

Police Policy Committee Minutes November 8, 2006

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on November 8, 2006 in the Boardroom of the Oregon Public Safety Academy. Chair Bob Tardiff called the meeting to order at 1:35 p.m.

Attendees

Policy Committee Members:

Robert Tardiff, Oregon Association Chiefs of Police, Chair
Robert King, Non-Mgmt Law Enforcement, Vice Chair (by teleconference)
Dave Burright, Oregon State Sheriffs' Association
Dan Durbin, Oregon State Police Command Officer
Eric Hendricks, Portland Police Bureau (for Chief Rosie Sizer)
Steven Piper, Non-management Law Enforcement (by teleconference)
Robert Jordan, Federal Bureau of Investigation – Oregon (by teleconference)

Policy Committee Members Absent:

Andrew Bentz, Oregon State Sheriffs' Association
Mike Healy, Oregon Association Chiefs of Police
Lane Roberts, Oregon Association Chiefs of Police
Rob Gordon, Oregon State Sheriff's Association
Ronald Ruecker, Superintendent, Oregon State Police
Ray Gruby, Oregon Council of Police Associations

DPSST Staff:

Eriks Gabliks, Deputy Director
Cameron Campbell, Training Division Director
Marilyn Lorange, Certification and Records Supervisor
Theresa King, Professional Standards Coordinator
Annola DeJong, Administrative Assistant
Tammera Hinshaw, Executive Assistant

Guests:

Maxine Bernstein, The Oregonian



1. **Minutes of August 9, 2006 meeting**

Dan Durbin motioned to approve the minutes from the August 9, 2006 meeting. Dave Burright seconded the motion. The motion passed in a unanimous vote.

2. **Minutes of August 31, 2006 meeting**

Dan Durbin motioned to approve the minutes from the August 31, 2006 meeting. Dave Burright seconded the motion. The motion passed in a unanimous vote.

3. **OAR 259-008-0068 – Policy Discussion – Certified Retired Officer**

Marilyn Lorance reviewed the issue before the Committee.

ISSUE:

Basic certification is the only certification level required by law. However, many certified officer applicants have obtained advanced or upper levels of certification throughout their career. Current rule does not clarify which, if any, levels of certification beyond Basic should remain active for a certified retired officer.

OAR 259-008-0068(1)(B) defines a “Certified Retired Police Officer” as “an honorably retired police officer who obtains and maintains her or his certification.”

Staff has identified the following areas for Committee discussion:

A. **Certified Retired Officer Awarded Intermediate or Advanced Certification at time of Retirement:**

1. Basic certification is the only level mandated by law;
2. Intermediate and Advanced certification levels may be obtained, based upon a Combination of training, education and experience. These certifications are not dependent on whether the officer is serving in a supervisory or management position with an agency.
3. Should a certified retired officer be eligible to maintain Intermediate or Advanced certification in an active status if they are not employed as a police officer?

B. **Certified Retired Officers Awarded Supervisory, Middle Management or Executive Certification at time of Retirement.**

1. The provisions for making application for upper levels of certification include

being “presently employed in” a Supervisory, Management or Executive level position.

2. Should a certified retired officer be eligible to maintain supervisory, middle management or executive level certification if they are not performing those duties?

C. Definition of Certified Retired Officer.

OAR 259-008-0068(1)(b) defines a certified retired officer as an honorably retired police officer who *obtains* and maintains certification. Should a certified retired officer be able to *obtain* upper levels of certification after retirement?

Staff believes this language was intended to refer to obtaining and maintaining a retired officer certification, not that the retired officer would have the ability to *obtain* any level of certification after retirement that they did not previously possess while employed as a police officer. Full-time employment as a police officer, and signature of the agency head, are general requirements for obtaining certification. If this is consistent with the committee’s understanding, staff recommends that this definition be clarified in rule.

ACTION ITEM 1:

Determine whether a certified retired officer should be eligible to maintain any level of certification beyond Basic certification.

Dave Burrigot motioned to recommend to the Board that Retired Officers cannot obtain higher levels of certification after retirement, but can maintain current level of certification as long applicable maintenance standards are met. Eric Hendricks seconded the motion. The motion passed in a unanimous vote.

4. OAR 259-008-0076 – Policy Discussion – Police Chief Certification

Marilyn Lorange reviewed the issue before the Committee.

BACKGROUND:

In December 2005, new rules relating to eligibility requirements for police chief applicants were filed as a permanent rule with the Secretary of State’s office. The rule requires the immediate suspension of a police chief’s certification for failing to obtain management certification within two years of the hired date. The Department is unable to “immediately” suspend a license, because suspension falls within the general due process requirements consistent with denial and revocation of certifications.

Other Oregon Administrative Rules, discussing maintenance requirements, provide for recall of certifications pending an individual's remediating their deficiencies. Recall is defined as the administrative inactivation of a certification.

It is not clear whether the intent of the Policy Committee and Board was to provide for an immediate recall of a certification, or for a suspension subject to due process notice, contested case hearing and judicial review.

Staff requested clarification and direction from the Committee.

Dave Burrignt motioned to direct DPSST staff to use the recall mechanism to this provision. Dan Durbin seconded the motion. The motion passed in a unanimous vote.

5. Harold Hamilton, DPSST #16086

Theresa King reviewed the issue before the Committee.

ISSUE:

Should Harold HAMILTON's certification be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND:

On September 27, 1982, HAMILTON was employed as a police officer with the Rainier Police Department. HAMILTON holds a Basic Police certification.

On February 23, 2006 HAMILTON was placed on suspension by the Rainier City Council.

On April 7, 2006, DPSST mailed a letter to Mayor Cole requesting the underlying investigation that led to HAMILTON's suspension.

On May 5, 2006, DPSST received an F-4, Personnel Action Report showing that HAMILTON had retired. DPSST subsequently received a news clipping of the retirement.

On April 13, 2006, DPSST received a cover letter from Attorney Peterson, representing the City of Rainier, and the underlying investigation. This case hinges on two primary issues. HAMILTON repeatedly used a controlled substance (Vicodin) without a prescription. HAMILTON repeatedly obtained the controlled substance from a subordinate.

On May 1, 2006, DPSST mailed a letter advising HAMILTON advising that his case would be heard before the Police Policy Committee. HAMILTON 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 1, 2006, DPSST mailed a letter to the Columbia County District Attorney's Office asking that HAMILTON sign a Stipulated Order as a part of any plea agreement for the VICODIN misuse.

On June 8, 2006, Theresa King received a telephone call from HAMILTON who stated he had received her letter and that his status should remain as retired. HAMILTON asked how we discovered the Vicodin incidents and Theresa King advised him that it was through notification of his suspension received in a news clipping. HAMILTON stated that he did not believe he would re-enter public safety, but he had not decided if he was going to sign the Stipulated Order. HAMILTON stated he would give the matter some thought.

On August 1, 2006 Theresa King spoke with Chief Painter about the case and asked if she could speak with Tina Viuhkola, Police Clerk. Theresa King interviewed Ms. Viuhkola regarding the incidents in which HAMILTON asked her for her prescription drugs and reduced our conversation to a draft affidavit which Ms. King emailed to her for her review.

On September 6, 2006, Theresa King received a letter from VIUHKOLA with her original Affidavit. On September 27, 2006, Theresa King contacted DA Atchison to follow-up on any criminal action. ATCHISON advised he has been in a murder trial for the past three months and has not reviewed the HAMILTON case.

Mitigating or Aggravating Circumstances:

1. A mitigating factor is that it appears that HAMILTON suffered pain from a pre-existing injury.
2. An aggravating factor is that Hamilton repeatedly engaged in criminal activity by asking for non-prescribed controlled substances.
3. An aggravating factor is that Hamilton sought the non-prescribed controlled substances from a subordinate who felt compelled to accommodate HAMILTON's requests.

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Under OAR 259-008-0010(6):

1. Would HAMILTON'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?
2. Did HAMILTON's conduct involve dishonesty, fraud, deceit, or misrepresentation?
3. Was HAMILTON's conduct prejudicial to the administration of justice?
4. Would HAMILTON'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?

STAFF CONCLUSION:

After considering the totality of circumstances, it appears that HAMILTON violated the established moral fitness standards when he repeatedly obtained and consumed a controlled substance without a prescription, and did so by involving a subordinate.

ACTION REQUESTED:

Staff requested the Police Policy Committee review the matter and recommend to the Board whether HAMILTON's certification should be revoked based on violation of the moral fitness standard.

Dan Durbin motioned to recommend to the Board to revoke Harold Hamilton's certification based on the violation of the moral fitness standard. Robert Jordan seconded the motion. The motioned passed in a unanimous vote.

6. Dennis Bell, DPSST #07347

Theresa King reviewed the issue before the Committee.

ISSUE:

Should Dennis BELL's certification be revoked based violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND:

On October 30, 1975, BELL was employed as a police officer with the Portland Police Bureau (PPB). BELL holds a Basic Police certification.

On April 13, 2006 BELL retired from PPB.

DPSST received information that BELL had retired in lieu of criminal charges being filed. DPSST sought and obtained the underlying investigation that led to his retirement.

On May 18, 2006, DPSST mailed a letter advising BELL advising that his case would be heard before the Police Policy Committee. BELL 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. Both letters were returned, undeliverable.

On June 2, 2006, Theresa King requested the DOJ Watch Center do a Skip Trace on BELL for the purposes of identifying a current mailing address. Based on their information, a second letter was sent to BELL on 06/05/06.

On July 1, 2006, BELL, through his attorney, provided a response for the Committee's consideration.

On July 7, 2006, Theresa King contacted Lt Tellis, PPB and asked if BELL had any similar prior sustained complaints against him, and he reported that he did not.

Mitigating or Aggravating Circumstances:

1. A significant mitigating factor was BELL's forthrightness when addressing his actions; admitted to losing control, explained what had led him to take this action, and ultimately wrote a letter of apology to LEROUX.
2. A mitigating factor is that BELL has no similar prior complaints against him.
3. An aggravating factor is that when BELL struck LEROUX, the prisoner was handcuffed and in the custody of police.
4. An aggravating factor is BELL's use of profanity toward LEROUX prior to and after the incident.
5. A mitigating factor is that there was no physical injury to LEROUX and there was corroborating statements that BELL's action was somewhat controlled, did not cause an injury, did not leave a mark and did not cause the prisoner's head to move.

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Under OAR 259-008-0010(6):

1. Would BELL'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?
2. Did BELL's conduct involve dishonesty, fraud, deceit, or misrepresentation?
3. Was BELL's conduct prejudicial to the administration of justice?
4. Would BELL'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?

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.

STAFF CONCLUSION:

It appears BELL took responsibility for this single, isolated incident, which occurred after over 30-years of service, and which did not include similar prior misconduct.

ACTION REQUESTED:

Staff requested the Police Policy Committee review the matter and recommend to the Board whether BELL's certification should be revoked based on violation of the moral fitness standard.

Dave Burrigton motioned to recommend to the Board to revoke Dennis Bell's certification based on the violation of the moral fitness standard. Ray Gruby seconded the motion. Eric Hendricks abstained. The motioned passed in a 7-0-1 vote.

7. Kalles Hanchor Jr

Theresa King reviewed the issue before the committee.

ISSUE:

The Warm Springs Police Department is requesting a waiver of the medical requirements for Officer Hanchor so he can attend the Basic Police Academy and become certified. OAR 259-008-0010(7)(h) 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. "

Although tribal police officers are not required to become DPSST certified, Warm Springs and other tribal agencies often send their law enforcement officers to a DPSST Basic Course so they may obtain state certification. In order to begin training, however, each tribal applicant must meet all state requirements for attendance at a Basic Course.

Officer Hanchor is prohibited from attending the Basic Police Course unless a waiver is granted.

BACKGROUND:

The Warm Springs P.D. originally hired Officer Hanchor as a police officer on November 23, 2005. OAR 259-008-0010(8) requires all law enforcement officer applicants to be examined by a licensed physician and pass minimum hearing standards.

Officer Hanchor's hearing test revealed no hearing in his right ear. Physician comments noted, "Clinic screening with Welch Allyn Audioscope. Pt. note sensori neural hearing loss since infancy in right ear. He is well compensated with use of left ear, which has normal

hearing.” Officer Hanchor cannot meet the mandatory minimum standard because the hearing in his right ear cannot be corrected.

The Chief of Warm Springs P.D. is requesting a waiver of the hearing standard because they believe that Officer Hanchor’s hearing is sufficient to permit him to perform the duties of a police officer.

Officer Hanchor has been successfully working at the Warm Springs P.D. for approximately 10 months without difficulty.

ACTION REQUESTED:

The Committee needs to determine whether to recommend a waiver of the minimum hearing standards to the Board for Officer Hanchor so he can attend the next available Basic Police Course.

Robert King motioned to recommend to the Board to grant the request for a medical waiver of the minimum hearing standards for Kalles Hanchor, so that he may attend the Basic Police Course. Robert Jordan seconded the motion. Chair Tardiff asked for a roll-call vote. Robert Jordan and Steven Piper voted in favor of the motion. Dan Durbin, Eric Hendricks, Robert King, Ray Gruby, Dave Burringht and Robert Tardiff voted against the motion. The motion failed on a 2-6-0 vote.

8. Kai Ho, DPSST #39661

Theresa King reviewed the issue before the committee.

ISSUE:

Should Kai Ho’s certifications be revoked based on violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND:

On November 29, 2001, HO was employed as a police officer with the Portland Police Bureau (PPB). HO holds a Basic Police certification.

On December 6, 2005, HO resigned from the Portland Police Bureau.

On December 9, 2005, PPB sent DPSST a F4, Personnel Action Report, indicating “Resignation in lieu of internal affairs investigation.”

On December 14, 2005, DPSST sent a letter to PPB requesting the underlying investigation.

On March 24, 2006, DPSST received the requested information.

On March 27, 2006, DPSST sent HO a letter advising him that his case would be heard by the Police Policy Committee, made the Stipulated Order available, and allowed him to provide mitigating circumstances for the Committee's consideration.

On April 25, 2006, HO sent a letter to DPSST for consideration by the Police Policy Committee.

Mitigating or Aggravating Circumstances:

1. A mitigating factor is that in the four years prior to HO's on-duty justified fatal shooting, he had no prior reported misconduct.
2. An aggravating factor is that HO was not initially forthright about his misconduct and attempted to conceal his bong pipe when he was first contacted by officers. However, a mitigating factor is that he was cooperative with investigators when they returned to his residence by consenting to a search of the residence and by voluntarily producing the bong pipes and a glass smoking pipe.
3. A mitigating factor is HO's forthrightness regarding his use of marijuana and prescription pills (without a prescription). However, an aggravating factor is that HO refused to identify the supplier of the marijuana and the prescription pills.
4. A significant aggravating factor is HO's possession and use of marijuana and non-prescribed prescription pills over a long period of time rather than a single event, in violation of Oregon Criminal Code and the Law Enforcement Code of Ethics.
5. A significant aggravating factor is HO's ongoing purchase of marijuana and non-prescribed prescription pills, in violation of Oregon Criminal Code and the Law Enforcement Code of Ethics.

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Under OAR 259-008-0010(6):

1. Would HO'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?
2. Did HO's conduct involve dishonesty, fraud, deceit, or misrepresentation?
3. Was HO's conduct prejudicial to the administration of justice?
4. Would HO'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?

STAFF CONCLUSION:

It appears that HO violated the established moral fitness standards for Oregon public safety professionals when he purchased and used illegal drugs on a repeated basis.

ACTION REQUESTED:

Staff requests the Police Policy Committee review the matter and recommend to the Board whether HO's certifications should be revoked based on violation of the moral fitness standard.

Eric Hendricks motioned to recommend to the Board to revoke Kai Ho's certification based on the violation of the moral fitness standard. Dan Durbin seconded the motion. Chair Tardiff asked for a roll-call vote. Dan Durbin, Eric Hendricks, Robert Jordan, Steven Piper, Ray Gruby, Dave Burrigh and Robert Tardiff voted in favor of the motion. Robert King voted against the motion. The motioned passed on a 7-1-0 vote.

9. Michael Ash, DPSST #24561

Theresa King reviewed the issue before the committee.

ISSUE:

Should Michael ASH's certifications be revoked based violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND:

On November 29, 1990, ASH was employed as a police officer with the Phoenix Police Department. ASH holds a Basic Police certification.

On July 12, 1999, ASH signed a Criminal Justice Code of Ethics.

On July 11, 2006, ASH resigned from Phoenix Police Department, in lieu of termination.

On August 7, 2006, DPSST sought and obtained the underlying investigation that led to ASH's resignation.

On August 20, 2006, DPSST mailed a letter advising ASH advising that his case would be heard before the Police Policy Committee. ASH 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 September 20, 2006, ASH provided a response for the Police Policy Committee.

Mitigating or Aggravating Circumstances

1. A mitigating factor is that after being counseled about his excessive alcohol use, ASH agreed to receive counseling and did so.
2. An aggravating factor is that after being counseled by BROWN regarding the sanctions for future alcohol use, ASH consumed alcohol on duty.

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Under OAR 259-008-0010(6):

1. Would ASH'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?
2. Did ASH's conduct involve dishonesty, fraud, deceit, or misrepresentation?
3. Was ASH's conduct prejudicial to the administration of justice?
4. Would ASH'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?

STAFF CONCLUSION:

Based on the totality of circumstances, it appears that ASH violated the established moral fitness standards for Oregon public safety officers by being consuming or being under the influence of alcohol while on duty on more than one occasion.

ACTION REQUESTED:

Staff requests the Police Policy Committee review the matter and recommend to the Board whether ASH's certification should be revoked based on violation of the moral fitness standard

Dave Burrigh motioned to recommend to the Board to revoke Michael Ash's certification based on the violation of the moral fitness standard. Dan Durbin seconded the motion. Chair Tardiff asked for a roll-call vote. Dan Durbin, Eric Hendricks, Robert Jordan, Steven Piper, Ray Gruby, Dave Burrigh and Robert Tardiff voted in favor of the motion. Robert King voted against the motion. The motion passed on 7-1-0 vote.

10. Ryan Thayer, DPSST #42659

Theresa King reviewed the issue before the committee.

ISSUE:

Should Ryan THAYER's certification be revoked based violation of the Moral Fitness standards defined in OAR 259-008-0010?

BACKGROUND:

On March 17, 2003, THAYER was employed as a police officer with the Corvallis Police Department. THAYER holds Basic and Intermediate Police certifications.

On May 20, 2004, THAYER signed a Criminal Justice Code of Ethics.

On April 2, 2006 THAYER resigned from Corvallis Police Department.

Through news clippings, DPSST received information that THAYER had resigned during an internal investigation alleging that he engaged in sexual activity while on duty and was then untruthful with investigators. DPSST sought and obtained the underlying investigation that led to his resignation.

On July 5, 2006, DPSST mailed a letter advising THAYER advising that his case would be heard before the Police Policy Committee. THAYER 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. To date no response has been received by DPSST.

On September 29, 2006, I contacted District Attorney Steven Morgan, Lane County District Attorney's Office, who advised they did have an active criminal case on THAYER.

Mitigating or Aggravating Circumstances:

1. An aggravating factor was that THAYER had been previously counseled about his inappropriate conduct.
2. An aggravating factor is that THAYER was untruthful about his misconduct.
3. An aggravating factor is that the misconduct occurred while being paid to perform his job and that he used agency equipment in the furtherance of his misconduct.

CONSIDERATIONS FOR THE POLICY COMMITTEE:

Under OAR 259-008-0010(6):

1. Would THAYER'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?
2. Did THAYER's conduct involve dishonesty, fraud, deceit, or misrepresentation?
3. Was THAYER's conduct prejudicial to the administration of justice?
4. Would THAYER'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?

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.

STAFF CONCLUSION:

Based on the totality of circumstances, it appears that THAYER has violated the established moral fitness standards for Oregon public safety officers by engaging in sexual activity while on duty, by misusing City time and resources in the furtherance of his misconduct, and by being untruthful with investigators.

ACTION REQUESTED:

Staff requests the Police Policy Committee review the matter and recommend to the Board whether THAYER's certification should be revoked based on violation of the moral fitness standard.

Dan Durbin motioned to recommend to the Board to revoke Ryan Thayer's certification based on the violation of the moral fitness standard. Steven Piper seconded the motion. Chair Tardiff asked for a roll-call vote. Dan Durbin, Eric Hendricks, Robert Jordan, Steven Piper, Ray Gruby, Dave Burrigh and Robert Tardiff voted in favor of the motion. Robert King voted against the motion. The motion passed on a 7-1-0 vote.

11. Agency Update

Eriks Gabliks reported back on the Board's action in adopting ORPAT as an academy standard. Eriks also noted the Basic Police 16-week curriculum was approved by the Board

and that Academy Training is moving forward on implementation. Mention was made of the DPSST budget request submitted to DAS, and the first appeal process. Robert Tardiff shared with the committee a situation involving an Oregon city that has hired a "Town Marshall" who is not DPSST trained or certified. Mr. Tardiff requested that staff review applicable ORS and OAR for guidance on the matter. Eriks announced that Andrew Jordan has been nominated (pending Governor's approval) to replace Lane Roberts on the committee and that the meeting dates for 2007 have been set.

There being no further business before the Committee the meeting adjourned at 2:45 p.m.