

**Fire Policy Committee
Minutes
November 19, 2010**

The Fire Policy Committee of the Board on Public Safety Standards and Training held a regular meeting at 9:00 a.m. on November 19, 2010 at the Oregon Public Safety Academy in Salem, Oregon. Chair Mark Prince called the meeting to order at 9:00 a.m.

Attendees

Committee Members:

Mark Prince, Oregon Fire Chiefs Association, Chair
Joe Seibert, Non-Management Firefighter, Vice-Chair
Alan Ferschweiler, Oregon State Fire Fighters Council
Larry Goff, Oregon Fire District Directors Association
John Klum, Portland Fire & Rescue
William Lafferty, Forest Protection Agencies
Dan Petersen, Oregon Fire Instructors Association
Randy Simpson, Oregon State Fire Marshal
Scott Stanton, Oregon Volunteer Firefighters Association

Committee Members Absent:

Johnny Mack, Community College Fire Programs
Michelle Stevens, Oregon Fire Marshals Association

DPSST Staff:

Eriks Gabliks, Director
Julie Olsen-Fink, Fire Certification Supervisor
Tina Diehl, Fire Certification Specialist
Allison Sebern, Fire Certification Coordinator
Mark Ayers, Fire Program Supervisor
Marilyn Lorance, Standards & Certification Program Supervisor
Kristen Turley, Standards & Compliance Coordinator
Linsay Bassler, Compliance Coordinator

Guests:

Michael Kinkade, Forest Grove Fire & Rescue/OFIA
Jeff Kronser, Springfield Fire & Life Safety
Ron Schmitt, Estacada RFPD
Chris Geiger, Clackamas County Fire District #1



1. **Minutes from August 27, 2010 meeting**

John Klum moved to approve the minutes from the August 27, 2010 Fire Policy Committee meeting. Alan Ferschweiler seconded the motion. The motion carried in a unanimous vote.

2. **Committee Vote on November 2011 Meeting Date**

It was decided that the November 2011 FPC meeting will be held on Wednesday, November 23.

3. **Standard for Technical Rescuer Professional Qualification
NFPA 1006, 2008 Edition – Proposed Revisions to OAR 259-009-0005**

Presented by Julie Olsen-Fink

BACKGROUND:

The BPSST/DPSST National Fire Protection Association (NFPA) Technical Rescuer Task Force originally met with the approval of the Fire Policy Committee (FPC) on August 31, 2010. The task force successfully concluded their work the same day. The duty of the task force was to review the 2000 Edition of NFPA 1006 adopted in current administrative rule and determine if adopting the 2008 Edition of NFPA 1006 would benefit the Oregon fire service. The task force believes there is significant training value in remaining consistent and current with the NFPA standards at the national level. The task force is recommending the Oregon Administrative Rules (OAR) reflect the following proposed changes and be adopted as permanent rule.

TASK FORCE MEMBERS:

Michael Kinkade (Chair)	Forest Grove Fire & Rescue
Chris Geiger (Vice-Chair)	Clackamas Fire District #1
Jason Blount	Hillsboro Fire and Rescue
Patrick Caprino	Salem Fire Department
Scott Carmony	Clackamas Fire District #1
Greg Deedon	Springfield Fire and Life Safety
Keith Gillespie	Albany Fire Department
Jeff Kronser	Springfield Fire & Life Safety
Mariana Ruiz-Temple	Oregon Office of State Fire Marshal
Ron Schmitt	Estacada Fire District #69
Tina Toney	Oregon Office of State Fire Marshal
Rich Tyler	Portland Fire and Rescue
Scott Walker	Clackamas Fire District #1
Clare Taylor	OFCA, Bookstore

DPSST STAFF:

Julie Olsen-Fink	Fire Certification Supervisor
Mark Ayers	Fire Training Supervisor

Harry Ward
Eriks Gabliks
Allison Sebern

Regional Fire Training
Director
Fire Certification Coordinator

SUMMARY:

The task force reviewed the proposed NFPA standards and unanimously agreed that the Oregon fire service standards should be updated as they are considered “highly technical” and “specialized areas of training.” NFPA has made significant changes to their standards in the 2008 Edition of NFPA 1006. Each chapter in the document has been broken into two levels, Level I (awareness) and Level II (operations). The task force deliberated at length on how to address Level I and II within Oregon’s standards. They also considered how these proposed changes could potentially impact the Oregon fire service. In order to ensure an accurate record based on the lengthy discussions, each standard was voted on individually. The results are identified below. Two of the proposed levels of certification have been broken into Level I and Level II: NFPA Rope Rescue and NFPA Surface Water Rescue. The other levels of certification remain intact and require both Level I and Level II to be completed prior to applying for certification. The task force also proposed the adoption of three new levels of certification (NFPA Surf Water Rescue, Dive Rescue, and Swiftwater Rescue.) The task force members expressed the need for the additional levels of certification because of the changing needs of rescue operations throughout the state. The following are the proposed level of certification:

- **Chapter 6 - Rope Rescue** - *Consensus to separate Level I and Level II, creating **two** levels of certification within the standard*
- **Chapter 7 - Confined Space Rescue** - *Consensus to adopt Chapter 7 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 8 - Trench Rescue** - *Consensus to adopt Chapter 8 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 9 - Structural Collapse** - *Recommendation in a nine-to-one vote to adopt Chapter 9 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 10 - Vehicle and Machinery Rescue** - *Consensus to adopt Chapter 10 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 11 - Surface Water Rescue** - *Recommendation in a six-to-three vote to separate Level I and Level II, creating **two** levels of certification within the standard*
- ****New proposed standard for adoption**:** **Chapter 12 - Swiftwater Rescue** - *Consensus to adopt Chapter 12 in total with just **one** level of certification which includes Level I and Level II*

- ****New proposed standard for adoption****: **Chapter 13 - Dive Rescue** - *Consensus to adopt Chapter 13 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 14 - Ice Rescue** - *Do not adopt (table until next standard or if the need arises)*
- *****New proposed standard for adoption*****: **Chapter 15 - Surf Rescue** - *Consensus to adopt Chapter 15 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 16 - Wilderness Rescue** - *Do not adopt (table until next standard or if the need arises)*
- **Chapter 17 - Mine and Tunnel Rescue** - *Do not adopt (table until next standard or if the need arises)*
- **Chapter 18 - Cave Rescue** - *Do not adopt (table until next standard or if the need arises)*

Each of the above levels of certification will require the successful completion of course work and training. The applicant must successfully complete the individual task book associated with the respective level of certification.

ISSUE: NFPA has made technical changes to the titles, and the definitions are not currently in rule. Staff has been adding definitions to this section of the rule when reviewing standards to create consistency within the OAR. Staff requests that the FPC review the proposed language and determine whether to recommend adoption of these definitions for Oregon fire service professionals. (The proposed rule to adopt the related standards is found in the next staff report, under OAR 259-009-0005.) For ease of review, only the relevant portion(s) of the revised text are included. The following proposed language contains recommended additions (**bold and underlined text**) and deletions (~~strikethrough text~~). Please note that all numbering will change based on upcoming changes adding Wildland Interface standards.

259-009-0005

Definitions

(33) “NFPA Confined Space Rescue” means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 7 sections 7.1 and 7.2.

(49) “NFPA Rope Rescue – Level I” means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 section 6.1.

(50) “NFPA Rope Rescue – Level II” means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 section 6.2.

(51) “NFPA Surface Water Rescue – Level I” means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 11 section 11.1.

(52) “NFPA Surface Water Rescue – Level II” means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 11 section 11.2.

(53) “NFPA Swiftwater Rescue” means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 sections 6.1 and 6.2, Chapter 11 sections 11.1 and 11.2, and Chapter 12 sections 12.1 and 12.2.

(54) “NFPA Trench Rescue” means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 8 sections 8.1 and 8.2.

(55) “NFPA Structural Collapse Rescue” means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 9 sections 9.1 and 9.2.

(56) “NFPA Vehicle and Machinery Rescue” means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 10 sections 10.1 and 10.2.

ACTION ITEM I: Determine whether to recommend to the Board filing the proposed language for OAR 259-009-0005 with the Secretary of State.

ACTION ITEM II: Determine whether to recommend to the Board filing the proposed language for OAR 259-009-0005 with the Secretary of State as permanent rule if no comments are received.

ACTION ITEM III: Determine whether there is a significant fiscal impact on small businesses. *No fiscal impact by consensus.*

John Klum moved to recommend to the Board to file the proposed language for OAR 259-009-0005 with the Secretary of State as proposed rule and as permanent rule if no comments are received. Larry Goff seconded the motion. The motion carried in a unanimous vote.

4. Standard for Technical Rescuer Professional Qualification
NFPA 1006, 2008 Edition – Proposed Revisions to OAR 259-009-0062

Presented by Julie Olsen-Fink

BACKGROUND:

The BPSST/DPSST National Fire Protection Association (NFPA) Technical Rescuer Task Force originally met with the approval of the Fire Policy Committee (FPC) on August 31, 2010. The task force successfully concluded their work the same day. The duty of the task force was to review the 2000 Edition of NFPA 1006 adopted in current administrative rule and determine if adopting the 2008 Edition of NFPA 1006 would benefit the Oregon fire service. As a result of their work, the task force recognized the importance of the Oregon fire service maintaining the most current standards available from NFPA. The proposed rules have been updated to reflect the changes in the standard. The task force also made the recommendation that the Fire Policy Committee and Board vote to approve and adopt the 2008 Edition of NFPA 1006 for Technical Rescuer.

TASK FORCE MEMBERS:

Michael Kinkade (Chair)	Forest Grove Fire & Rescue
Chris Geiger (Vice-Chair)	Clackamas Fire District #1
Jason Blount	Hillsboro Fire and Rescue
Patrick Caprino	Salem Fire Department
Scott Carmony	Clackamas Fire District #1
Greg Deedon	Springfield Fire and Life Safety
Keith Gillespie	Albany Fire Department
Jeff Kronser	Springfield Fire & Life Safety
Mariana Ruiz-Temple	Oregon Office of State Fire Marshal
Ron Schmitt	Estacada Fire District #69
Tina Toney	Oregon Office of State Fire Marshal
Rich Tyler	Portland Fire and Rescue
Scott Walker	Clackamas Fire District #1
Clare Taylor	OFCA, Bookstore

DPSST STAFF:

Eriks Gabliks	Director
Julie Olsen-Fink	Fire Certification Supervisor
Mark Ayers	Fire Training Supervisor
Harry Ward	Regional Fire Training
Allison Sebern	Fire Certification Coordinator

SUMMARY:

The task force reviewed the proposed NFPA standards and unanimously agreed that the Oregon fire service standards should be updated as they are considered “highly technical” and “specialized areas of training.” NFPA has made significant changes to their standards in the 2008 Edition of NFPA 1006. Each chapter in the document has been broken into

two levels, Level I (awareness) and Level II (operations). The task force deliberated at length on how to address Level I and II within Oregon's standards. They also considered how these proposed changes could potentially impact the Oregon fire service. In order to ensure an accurate record based on the lengthy discussion, each standard was voted on individually. The results are identified below. Two of the proposed levels of certification have been broken into Level I and Level II: NFPA Rope Rescue and NFPA Surface Water Rescue. The other levels of certification remain intact and require both Level I and Level II to be completed prior to applying for certification. The task force also proposed the adoption of three new levels of certification (NFPA Surf Water Rescue, Dive Rescue, and Swiftwater Rescue.) The task force members expressed the need for the additional levels of certification because of the changing needs of rescue operations throughout the state. The following are the proposed level of certification:

- **Chapter 6 - Rope Rescue** - *Consensus to separate Level I and Level II, creating **two** levels of certification within the standard*
- **Chapter 7 - Confined Space Rescue** - *Consensus to adopt Chapter 7 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 8 - Trench Rescue** - *Consensus to adopt Chapter 8 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 9 - Structural Collapse** - *Recommendation in a nine-to-one vote to adopt Chapter 9 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 10 - Vehicle and Machinery Rescue** - *Consensus to adopt Chapter 10 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 11 - Surface Water Rescue** - *Recommendation in a six-to-three vote to separate levels Level I and Level II, creating **two** levels of certification within the standard*
- ****New proposed standard for adoption****: **Chapter 12 - Swiftwater Rescue** - *Consensus to adopt Chapter 12 in total with just **one** level of certification which includes Level I and Level II*
- ****New proposed standard for adoption****: **Chapter 13 - Dive Rescue** - *Consensus to adopt Chapter 13 in total with just **one** level of certification which includes Level I and Level II*
- **Chapter 14 - Ice Rescue** - *Do not adopt (table until next standard or if the need arises)*

- *****New proposed standard for adoption***: **Chapter 15 - Surf Rescue** - *Consensus to adopt Chapter 15 in total with just **one** level of certification which includes Level I and Level II***
- **Chapter 16 - Wilderness Rescue** - *Do not adopt (table until next standard or if the need arises)*
- **Chapter 17 - Mine and Tunnel Rescue** - *Do not adopt (table until next standard or if the need arises)*
- **Chapter 18 - Cave Rescue** - *Do not adopt (table until next standard or if the need arises)*

Each of the above levels of certification will require the successful completion of course work and training. The applicant must successfully complete the individual task book associated with the respective level of certification.

The following proposed administrative rules would update the OAR's to reflect the current changes within the 2008 NFPA Technical Rescuer standard.

ISSUE: Staff requests that the FPC review the proposed language and determine whether to recommend adoption of these standards for Oregon fire service professionals. For ease of review, only the relevant portion(s) of the revised text are included. The following proposed language contains recommended additions (**bold and underlined text**) and deletions (~~strikethrough text~~). Please note that all numbering will change based on upcoming changes adding Fire Officer and Wildland Interface standards.

259-009-0062

Fire Service Personnel Certification

(2) The following standards for fire service personnel are adopted by reference:

(o) The provisions of the **2008 Edition of** NFPA Standard No. 1006, ~~Edition 2000~~ **2008**, entitled, "~~Professional Qualifications for Rescue Technician~~" "**Standard for Technical Rescuer Professional Qualifications**" are adopted subject to the following modifications:

(A) The "Authority Having Jurisdiction" ~~shall~~ means the local or regional fire service agency.

(B) Historical Recognition:

~~(i) Application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.~~

(i) Applicants who currently hold an active Department of Public Safety Standards and Training NFPA Surface Water Rescue Technician level of certification may apply for NFPA Swiftwater Rescue level of certification upon completion of the NFPA Swiftwater Rescue Task Book.

~~(ii) The application to use historical recognition shall be submitted to DPSST on or before March 31, 2003.~~

(ii) The NFPA Technical Rescuer application for certification under (i) above must be submitted to the Department of Public Safety Standards and Training on or before December 31, 2011.

~~(ii) The application for~~

~~(B)-(C)~~ Instructors:

(i) Curriculum must be certified by ~~DPSST~~ **the Department** to meet NFPA 1006 **standards**.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

~~(C)-(D)~~ Task Books:

(i) A task book must be completed for each of the **eleven** ~~six~~ specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can sign off **on** the task book.

(iii) The requirements in Chapters ~~2~~ **4** and ~~3~~ **5** need **only** to be met **once** for all **eleven** ~~six~~ specialty rescue areas.

ACTION ITEM I: Determine whether to recommend to the Board filing the proposed language for OAR 259-009-0062 with the Secretary of State.

ACTION ITEM II: Determine whether to recommend to the Board filing the proposed language for OAR 259-009-0062 with the Secretary of State as permanent rule if no comments are received.

ACTION ITEM III: Determine whether there is a significant fiscal impact on small businesses. *No fiscal impact by consensus.*

Dan Petersen moved to recommend to the Board to file the proposed language for OAR 259-009-0062 with the change: [(B) Historical Recognition: (i) Applicants who

currently hold active Department of Public Safety Standards and Training NFPA Surface Water Rescue Technician and NFPA Rope Rescue Technician levels of certification may apply for NFPA Swiftwater Rescue level of certification.] with the Secretary of State as proposed rule and as permanent rule if no comments are received. Scott Stanton seconded the motion. The motion carried in a unanimous vote.

5. Revocation/Denial Case Review for Paul F. Yegge DPSST #17985

Presented by Kristen Turley

ISSUE:

Reconsideration: Should Paul YEGGE's eligibility to apply for fire certifications be restored under OAR 259-009-0070(9)?

BACKGROUND and OVERVIEW:

This case involves the following actions and processes related to YEGGE:

On November 15, 2001, YEGGE was hired by the Fair Oaks RFPD.

On March 28, 2003, YEGGE was granted a NFPA Fire Fighter I certification.

On April 10, 2009, YEGGE applied for the NFPA Fire Instructor certification.

A routine records check showed YEGGE was convicted of Tampering with Drug Records (Class C Felony), a discretionary disqualifying crime, for purposes of certification.

*On or about March 19, 2007, YEGGE was arrested for Possession of a Controlled Substance and Tampering with Drug Records. On August 27, 2007, YEGGE was arraigned and the case was placed on hold pending an indictment. The case was dismissed on July 25, 2008, for failure to obtain a timely indictment. YEGGE was subsequently indicted on August 7, 2008, for the same charges and on a third count of Possession of a Controlled Substance that occurred on March 27, 2007. On February 6, 2009, YEGGE was convicted of Tampering with Drug Records. **This is a discretionary disqualifying crime for purposes of certification.***

These convictions were compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter required review by the Fire Policy Committee (FPC).

On June 22, 2009, TURLEY mailed YEGGE a certified letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent both certified and regular mail. As a policy, DPSST also provides a Stipulated Order Revoking and Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.

On or about July 10, 2009, TURLEY received the certified mail return receipt "Unclaimed" from YEGGE. The letter sent regular mail was not returned. On July 22, 2009, YEGGE's attorney responded in writing on his behalf.

On September 15, 2009, the Fire Policy Committee met and after reviewing the facts of the case, *unanimously* voted to recommend that YEGGE's conduct does rise to the level to warrant denial and revocation of YEGGE's certifications, based on his discretionary disqualifying conviction.

- In substance, the FPC adopted the Staff Report and associated documents as the record on which their recommendation was based.
- The FPC determined that YEGGE's conduct violated the core values of honesty and professionalism.
- The FPC identified as mitigating circumstances the letters of support and that his use of prescriptions was to treat chronic pain and he was trying to save money.
- The FPC identified as an aggravating circumstance the fact that his attempt to fill a duplicate prescription was intentional. They also noted that he attempted to run the second purchase through insurance and expressed concern over the number of pills taken in a short period of time.
- The FPC determined that YEGGE's conduct rises to the level that warrants revocation and denial of his certifications and that the initial minimum period of ineligibility to re-apply for certification would be sixty (60) days.

On October 29, 2009, DPSST issued YEGGE a Notice of Intent to Deny and Revoke Certifications and Opportunity to be Heard. On November 30, 2009, YEGGE made a timely request for a hearing and then subsequently withdrew that request.

On March 15, 2010, DPSST issued to YEGGE a Default Final Order Denying and Revoking Certifications.

On May 27 2010, YEGGE submitted an NFPA Fire Instructor Application. DPSST staff contacted YEGGE and provided him information via email regarding the eligibility determination process outlined in OAR.

On July 8, 2010, YEGGE submitted a request for eligibility determination under OAR 259-009-0070 along with support documentation.

On August 27, 2010, the Fire Policy Committee met and after reviewing the facts of the case, *unanimously* voted to recommend that YEGGE's eligibility to apply for fire certifications be restored under OAR 259-009-0070(9).

- In substance, the FPC adopted the Staff Report and associated documents as the record on which their recommendation was based.
- The FPC identified as mitigating circumstances that YEGGE's sixty (60) day ineligibility period has passed and during that time he has maintained his position as Fire Chief, the fact that he has complied with all of the court-ordered requirements, and he no longer has a need for the previously prescribed medication.
- The FPC determined that YEGGE's eligibility to apply for fire certifications should be restored.

On or about September 22, 2010, Staff received information from the State EMS & Trauma Systems Section regarding a 2005 Stipulated Probation Certification Agreement that was offered in lieu of a Proposed Denial of Certification. The State

EMS Office offered YEGGE the Probation Agreement after he was arrested for Possession of a Controlled Substance and admitted to using Cocaine in January 2002. In November 2005, YEGGE's Probation was revoked after violating several terms and conditions of the agreement.

On or about September 22, 2010, Staff spoke to FPC Chair regarding the new information received and he requested that YEGGE's case go back to the November FPC meeting.

On or about October 19, 2010, Staff mailed YEGGE's attorney a letter advising him of the reconsideration.

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 259-009-0070(4) specifies discretionary disqualifying conduct which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that *must* be reviewed by the FPC.

OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

- (a) Category I: **Honesty**. Honesty includes fairness and straightforwardness of conduct; integrity. Adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.
- (b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.
- (c) Category III: **Justice**. Justice includes just treatment, the quality or characteristic of being just, impartial, or fair; integrity and honesty.

OAR 259-009-0070(4)(c) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following

crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

ORS 167.212 Tampering with drug records.

OAR 259-009-0070(9) details the reapplication process:

(a) Any fire service professional or instructor whose certification has been denied or revoked under section (4) of this rule for discretionary disqualifying misconduct may reapply for certification within the applicable timeframes described in (4) and (5) of this rule.

(b) Any fire service professional or instructor whose certification has been denied or revoked 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 the maximum initial period of ineligibility identified in (5) 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 the Fire Policy Committee has recommended that a fire service professional's or instructor's eligibility to apply for fire service 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 Fire Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section (7)(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through the Fire 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 fire service professional or instructor is employed or utilized by a fire service agency; and

(D) All requirements for certification have been met.

OAR 259-009-0070(7)(d) provides that the FPC will consider aggravating and mitigating circumstances, which include:

(A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

ACTION REQUESTED:

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether YEGGE's eligibility to apply for fire certifications should be restored by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.
2. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances relevant to their eligibility recommendation.
3. By vote, the Fire Policy Committee finds that YEGGE's eligibility to apply for fire certifications *be restored/not be restored* and recommends such to the Board.

Randy Simpson moved that the committee adopts the staff report as the record on which their recommendations are based. Joe Seibert seconded the motion. The motion carried unanimously.

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

The following aggravating circumstances were identified:

- He provided false information to the State Emergency Medical Services Section.
- He appears to have worked diligently to hide his prior conduct, withholding information from the FPC instead of moving forward with better choices, and the fact that he holds the position of Fire Chief.

Randy Simpson moved that the committee recommends to the Board that Yegge's eligibility to apply for fire certifications not be restored under OAR 259-009-0070(9) and recommends such action to the Board for a period of seven years. Scott Stanton seconded the motion. The motion carried unanimously.

6. Revocation/Denial Case Review for Carl D. Brown DPSST #7528

Presented by Kristen Turley

ISSUE:

Should Carl D. BROWN's NFPA Driver, NFPA Wildland Fire Operator, NFPA Pumper Operator, NFPA Mobile Water Supply Operator, First Responder Operations, Wildland Interface Fire Fighter, NFPA Fire Fighter I and Basic Fire Fighter certifications be revoked and his Wildland Interface Engine Boss certification be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW:

This case involves the following actions and processes related to BROWN:

On October 19, 2005, BROWN was hired by Gearhart Volunteer Fire Department.

On May 8, 1992, BROWN was granted a Basic Fire Fighter certification.

On August 17, 2006, BROWN was granted Wildland Interface Fire Fighter certification.

On December 7, 2005, BROWN's Basic Fire Fighter certification became inactive.

On January 25, 2007, BROWN was granted a NFPA Driver certification.

On February 1, 2007, BROWN was granted a First Responder Operations certification.

On April 19, 2007, BROWN was granted NFPA Fire Fighter I and NFPA Pumper Operator certifications.

On July 19, 2007, BROWN was granted NFPA Mobile Water Supply Operator and NFPA Wildland Fire Operator certifications.

On or about July 14, 2010, BROWN applied for the Wildland Interface Engine Boss certification.

A routine records check was completed on BROWN and the following information was obtained:

LEDS identified BROWN as a convicted felon with an FBI number, and a multi source offender requiring fingerprints. A letter was sent to the agency and BROWN requesting a fingerprint card. The results received from Oregon State Police did not identify any out-of-state disqualifying convictions.

On or about January 22, 1994, BROWN was arrested for Possession of a Controlled Substance and later convicted of the felony charge on August 15, 1994. Based on the date of the conviction, this is not a discretionary disqualifying conviction, for purposes of certification.

On or about January 25, 2000, BROWN was arrested for Possession of a Controlled Substance. On January 27, 2000, the charge was dismissed.

On or about March 1, 2001, BROWN was arrested for Possession of a Controlled Substance-Delivering. On June 12, 2001, the charge was dismissed.

BROWN was indicted for Felon in Possession of a Firearm on or about December 9, 2002. This charge was dismissed on April 2, 2003 due to the death of the State's material witness.

*On or about May 9, 2003, BROWN was arrested for two counts of Possession of a Controlled Substance, Fourth Degree Assault and Interfering with Making a Report. He was subsequently convicted of Fourth Degree Assault and Possession of a Schedule II Substance on April 16, 2004. **Fourth Degree Assault and Possession of a Schedule II Substance are discretionary disqualifying crimes for purposes of certification.***

*On or about September 5, 2004, BROWN was arrested for Second Degree Theft and Disorderly Conduct. He was subsequently convicted of both crimes on January 7, 2005. In this case, the prosecuting attorney elected to have these misdemeanor crimes treated as violations under ORS 161.566. OAR 259-009-0070, which grants DPSST authority over a fire service professional who has been convicted of an offense punishable as a crime. Therefore, the FPC is required to review this case based on the Second Degree Theft conviction. **Second Degree Theft is a discretionary disqualifying crime for purposes of certification.***

*On or about December 4, 2007, BROWN was arrested for Fourth Degree Assault, Menacing, and Harassment. On January 8, 2009, BROWN was convicted of Harassment – Touch Intimate. **Harassment is not a discretionary disqualifying crime for purposes of certification.***

These convictions were compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter must be reviewed by the Fire Policy Committee.

On September 29, 2010 and October 15, 2010, TURLEY mailed BROWN letters advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. These letters were sent regular and certified mail. As a policy, DPSST also provides a Stipulated Order Revoking and Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s) which ends the denial or revocation process.

BROWN was provided an additional 30 days on October 15, 2010, to provide the FPC a written response relevant to his case. Any response received from BROWN, will be provided to the FPC as an addendum.

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 MISCONDUCT:

OAR 259-009-0070(4) specifies discretionary disqualifying conduct which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that must be reviewed by the FPC.

In OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

- (a) Category I: **Honesty**. Honesty includes fairness and straightforwardness of conduct; integrity. Adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.
- (b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.
- (c) Category III: **Justice**. Justice includes just treatment, the quality or characteristic of being just, impartial, or fair; integrity and honesty.

OAR 259-009-0070(4)(c) provides that, pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the [listed] crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification.

Staff Explanation: The above rule creates a presumption that if an individual has been convicted of any of the discretionary crimes, they have violated the core values of the fire service profession and may not be fit to receive or hold certification. To determine that the applicant may hold certification means that the FPC has determined that in the case of the subject individual, these convictions do not violate the core values.

OAR 259-009-0070(5) provides that upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

OAR 259-009-0070(7)(d) provides that the FPC will consider aggravating and mitigating circumstances, which include:

- (A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);
- (B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;
- (C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;
- (D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;
- (E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;
- (F) Whether the conduct involved domestic violence;
- (G) Whether the fire service professional or instructor self reported the conduct;
- (H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;
- (I) Whether the conduct was prejudicial to the administration of justice;
- (J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and
- (K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire

service professional or instructor possesses the core values integral to the fire service profession.

ACTION REQUESTED:

Part One

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to revoke and/or deny BROWN's certifications by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.
2. By discussion and consensus:
 - a. Identify the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that BROWN's conduct *does/does not* rise to the level to warrant revocation and denial of his certification(s), and therefore recommends to the Board that BROWN's certifications be *revoked and denied/not revoked and denied*.

Part Two (to be considered if denial and revocation are recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

By vote, the Fire Policy Committee recommends a minimum initial period of ineligibility of *time to be determined*.

Scott Stanton moved that the committee adopts the staff report as the record on which their recommendations are based. Dan Petersen seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify the conduct that is at issue
Fourth Degree Assault and Possession of a Schedule II Substance are discretionary disqualifying crimes, for purposes of certification.
- b. The conduct **does** violate the core value of honesty.
- c. The conduct **does** violate the core value of professionalism.
- d. The conduct **does** violate the core value of justice.

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

- The FPC identified BROWN's track record of criminal history, the element of domestic abuse, and that he engaged in criminal activity after he became a volunteer firefighter as aggravating factors.
- The FPC identified as a mitigating circumstance the letters of support.

John Klum moved that the committee finds that BROWN's conduct does rise to the level to warrant revocation and denial of his certification(s), and therefore recommends to the Board that BROWN's certifications be revoked and denied. Joe Seibert seconded the motion. The motion carried unanimously.

Randy Simpson moved that the committee recommends to the Board that the initial minimum period of ineligibility to re-apply for certification would be three (3) years. John Klum seconded the motion. The motion carried unanimously.

7. Fallen Fire Fighter Memorial Board Meeting

Presented by Eriks Gabliks

The Fallen Fire Fighter Memorial was built as part of the art dollars here at DPSST. The idea was to have the memorial be the Oregon Fire Service Memorial, which is the way it's managed. DPSST Staff is honored to have it here on campus and maintain it at no cost. Each year the state fire service has an annual ceremony to honor our fallen. Over the years the Oregon Fire Service Honor Guard has helped with the memorial; however the Oregon Fire Service Honor Guard also needs to generate money to cover their operating costs.

The cost for the annual memorial program is approximately \$2,500 to \$3,000 a year. The Oregon Fire Chiefs Foundation which is a 501-C3 already manages the dollars that are in the memorial account. Over the last year through different efforts of staff and projects, approximately \$8,000 was raised for the memorial. However, that money needs to be continually replenished as it is spent every year.

The idea brought to the table was to put a group together whose focus is to make sure there is enough money for the program and to add names to the wall as needed. The engraving cost is about \$90 per name. The Oregon Fire Chiefs Foundation has agreed to create a subgroup whose entire focus is to raise the money for the memorial and maintain it. Would any FPC members be interested in participating in this group? Julie will report back to the Oregon Fire Chiefs Foundation.

8. Round Table/Staff Update

Julie Olsen-Fink reported:

- The Fire Certification staff is down to three staff members. The vacant position will stay open until the first of the year, then a recruiting process will take place to fill the OSI position.
- The NFPA Driver/Apparatus Operator application for certification will be posted, only the names have changed.
- Guides for the NFPA Fire Investigator and NFPA Fire Inspector standards are being posted.

- Thank you to staff, Corey Wilson with Portland Fire & Rescue, Yvain McDaniel with Hillsboro Fire Department, and Terry Riley with Willamette Valley Fire/Rescue Authority for testing the online E-Forms process. Contact Julie Olsen-Fink if you know of any agencies that would like to be a part of the first stage testing. While using the system, please report any problems, concerns or input, good or bad.

Mark Ayers reported:

- The Fire Program has had a productive year and is fully staffed right now.
- The Fire Fighter I Academy was held in March with 35 recruits and graduated 28. The next academy is scheduled in March 2011.
- 22 people attended the first NFPA Fire Officer I class at DPSST.
- DPSST continues delivery of the Farm Machinery Extrication class on a regional basis.
- The Skid Avoidance Program has been immensely successful.
- DPSST is scheduled to deliver eight two-day National Fire Academy classes starting in February 2011.

Eriks Gabliks reported:

- The Oregon Emergency Management agreement is a \$250,000 grant. The grant is for delivery of two complete series of NIMS All-Hazard Incident Management Team classes. One series will be offered at the academy, the other in the metro area. Food and lodging will be picked up for the students at the academy.
- There was an inquiry from the Oregon Air National Guard. They have received one million dollars to build urban search and rescue training props. They are meeting with DPSST to see if that venue can be hosted here at the academy.
- Budget: No word yet on the 2011-2013 budget for Fire Insurance Premium Taxes. The estimation is July or August before we know.
- After the Governor's transition, Eriks Gabliks will go through the resignation process where the new governor will determine if he is reinstated or not.
- Live Fire Training – 1403 Standards came to us thru the Oregon Fire Instructors Association. DPSST worked with a task force which was focused on awareness. OFIA created a DVD that was a "How to Address 1403". DPSST purchased a copy of the 1403 Standard for each department. A number of different classes were offered for instructors to learn how to be 1403 compliant in partnership with the OFIA. Collectively approximately \$100,000 was spent in one year to address the 1403 issue of getting the word out that the standard should be followed if you do Live Fire training. DPSST is concerned that 1403 is not a certification standard; it is a how you do it standard.

Mark Prince thanked Randy Simpson for his time serving on the FPC. This is his last meeting before retiring.

Next scheduled meeting is 2/23/11.

Meeting adjourned at 11:20 a.m.