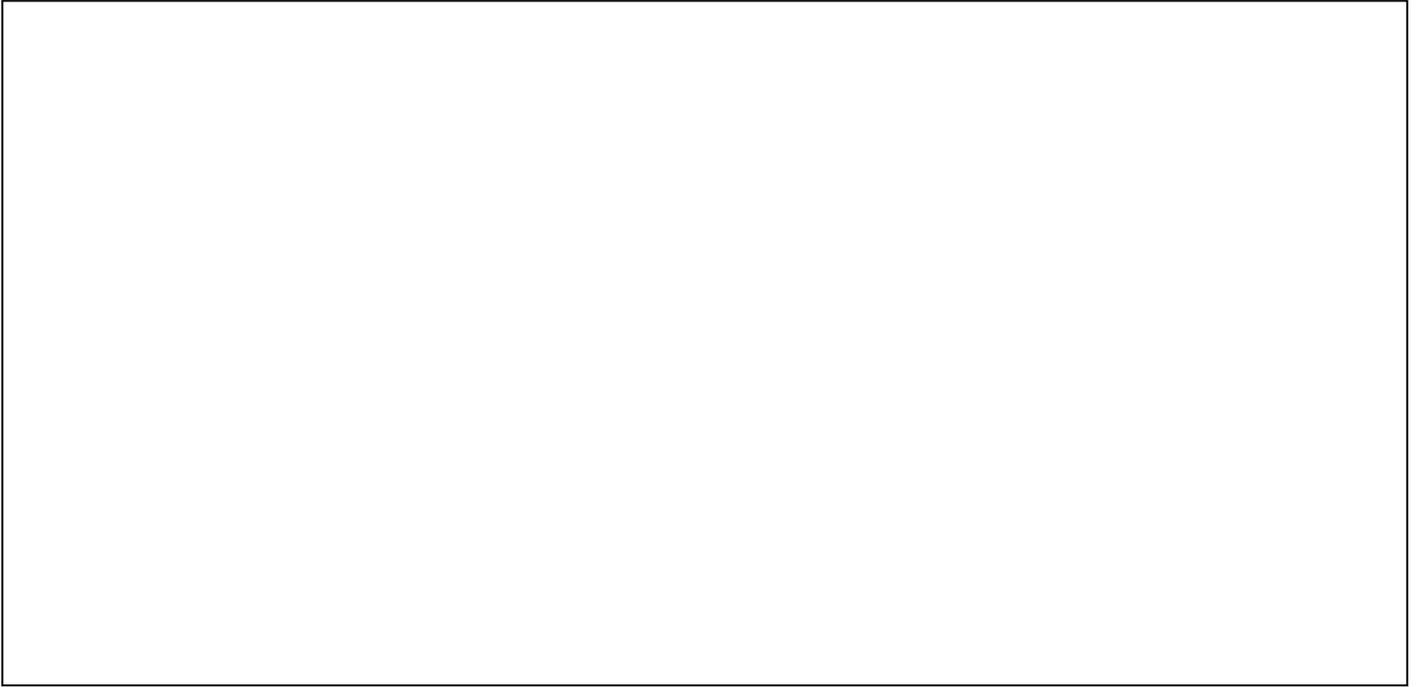
ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

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



Appendix G

Department of Public Safety Standards and Training Memorandum

DATE: November 15, 2012

TO: Police Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: RANDY B. VANDERHOOF DPSST #25521
Portland Police Bureau**

ISSUE:

Should Randy B. Vanderhoof's Basic, Intermediate and Advanced Police certifications be revoked based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4), and as referenced in OAR 259-008-0010?

The issue in this case involves VANDERHOOF's conduct surrounding his 2012 conviction for Driving Under the Influence of Intoxicants.

BACKGROUND and OVERVIEW:

9. *On March 12, 1992, VANDERHOOF was hired as a police officer by the Portland Police Bureau.⁴¹ He signed his Code of Ethics,⁴² and ultimately obtained his Basic, Intermediate and Advanced Police certifications.⁴³*
10. *In September 2011, DPSST received information that VANDERHOOF had been arrested for DUII by the Clackamas County Sheriff's Office.⁴⁴ DPSST monitored the matter and in March 2012 learned that VANDERHOOF was convicted of the offense on February 15, 2012.⁴⁵ Subsequently, DPSST sought and obtained the information leading to VANDERHOOF's conviction.⁴⁶*

⁴¹ Ex A1

⁴² Ex A2

⁴³ Ex A1

⁴⁴ Ex A3

⁴⁵ Ex A4

⁴⁶ Ex A5

11. In September 2012, DPSST notified VANDERHOOF via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.⁴⁷

12. VANDERHOOF provided a response.⁴⁸

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:

⁴⁷ Ex A6

⁴⁸ Ex A7

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification; (Comment: Conduct underlying the mandatory disqualifying misdemeanors involving these elements in Subsection (D) and the Category I offenses in section (4), is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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. (Comment: Conduct underlying the Category II offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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. (Comment: Conduct underlying the Category III offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category IV offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(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; (Comment: Conduct underlying the Category V offenses in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.) 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:

** * **

813.010 (Driving Under the Influence of Intoxicants) – 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 of 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 VANDERHOOF's certification(s) based on discretionary disqualifying misconduct:

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 a **Disregard for the Rights of Others**.

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

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

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

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

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

25. By vote, the Policy Committee finds VANDERHOOF's conduct *does/does not* rise to the level to warrant the denial 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

