

# Corrections Policy Committee

## Minutes

### August 19, 2008

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, August 19, 2008 at 1:30 p.m. in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located at 4190 Aumsville Hwy. SE., Salem, Oregon. Chair Todd Anderson called the meeting to order at 1:34 p.m.

#### **Attendees:**

##### **Committee Members:**

Todd Anderson, Oregon State Sheriffs' Association, Chair  
Brian Belleque, Designee for Director of Department of Corrections  
Scott Brewen, Department of Corrections Training Division Director  
Bryan Goodman, Non-Management Corrections Officer  
Ida Rovers, Department of Corrections, Women's Correctional Facility  
Mitchell Southwick, Oregon State Sheriffs' Association  
Marie Tyler, Oregon Sheriff's Jail Command Council  
Thomas Wright, DOC Bargaining Unit Representative

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

Raimond Adgers, Oregon Sheriff's Jail Command Council  
Michael Gower, Department of Corrections Security Manager  
Shane Hagey, Oregon Assoc. of Community Corrections Directors

#### **Guests:**

Cheryl Pellegrini, Attorney General's Office  
Reyes Daniel Romayor, Jr.

#### **DPSST Staff:**

Eriks Gabliks, Deputy Director  
Carolyn Kendrick, Administrative Specialist  
Marilyn Lorange, Certification and Records Supervisor  
Bonnie Salle, Certification Coordinator  
Theresa King, Professional Standards Coordinator  
Steve Winegar, Research and Development  
Kristen Turley, Standards and Compliance Coordinator  
Cameron Campbell, Director of Training  
Ryan Keck, Training Coordinator



#### **1. Minutes (May 20, 2008)**

Approve the minutes of the May 20, 2008 Corrections Policy Committee meeting.

*See Appendix A for details.*

*Marie Tyler moved to approve the minutes of the May 20, 2008 Corrections Policy Committee meeting. Bryan Goodman seconded the motion. The motion carried unanimously by all voting.*

2. **OAR 259-008-0010 – Hearing Officer’s Report**

Denial or Revocation of Certification

Presented by Bonnie Salle-Narvaez

*See Appendix B(1-3) for details.*

*Mitchell Southwick moved to adopt the proposed rule language previously submitted to the Corrections Policy Committee, amending OAR 259-008-0010, as a permanent rule. Marie Tyler seconded the motion. The motion carried unanimously by all voting.*

3. **OAR 259-008-0070 – Hearing Officer’s Report**

Denial or Revocation of Certification

Presented by Bonnie Salle-Narvaez

*See Appendix C(1-3) for details.*

*Brian Belleque moved to adopt the attached version of the proposed rules amending OAR 259-008-0070 as a permanent rule with the identified additional modifications to the original proposed rule language. Marie Tyler seconded the motion. The motion carried unanimously by all voting.*

4. **Convene in Executive Session**

The committee convened in executive session at 1:50 p.m. to discuss matters exempt from disclosure under ORS 92.662(2)(f) related to whether a medical waiver should or should not be granted for Brian Kinney.

5. **Reconvene in Regular Session**

The committee reconvened in regular session at 2:07 p.m. to determine whether or not to recommend approval to the Board for a waiver of the color vision standard for Brian Kinney.

*See Appendix D for details*

*Marie Tyler moved to recommend getting clarification on documents that appear to be in disagreement with each other. Ida Rovers seconded the motion.*

*Brian Belleque stated that both the doctor’s evaluation as well as the field test have contradicting information and need to be clarified.*

*The motion carried unanimously by all voting.*

6. **Johnny Hawkins – DPSST #26585**

Presented by Theresa King

*See Appendix E for details*

**Convene in Executive Session**

The committee convened in executive session at 2:13 p.m. to discuss matters exempt from disclosure under ORS 92.662(2)(f) related to medical issues related Johnny Hawkins’ case.

**Reconvene in Regular Session**

The committee reconvened in regular session at 2:17 p.m.

**Brian Belleque stated for the record that since Johnny Hawkins is an employee of the Oregon State Penitentiary, he would abstain from voting.**

1. The Corrections Policy Committee **adopts** the Staff report as the record upon which its recommendations are based.

**Marie Tyler moved to adopt the staff report as the record upon which the Corrections Policy Committee recommendations are based. Scott Brewen seconded the motion. The motion carried unanimously by all voting. Brian Belleque abstained from voting.**

2. The Corrections Policy Committee believes:
  - a. HAWKINS' actions **do** cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land **based on the illegal use of marijuana, lying, and driving under the influence.**
  - b. HAWKINS' conduct **did** involve **dishonesty**, fraud, **deceit**, or misrepresentation **based on the illegal and undisclosed use of marijuana.**
  - c. HAWKINS' conduct **was not** prejudicial to the administration of justice.
  - d. HAWKINS' conduct **did** adversely reflect on his fitness to perform as a corrections officer **based on illegal use of marijuana and probable lack of integrity regarding issues in his past.**
  - e. HAWKINS' actions **do** make him inefficient or otherwise unfit to render effective service because of the agency and the public's loss of confidence in his ability to perform competently **based on deceitful use of marijuana and driving under the influence.**

**Marie Tyler moved the committee believes that HAWKINS' actions do cause a reasonable person to have doubts about honesty, respect for the rights of others and respect for the laws of the land; HAWKINS' conduct did involve dishonesty, fraud and deceit; did not believe HAWKINS' conduct was not prejudicial to the administration of justice; and HAWKINS' conduct did adversely reflect and make him inefficient to perform as a corrections officer. Ida Rover seconded the motion. The motion carried unanimously by all voting. Brian Belleque abstained from voting.**

3. The Corrections Policy Committee finds HAWKINS' conduct **does** rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that HAWKINS' certifications **be revoked.**

**Mitchell Southwick moved that the committee finds HAWKINS' conduct does rise to the level to warrant the revocation of his certification, and therefore recommends to the Board that Hawkins' certifications be revoked. Thomas Wright seconded the motion. The motion carried unanimously by all voting. Brian Belleque abstained from voting.**

7. **Dylan Michael Sims (a.k.a. Lon Jay Sims) – DPSST #41912**  
Presented by Theresa King

**See Appendix F for details**

1. The Corrections Policy Committee **adopts** the staff report as the record upon which its recommendations are based.

***Bryan Goodman moved to adopt the staff report as the record upon which the Corrections Policy Committee's recommendations are based. Brian Belleque seconded the motion. The motion carried unanimously by all voting.***

2. The Corrections Policy Committee believes:

- a. SIMS' actions **do** cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land **based on lack of respect of rights of others, honesty, and respect for the laws of the land.**
- b. SIMS' conduct **did** involve dishonesty, fraud, deceit, or misrepresentation **based on inappropriate use of agency equipment, unreported inappropriate relationship with paroled sex offender, and driving with suspended license which was also unreported to supervisor.**
- c. SIMS' conduct **was** prejudicial to the administration of justice.
- d. SIMS' conduct **did** adversely reflect on his fitness to perform as a corrections officer **based on SIMS' statement refusing to protect or come to the aid of a coworker if they were being beaten by an inmate.**
- e. SIMS' actions **do** make him inefficient or otherwise unfit to render effective service because of the agency's and the public's loss of confidence in his ability to perform competently.

***Bryan Goodman moved that SIMS' actions do cause a reasonable person to have doubts about his honesty, respect for the rights of others, and the laws of the land; that SIMS' conduct did involve dishonesty, fraud, and misrepresentation; that SIMS' conduct was prejudicial to the administration of justice; that SIMS' conduct did adversely reflect on his fitness to perform as a corrections officer; and that SIMS' actions do make him inefficient or otherwise unfit to render effective service because of the agency and public's loss of confidence in his ability to perform competently. Scott Brewen seconded the motion. The motion carried unanimously by all voting.***

3. The Corrections Policy Committee finds SIMS' conduct **does** rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that SIMS' certifications **be revoked.**

***Bryan Goodman moved that the Corrections Policy Committee finds SIMS' conduct does rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that SIMS' certifications be revoked. Marie Tyler seconded the motion. The motion carried unanimously by all voting.***

## **8. Reyes Daniel Romayor, Jr. – DPSST #38561**

Presented by Theresa King

**See Exhibit G for details**

1. The Corrections Policy Committee **adopts** the staff report as the record upon which its recommendations are based.

***Bryan Goodman moved to adopt the staff report as the record upon which the Corrections Policy Committee's recommendations are based. Brian Belleque seconded the motion. The motion carried unanimously by all voting.***

2. The Corrections Policy Committee believes:

- a. ROMAYOR'S actions ***do*** cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land ***based on deceitful translation for an officer, continued incidences with police, plus his two convictions.***
- b. ROMAYOR'S conduct ***did*** involve dishonesty, fraud, deceit, or misrepresentation ***based on his offer to help which was actually interference in an investigation.***
- c. ROMAYOR'S conduct ***was*** prejudicial to the administration of justice ***based on his translation for an officer and an involved party in which he advised said party not to tell the police anything.***
- d. ROMAYOR'S conduct ***did*** adversely reflect on his fitness to perform as a corrections officer.
- e. ROMAYOR'S actions ***do*** make him inefficient or otherwise unfit to render effective service because of the agency's and the public's loss of confidence in his ability to perform competently ***based on stated incidents above and the fact an adjoining state agency called with their concern about ROMAYOR'S conduct.***

***Brian Belleque moved that ROMAYOR'S actions do cause a reasonable person to have doubts about his honesty, respect for the rights of others and the laws of the land; that ROMAYOR'S conduct did involve dishonesty, and misrepresentation; that ROMAYOR'S conduct was prejudicial to the administration of justice; that ROMAYOR'S conduct did adversely reflect on his fitness to perform as a corrections officer and do make him inefficient or otherwise unfit to render effective service because of the agency and public's loss of confidence in his ability to perform competently. Marie Tyler seconded the motion. The motion carried unanimously by all voting.***

- a. After a review of any mitigating and aggravating circumstances cited in the above "discretionary disqualifying convictions" section:
  - a. ROMAYOR'S case ***contains*** mitigating circumstances ***based on ROMAYOR'S meeting restitution obligations and the letter he had written taking responsibility for his actions.***
  - b. ROMAYOR'S case ***contains*** aggravating circumstances ***based on continued behavior after writing letter of apology, as well as his role in interpretation for officer.***

***Marie Tyler moved that the Corrections Police Committee agrees there are both mitigating and aggravating circumstances. Brian Belleque seconded the motion. The motion carried unanimously by all voting.***

- b. The Corrections Policy Committee finds ROMAYOR'S conduct ***does*** rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that ROMAYOR'S certifications ***be revoked***, and his Intermediate Corrections certification ***be denied***.

*Brian Belleque moved that the Corrections Policy Committee finds ROMAYOR'S conduct does rise to the level to warrant the revocation of his Basic Corrections certifications, and therefore recommends to the Board that ROMAYOR'S certifications be revoked and his Intermediate Corrections certification be denied based upon moral turpitude and the discretionary disqualifying conviction. Mitchell Southwick seconded the motion. The motion carried unanimously by all voting.*

**9. Paul D. Cuff – DPSST #24364**

Presented by Theresa King

*See Exhibit H for details*

*For the record, Marie Tyler stated that Paul Cuff is a former employee of hers and asked if that disqualified her from voting. Staff stated she could vote if Marie felt she could be objective in the matter. Marie stated she indeed could and would be objective regarding this case.*

1. The Corrections Policy Committee *adopts* the Staff report as the record upon which its recommendations are based.

*Mitchell Southwick moved to adopt the staff report as the record upon which the Corrections Policy Committee's recommendations are based. Brian Belleque seconded the motion. The motion carried unanimously by all voting.*

2. The Corrections Policy Committee believes:
  - a. CUFF'S actions *do* cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land *based on his untruthfulness about the work log and perusing pornography while on duty.*
  - b. CUFF'S conduct *did* involve dishonesty, fraud, deceit, or misrepresentation *based on the fact that he said he was making his rounds when he was not.*
  - c. CUFF'S conduct *was* prejudicial to the administration of justice *based on the fact that he was supposed to be providing a safe environment for the inmates when in reality he lied about making his rounds.*
  - d. CUFF'S conduct *did* adversely reflect on his fitness to perform as a corrections officer *based on the fact he lied about working when he was not.*
  - e. CUFF'S actions *do* make him inefficient or otherwise unfit to render effective service because of the agency's and the public's loss of confidence in his ability to perform competently *based on the fact he lied about working when he was not.*

*Mitchell Southwick moved that the Corrections Policy Committee believes that CUFF'S conduct does cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land; that CUFF'S conduct did involve dishonesty, fraud, and misrepresentation; that CUFF'S conduct was prejudicial to the administration of justice; and CUFF'S conduct did adversely reflect and make him inefficient and unfit to perform as a corrections officer. Marie Tyler seconded the motion. The motion carried unanimously by all voting.*

3. The Corrections Policy Committee finds CUFF'S conduct *does* rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that CUFF'S

certifications *be revoked*.

*Mitchell Southwick moved that the Corrections Policy Committee finds CUFF'S conduct rises to the level to warrant the revocation of his certifications, and recommends to the Board that CUFF'S certifications be revoked. Scott Brewen seconded the motion. The motion carried unanimously by all voting.*

#### **10. ORPAT for Corrections**

Presented by Steve Winegar

*See Exhibit I for details*

*Staff stated the average time difference between DOC and the counties is approximately 25 seconds. Part of the issue is counties pretest upon hiring, whereas DOC does not. The question for the Corrections Policy Committee is whether a fitness standard should be set, and if so, the time DPSST can defend is eight minutes for entry level basic corrections. Committee members stated that the sheriff's and jail commanders are not pleased with the numbers and don't agree that it is an accurate interpretation due to the class ratio of 70:30 DOC to county.*

*If DPSST sets a standard, it becomes a liability for the counties due their lower ORPAT time standard already in place for hiring. Part of the problem is DOC does not implement ORPAT upon hiring whereas the counties do. Student preparedness prior to entering the academy makes a dramatic difference in ORPAT times.*

*Staff proposed separating the counties' numbers from DOC's. The issue with doing that is there are not sufficient numbers to be statistically significant.*

*Committee members said this information may be valuable for DOC in considering establishing entry level testing which could prompt people to take the time standard more seriously.*

*Staff will provide the committee with separated numbers via email.*

#### **11. Next Regularly Scheduled Meeting – November 18, 2008**

*Due to the number of cases to be brought before committee in November, staff requests the November 18, 2008 meeting be broken into two sessions: morning session from 10:00am to noon; and the afternoon session from 1:00pm until finished. Committee members suggested starting earlier at 9:00am. Staff stated that the materials will be sent out in volumes to enable enough time for committee members to review the cases.*

*Therefore, the next regularly scheduled meeting will be November 18, 2008 from 9:00am-12:00pm and 1:00pm until finished.*

*With no further business before the committee, Brian Belleque moved the meeting be adjourned. Thomas Wright seconded the motion. The motion carried unanimously adjourning the meeting at 4:01 p.m.*

## Appendix A

# Corrections Policy Committee Minutes (Draft) May 20, 2008

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, May 20, 2008 at 1:30 p.m. in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located at 4190 Aumsville Hwy SE Salem, Oregon. Chair Todd Anderson called the meeting to order at 1:32 p.m.

### **Attendees:**

#### **Committee Members:**

Todd Anderson, Oregon State Sheriffs' Association, Chair  
Raimond Adgers, Oregon Sheriff's Jail Command Council  
Bryan Goodman, Non-Management Corrections Officer  
Michael Gower, Department of Corrections Security Manager  
Ida Rovers, Department of Corrections, Women's Correctional Facility  
Mitchell Southwick, Oregon State Sheriffs' Association  
Marie Tyler, Oregon Sheriff's Jail Command Council  
Thomas Wright, DOC Bargaining Unit Representative

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

Brian Belleque, Designee for Director of Department of Corrections  
Scott Brewen, Department of Corrections Training Division Director  
Shane Hagey, Oregon Assoc. of Community Corrections Directors

### **Guests:**

Cheryl Pellegrini, Attorney General's Office  
Deputy Erik Douglass, Marion County Sheriff's Office  
Deputy John Nicklason, Josephine County Sheriff's Office

### **DPSST Staff:**

Eriks Gabliks, Deputy Director  
Carolyn Kendrick, Academy Training Administrative Assistant  
Marilyn Lorange, Certification and Records Supervisor  
Bonnie Salle, Certification Coordinator  
Theresa King, Professional Standards Coordinator  
Steve Winegar, Research and Development



### **12. \*Minutes (February 19, 2008)**

Approve the minutes of the February 19, 2008 Corrections Policy Committee meeting.

*See Appendix A for details.*

*Raimond Adgers moved to approve the February 19, 2008 minutes. Thomas Wright seconded the motion. The motion carried unanimously by all voting.*

*Chair Anderson spoke about a consistent procedure for voting on revocations and denials.*

**13. \*CARTER, Roy E. DPSST #32618**

Presented by Theresa King

*See Appendix B for details.*

*Marie Tyler moved to adopt the staff report as factual. Michael Gower seconded the motion. The motion carried unanimously by all voting.*

**CONSIDERATIONS FOR THE POLICY COMMITTEE:**

Under OAR 259-008-0010(6):

1. Would CARTER's actions cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the state?

*Committee consensus is yes.*

2. Did CARTER's conduct involve dishonesty, fraud, deceit, or misrepresentation?

*Committee consensus is yes.*

3. Was CARTER's conduct prejudicial to the administration of justice?

*Committee was unclear if this applicable.*

4. Would CARTER's actions adversely reflect on his fitness to perform as a law enforcement officer and do his actions make him inefficient and otherwise unfit to render effective service because of the agency's and public's loss of confidence in his ability to perform competently?

*Committee consensus is yes.*

*Raimond Adgers moved to recommend to the Board the revocation of Roy E. Carter's certification based on a violation of the established moral fitness standards. Marie Tyler seconded the motion. The motion carried unanimously by all voting.*

**14. \*NICKLASON, John C. DPSST #49022**

Presented by Theresa King

*See Appendix C for details.*

*It is the consensus of the committee to adopt staff's report as factual.*

*Marie Tyler moved to recommend to the Board not to deny John C. Nicklason's certification based on his conviction for a discretionary disqualifying misdemeanor. Raimond Adgers seconded the motion. The motion carried unanimously by all voting.*

*Thomas Wright moved to recommend to the Board not to deny John C. Nicklason's certification based on his conviction for a violation of the established moral fitness standards. Marie Tyler seconded the motion. The motion carried unanimously by all voting.*

**15. \*DUNGEY, Stephen H. DPSST #41288**

Presented by Theresa King

*See Appendix D for details.*

*Marie Tyler moved to adopt the staff report as factual. Michael Gower seconded the motion. The motion carried unanimously by all voting.*

**CONSIDERATIONS FOR THE POLICY COMMITTEE:**

Under OAR 259-008-0010(6):

1. Would DUNGEY's actions cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the state?

*Committee consensus is yes.*

2. Did DUNGEY's conduct involve dishonesty, fraud, deceit, or misrepresentation?

*Committee consensus is yes.*

3. Was DUNGEY's conduct prejudicial to the administration of justice?

*Committee consensus is yes.*

4. Would DUNGEY's actions adversely reflect on his fitness to perform as a law enforcement officer and do his actions make him inefficient and otherwise unfit to render effective service because of the agency's and public's loss of confidence in his ability to perform competently?

*Committee consensus is yes.*

*Raimond Adgers moved to recommend to the Board to revoke Stephen H. Dungey's certifications based on a violation of the established moral fitness standards. Marie Tyler seconded the motion. The motion carried unanimously by all voting.*

**16. OAR 259-008-0060 – Proposed Rule**

Creditable Service Time

Presented by Bonnie Salle

*See Appendix E for details*

*The committee asked if there was a surge in hiring, what if DPSST could not train enough students in the time allotted by this rule? Staff stated there is already statutory provision that allows for this if the DPSST cannot provide the training. If there was such a backlog that DPSST couldn't get somebody into training beyond that 12 month period and beyond the 12 months that is already within the agency's discretion to request an extension, there is no statutory provision to otherwise extend the requirement to become certified. DPSST would have to take different steps to the legislature for an amendment to the statute. This could not be fixed by an administrative rule change.*

*Mitch Southwick moved to recommend filing the proposed language for OAR 259-008-0060 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Bryan Goodman seconded the motion. The motion carried by all voting.*

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

**17. OAR 259-008-0200 – Hearing Officer's Report**

Presented by Bonnie Salle

See Appendix F for details

*Marie Tyler moved to adopt the proposed rule amending OAR 259-008-0200 as a permanent rule as originally approved by the Police Policy Committee and Board on Public Safety Standards and Training.*

**18. OAR 259-013-0000 – Proposed Rule**

Criminal Records Check  
Presented by Bonnie Salle

See Appendix G for details

*Michael Gower moved to recommend filing the proposed language for OAR 259-013-0000 through 259-013-0300 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Marie Tyler seconded the motion. The motion carried by all voting.*

**19. Convene in Executive Session**

The committee convened in Executive Session at 2:30 p.m. to discuss matters exempt from disclosure under ORS 92.660(2)(f) related to whether a medical waivers for Crystal Jarvis and Randall Randolph should be recommended to the Board.

**20. Reconvene in Regular Session**

The committee reconvened in regular session at 2:48 p.m. to take final action regarding a determination of whether medical waivers for Crystal Jarvis and Randall Randolph should be recommended to the Board.

**ACTION ITEM:** The committee needs to determine whether they will recommend approval to the Board for a waiver of the visual acuity standard for Crystal Jarvis.

*Raimond Adgers moved to recommend approval for a waiver of the visual acuity standard for Crystal Jarvis to the Board. Bryan Goodman seconded the motion. The motion carried unanimously by all voting.*

**ACTION ITEM:** The committee needs to determine whether they will recommend approval to the Board for a waiver of the depth perception standard for Randall Randolph to the Board.

*Michael Gower moved to recommend approval for a waiver of the depth perception standard for Randall Randolph to the Board. Thomas Wright seconded the motion. The motion carried unanimously by all voting.*

*Marie Tyler excused herself from discussion and voting on Randall Randolph's medical waiver.*

**21. Next Regularly Scheduled Meeting – August 19, 2008 at 1:30 p.m.**

*With no further business before the committee the meeting adjourned at 2:50 p.m.*

## **Appendix B1**

**DATE:** July 22, 2008

**TO:** Corrections Policy Committee

**FROM:** Bonnie Sallé-Narváez  
Hearing Officer

**SUBJECT:** Hearing Officer's Report and Recommendation  
OAR 259-008-0010

The Corrections Policy Committee and Board on Public Safety Standards and Training previously reviewed and approved filing a proposed permanent rule with the Secretary of State's office to amend the rules relating to the denial or revocation of a public safety officer's or instructor's certification. The proposed rules were filed with the Secretary of State's Office and opened for public comment.

A total of one (1) comment was received during the open comment period. The comment is attached to this memorandum and incorporated by reference.

### **FINDINGS OF FACT:**

1. On February 15, 2008, a Notice of Proposed Rulemaking Hearing was filed with the Secretary of State's office (see Exhibit A)
2. On March 1, 2008, the Notice of Proposed Rulemaking Hearing was published in the Secretary of State's monthly publication (Bulletin). (see Exhibit B)
3. During the month of March 2008, the Notice of Proposed Rulemaking Hearing was posted on the Department of Public Safety Standards and Training's website.
4. On March 24, 2008, a public hearing was held. Zero (-0-) individuals attended the hearing and no public testimony was given.
5. On March 24, 2008, the public comment period closed.

### **CONCLUSION:**

The Department previously presented proposed rule amendment to OAR 259-008-0010 to the Police Policy Committee, Telecommunications Policy Committee, and Corrections Policy Committee. It was reviewed and discussed by all committee members from each committee and the Department received approval from all three committees to forward their recommendation to approve the proposed language for 259-008-0010 to the Board.

The Department presented the proposed rule amendment to OAR 259-008-0010 to the Board. It was reviewed by Board members and the Department received approval to file the proposed amendment with the Secretary of State's office as a proposed rule.

The Department provided notice of a proposed rulemaking hearing to:

- a) The Secretary of State's office;
- b) Legislative Counsel;
- c) The agency interested parties' list; and
- d) The Department's website;

The Department received one public comment during the public comment period which erroneously referenced a previous modification to OAR 259-008-0010 and was not relevant to the current proposed language most recently approved by the Board.

It is the conclusion of the hearing officer that the Department provided ample notice of the proposed rule amendment to OAR 259-008-0010 to the largest extent possible to public safety agencies and public safety personnel. After careful consideration of comment submitted, contrasted with the extensive public notice given, the single erroneous comment received did not appear to represent a statewide concern among public safety agencies about the rule amendment as originally drafted.

**HEARING OFFICER'S RECOMMENDATION:** Adopt the proposed rule language previously submitted to the Corrections Policy Committee, amending OAR 259-008-0010, as a permanent rule.

## Appendix B2

### Comment #1 :

On March 21, 2008, a comment was received within the text of Comment #1 (responding to OAR 259-008-0070) expressing the following concern:

“We are pleased to see that the BPSST has codified what the Department says is the current practice of closing any investigation where an arbitrator has ruled that alleged conduct did not occur. We are also pleased that BPSST has recognized that not all conduct requires a lifetime ban from public service. We are disappointed that the only change to OAR 259-008-0010 is the removal of the mention of background investigations and the removal of the requirement to take a reading test if the applicant has a college degree. There is still no way for a prospective applicant or revoke to know what the BPSST defines as “good moral fitness.”

**Staff Response:** *The Department believes this concern is erroneous because it does not adequately respond to the current proposed rule revision to OAR 259-008-0010. The Department previously amended a portion of OAR 259-008-0010 to eliminate the language relating to background investigations which were adopted as a permanent rule. However, in the current proposed revision,, substantive changes were made to the moral fitness definition to include “professional standards;” and relevant portions of OAR 259-008-0010 were amended to define lack of “moral fitness” to mean disqualifying misconduct as defined in the proposed OAR 259-008-0070.*

*The remainder of the issues raised in the response are discussed in the context of staff response to 014-259-008-0070.*

## Appendix B3

259-008-0010

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

\* \* \*

(6) Moral Fitness (~~Moral Character~~ **Professional Fitness**). All law enforcement officers must be of good moral fitness.

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

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

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

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

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

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

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

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

\* \* \*

## **Appendix C1**

**DATE:** July 22, 2008

**TO:** Corrections Policy Committee

**FROM:** Bonnie Sallé-Narváez  
Hearing Officer

**SUBJECT:** Hearing Officer's Report and Recommendation  
OAR 259-008-0070

The Corrections Policy Committee and Board on Public Safety Standards and Training previously reviewed and approved filing a proposed permanent rule with the Secretary of State's office to amend the rules relating to the denial or revocation of a public safety officer's or instructor's certification. The proposed rules were filed with the Secretary of State's Office and opened for public comment.

A total of five (5) comments were received during the open comment period. The comments are attached to this memorandum and incorporated by reference. For ease of review, staff responses to relevant issues are addressed individually after each attached comment.

### **FINDINGS OF FACT:**

1. On February 15, 2008, a Notice of Proposed Rulemaking Hearing was filed with the Secretary of State's office.
3. On March 1, 2008, the Notice of Proposed Rulemaking Hearing was published in the Secretary of State's monthly publication (Bulletin).
4. During the month of March 2008, the Notice of Proposed Rulemaking Hearing was posted on the Department of Public Safety Standards and Training's website.
6. On March 24, 2008, a public hearing was held. Zero (-0-) individuals attended the hearing and no public testimony was given.
7. On March 24, 2008, the public comment period closed.

### **CONCLUSION:**

The Department previously presented proposed rule amendment to OAR 259-008-0070 to the Police Policy Committee, Telecommunications Policy Committee, and Corrections Policy Committee. It was reviewed and discussed by all committee members from each committee and the Department received approval from all three committees to forward their recommendation to approve the proposed language for OAR 259-008-0070 to the Board.

The Department presented the proposed rule amendment to OAR 259-008-0070 to the Board. It was reviewed by Board members and the Department received approval to file the proposed amendment with the Secretary of State's office as a proposed rule.

The Department provided notice of a proposed rulemaking hearing to:

- a) The Secretary of State's office;
- b) Legislative Counsel;
- c) The agency interested parties' list;
- d) The Department's website;
- e) The Department's Ethics Bulletin (listserve) and
- f) All public safety agencies and associations (via listserve)

The Department received five public comments during the public comment period, two of which contained duplicate language (*see* Comment 2 & 3).

The Department has amended relevant portions of its originally proposed rules to address some of the concerns expressed in the comments received during the public comment period. The original proposed rules, as well staff's proposed amendments to address the public comments received, have been reviewed with the Department's legal counsel. In addition to the proposed new language, staff included minor housekeeping and structural changes to the attached rules. All new text proposed by staff will appear as ***bold, italicized, and dotted underlined*** text in the attached document.

It is the conclusion of the hearing officer that the Department provided ample notice of the proposed rule amendment to OAR 259-008-0070 to the largest extent possible to public safety agencies and public safety personnel. After careful consideration of issues raised in the comments, contrasted with the extensive public notice given, the few negative comments received did not appear to represent a statewide concern among public safety agencies about the rule amendment as originally drafted. However, as stated above, the Department consulted with its legal counsel and has made additional modifications to the proposed rules for purposes of clarity and to address concerns expressed by constituents, where appropriate.

**HEARING OFFICER'S RECOMMENDATION:** Adopt the attached version of the proposed rules amending OAR 259-008-0070 as a permanent rule with the identified additional modifications to the original proposed rule language.

Attachments:

- "A" – Comment #1 (Includes staff's response)
- "B" – Comment #2 & #3 (Includes staff's response)
- "C" – Comment #4 (Includes staff's response)
- "D" – Comment #5
- "E" – Staff Response to Comment #5

## Appendix C2

### Comment #1:

On March 21, 2008, a comment was received expressing the following concerns:

“We are pleased to see that BPSST [sic] has codified what the Department says is the current practice of closing any investigation where an arbitrator has ruled that alleged conduct did not occur. \* \* \* The changes, however, that the BPSST has proposed to OAR 259-008-0070 do not resolve the inherent problems we have with the process. Section 9 must be changed to allow those facing decertification to question the evidence and witnesses against them, call witnesses in their defense and make arguments before the board. Until the process is changed the moral fitness and mitigating factors related to public trust and public confidence have no application. If only one side of a story is played in the press, or even worse in a government ‘hearing’, the public and board members cannot make a real determination about the underlying conduct. [We] will continue to work with the Department and Board, along with whatever other means are necessary, to develop a fair process for reviewing the certification of Oregon’s public safety professionals.”

**Staff Response:** *The Department has amended section nine for clarification and revised the language to include the current process for misconduct cases in which an arbitrator’s opinion has been rendered. The amended language has been reviewed and approved by the Department’s legal counsel.*

*The remainder of the issues raised in the response was beyond the scope of the proposed rule change and were not issues originally raised or addressed during the Phase 2 workgroup’s review of the rules. In other areas, the comments did not accurately reflect the Department’s current denial/revocation process, which is in accordance with the Attorney General’s Model Rules and the Administrative Procedures Act.*

## Appendix C3

259-008-0070

### Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to insure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

#### Definitions

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

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

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

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

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

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

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

(A) The public safety professional **or instructor** has been discharged for cause from employment as a public safety professional **or instructor**. For purposes of this rule, "discharged for cause," means an employer-initiated termination of employment for any of the following reasons, *after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the public safety professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.*

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

**(ii) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public. This category involves a victim; [Comment: Conduct underlying the Category II offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.]**

~~(i) (iii) Gross Negligence-Misconduct: means the public safety professional's **an** act or failure to act **that** creates a danger or risk to persons, property, or to the efficient operation of the department **agency**, recognizable as a gross deviation from the standard of care that a reasonable public safety professional **or instructor** would observe in a similar circumstance; *[Comment: Conduct underlying the Category IV offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.]*~~

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

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

~~(v) Insubordination: Includes a refusal by a public safety professional **or instructor** to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's **or instructor's** refusal to comply with the rule or order constitutes a substantial breach of that person's duties; or~~

**(v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse actions under the color of office. [Comment: Conduct underlying the Category III offenses identified 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) The public safety professional or instructor has been convicted in this state or any other jurisdiction of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

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

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

162.075 (False swearing),

162.085 (Unsworn falsification),

162.145 (Escape in the third degree),

162.175 (Unauthorized departure),

162.195 (Failure to appear in the second degree),

162.235 (Obstructing governmental or judicial administration),

162.247 (Interfering with a peace officer),

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

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

165.825 (Sale of drugged horse),  
166.065(1)(b) (Harassment),  
166.155 (Intimidation in the second degree),  
166.270 (Possession of weapons by certain felons),  
166.350 (Unlawful possession of armor-piercing ammunition),  
166.416 (Providing false information in connection with a transfer of a firearm),  
166.418 (Improperly transferring a firearm),  
166.470 (Limitations and conditions for sales of firearms),  
167.007 (Prostitution),

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

~~167.065 (Furnishing obscene materials to minors),~~  
~~167.070 (Sending obscene materials to minors),~~  
167.075 (Exhibiting an obscene performance to a minor),  
167.080 (Displaying obscene materials to minors),  
167.132 (Possession of gambling records in the second degree),  
167.147 (Possession of a gambling device),  
167.222 (Frequenting a place where controlled substances are used),  
167.262 (Adult using minor in commission of controlled substance offense),  
167.320 (Animal abuse in the first degree),  
167.330 (Animal neglect in the first degree),  
167.332 (Prohibition against possession of domestic animal),  
167.333 (Sexual assault of animal),  
167.337 (Interfering with law enforcement animal),  
167.355 (Involvement in animal fighting),  
167.370 (Participation in dogfighting),  
167.431 (Participation in cockfighting),  
167.820 (Concealing the birth of an infant),  
475.525 (Sale of drug paraphernalia),

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

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

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

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

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

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

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

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

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

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

475.950 (Failure to report precursor substances transaction),

475.955 (Failure to report missing precursor substances),

475.960 (Illegally selling drug equipment),

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

475.969 (Unlawful possession of phosphorus),

475.971 (Unlawful possession of anhydrous ammonia),

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

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

475.976 (Unlawful possession of iodine matrix),

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

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

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

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

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

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

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

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

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

807.520 (False swearing to receive license),

807.620 (Giving false information to police officer),

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

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

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

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

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

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

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

(b) (C) The public safety professional or instructor has been convicted of an offense, **listed in subsection (4)**, punishable as a crime, other than a mandatory disqualifying crime listed in section (2)(3) of this rule, in this state or any other jurisdiction.

*(b) 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. This category involves a victim; [Comment: Conduct underlying the Category II offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in criminal conviction.]**

**(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses actions under the color of office. [Comment: Conduct underlying the Category III offenses identified 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 identified 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 identified 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 under (a) (A) or (B), the applicable category will be determined based on the facts of each case. For discretionary disqualifying misconduct under (a)(C), the following list identifies the applicable category for each discretionary offense:

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

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

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

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

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

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

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

**163.190 (Menacing) – Category II,**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**164.140 (Criminal Possession of Rented or Leased Personal Property) – Category V,**  
**164.162 (Mail Theft or Receipt of Stolen Mail) – Category I,**  
**164.243 (Criminal Trespass in the Second Degree by a Guest) – Category V,**  
**164.245 (Criminal Trespass in the Second Degree) – Category V,**  
**164.255 (Criminal Trespass in the First Degree) – Category V,**  
**164.265 (Criminal Trespass While in Possession of a Firearm) – Category IV,**  
**164.272 (Unlawful Entry into a Motor Vehicle) – Category V,**  
**164.278 (Criminal Trespass at Sports Event) – Category V,**  
**164.335 (Reckless Burning) – Category IV,**  
**164.345 (Criminal Mischief in the Third Degree) – Category V,**  
**164.354 (Criminal Mischief in the Second Degree) – Category V,**  
**164.373 (Tampering with Cable Television Equipment) – Category V,**  
**164.377 (Computer Crime) – Category V,**  
**164.775 (Deposit of Trash Within 100 Yards of Water) – Category V,**  
**164.785 (Placing Offensive Substances in waters/on highways or property) – Category IV,**  
**164.805 (Offensive Littering) – Category V,**  
**164.813 (Unlawful Cutting and Transporting of Special Forest Products) – Category V,**  
**164.815 (Unlawful Transport of Hay) – Category V,**  
**164.825 (Cutting and Transport of Coniferous Trees without Permit/Bill of Sale) – Category V,**  
**164.845 (FTA on Summons for ORS 164.813 or 164.825) – Category V,**  
**164.863 (Unlawful Transport of Meat Animal Carcasses) – Category V,**  
**164.865 (Unlawful Sound Recording) – Category V,**  
**164.875 (Unlawful Video Tape Recording) – Category V,**  
**164.887 (Interference with Agricultural Operations) – Category II,**  
**165.107 (Failing to Maintain a Metal Purchase Record) – Category V,**  
**165.109 (Failing to Maintain a Cedar Purchase Record) – Category V,**  
**165.540 (Obtaining Contents of Communications) – Category V,**  
**165.555 (Unlawful Telephone Solicitation) – Category V,**  
**165.570 (Improper Use of Emergency Reporting System) – Category IV,**  
**165.572 (Interference with Making a Report) – Category II,**

165.577 (Cellular Counterfeiting in the Third Degree) – Category I,  
165.805 (Misrepresentation of Age by a Minor) – Category I,  
166.025 (Disorderly Conduct in the Second Degree) – Category IV,  
166.027 (Disorderly Conduct in the First Degree) – Category IV,  
166.075 (Abuse of Venerated Objects) – Category II,  
166.076 (Abuse of a Memorial to the Dead) – Category II,  
166.090 (Telephonic Harassment) – Category II,  
166.095 (Misconduct with Emergency Telephone Calls) – Category IV,  
166.155 (Intimidation in the Second Degree) – Category II,  
166.180 (Negligently Wounding Another) – Category IV,  
166.190 (Pointing a Firearm at Another) – Category IV,  
166.240 (Carrying a Concealed Weapon) – Category V,  
166.250 (Unlawful Possession of a Firearm) – Category V,  
166.320 (Setting of a Springgun or Setgun) – Category IV,  
166.385 (Possession of Hoax Destructive Device) – Category IV,  
166.425 (Unlawful Purchase of Firearm) – Category I,  
166.427 (Register of Transfers of Used Firearms) – Category V,  
166.480 (Sale or Gift of Explosives to Children) – Category IV,  
166.635 (Discharging Weapon or Throwing Object at Trains) – Category IV,  
166.638 (Discharging Weapon Across Airport Operational Surfaces) – Category IV,  
166.645 (Hunting in Cemeteries) – Category V,  
166.649 (Throwing Object off Overpass in the Second Degree) – Category IV,  
167.122 (Unlawful Gambling in the Second Degree) – Category V,  
167.312 (Research and Animal Interference) – Category II,  
167.315 (Animal Abuse in the Second Degree) – Category IV,  
167.325 (Animal Neglect in the Second Degree) – Category IV,  
167.340 (Animal Abandonment) – Category IV,  
167.351 (Trading in Nonambulatory Livestock) – Category V,  
167.352 (Interfering with Assistance, Search and Rescue or Therapy Animal) – Category IV,  
167.385 (Unauthorized Use of Livestock Animal) – Category II,

**167.388 (Interference with Livestock Production) – Category II,**  
**167.390 (Commerce in Fur of Domestic Cats and Dogs) – Category V,**  
**167.502 (Sale of Certain Items at Unused Property Market) – Category V,**  
**167.506 (Record Keeping Requirements) – Category V,**  
**167.808 (Unlawful Possession of Inhalants) – Category IV,**  
**167.810 (Creating a Hazard) – Category IV,**  
**167.822 (Improper Repair Vehicle Inflatable Restraint System) – Category IV,**  
**411.320 (Disclosure and Use of Public Assistance Records) – Category II,**  
**468.922 (Unlawful disposal, storage or treatment of hazardous waste in the second degree) – Category V,**  
**468.929 (Unlawful transport of hazardous waste in the second degree) – Category V,**  
**468.936 (Unlawful Air Pollution in the Second Degree) – Category V,**  
**468.943 (Unlawful Water Pollution in the Second Degree) – Category V,**  
**468.956 (Refusal to Produce Material Subpoenaed by the Commission) – Category V,**  
**471.410 (Providing Liquor to Person under 21 or to Intoxicated Person) – Category IV,**  
**496.994 (Obstruction to the Taking of Wildlife) – Category V,**  
**496.996 (Attempt to Take Wildlife Decoy) – Category V,**  
**498.164 (Use of Dogs or Bait to hunt Black Bears or Cougars) – Category V,**  
**717.200 to 717.320 (Any violation) – Category V,**  
**803.225 (Failure to Designate Replica..Vehicle in Title or Registration Application) – Category I,**  
**807.430 (Misuse of Identification Card) – Category I,**  
**807.510 (Transfer of documents for the purpose of misrepresentation) – Category I,**  
**807.530 (False Application for License) – Category I,**  
**807.570 (Failure to Carry or Present License) – Category V,**  
**807.580 (Using Invalid License) – Category I,**  
**807.590 (Permitting Misuse of License) – Category I,**  
**807.600 (Using Another’s License) – Category I,**  
**811.060 (Vehicular Assault of Bicyclist or Pedestrian) – Category V,**  
**811.140 (Reckless Driving) – Category IV,**  
**811.172 (Improperly Disposing of Human Waste) – Category V,**  
**811.182 (Criminal Driving While Suspended or Revoked) – Category V,**

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

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

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

811.740 (False Accident Report) – Category I, and

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

*Misconduct Categories and Initial Periods of Ineligibility*

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

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

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

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

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

(D) Category IV: Gross Misconduct (5 years to 10 years). Includes act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional would observe in similar circumstances; and

(E) Category V: Misconduct (3 years to 7 years). Includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category;

(F) Category VI: Insubordination (3 years to 7 years). Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

*Eligibility to Reapply; Ineligibility Periods*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(F)~~ **(f)** Notwithstanding subsection (2)(b) ~~(b)~~ of this section, all denial and revocation standards must apply to public safety professionals and instructors. **The Department will not take action against a public safety professional, instructor, or agency for failing to report, prior to January 1, 2003, a conviction that constitutes discretionary disqualifying misconduct.**

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

~~(e)~~ **(h)** The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640.

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

~~(4)~~ **(8)** Scope of Revocation. Whenever the Department ~~denies or~~ revokes the certification of any public safety professional or instructor under the provisions of OAR 259-008-0070, the ~~denial or~~ revocation will encompass all public safety certificates, except fire certification(s), the Department has issued to that person.

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

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

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

~~(c) Department Staff Review:~~ When the Department receives information, from any source, that a public safety professional or instructor may not meet the established standards for Oregon public safety professionals or instructors, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

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

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

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

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

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

**(E) In misconduct cases in which there has been an arbitrator's opinion related to the public safety professional's or instructor's employment, the Department will proceed as follows:**

**(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the department will proceed as identified in paragraphs (A) through (D) of this subsection.**

**(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.**

**(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, the Department will proceed as identified in paragraph (A) of this subsection and administratively close the matter.**

~~(d) Policy Committee and Board Review: The Policy Committees and Board may **will** consider mitigating and aggravating circumstances in **In** making a decision to *deny or revoke* **authorize** initiation of proceedings under subsection (e) of this rule, certification based on discretionary disqualifying **misconduct**, **the Policy Committees and Board will consider mitigating and aggravating circumstances**, including, *but not limited to*, the following:~~

~~**(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);**~~

~~(A) **(B) Was a If a the misconduct resulted in a conviction:**~~

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

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

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

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

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

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

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

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

~~(I) **(viii) (C) Whether** Has the public safety professional **or instructor has** been convicted of **engaged in** the same **misconduct** more than once, **and if so**,? Is this a repeated violation or a single occurrence **over what period of time**?~~

~~(H) **(C) (D) Do Whether** the actions **of the public safety professional or instructor** violate the established moral fitness standards for Oregon public safety officers identified in OAR 259-008-0010(5), i.e., moral turpitude, dishonesty, fraud, deceit, misrepresentation, conduct prejudicial to the administration of justice, conduct that reflects adversely on the profession, or conduct that would cause a reasonable person to have substantial doubts about the public safety professional's **or instructor's** honesty, fairness, respect for the rights of others, or for the laws of the state or the nation?;~~

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

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

~~**(F) (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;**~~

~~**(G) (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.**

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

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

(g) Response Time:

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

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

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0645.

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

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

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

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

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

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

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

**Appeals, Reapplication, and Eligibility Determinations**

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

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

**(11) Reapplication Process.**

~~(b)~~ **(a) Any public safety professional or instructor who has had a whose certification has been denied or revoked pursuant to ORS 181.661, and 181.662 or subsection (a) of this section (4) of this rule, may reapply for certification within the applicable timeframes described in sections (4) through (6) of this rule. The initial minimum ineligibility period will begin on the date an Order of the Department denying or revoking certification becomes final. The initial minimum ineligibility period will cease when the applicable timeframe stated in the Order has been satisfied, but not sooner than four years after the date on which the Order of the Department revoking certification became final.**

**(b) Any public safety professional or instructor whose certification has been denied or revoked pursuant to section (9) of this rule based on discretionary disqualifying misconduct may not reapply for certification until:**

**(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;**

**(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until after the maximum initial period of ineligibility identified in (4) of this rule has been satisfied.**

**(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.**

**(B) A written request for an eligibility determination has been submitted to the Department and a Policy Committee has recommended that a public safety professional's or instructor's eligibility to apply for public safety or instructor certification be restored and the Board has upheld the recommendation;**

**(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's or instructor's request for eligibility to apply for certification.**

**(ii) In considering a request for an eligibility determination, the Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section 9(d) of this rule.**

**(iii) After reviewing a written request for an eligibility determination, the Board, through a Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.**

**(C) The public safety professional or instructor is employed or utilized by a public safety agency; and**

**(D) All requirements for certification have been met.**

## Exhibit D

### Department of Public Safety Standards and Training Memo

**Date:** July 22, 2008  
**To:** Corrections Policy Committee  
**From:** Bonnie Sallé-Narváez  
**Subject:** Medical Waiver – Brian Kinney

**Issue:** Department of Corrections (DOC) is supporting a request for a waiver of the medical requirements for Correctional Officer Brian Kinney. OAR 259-008-0010(8)(j) allows the Board to "waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers.

**Background:** The DOC is requesting a review of the visual acuity standard for Mr. Kinney. As part of the hiring process, Mr. Kinney was referred to Physician's Primary Care Center on December 6, 2007 for a physical examination (see **Exhibit B**). His examination revealed a deficiency in the area of color vision. His examination revealed he correctly read three of the first 13 plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

On December 18, 2007, a color vision field test for corrections officers was conducted. Officer Kinney was noted to be able to demonstrate the ability to correctly identify color clothing during daylight, darkness and low lighting conditions. However, he was unable to demonstrate the ability to correctly identify the color status lights during darkness. The evaluator noted he, "failed and partially passed offender screen." (see **Exhibit "C"**)

On August 3, 2007, Officer Kinney's physician indicated, "Brian can see primary colors. He is color deficient only." (see **Exhibit D**)

On March 14, 2008, the DOC administered a color vision field test to Officer Kinney. He was able to correctly identify the color of clothing during daylight and darkness, or low lighting conditions. However, he was not able to successfully demonstrate the ability to correctly identify the color status lights during daylight or the color of inmate tattoos during darkness, clear weather or low lighting conditions. (see **Exhibit E**).

**Item #1:** DOC is requesting a waiver of the color vision standard because they believe that Mr. Kinney "is capable of completing the position duties of a Correctional Officer and has demonstrated the ability to sufficiently discriminate colors while testing and during employment." (see **Exhibit A**)

**ACTION ITEM #1:** The Committee needs to determine whether they will recommend approval to the Board for a waiver of the color vision standard for Brian Kinney.

## Exhibit E

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 19, 2008  
**TO:** Corrections Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** Johnny HAWKINS DPSST #26585

**ISSUE:**

Should Johnny HAWKINS' Basic, Intermediate and Advanced Corrections certifications be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010, or the discretionary disqualifying convictions defined in OAR 2590-008-0070, or both?

**BACKGROUND and OVERVIEW:**

**Note: This Staff Report contains personal medical information that, if discussed, must be discussed during an Executive Session.**

On August 31, 1987, HAWKINS was employed as a corrections officer with the Oregon Department of Corrections (DOC). HAWKINS holds Basic, Intermediate and Advanced Corrections certifications.

On October 9, 2007, DOC reported to DPSST that HAWKINS had been convicted of DUII and Assault 4. DOC provided copies of the judgments and an Attachment to Judgment written and signed by Judge Lipscomb.

On April 2, 2008, DPSST sent a letter to Marion County Sheriff's Office requesting a copy of the underlying investigation. DPSST subsequently received a toxicology report on HAWKINS, the Incident Report, Booking Report and related documents.

A review of the events include:

1. On January 13, 2007, police responded to a one-vehicle accident into a ditch. When officers arrived they found HAWKINS, the driver, was not injured and appeared to be impaired.
2. After SFST tests, HAWKINS was arrested, two breath samples produced a .00 reading. A Drug Recognition Expert was contacted to evaluate HAWKINS. HAWKINS disclosed to the officers that he was taking a number of prescription medications. HAWKINS agreed to submit to a urine test.
3. Based on the incident report, HAWKINS was compliant and forthright with the investigating officers. Ultimately a toxicology report showed two controlled prescription medications as well as the presence of marijuana.
4. HAWKINS was cited for DUII Controlled Substances, Assault 4 and Reckless Endangerment. HAWKINS was later cited for Providing Liquor to a Minor.

HAWKINS admitted to providing alcohol to a minor at his home while they were watching movies.

5. The passenger, a minor, had a laceration on his nose and a bump on his right forehead. This individual was transported to the hospital for treatment.
6. The passenger confirmed that he had been provided alcohol by HAWKINS.
7. As identified by Judge Lipscomb, the Assault 4 was the result of the injury incurred by the passenger during the accident. Judge Lipscomb further determined that based on HAWKINS' lack of prior criminal history, the controlled substances which included prescription medications, contributed to HAWKINS' intoxication and he considered this event an aberration.

On June 16, 2008, HAWKINS was mailed a letter advising him that his case would be heard before the Corrections Policy Committee. HAWKINS was advised he had an opportunity to provide mitigating circumstances, in writing, for the Committee's consideration. This letter was sent regular mail and certified mail, return receipt requested. Subsequent to this, HAWKINS provided a 2-page letter to the Policy Committee, and accompanying documents which include proof of completion of trainings and counseling, documentation of discipline from HAWKINS' employer, as well as supporting letters of recommendation for HAWKINS by both line staff and command personnel. Staff asks that the Policy Committee review these documents in their entirety.

On July 24, 2008, DPSST sent a follow-up email to DOC Security Manager Brandon KELLY making further inquiry regarding HAWKINS marijuana use and providing him additional opportunity to address this matter to the CPC. As of the CPC meeting, no additional information was provided.

#### **DISCUSSION:**

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review. Committee and Board members may consider any mitigating or aggravating factors in their review.

#### **DISCRETIONARY DISQUALIFYING CONDUCT**

OAR 259-008-0070 specifies discretionary disqualifying conduct which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

*(3) Discretionary Grounds for Denying or Revoking Certification of a Public Safety Professional or Instructor: The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:*

...

*(c) 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. (moral fitness)*

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

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

*(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.*

...

*(d) Policy Committee and Board Review: The Policy Committee and Board may consider mitigating and aggravating circumstances in making a decision to deny or revoke certification based on discretionary disqualifying conduct.*

## **Moral Fitness**

OAR 259-008-0010(6) states, in part, “All law enforcement officers must be of good moral fitness.” Moral fitness is described as:

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

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

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

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

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

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

## **Discretionary Disqualifying Convictions:**

OAR 259-008-0070(3) specifies discretionary disqualifying conduct. This rule provides for committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

*“(i) In making a decision on a discretionary denial or revocation the policy committee may use the criminal disqualifier and decision matrix approved by the Board.*

*(ii) The matrix is designed as an aid in guidance to decision-making only and provides parameters for deviation.*

*(iii) Policy committees may consider aggravating and/or mitigating circumstances from the criminal disqualifier matrix for the parameters included but not limited to the list below:*

*(I) Was the conviction a felony, misdemeanor, or violation?*

*(II) How long ago did the conviction occur? (refer to the matrix)*

*(III) Was the person a minor at the time and tried as an adult?*

*(IV) Did it occur before, during, after, or in between employment in law enforcement?*

*(V) Did the individual serve time in prison/jail? If so, how long?*

*(VI) If restitution was involved, has the person met all obligations?*

*(VII) Was the individual on parole or probation? If so, when did the parole or probation end? Is the person still on parole or probation?*

*(VIII) Are there any aggravating or mitigating circumstances that should be considered?*

*(IX) Do the actions violate the rule definition of moral fitness (OAR 259-008-0010(6)), i.e., moral turpitude, dishonesty, fraud, deceit, misrepresentation, conduct prejudicial to the administration of justice, conduct that reflects adversely on the profession, or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation?*

*(X) How many other convictions does this person have? Over what period of time?*

*(XI) Has this person been convicted of this same crime more than once?*

*(XII) If a DUII, is this the first, second, or third time within the previous 10 years? (Has this DUII become a felony (it's a felony if this is the fourth conviction and the last three were within the previous ten-year period)?)*

*(XIII) Does this conviction involve any domestic violence situation?*

#### **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.

#### **ACTION REQUESTED:**

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke HAWKINS' certifications, based violation of the established moral fitness standards, or his discretionary disqualifying convictions, or both, by voting on the following:

3. The Corrections Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
4. The Corrections Policy Committee believes:
  - a. HAWKINS' actions *do/do not* cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land.
  - b. HAWKINS' conduct *did/did not* involve dishonesty, fraud, deceit, or misrepresentation.
  - c. HAWKINS' conduct *was/was not* prejudicial to the administration of justice.
  - d. HAWKINS' conduct *did/did not* adversely reflect on his fitness to perform as a corrections officer.
  - e. HAWKINS' actions *do/do not* make him inefficient or otherwise unfit to render effective service because of the agency's and the public's loss of confidence in his ability to perform competently.
5. The Corrections Policy Committee finds HAWKINS' conduct *does/does not* rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that HAWKINS' certifications *be revoked/not be revoked*.

#### **PERSONAL MEDICAL INFORMATION CONTAINED IN THE EXHIBITS**

## Exhibit F

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 19, 2008

**TO:** Corrections Policy Committee

**FROM:** Theresa King  
Professional Standards Coordinator

**SUBJECT:** Dylan Michael SIMS aka Lon Jay SIMS DPSST #41912

**ISSUE:**

Should Dylan SIMS aka Lon Sims' (SIMS) certification be revoked based on a violation of the Moral Fitness standards defined in OAR 259-008-0010(6)?

**BACKGROUND and OVERVIEW:**

**Note: This Staff Report contains personal medical information that, if discussed, must be discussed during an Executive Session.**

On February 1, 2002, SIMS was employed as a corrections officer with the Oregon Department of Corrections (DOC). SIMS holds a Basic Corrections certification.

On March 4, 2002, SIMS signed his Criminal Justice Code of Ethics.

On February 2, 2006, SIMS sought a name change from Lon Jay SIMS to Dylan Michael SIMS through the Multnomah County Circuit Court.

On or about February 24, 2006, DPSST received a F4, Personnel Action Report, showing SIMS had been discharged for cause. DPSST sent a letter to DOC requesting a copy of the underlying investigation.

On April 11, 2006, the Oregon Department of Corrections (DOC) faxed a copy of the Initiation of Pre-Dismissal Process and a Resignation form to DPSST. *During the pre-dismissal process SIMS resigned.* Subsequent to this DPSST sought, and received, additional documentation on the circumstances surrounding the resignation.

A review of the allegations against SIMS includes:

1. In November 2005, SIMS admitted to viewing the Iraqi Constitution on the computer while at work. SIMS was counseled for this violation of agency policy.
2. In December 2005, a routine records check showed that SIMS' driver's license was suspended. SIMS admitted he did not report this to his employer, a violation of agency policy. SIMS was removed from all driving duties until he could do so lawfully, although the ability to drive was an essential function of his job. In January 2006, SIMS's employer witnessed him driving while suspended and SIMS admitted to driving to work in a suspended status. In July 2007 SIMS was convicted of Driving while Suspended.

3. In December 2005, after the employer received complaints from SIMS' co-workers, SIMS was given a direct order not to discuss his sexual orientation with others while at work. After receiving this instruction from his employer, a co-worker reported that SIMS continued to initiate sexually explicit discussions with her during work hours. In one of these conversations a co-worker asserted that SIMS told her he would not protect a co-worker who was being beaten by an inmate.
4. In January 2006, SIMS self-reported a previous unreported relationship with a paroled sexual offender. At issue in the investigation was when SIMS gained knowledge of the offender's status, and that he used the state's computer to access information about the offender for personal use. There was also a discrepancy regarding whether SIMS went to the paroled sexual offender's residence in uniform. SIMS initially asserted he had not done so, but when investigators told SIMS that the offender had described his uniform, SIMS then stated it was possible he had, but did not specifically remember. Another discrepancy involved SIMS' assertion that he looked for "Chrissy Michelle Strawn," but he could not find a match, and *in a later look-up* found "Chris Michael Strawn." However, the investigator found that when he "entered 'Chrissy Michelle Strawn' the only one similar name that appeared was that of "Chris Michael Strawn." And in SIMS response to the pre-dismissal hearing, SIMS asserted that "I told him [the investigator] that I attempted to look up Ms. Strawn *early* in the relationship and could not find "Chrissy Michelle Strawn." In this statement SIMS asserted that he did find "Chris Michael Strawn" but did not believe this to be the same person and only made the connection between the two when SIMS saw his name in the "chronos."

On April 14, 2006, SIMS was mailed a letter advising him that his case would be heard before the Corrections Policy Committee. SIMS was advised he had an opportunity to provide mitigating circumstances, in writing, for the Committee's consideration. This letter was sent regular mail and certified mail, return receipt requested.

On May 16, 2006, SIMS emailed three responses to DPSST. Staff asks that the Policy Committee and Board members review these responses in their entirety. In his initial explanation, SIMS asserts that he was wrongly terminated for a number of reasons. (Ex A31)

## **DISCUSSION:**

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review. Committee and Board members may consider any mitigating or aggravating factors in their review.

## **Moral Fitness**

OAR 259-008-0010(6) states, in part, "All law enforcement officers must be of good moral fitness. Moral fitness is described as:

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

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

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

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

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

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

**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.

**ACTION REQUESTED:**

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke SIMS' certifications, based violation of the established moral fitness standards, by voting on the following:

1. The Corrections Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. The Corrections Policy Committee believes:
  - a. SIMS' actions *do/do not* cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land.
  - b. SIMS' conduct *did/did not* involve dishonesty, fraud, deceit, or misrepresentation.
  - c. SIMS' conduct *was/was not* prejudicial to the administration of justice.
  - d. SIMS' conduct *did/did not* adversely reflect on his fitness to perform as a corrections officer.
  - e. SIMS' actions *do/do not* make him inefficient or otherwise unfit to render effective service because of the agency's and the public's loss of confidence in his ability to perform competently.
3. The Corrections Policy Committee finds SIMS' conduct *does/does not* rise to the level to warrant the revocation of his certifications, and therefore recommends to the Board that SIMS' certifications *be revoked/not be revoked*.

**ATTACHMENTS; PERSONAL MEDICAL INFORMATION CONTAINED IN THE EXHIBITS**

## Exhibit G

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 19, 2008

**TO:** Corrections Policy Committee

**FROM:** Theresa King  
Professional Standards Coordinator

**SUBJECT:** Reyes Daniel ROMAYOR, Jr.DPSST #35861

**ISSUE:**

Should Reyes ROMAYOR's Basic Corrections certification be revoked, and his Intermediate Corrections certification be denied, based on violation of the Moral Fitness standards defined in OAR 259-008-0011, or the discretionary disqualifying convictions defined in OAR 2590-008-0070, or both?

**BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to ROMAYOR:*

On July 13, 1998, ROMAYOR was hired by the Oregon Department of Corrections (DOC).

On June 14, 1999, ROMAYOR was granted a Basic Corrections certification.

On October 30, 2006, ROMAYOR submitted a F-7, Application for Certification, seeking his Intermediate Corrections Certification.

On 02 15 07, ROMAYOR signed an F-11, Criminal Justice Code of Ethics.

In January 2006, DPSST received a call from the Payette County Sheriff's Office advising that ROMAYOR had been arrested for Obstructing Officers and Disorderly Conduct. Of particular concern was that ROMAYOR, as a correctional officer, had been involved in additional prior contacts with police in the community in which he resided. A request was made for all contacts with police that ROMAYOR had been involved in.

On November 15, 2006, DPSST mailed ROMAYOR a letter advising him that his case would be heard before the Corrections Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. On November 30, 2006, DPSST received the certified mail return receipt.

On December 14, 2006, DPSST received a faxed response by ROMAYOR. Staff asks that the Committee and the Board review the materials in their entirety.

On July 17, 2008, DPSST contacted the Payette County Courts regarding ROMAYOR's status. Of particular concern were three questions:

1. Within the Idaho court system, is a “withheld judgment” considered a conviction? YES
2. Is ROMAYOR still on any kind of probation? NO
3. Has ROMAYOR sought a dismissal of his convictions? NO

DPSST was provided a Detail Summary of ROMAYOR’s criminal conviction status, via fax, as well as copies of the judgments.

A chronological review revealed the following contacts with law enforcement:

**December 18, 2003** – Shortly after midnight, ROMAYOR was contacted by police who were responding to a fight outside of a drinking establishment. Officers reported that ROMAYOR had been drinking and was somewhat uncooperative. ROMAYOR was with another corrections officer who engaged in a physical altercation with another person. ROMAYOR was not involved in the physical altercation. The police were made aware that ROMAYOR and his companion were correctional officers and included this information in the Incident Report.

**October 8, 2005** - At approximately 4 a.m., ROMAYOR was with another corrections officer who was the victim of an assault by a former inmate they had supervised at the correctional facility. Earlier that evening ROMAYOR and the other corrections officer were at a drinking establishment and had seen the inmate, who recognized them.

**January 15, 2006** – At approximately 1:45 a.m., ROMAYOR was outside of a drinking establishment when a domestic assault occurred. When police arrived, ROMAYOR approached the police and offered to interpret Spanish between the officer and an involved party. During this translation, the officer determined that ROMAYOR was telling one of the involved parties not to tell the police anything. When the officer challenged ROMAYOR’s conduct, ROMAYOR became aggressive, refused to leave the scene and was subsequently arrested. After ROMAYOR was transported to jail, he told the officers he was a correctional officer. The arresting officer told ROMAYOR that he was going to contact DOC and DPSST. **ROMAYOR was subsequently convicted of Resisting or Obstruction Officers and Disturbing the Peace on June 13, 2006 (Ex A37)**

**January 30, 2006** – Shortly after midnight police responded to a call by ROMAYOR’s girlfriend who reported that he had taken her bank card and a discount card. When police contacted ROMAYOR, he told them he had been drinking and agreed to turn over the property to the police, which he did.

**April 14, 2006** – Shortly after midnight, ROMAYOR was arrested for DUII and Unlawful Transportation of Alcohol. The subsequent Intoxilyzer results were .109 and .111. ROMAYOR was with another correctional officer; they had been stopped earlier in the evening by the police and the other officer had been cited for Unlawful Transportation of Alcohol. In this instance there were two open containers containing alcohol. **ROMAYOR was subsequently convicted of DUII on June 13, 2006 (ExA37)**

**January 23, 2007** – At approximately 9:45 p.m. ROMAYOR was arrested for domestic assault. According to ROMAYOR’s girlfriend, they had been drinking and after a short verbal exchange, the girlfriend left the room and was in the bathroom preparing to shower when ROMAYOR threw a beer bottle at her, striking her lower back as he

verbally retorted to her. The victim showed police a red mark on her lower back and the officer observed a wet spot on her shorts where the beer bottle struck. ROMAYOR denied throwing the beer bottle at the victim and told officers that he had been in trouble before and he worked at the prison. Two days later, ROMAYOR's girlfriend contacted the police and stated that she had lied about the assault; claimed the red mark officers had seen was a "tan mark" and provided no explanation for the wet spot on her shorts. The girlfriend wrote a statement and was cited and released for Obstructing. Subsequent to this the charge was dismissed.

#### **DISCUSSION:**

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

#### **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.

#### **DISCRETIONARY DISQUALIFYING CONDUCT**

OAR 259-008-0070 specifies discretionary disqualifying conduct which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

*(3) Discretionary Grounds for Denying or Revoking Certification of a Public Safety Professional or Instructor: The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:*

...

*(c) 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. (moral fitness)*

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

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

*(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.*

...

*(d) Policy Committee and Board Review: The Policy Committee and Board may consider mitigating and aggravating circumstances in making a decision to deny or revoke certification based on discretionary disqualifying conduct.*

## **Moral Fitness**

OAR 259-008-0010(6) states, in part, “All law enforcement officers must be of good moral fitness.” Moral fitness is described as:

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

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

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

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

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

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

## **Discretionary Disqualifying Convictions:**

OAR 259-008-0070(3) specifies discretionary disqualifying conduct. This rule provides for committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

*“(i) In making a decision on a discretionary denial or revocation the policy committee may use the criminal disqualifier and decision matrix approved by the Board.*

*(ii) The matrix is designed as an aid in guidance to decision-making only and provides parameters for deviation.*

*(iii) Policy committees may consider aggravating and/or mitigating circumstances from the criminal disqualifier matrix for the parameters included but not limited to the list below:*

*(I) Was the conviction a felony, misdemeanor, or violation?*

*(II) How long ago did the conviction occur? (refer to the matrix)*

*(III) Was the person a minor at the time and tried as an adult?*

*(IV) Did it occur before, during, after, or in between employment in law enforcement?*

*(V) Did the individual serve time in prison/jail? If so, how long?*

*(VI) If restitution was involved, has the person met all obligations?*

*(VII) Was the individual on parole or probation? If so, when did the parole or probation end? Is the person still on parole or probation?*

*(VIII) Are there any aggravating or mitigating circumstances that should be considered?*

*(IX) Do the actions violate the rule definition of moral fitness (OAR 259-008-0010(6)), i.e., moral turpitude, dishonesty, fraud, deceit, misrepresentation, conduct prejudicial to the administration of justice, conduct that reflects adversely on the profession, or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation?*

*(X) How many other convictions does this person have? Over what period of time?*

*(XI) Has this person been convicted of this same crime more than once?*

*(XII) If a DUII, is this the first, second, or third time within the previous 10 years? (Has this DUII become a felony (it's a felony if this is the fourth conviction and the last three were within the previous ten-year period)?)*

*(XIII) Does this conviction involve any domestic violence situation?*

### **ACTION REQUESTED:**

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke ROMAYOR's Basic Corrections certification, and deny his Intermediate Corrections certification, based on violation of the established moral fitness standards, or his discretionary disqualifying convictions, or both:

1. The Corrections Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
2. The Corrections Policy Committee believes:
  - a. ROMAYOR's actions *do/do not* cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land.
  - b. ROMAYOR's conduct *did/did not* involve dishonesty, fraud, deceit, or misrepresentation.
  - c. ROMAYOR's conduct *was/was not* prejudicial to the administration of justice.
  - d. ROMAYOR's conduct *did/did not* adversely reflect on his fitness to perform as a Corrections Officer.
  - e. ROMAYOR's actions *do/do not* make him inefficient or otherwise unfit to render effective service because of the agency's and the public's loss of confidence in his ability to perform competently.
3. After a review of any mitigating and aggravating circumstances cited in the above "discretionary disqualifying convictions" section:
  - a. ROMAYOR's case *contains/does not contain* mitigating circumstances.
  - b. ROMAYOR's case *contains/does not contain* aggravating circumstances.
4. The Corrections Policy Committee finds ROMAYOR's conduct *does/does not* rise to the level to warrant the revocation of his Basic Corrections certification, and denial of his Intermediate Corrections certification, and therefore recommends to the Board that ROMAYOR's Basic Corrections certification *be revoked/not be revoked*, and his Intermediate Corrections certification *be/not be* denied.

## Exhibit H

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 19, 2008  
**TO:** Corrections Policy Committee  
**FROM:** Theresa King  
Professional Standards Coordinator  
**SUBJECT:** Paul D. CUFF DPSST #24364

**ISSUE:**

Should Paul CUFF's Basic Corrections certification be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010?

**BACKGROUND and OVERVIEW**

*This case involves the following actions and processes related to CUFF:*

On September 17, 1990, CUFF was hired by the Washington County Sheriff's Office (WCSO).

On December 12, 1990, CUFF signed an F-11, Criminal Justice Code of Ethics.

On July 23, 1991, CUFF was granted a Basic Corrections certification.<sup>1</sup>

On February 19, 2008, CUFF resigned in lieu of termination from the WCSO based on an internal investigation that revealed that CUFF had among other violations, falsified official records by documenting that he had completed rounds properly, completely and on time. Of significant concern to the employer was CUFF's untruthfulness.

On May 15, 2008, DPSST mailed CUFF a letter advising him that his case would be heard before the Corrections Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. On May 19, 2008, DPSST received the certified mail return receipt. To date, CUFF has not provided any response.

The CPC has previously considered unrelated matters regarding Cuff's certification.

**DISCUSSION:**

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

**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.

## DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-008-0070 specifies discretionary disqualifying conduct which includes criminal convictions and violations of the established moral fitness standards. This rule provides for Committee and Board consideration of aggravating and mitigating circumstances by stating, in part:

...

*(3) Discretionary Grounds for Denying or Revoking Certification of a Public Safety Professional or Instructor: The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:*

...

*(c) 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. (moral fitness)*

and OAR 259-008-0070(5) specifies the procedures to be used by stating, in part:

...

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

*(D) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying conduct listed in subsection (3), the case may be presented to the Board, through a Policy Committee.*

...

*(d) Policy Committee and Board Review: The Policy Committee and Board may consider mitigating and aggravating circumstances in making a decision to deny or revoke certification based on discretionary disqualifying conduct.*

### Moral Fitness

OAR 259-008-0010(6) states, in part, "All law enforcement officers must be of good moral fitness. Moral fitness is described as:

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

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

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

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

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

(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement officer. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from

duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the law enforcement officer's performance on the job which makes the law enforcement officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the law enforcement officer's ability to perform competently.

**ACTION REQUESTED:**

Staff requests the Corrections Policy Committee review the matter and make a recommendation to the Board whether or not to revoke CUFF's certification, based on violation of the established moral fitness standards:

5. The Corrections Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
6. The Corrections Policy Committee believes:
  - a. CUFF's actions *do/do not* cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the land.
  - b. CUFF's conduct *did/did not* involve dishonesty, fraud, deceit, or misrepresentation.
  - c. CUFF's conduct *was/was not* prejudicial to the administration of justice.
  - d. CUFF's conduct *did/did not* adversely reflect on his fitness to perform as a Corrections Officer..
  - e. CUFF's actions *do/do not* make him inefficient or otherwise unfit to render effective service because of the agency's and the public's loss of confidence in his ability to perform competently.
7. The Corrections Policy Committee finds CUFF's conduct *does/does not* rise to the level to warrant the revocation of his certification, and therefore recommends to the Board that CUFF's certification *be revoked/not be revoked*.

## Exhibit I

### Department of Public Safety Standards and Training Memorandum

**DATE:** August 19, 2008

**TO:** Corrections Policy Committee

**FROM:** Steve Winegar  
Curriculum Unit

**SUBJECT:** ORPAT for Corrections  
Discussion and Alternatives for Standards

**Background:** The Corrections Policy Committee has expressed interest in adopting a legally defensible standard for completion of the ORPAT as part of the Basic Corrections Academy course requirements.

DPSST staff is conducting an extensive review of ORPAT, completion times, and links to performance during training and job performance. This review included examination of ORPAT for corrections officers during their Basic Corrections Academy training.

#### **Issues:**

##### Authority of the Board on Public Safety Standards and Training

ORS 181.640 (1)(a) grants the authority to the Board on Public Safety Standards and Training to establish minimum standards for corrections officers; the statutory language is:

- (a) The department shall recommend and the board shall establish by rule reasonable minimum standards of physical, emotional, intellectual and moral fitness for public safety personnel and instructors.

If the Board wishes to adopt a standard for completion of ORPAT for corrections officers, the standard must be a “reasonable minimum standard” for physical fitness for corrections officers.

##### ORPAT

The Oregon Physical Ability Test (ORPAT) was developed to reflect the typical physical demands of a police officer, based on an analysis of the physical job tasks for police officer.

DPSST has been administering the ORPAT to students in Basic Police, Basic Corrections and Basic Parole and Probation courses beginning in 2000. At the direction of the Police Policy Committee, DPSST staff analyzed the data from Basic Police course students. As a result of that analysis, the Police Policy Committee recommended, and the Board adopted, a “qualification standard” for ORPAT for Basic Police students. The standard adopted was 5 minutes 30 seconds (5:30). This standard was based on the analysis of the data and set to eliminate any disparate impact of the standard for students at the Academy, under EEO guidelines.

The “qualification standard” chosen for police officers was the average (mean) time plus two standard deviations for the ORPAT test at the end of their Academy training (referred to as “Post Test” time).

Statistically this means that “on average” if you had 100 students take the test, about 96 would meet or exceed the standard. The Police Policy Committee recommended and the Board adopted the 5:30 qualification standard for Basic Police course students. Basic Police course students perform the ORPAT at three times during their training; under the policy adopted by the Board the student must meet the standard at any one of the three testing times (because the standard was based on the “Post Test” times).

#### Validity for ORPAT for Corrections

During the current review of ORPAT, the activities that comprise ORPAT were examined for applicability for Corrections Officers. In comparing the physical job tasks from recent police and corrections job task analysis (JTA), there is substantial agreement in the physical job tasks that were identified as critical and essential for both police and corrections.

Of the physical job tasks evaluated by police and corrections officers, thirty-seven (37) of the physical job tasks were identified as critical and essential for both police and corrections officers. Six (6) tasks were identified as critical and essential for police but not for corrections, and seven (7) tasks were identified as critical and essential for corrections but not for police.

The recent JTA’s for police and corrections included tasks that were part of the JTA evaluation for one discipline but were not on the list of tasks evaluated by the other discipline. There were forty-six (46) tasks identified as critical and essential for police that were not evaluated by corrections; there were seven (7) tasks that were evaluated by corrections and not by police.

In reviewing the validation of ORPAT for police, both the individual stations (activities) included in ORPAT and the overall composition of ORPAT were evaluated against the critical and essential physical job tasks for police officer. A similar evaluation was done based on the physical job tasks for corrections officer.

The individual ORPAT stations or activities were found to reflect seventeen (17) job tasks that were identified as critical and essential for police officers, and twenty-four (24) job tasks that were identified as critical and essential for corrections officers. In addition, when viewed as a whole ORPAT was found to reflect forty-three (43) job tasks that were identified as critical and essential for police officers and sixty-two (62) job tasks that were identified as critical and essential for corrections officers. There is ample evidence to validate ORPAT as reflecting the critical and essential physical job tasks for corrections officers.

#### Establishing a Minimum Standard of Physical Fitness for Corrections Officers

The Corrections Policy Committee has expressed the desire to develop a “qualification standard” for completion of ORPAT for Basic Corrections Academy students, and the Committee would then make a recommendation to the Board that the standard be adopted by the Board.

DPSST staff reviewed ORPAT data for Basic Corrections Academy students, their employment/retention status, data beginning early 2004 on deficiencies during training at the Academy, and since January 2007 injuries during training. We have analyzed ORPAT data from a disparate impact perspective, success on the job and success in training (no deficiencies), in an effort to establish what a “reasonable minimum standard” might be.

## Disparate Impact Analysis

Below is a summary of ORPAT completion times for students in the Basic Corrections Academy classes at DPSST from 2000 (Basic Corrections Class 151) through 2008 (Basic Corrections Class 231). This data is based on over 2300 students.

### ORPAT Time at Entry to Academy (Pre-Test Time)

Mean (average) time	5:25
Mean plus one standard deviation	6:47
Mean plus two standard deviations	8:09

### ORPAT Time at Graduation from Academy (Post Test Time)

Mean (average) time	4:50
Mean plus one standard deviation	5:55
Mean plus two standard deviations	7:01

NOTE: In a previous report to the Corrections Policy Committee the mean plus two standard deviations post test time was 6:55 based on over 1900 students. Including the additional students from the past year has slightly increased the overall completion times.

In order to establish a qualification standard that does not have adverse impact on any protected class, the standard for Basic Corrections Academy students would have to be around the mean (average) time plus two (2) standard deviations which is eight minutes nine seconds (8:09). Statistically this means that “on average” if you had 100 students take the test, about 96 would meet or exceed the standard. At this qualification standard the passing rate of any protected class would be at least 80% of the passing rate for the highest group. (For purposes of analysis for this paper we conducted all analysis using eight minutes; there is no adverse impact on any protected class at 8:00.)

It is important to recognize that adverse impact is the first level of analysis used to evaluate tests used for screening applicants for employment. The data that DPSST has on ORPAT completion times is for STUDENTS in the Basic Corrections Academy. These students may or may not represent the level of physical fitness of all APPLICANTS for corrections jobs, so any standard recommended to the Board MAY NOT be a reasonable standard for screening applicants for employment.

## Reasonable Minimum Standard of Physical Fitness for the Job

The statutes authorize the Board to adopt “reasonable minimum standards” for physical fitness, but what constitutes a “reasonable minimum standard” is not defined in the statutes or administrative rules. There has only been one court decision addressing the Board’s statutory authority to establish “reasonable minimum standard” and it does not specifically define what a “reasonable minimum standard” might entail. Reviewing recent court decisions addressing physical fitness standards, the Third Circuit Court of Appeals interpreted similar language as meaning “likely to be able to do the job.” *Lanning v. SEPTA*, 308 F3d. 286 (3d Cir. 2002).

A “reasonable minimum standard” qualification time for completion of the ORPAT could be established that reflects the ability of the student to perform the physical tasks of a corrections officer. An argument could be made that if a student completes ORPAT at a time greater than the reasonable minimum standard completion time, the student will likely not be able to successfully perform the critical and essential physical job tasks as a corrections officer. As a result of the inability to perform and meet the minimum requirements, the student would not continue to be employed in a corrections capacity beyond their probationary period (usually 12 to 18 months) as their inability to perform the physical tasks should be exhibited during that time. The analysis of the “reasonableness” of a standard

would be based on the relationship between continued employment in corrections at least 18 months after hire compared to the student's ORPAT completion time, recognizing that the reason a person may not successfully complete a probationary period is likely more complex than simply not being able to perform the physical job tasks.

Examining data on corrections officers who were hired between late 1999 and July 1, 2006, there appears to be no ORPAT time that reflects the minimum physical fitness standard to perform the job of corrections officer. Roughly 89% of the corrections officers who at entry into the Basic Corrections Academy course were able to complete the ORPAT in less than 8:00 and are still employed in public safety after 18 months. It should be noted that a number of people who complete the Basic Corrections Academy go on to employment in other public safety disciplines (for example 25 officers who were hired between late 1999 and 7/1/2006 left corrections and went to police within 18 months of hire as a corrections officer); the assumption is that each of these public safety disciplines require similar physical abilities – an assumption that is supported by the job task analysis for each. About 89% of the corrections officers who completed the ORPAT within 8:00 upon entry to the Basic Corrections Academy course are still employed in a public safety discipline after 18 months; about 85% of corrections officers who completed ORPAT in greater than 8:00 at entry to the Basic Corrections Academy course are still employed in a public safety discipline after 18 months. The data on ORPAT times to this point do not provide support for any qualification standard that would correlate to successful job performance as indicated by still being employed in a public safety discipline 18 months after hire (reflecting successful completion of the probationary period).

To establish an ORPAT completion time that would be reasonable based on successful performance of the job tasks would require testing a representative sample of incumbent corrections officers to validate the qualification standard. DPSST has no ORPAT data for incumbent corrections officers.

#### ORPAT Standard and Successful Completion of Academy Training

Another approach to establishing a reasonable minimum standard qualification time for completion of ORPAT would be the successful performance during training at the Basic Corrections Academy. An argument is that a reasonable minimum qualification standard would screen out students that are more likely to become injured and/or be deficient because they are unable to successfully perform the required physical tasks during training. The qualification standard would have to be based on the student's physical fitness as reflected by the ORPAT completion time at the beginning of Academy training (Pre-Test Time) in order to be effective in screening out students who are more likely to become injured and/or be deficient because they are unable to successfully perform the required physical tasks during training.

DPSST has been gathering data on injuries and deficiencies during training, however we only have accumulated about 18 months of injury data with sufficient and consistent detail (starting January 2007). The data indicates that corrections students who complete ORPAT in times greater than 8:00 are more likely to sustain an injury during training, but the numbers are insufficient to support a defensible conclusion at this time.

DPSST has also been collecting information on students who are deficient during training; this data starts mid-year in 2004 and includes over 1100 students with over 100 of them being deficient in some segment of their training. The data show that Basic Corrections Academy students who complete ORPAT with times greater than 8:00 are significantly more likely to be deficient than corrections students who complete ORPAT in less than 8:00. Over 45% of the students who complete the ORPAT with a time more than 8:00 at entry to the Basic Corrections Academy experience a deficiency during training that requires them to return to the Academy to remediate the deficiency. Students who complete ORPAT with a time more than 8:00 are nearly seven times more likely to experience a

deficiency in their training than students who complete the ORPAT in less than 8:00, who experience a deficiency rate of less than 7%.

If 8:00 was identified and adopted as the reasonable minimum standard for completion of ORPAT for Basic Corrections Academy students, 120 (5%) of the 2370 Basic Corrections course students who completed ORPAT between 2000 and 2008, would not have met the standard. However, that does not mean that 5% of the students coming to the Basic Corrections Academy would necessarily fail the pre-test ORPAT. Basic Corrections course students who completed ORPAT with times greater than 8:00 at the pre-test, were able to improve their ORPAT completion times about 90 seconds on average by the post test during the Basic Corrections Academy. Minimal preparation prior to attending the Basic Corrections course could substantially improve a student's ORPAT completion time.

Since DPSST moved into the new Public Safety Academy in 2006, the average time between hire and starting the Basic Corrections course is over three months. The lag time between hire and starting the Academy course could easily provide adequate time for an officer to improve their ability to complete ORPAT within the established reasonable minimum standard time.

#### Direction on ORPAT Standard for Corrections

The Corrections Policy Committee is in a position to determine if they want to move toward adopting ORPAT as a physical abilities test for students attending the Basic Corrections course. If the Corrections Policy Committee wishes to move forward in adopting ORPAT as a test of physical fitness test for entry into the Basic Corrections Academy, the justification for the "reasonable minimum standard" for fitness should be reviewed by legal counsel prior to any final recommendation being forwarded to the Board. DPSST staff will continue to collect and analyze data on the performance of Basic Corrections Academy students on the ORPAT, injuries, deficiencies and successful completion of the Basic Corrections Academy course, and continued employment in the corrections profession.

**Recommendation:** Staff recommends that the Corrections Policy Committee consider the following questions:

- Does the Corrections Policy Committee want to pursue establishing a physical fitness standard for ORPAT for Basic Corrections Academy students?
- Does the Corrections Policy Committee want to recommend a standard of 8:00 (eight minutes) at entry into the Basic Corrections Academy course?

If the Corrections Policy Committee wishes to pursue a minimum physical fitness standard for ORPAT for Basic Corrections students, DPSST staff will forward the justification for legal review and report back to the Committee.