

Police Policy Committee

Minutes

November 17, 2011

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on November 17, 2011 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:30 p.m. by Chair Kent Barker.

Attendees

Policy Committee Members:

Kent Barker, Oregon Association Chiefs of Police
Tom Bergin, Oregon State Sheriffs' Association
Chris Brown, Oregon State Police, Superintendent
Richard Evans, Oregon State Police Command Officer
Robert Gordon, Oregon State Sheriffs' Association
Craig Halupowski, Non-Management Law Enforcement
Eric Hendricks, Portland Police Bureau (Designee for Chief Mike Reese)
Ryan Humphrey, Non-Management Law Enforcement
James Hunter, Oregon Association Chiefs of Police
Holly Russell, Oregon State Sheriffs' Association
Glen Scruggs, Non-Management Law Enforcement
Mike Wells, Non-Management Law Enforcement
Mathew Workman, Oregon Association Chiefs of Police

Committee Members Absent

Marc Tisher, Non-Management Law Enforcement

DPSST Staff:

Eriks Gabliks, Director
Carolyn Kendrick, Administrative Specialist
Marilyn Lorange, Standards and Certification Program Supervisor
Leon Colas, Professional Standards Coordinator/Investigator
Linsay Hale, Rules and Compliance Coordinator
Sharon Huck, Job Task Analyst
Ray Rau, Academy Training Supervisor



1. Minutes of September 1, 2011 Meeting

Approve minutes from the September 1, 2011 meeting.

See Appendix A for details

- *Tom Bergin moved to approve the minutes from the September 1, 2011 Police Policy Committee meeting. Craig Halupowski seconded the motion. The motion carried unanimously.*

2. OAR 2059-008-0005

Presented by Linsay Hale

See Appendix B for details

- *Glen Scruggs moved that the Police Policy Committee recommend to the Board filing the proposed language with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Chris Brown seconded the motion. The motion carried unanimously.*

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

3. OAR 259-008-0069

Presented by Linsay Hale

See Appendix C for details

- *Ryan Humphreys moved that the Police Policy Committee recommend to the Board filing the proposed language with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. James Hunter seconded the motion. The motion carried unanimously.*

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

4. OAR 259-008-0100

Presented by Linsay Hale

See Appendix D for details

- *Craig Halupowski moved that the Police Policy Committee recommend to the Board filing the proposed language with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Chris Brown seconded the motion. The motion carried unanimously.*

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

5. Christopher Krigbaum – DPSST 51012

Request for Medical Waiver

Presented by Linsay Hale

- *Tom Bergin moved that the Police Policy Committee recommend approval of a medical waiver for Christopher Krigbaum. Craig Halupowski seconded the motion. The motion carried unanimously.*
- *Tom Bergin moved that the Police Policy Committee forward the recommendation of a medical waiver to the Executive Committee. Craig Halupowski seconded the motion. The motion carried unanimously.*

6. Remediation of Skills Deficiencies

Presented by Marilyn Lorange

See Appendix E for details

The policy committee requested that staff revise the time frame of six months and criteria to be assessed case by case.

7. Jason M. Brown, Department of Public Safety Standards and Training – DPSST #40958

Presented by Leon Colas

See Appendix F for details

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Rob Gordon seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case: **Dishonesty**
 - b. The identified conduct did involve **Dishonesty**. *BROWN lied by omission when he did not disclose the DUII arrest or his release. He was dishonest about his timesheet, about taking a polygraph test, and about being intoxicated. BROWN was also untruthful about changing his uniform and locking up his gun.*
 - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
 - d. The identified conduct did involve **Misuse of Authority**.
 - e. The identified conduct did involve **Gross Misconduct based on the compromised efficiency of the agency; a gross deviation from the standard of practice followed by public safety officers. BROWN continued to compound his mistakes and continued mishandling a firearm against the request of a State Trooper.**
 - f. The identified conduct did involve **Misconduct based on violation of the law**.
 - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted BROWN' refusal to submit to an intoxilizer test, the fact he was a trainer of new cadets and held to a higher standard, and that BROWN did not take responsibility but blamed others for the circumstances as aggravating circumstances.*

No mitigating circumstances were noted by the policy committee.

- *Rob Gordon moved that the Police Policy Committee finds BROWN's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) be revoked. Craig Halupowski seconded the motion. The motion carried unanimously.*
- *Rich Evans moved that the Police Policy Committee recommends to the Board that BROWN's conduct encapsulated the highest end of the categories noted above with a focus on Dishonesty, therefore recommending a lifetime disqualifier; BROWN may never*

reapply for certification. Rob Gordon seconded the motion. The motion carried unanimously.

8. Donald A. Denison, Toledo Police Department – DPSST #15298

Presented by Leon Colas

See Appendix G for details

- *Mike Wells moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Chris Brown seconded the motion. The motion carried in a 12 to 1 vote with Rob Gordon voting no.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case: *Dishonesty*
 - b. The identified conduct did involve **Dishonesty**. *DENISON was dishonest about personal use of city laptops, use of personal facility for SWAT and Posse training, use of city funds for Explorer program, and did not disclose in writing potential conflicts which he was obligated to do.*
 - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
 - d. The identified conduct did involve **Misuse of Authority based on use of his position to obtain a personal benefit**.
 - e. The identified conduct did not involve **Gross Misconduct**
 - f. The identified conduct did involve **Misconduct based on violation of ORS, personal use of city backhoe, and family use of city laptops**.
 - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted DENISON's last sentence in his letter "...my certifications have lapsed and are of no value..." shows he doesn't care if he is revoked or not. This is considered very aggravating by the policy committee.*

The fact DENISON took time to write a letter and that his intentions started out to benefit the Explorers program were noted as mitigating circumstances by the policy committee.

- *Mike Wells moved that the Police Policy Committee finds DENISON's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) be revoked. Chris Brown seconded the motion. The motion carried unanimously.*
- *Glen Scruggs moved that the Police Policy Committee recommends to the Board that DENISON's conduct encapsulated the highest end of the categories noted above with a focus on Dishonesty, therefore recommending a lifetime disqualifier; DENISON may never reapply for certification. Chris Brown seconded the motion. The motion carried unanimously.*

9. Andrew C. Elliott, Warm Springs Police Department – DPSST #51127

Presented by Leon Colas

- *Rob Gordon moved that the Police Policy Committee does not adopt the staff report as the record upon which its recommendations are based and to table this case until more information can be provided. Mike Wells seconded the motion. The motion carried unanimously.*

10. Henry E. Filipponi, Ontario Police Department – DPSST #49765

Presented by Leon Colas

See Appendix H for details

- *Rob Gordon moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Mike Wells seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case:
 - b. The identified conduct did not involve **Dishonesty**.
 - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
 - d. The identified conduct did not involve **Misuse of Authority**.
 - e. The identified conduct did not involve **Gross Misconduct**
 - f. The identified conduct did involve **Misconduct based on violation of the law**.
 - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted that the Chief handled the issue well.*

No aggravating circumstances were noted by the policy committee.

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

11. Sean M. Gilhousen, Coburg Police Department – DPSST #37612

Presented by Leon Colas

See Appendix I for details

- *Rob Gordon moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Craig Halupowski seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case: **Dishonesty**
 - b. The identified conduct did involve **Dishonesty**. *GILHOUSEN was not forthcoming until confronted by evidence, he lied about photos being taken and sent, lied about the car being at the trailer park, and about using city computers for personal use.*

- c. The identified conduct did involve a **Disregard for the Rights of Others based on violation of civil rights by making illegal traffic stops.**
 - d. The identified conduct did involve **Misuse of Authority based on violation of civil rights by making illegal traffic stops and personal use of city computers.**
 - e. The identified conduct did involve **Gross Misconduct based on the compromised efficiency of the agency by reputation; a gross deviation from the standard of practice followed by public safety officers. GILHOUSEN was on duty on public property taking inappropriate photos.**
 - f. The identified conduct did involve **Misconduct based on the compromised efficiency of the agency by reputation; a gross deviation from the standard of practice followed by public safety officers. GILHOUSEN was on duty on public property taking inappropriate photos.**
 - g. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted GILHOUSEN's lack of response to DPSST and that he was acting as Chief during the violations as aggravating circumstances.*

No mitigating circumstances were noted by the policy committee.

- *Mike Wells moved that the Police Policy Committee finds GILHOUSEN's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) be revoked. Chris Brown seconded the motion. The motion carried unanimously.*
- *Rob Gordon moved that the Police Policy Committee recommends to the Board that GILHOUSEN's conduct encapsulated the highest end of the categories noted above with a focus on Dishonesty, therefore recommending a lifetime disqualifier; GILHOUSEN may never reapply for certification. Mike Wells seconded the motion. The motion carried unanimously.*

12. Justin D. Morris, Hillsboro Police Department – DPSST #46101

Presented by Leon Colas

See Appendix J for details

Kent Barker and Rob Gordon recused themselves from voting on this case.

- *James Hunter moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Tom Bergin seconded the motion. The motion carried unanimously with Kent Barker and Rob Gordon abstaining.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case:
 - b. The identified conduct did not involve **Dishonesty.**
 - c. The identified conduct did not involve a **Disregard for the Rights of Others**

- d. The identified conduct did involve **Misuse of Authority based on fact he met the girl while in uniform, took advantage of a vulnerable person, and violated the law of official misconduct.**
 - e. The identified conduct did involve **Gross Misconduct based on negligence of duty; a gross deviation from the standard of practice followed by public safety personnel. MORRIS' conduct impacted the efficient operation of the agency**
 - f. The identified conduct did involve **Misconduct based on violation of the law of official misconduct.**
 - g. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The only mitigating circumstance noted by the policy committee was that MORRIS self-reported to the Deputy Chief.*
 - *Mike Wells moved that the Police Policy Committee finds MORRIS' conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) be revoked. Holly Russell seconded the motion. The motion carried unanimously with Kent Barker and Rob Gordon abstaining.*
 - *Craig Halupowski moved that the Police Policy Committee recommends to the Board that MORRIS' conduct encapsulated the highest end of the categories noted above with a focus on Gross Misconduct, therefore recommending a 10-year disqualifier; MORRIS may reapply for certification 10 years from the date of revocation. Glen Scruggs seconded the motion. The motion carried unanimously with Kent Barker and Rob Gordon abstaining.*

13. Ryan J. Murphy, Hillsboro Police Department – DPSST #43617

Presented by Leon Colas

See Appendix K for details

- *Rob Gordon moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Mike Wells seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case:
 - b. The identified conduct did not involve **Dishonesty.**
 - c. The identified conduct did not involve a **Disregard for the Rights of.**
 - d. The identified conduct did not involve **Misuse of Authority.**
 - e. The identified conduct did not involve **Gross Misconduct.**
 - f. The identified conduct did not involve **Misconduct.**
 - g. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee noted as mitigating that MURPHY took action to remedy the alcohol issues.*

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

14. Christopher C. Noffsinger, Douglas County Sheriff's Office – DPSST #35989

Presented by Leon Colas

See Appendix L for details

- *Rob Gordon moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Tom Bergin seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case: *Dishonesty*
 - b. The identified conduct did involve **Dishonesty**. *NOFFSINGER lied to his supervisor multiple times and was dishonest about the can drive.*
 - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
 - d. The identified conduct did not involve **Misuse of Authority**. *The policy committee did not reach consensus.*
 - e. The identified conduct did not involve **Gross Misconduct**
 - f. The identified conduct did involve **Misconduct based on violation of the law**.
 - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. *The policy committee stated that once a public safety professional is dishonest they can no longer be used. This with the fact that NOFFSINGER was caught on film and still continued to lie was noted as aggravating circumstances.*

No mitigating circumstances were noted by the policy committee.

- *Mike Wells moved that the Police Policy Committee finds NOFFSINGER's conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) be revoked. Ryan Humphrey seconded the motion. The motion carried unanimously.*
- *Glen Scruggs moved that the Police Policy Committee recommends to the Board that NOFFSINGER's conduct encapsulated the highest end of the categories noted above with a focus on Dishonesty, therefore recommending a lifetime disqualifier; NOFFSINGER may never reapply for certification. Craig Halupowski seconded the motion. The motion carried unanimously.*

15. Daniel M. Swain, Salem Police Department – DPSST #50263

Presented by Leon Colas

See Appendix M for details

- ***Rob Gordon moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Ryan Humphrey seconded the motion. The motion carried unanimously.***
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case:
 - b. The identified conduct ***did not*** involve **Dishonesty**.
 - c. The identified conduct ***did not*** involve a **Disregard for the Rights of Others**.
 - d. The identified conduct ***did not*** involve **Misuse of Authority**.
 - e. The identified conduct ***did not*** involve **Gross Misconduct**.
 - f. The identified conduct ***did*** involve **Misconduct based on violation of the law**.
 - g. The identified conduct ***did not*** involve **Insubordination**.
- By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. ***The policy committee noted SWAIN's negative comments during stops, his lack of cooperation during the investigation, and his effort to make difficulties for the test as aggravating circumstances.***

Mitigating circumstances identified by the policy committee included the letter from the president of SWAIN's union, SWAIN's honesty during the interview and that he took responsibility and was willing to resign.

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

16. Additional Business

Director's Report

Questions have been asked of DPSST regarding OHSU and armed officers. DPSST is not the entity that makes decisions regarding this subject that was put into statute. We will facilitate discussions between Chiefs and Oregon Council of Police Associations and the Portland Police Bureau. This statute specifically states that OHSU officers are to be certified and trained by DPSST but cannot be armed while they are working.

Board of Higher Education

The Chancellor and the Board of Higher Education has granted permission to the University of Oregon to start their own police department. DPSST is will be working with them to transition to becoming a law enforcement agency. We anticipate this will happen over a number of years. They have hired a number of lateral officers that will be able to transition right away.

Budget Reduction Exercise

DPSST has been asked by legislative fiscal to prepare a 10.5% budget reduction exercise. This exercise is comprised of three 3.5% phases. If reductions are taken, the Training Division would be reorganized. The total number of positions to be eliminated are 21; 19 from Training and 3 from the

DOC Audit Team. This has been shared with the Board and Executive Committee last week. We will not need to cut basic police classes. DPSST will still provide 13 basic police classes, 6 corrections classes and the Parole & Probation and Telecommunication classes remain whole. The risk is that we lose our Safety Coordinator and the student to staff ratio increases. We continue to do business as usual however it will be different business as usual.

Review of 16-Week Basic Police Course and Career Officer Development Course

DPSST is in the process of reviewing the Basic Police Course as well as the Career Officer Courses and Field Training Manuals from front to back to ensure that we (DPSST) are meeting the needs of our stakeholders. DPSST hopes to have a thorough review completed by spring 2012.

Ray Rau: Overview of Some Changes Occurring at the Academy

Some of the changes being implemented in our Training Division include onsite remediation, and attention to detail. Attention to detail, accountability, and holding students responsible for decisions they are making. All basic students wear the same uniform regardless of discipline. This is not to create robots but to build students who have pride in public safety. Now students march from venue to venue rather than milling about. Marching is an efficient way to get a group of people from one place to another but it also serves the purpose of building camaraderie, self-discipline and pride of the profession. The two classes we have implemented these expectations in have shown increased academic scores and increased skills. We have set high benchmarks and the students are rising to these levels.

The Police Policy Committee was appreciative of the update and supportive of the actions being taken by DPSST staff.

17. Next Police Policy Committee Meeting – February 16, 2011 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 4:05 p.m.

Appendix A

Police Policy Committee Minutes (Draft) September 1, 2011

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on September 1, 2011 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:32 p.m. by Chair Kent Barker.

Attendees

Policy Committee Members:

Kent Barker, Oregon Association Chiefs of Police
Tom Bergin, Oregon State Sheriffs' Association
Chris Brown, Oregon State Police, Superintendent
Richard Evans, Oregon State Police Command Officer
Robert Gordon, Oregon State Sheriffs' Association
Craig Halupowski, Non-Management Law Enforcement
Eric Hendricks, Portland Police Bureau (Designee for Chief Mike Reese)
Ryan Humphrey, Non-Management Law Enforcement
James Hunter, Oregon Association Chiefs of Police
Marc Tisher, Non-Management Law Enforcement
Mike Wells, Non-Management Law Enforcement
Mathew Workman, Oregon Association Chiefs of Police

Committee Members Absent

Glen Scruggs, Non-Management Law Enforcement
Holly Russell, Oregon State Sheriffs' Association

Guests

DPSST Staff:

Eriks Gabliks, Director
Carolyn Kendrick, Administrative Specialist
Marilyn Lorance, Standards and Certification Program Supervisor
Leon Colas, Professional Standards Coordinator/Investigator



1. Minutes of May 19, 2011 Meeting

Approve minutes from the May 19, 2011 meeting.

See Appendix A for details

- *Tom Bergin moved to approve the minutes from the May 19, 2011 Police Policy Committee meeting. Erik Hendricks seconded the motion. The motion carried unanimously.*

2. Scott E. Hoffert, Sherwood Police Department – DPSST #44378

Presented by Leon Colas

See Appendix B for details

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Ryan Humphrey seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue, specific to this case: *Dishonesty*
 - b. The identified conduct did involve *Dishonesty based on HOFFERT's misrepresentation of facts, false statements regarding act, and his dishonesty with his Sergeant and co-workers.*
 - c. The identified conduct did not involve a *Disregard for the Rights of Others.*
 - d. The identified conduct did involve *Misuse of Authority. HOFFERT used his position to meet and establish relationships. This abuses the public trust. He also used his position to interfere in a DUI case.*
 - e. The identified conduct did involve *Gross Misconduct based on HOFFERT's failure to respond to a call for back up.*
 - f. The identified conduct did involve *Misconduct. The entire situation of transporting civilians without reporting in, or using CAD, is a gross deviation of the standard of practice generally followed by public safety personnel.*
 - g. The identified conduct did involve *Insubordination based on HOFFERT's continued involvement in another officer's case after being told to stand down.*
- By discussion and consensus, the policy committee must identify and consider any mitigating and aggravating circumstances. *The policy committee members noted as aggravating circumstances the severity of the offenses, HOFFERT's minimization of the situation, his refusal to accept responsibility, and his referral to his untruthfulness as a "difference of opinion".*

No mitigating circumstances were identified by the policy committee.

- *Craig Halupowski moved that the Police Policy Committee finds HOFFERT's conduct does rise to the level to warrant the revocation of his certification(s) and therefore recommends to the Board that these certification(s) be revoked. Ryan Humphrey seconded the motion. The motion carried unanimously.*
- *Chris Brown moved that the Police Policy Committee recommends to the Board that HOFFERT's conduct encapsulated the highest end of the categories noted above with a focus on Dishonesty, therefore recommending a lifetime disqualifier; HOFFERT may never reapply for certification. Craig Halupowski seconded the motion. The motion carried unanimously.*

3. Scott L. Whitehead, Carlton Police Department – DPSST #19266
Presented by Leon Colas

See Appendix C for details

For the record Mathew Workman, Richard Evans, Kent Barker, and Rob Gordon noted they have all worked with WHITEHEAD however they are able to remain unbiased in their decision.

- *Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Chris Brown seconded the motion. The motion carried unanimously.*
- *By discussion and consensus:*
 - a. *Identify the conduct that is at issue, specific to this case: **Dishonesty***
 - b. *The identified conduct did involve **Dishonesty**. **WHITEHEAD admitted his transgressions to DPSST however lied to his Chief. WHITEHEAD stated he did not share or view items on the website, however forensics proved he did. There were several occasions of lying by omission. It was deceptive of WHITEHEAD to have his Chief write a letter on his behalf without the Chief knowing all the information.***
 - c. *The identified conduct did not involve a **Disregard for the Rights of Others**.*
 - d. *The identified conduct did not involve **Misuse of Authority**.*
 - e. *The identified conduct did involve **Gross Misconduct based on the compromised efficiency of the agency; a gross deviation from the standard of practice followed by public safety officers**.*
 - f. *The identified conduct did involve **Misconduct based on WHITEHEAD'S inappropriate use of the agency computer and his abuse of public trust**.*
 - g. *The identified conduct did not involve **Insubordination**.*
- *By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances. **The policy committee noted WHITEHEAD'S hiding behind nondisclosure, the minimization of responsibility in his letter, and the fact WHITEHEAD drug his current Chief unknowingly into deception as aggravating circumstances.***

The only mitigating circumstance noted by the policy committee is that WHITEHEAD does a good job on the streets.

- *Mathew Workman moved that the Police Policy Committee finds WHITEHEAD'S conduct does rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) be revoked. Chris Brown seconded the motion. The motion carried unanimously.*
- *Craig Halupowski moved that the Police Policy Committee recommends to the Board that WHITEHEAD'S conduct encapsulated the highest end of the categories noted above with a focus on Dishonesty, therefore recommending a lifetime disqualifier; WHITEHEAD may never reapply for certification. Mike Wells seconded the motion. The motion carried unanimously.*

4. Law Enforcement Memorial Wall Nomination

Officer Christopher Kilcullen, City of Eugene Police Department
Presented by Eriks Gabliks

See Appendix D for details

- *Tom Bergin moved that the Police Policy Committee recommends to the Board the addition of Christopher Kilcullen's name to the Oregon Fallen Officer Memorial Wall. Craig Halupowski seconded the motion. The motion carried unanimously.*

5. **Law Enforcement Memorial Wall Nomination**

Deputy Sheriff J.F. Lewis, Lake County Sheriff's Office
Presented by Eriks Gabliks

See Appendix E for details

- *Craig Halupowski moved that the Police Policy Committee recommends to the Board the addition of J.F. Lewis' name to the Oregon Fallen Officer Memorial Wall. Chris Brown seconded the motion. The motion carried unanimously.*

6. **Additional Business**

Director's Report

2011-2013 Budget Recap

The Oregon Legislative Assembly has completed its work on DPSST's 2011-2013 budget. The largest reduction was in the Criminal Fines and Assessments Account with a reduction of 13 employees and two Basic Police classes. In its original budget reduction proposal, DPSST had proposed elimination of the DOC Audit Program. As the legislative process unfolded, DPSST was able to find other reductions that allowed this valuable program to remain intact. DPSST was able to mitigate much of the impact of the personnel cuts by keeping vacant positions open. Unfortunately three positions were lost due to lay-offs. The Legislature did give DPSST permission to request the restoration of the lost Basic Police Classes if hiring trends require additional classes be offered at the Academy. The Fire and 9-1-1 Programs did not take any reductions as they are from dedicated funds. The fee increase proposed in the Private Security licenses was approved by the Legislature but at a lesser amount than approved by the constituents. The amount will allow the DPSST Private Security Program to remain whole during the 2011-2013 biennium. Eriks thanked all of the PPC members and the various public safety organizations for their support of DPSST programs and employees during the session.

2011 Legislative Session Recap

There were three bills that DPSST was involved in that had an impact on the Police Policy Committee. The first is the Tribal law Enforcement Officer Bill which will allow tribal officers the ability to have peace officer powers off tribal lands. The legislation requires that all members of the tribal law enforcement agency comply with DPSST standards if the agency is to have state peace officer powers. The bill also requires that tribal law enforcement agencies submit proof of insurance as well as proof that no tribal law enforcement officers have tribal criminal convictions. DPSST will be asking the Board (BPSST) to adopt Temporary Administrative Rules to start the program while staff works with the PPC and the Board to adopt Permanent Administrative Rules. The second bill involves University Police Officers. The Oregon University System will now have the ability to establish law enforcement agencies and law enforcement officers with the permission of the Chancellor and the Board of Higher Education. DPSST is working with the university system on this process and administrative rules will come to the PPC as they are developed. The University System is taking this new statute very seriously and will only give a university permission to

establish a law enforcement agency if it can demonstrate financial ability, proper oversight and leadership, and established policies and procedures which will govern the employees. Finally, the legislature approved the Law Enforcement Medal of Ultimate Sacrifice that will honor fallen peace officers and the families they left behind. DPSST staff is working with the Medal of Honor Commission to establish rules and process for the award of this new medal.

Listening Tour

Members of the DPSST Leadership Team recently visited more than a dozen communities across the state to meet with stakeholders. The attendance was very good as was the information that was provided. DPSST asked what we are doing well, what needed to be improved, and what we are not currently doing that should be considered. The comments are being transcribed into a comprehensive document and will be shared with constituents as soon as they are completed. DPSST will provide feedback to the attendees and also post the comments received as well as actions either taken or in progress to address what was heard from the field. One area of concern statewide was the current process used for Supervision and Middle-Management training. Based on the feedback, DPSST staff is working on solutions that will address the concerns and improve the process.

Certification Matrix Work Group

DPSST Staff continues to work with police, corrections, parole and probation, and telecommunications professions to review and update the certification matrix used to award upper levels of certification (Intermediate, Advanced, Supervisor, etc.). This issue was raised during our last Listening Tour and a number of work groups have been working on this for over two years. A meeting was held on August 17, 2011 at DPSST to discuss progress as well as challenges. It is important to note that no changes have been made to date and that the respective Committees and the Board will see any proposals before they are sent out for public comment as part of the Administrative Procedures Act.

Instructor Standards

At last week's meeting of the Board, a question arose regarding DPSST's oversight of instructors. The issue arose because an instructor provided incorrect information to an agency which potentially exposed them to liability. DPSST staff only has oversight over instructors that have either DPSST certification as an officer, or those who instruct in mandated classes. Due to budget reductions, DPSST no longer certifies non-mandated DPSST classes or instructors. DPSST staff continues to provide information to agencies statewide reminding them that they need to vet the instructors they are using to ensure that they are qualified and capable to deliver the class.

Review of 16-Week Basic Police Course

As DPSST begins its 50th year of service, and as the 16-week Basic Police Course turns five years old, it's time to bring in our constituents to review the Basic Police Course from front to back to ensure that we (DPSST) are meeting the needs of our stakeholders. Eriks asked each organization (OSSA, OACP, PPB, OSP, OPOA, OCPA) to submit the names of two representatives to serve on the sub-committee. The sub-committee will submit its report and recommendations to the Police Policy Committee for review and consideration. Eriks asked that representatives not work for DPSST as part-time employees so that the review process can remain pure. The PPC asked Eriks to contact the Executive Directors of the respective organizations to request participants. DPSST hopes to have a thorough review completed by the end of the year with changes hopefully implemented at the beginning of 2012.

Fallen Public Safety Officer License Plates

While not a DPSST issue, here is an update on the Fallen Public Safety Officer License Plate Program. This program provides financial assistance to family members of firefighters and law enforcement officers (including corrections and parole & probation officers) killed in the line of duty when they attend the national ceremony the year their loved one is added. The license plates have been available for almost six months. Under the leadership of Mary Nunnenkamp and the use of social media, over \$35,000 has been raised to date for this fund. The fund is managed by DPSST but under the oversight of a 501C3 Board of Directors.

Line of Duty Death (LODD) Resource Guide

For over a year, DPSST has worked with OACP, OSSA, OSP, DOC, OPOA, OCPA, and COPS to develop an L-O-D-D Resource Guide that can be used by law enforcement agencies if they have either an on-duty or off-duty death. The guide is completed and will be presented to chiefs and sheriffs at their annual joint meeting at DPSST later this month. The guide will also be made to all of the partner organizations electronically so that it can be accessible on-line when needed. Eriks thanked all of the agencies for their assistance with the development of this valuable tool.

7. Next Police Policy Committee Meeting – November 17, 2011 at 1:30 p.m.

With no further business before the committee, Rob Gordon moved that the Police Policy Committee meeting be adjourned. Tom Bergin seconded the motion. The motion carried unanimously and the meeting adjourned at 3:50 p.m.

Appendix B

Department of Public Safety Standards and Training Memo

Date: November 17, 2011
To: Police Policy Committee
From: Linsay Hale
Rules & Compliance Coordinator

Subject: OAR 259-008-0005 – Proposed Rule
Definitions

Issue: The 2011 legislative session saw many changes to DPSST definitions. SB 76 updated the definition of correctional officer to include supervisors and managers of correctional officers. SB 405 and SB 412 expanded the definition of law enforcement unit and police officer to include universities with police departments and tribal governments.

All definitions have been reviewed to ensure consistency between ORS 181.610 and Oregon Administrative Rule. As a result, district attorney's offices/investigators and animal care agencies/agent were added to the definition of law enforcement unit/police officer and certified reserve officers were added to the definition of public safety professional.

Finally, housekeeping changes were made for clarity. The acronym "DPSST" was defined, because it is used through the criminal justice rule set. Also, the definition of "recall" was updated to include any administrative requirements that might be required to restore certification.

The following revised language for OAR 259-008-0005 contains recommended additions (**bold and underlined**) and deletions (~~striketrough text~~).

259-008-0005

Definitions

- (1) "Assistant Department Head" means an officer occupying the first position subordinate to a Department Head, ~~and~~ **who** is primarily responsible for supervision of middle managers and/or supervisors.
- (2) "Board" means the Board on Public Safety Standards and Training.
- (3) "Casual employment" means employment that is occasional, irregular, or incidental ~~and~~ **for which** the employee does not receive seniority rights ~~nor~~ fringe benefits.
- (4) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.
- (5) "Commissioned" means ~~an authorization granting the power~~ **being authorized** to perform various acts or duties of a police officer **or reserve officer** and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.
- (6) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including, but not limited to, vocational or technical education programs or lower division collegiate programs.

(7) "Corrections Officer" means an officer or member of employed full-time by a law enforcement unit who ~~is employed full-time thereby and~~

(a) Is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles;

(b) Has been certified as a corrections officer described in paragraph (a) of this subsection and has supervisory or management authority for corrections officers as described in paragraph (a) of this subsection; or

(c) ~~Is and~~ any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(8) "Department" and "DPSST" mean the Department of Public Safety Standards and Training.

(9) "Department Head" means the chief of police, sheriff, or chief executive of a law enforcement unit or a public or private safety agency directly responsible for the administration of that unit.

(10) "Director" means the Director of the Department of Public Safety Standards and Training.

(11) "Educational Credits" are credits earned for studies satisfactorily completed at an accredited post-secondary education institution recognized under OAR 259-008-0045.

(12) "Emergency ~~m~~Medical ~~d~~Dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(13) "First-Level Supervisor" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between the operational level and the middle manager position who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.

(14) "Full-time employment" means the employment of a person ~~who has the responsibilities as defined in ORS 181.610(3), (5), (9), (13), (14), (18) of this rule,~~ who has the responsibility for, and is paid to perform the duties described in the above statute and administrative rule of a public safety professional for more than 80 hours per month for a period of more than 90 consecutive calendar days. For purposes of this rule, any employment that meets the definition of seasonal, casual, or temporary employment is not considered full-time employment as a public safety professional.

(15) "High School" is a school accredited as a high school by the Oregon Department of Education, ~~or~~ a school accredited as a high school by the recognized regional accrediting body, or a school accredited as a high school by the state university of the state in which the high school is located.

(16) "Law Enforcement Officers" ~~as used throughout this manual collectively means all police, corrections, and parole and probation officers who are included~~ as described in the Public Safety Standards and Training Act ~~as described in ORS 181.610, and 181.651.~~

(17)~~(a)~~ "Law Enforcement Unit" means:

(a) A police force or organization of the state, a city, university that has established a police department under Oregon Law 2011, Chapter 506, port, school district, mass transit district, county, county service district authorized to provide enhanced law enforcement services under ORS 451.010, ~~Indian reservation~~ tribal government as defined in Oregon Law 2011, Chapter 644 that employs authorized tribal police officers as defined in Oregon Law 2011, Chapter 644, Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, or common carrier railroad whose the primary duty of which, as prescribed by law, ordinance, or directive, is ~~any~~ one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control, or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision, and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation;

(b) "~~Law enforcement unit~~" also means a A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area whose the employees of which are commissioned by a county sheriff;

(c) A district attorney's office; or

(d) A private, nonprofit animal care agency that has maintained an animal welfare investigation department for at least five years and has had officers commissioned as special agents by the Governor.

(18) "Leave" means **a leave granted to a public safety professional by their employing public or private safety agency.**

~~(a) a leave granted to a law enforcement officer from a law enforcement unit; or~~

~~(b) a leave granted to a telecommunicator or emergency medical dispatcher from a public or private safety agency.~~

(19) "Middle Manager" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between first-level supervisor and department head position and is primarily responsible for management and/or command duties. A middle manager position does not include a position with limited, or acting middle management duties.

(20) "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties **of a public safety professional** described in statutes and administrative rules ~~for public safety personnel~~ for 80 hours **or less** per month, ~~or less,~~ for a period of more than 90 consecutive calendar days.

(21) "Parole and Probation Officer" means:

(a) Any officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers; or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; ~~or~~

(b) Any officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation; **or**

(c) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(22) "Police Officer" means an officer, ~~or~~ member **or employee** of a law enforcement unit ~~who is~~ employed full-time as a peace officer **who is:**

(a)(A) eCommissioned by a city, port, school district, mass transit district, county, county service district authorized to provide ~~enhanced~~ law enforcement services under ORS 451.010, ~~Indian reservation~~ **tribal government as defined in section 2011 OR SB 412**, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, **a university that has established a police department under 2011 OR SB 405**, ~~or~~ the Governor, or a ~~member~~ of the Department of State Police; **and**

(B) ~~who is~~ **r**Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(b) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or another state;

(c) An authorized tribal police officer as defined in Oregon Law 2011, Chapter 644; or

(d) and aAny full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.651.

(23) "Public or private safety agency" means ~~any~~

(a) A law enforcement unit; or

(b) A unit of state or local government, a special purpose district or a private firm ~~which~~ **that** provides, or has authority to provide, ~~police~~, ambulance or emergency medical services.

(24) "~~Public safety personnel~~" and "~~Public safety professional~~" **"Public Safety Personnel," "Public Safety Officer," and "Public Safety Professional"** include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, **certified reserve officers**, and telecommunicators.

(25) "Recall" means the administrative inactivation of a certificate issued by the Department until maintenance requirements **or other administrative requirements for certification** are met and certification is restored.

(26) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public ~~s~~**S**afety Academy.

(27) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181.690, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses incurred while officers attend approved training courses certified by the Department.

(28) "Reserve Officer" means an officer or member of a law enforcement unit **who is:**

(a) ~~Who is a~~ **A** volunteer or ~~who is~~ employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, ~~Indian reservation~~ **tribal government as defined in Oregon Law 2011, Chapter 644**, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, ~~or~~ the Governor, or ~~who is a member of~~ the Department of State Police **who is;**

(b) ~~Who is a~~ **A**Armed with a firearm; and

(c) ~~Who is r~~**R**esponsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(29) "Seasonal ~~e~~**E**mployment" means employment that can be carried on only at certain seasons or fairly definite portions of the year, with defined starting and ending dates based on a seasonally determined need.

(30) "Staff" means those employees occupying full-time, part-time, ~~and~~ or temporary positions with the Department.

(31) "Telecommunicator" means:

(a) any A person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 403.105; or

(b) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(32) "Temporary employment" means employment that lasts no more than 90 consecutive calendar days and is not permanent.

(33) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.715).

(34) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0005 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0005 with the Secretary of State as a permanent rule if no comments are received.

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

Appendix C

Department of Public Safety Standards and Training

Memo

Date: November 17, 2011
To: Police Policy Committee
From: Linsay Hale
Rules Coordinator
Subject: OAR 259-008-0069 – Proposed Rule
Tribal Law Enforcement

Issue: SB 412 was enacted during the 2011 Legislative Session and relates to the regulation of tribal law enforcement units and the certification of tribal police officers.

The bill was enacted with an emergency clause which caused the act to take effect upon its passage. Because of this, staff, with the permission of the Board, has filed the following language as a temporary rule to implement the basic requirements of the Act that pertain to DPSST until this proposed rule language could be brought before the Police Policy Committee and the permanent rulemaking process can begin.

The following recommended language for OAR 259-008-0069.

259-008-0069

Tribal Law Enforcement

(1) In order for individuals employed as public safety professionals by a tribal government to be eligible for certification as a public safety professional:

(a) The tribal government must comply with all requirements found in ORS 181.610 to 181.712 and OAR 259, Section 8 applicable to law enforcement units.

(b) Prior to eligibility for certification of tribal government employees, tribal governments must submit a resolution to the Department that includes the following:

(A) A declaration of compliance with all requirements of 2011 OR SB 412;

(B) Proof of insurance. Acceptable proof of insurance consists of:

(i) A full copy of the public liability and property damage insurance for vehicles operated by the tribal government's authorized tribal police officers and a full copy of the police professional liability insurance policy from a company licensed to sell insurance in the state of Oregon; or

(ii) A description of the tribal government's self-insurance program which is in compliance with 2011 OR SB 412.

(c) Tribal governments must file a written description of all material changes to insurance policies or the tribal government's self-insurance program with the Department within 30 days of the change.

(d) Tribal law enforcement units must submit an Applicant Disclosure of Convictions in Tribal Jurisdiction (Form F-8) when:

(A) Reporting individuals hired into certified positions as prescribed in OAR 259-008-0020 (Personnel Action Report Form F-4); and

(B) Upon application for certification (Application for Certification Form F-7).

(e) Tribal law enforcement units must annually complete an Annual Affidavit for Tribal Law Enforcement Units (Form F-8a).

(f) A certified public safety professional employed by a tribal government must comply with all requirements found in ORS 181.610 to 181.712 and OAR 259, Section 8 applicable to public safety professionals.

(4) Failure of a tribal government to comply with any requirements of this rule will result in the lapse of certification of all certified public safety professionals employed with the affected tribal government. Upon reemployment as a public safety professional, or upon compliance with requirements by a tribal government, a person whose certification has lapsed may apply for recertification in the manner provided in 2011 OR SB 412 and this rule.

[ED. NOTE: Forms referenced are available from the agency.]

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0069 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0069 with the Secretary of State as a permanent rule if no comments are received.

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

Appendix D

Department of Public Safety Standards and Training Memo

Date: November 17, 2011
To Police Policy Committee
From: Linsay Hale
Rules Coordinator
Subject: OAR 259-008-0100 – Proposed Rule
Miscellaneous Activities of the Board or Department

Issue: This rule update clarifies the process for retired public safety professionals to receive Retirement Cards.

The following revised language for OAR 259-008-0100 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-008-0100

Miscellaneous Activities of the Board or Department

(6) The Department may, on request, issue Retirement Cards to those **Department-certified** ~~DPSST certified law enforcement officers~~ **public safety professionals** who have honorably served the citizens of Oregon and who have **honorably** retired from their agency ~~under honorable conditions~~.

(a) For the purposes of this rule, "**honorably** retired" means reaching the **State of Oregon's** recognized retirement age **and retiring in good standing from a certified position as a public safety professional** with a minimum of five (5) years of full-time ~~law enforcement~~ **public safety** experience in Oregon.

(b) An ~~officer~~ **public safety professional** who has sustained a permanent disability that prevents a return to ~~law enforcement~~ **their certifiable position** may qualify for a Retirement Card if the ~~officer~~ **public safety professional** has served a minimum of five (5) years as a full-time ~~law enforcement officer~~ **public safety professional** in Oregon.

(c) The request for a Retirement Card ~~shall~~ **must** be made by the agency ~~in~~ **with** which the ~~officer~~ **public safety professional** was last employed. The request ~~shall~~ **must** be made **using a FORM XXXX** ~~in writing~~.

(d) The Department will issue only one Retirement Card per qualifying public safety professional.

(e) If a Retirement Card is lost or damaged, the Department may issue a replacement Card if requested by the applicable public safety professional.

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0100 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0100 with the Secretary of State as a permanent rule if no comments are received.

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

Appendix E

Memorandum

Date: November 17, 2011
To: Police Policy Committee
From: Marilyn Lorange, Manager
Standards and Certification Program
Subject: Recommended time frame for remediation of skills deficiencies

Background:

There are times when Basic students are not able to meet the standards in one or more required skills during their basic training. These students are allowed to return to the Academy to remediate the skill(s) and demonstrate their ability to perform the task prior to their deadline to obtain certification. These students are not given credit for having completed their Basic course until they have successfully remediated their deficiency. When remediation is complete, the student is identified as having successfully completed their Basic course.

Although not common, there have been occasions when a student with deficiencies has been completely removed from their work or training environment for a period of time prior to their remediation. Some examples are medical or military leaves that may last for many months, or occasionally for longer than a year.

A concern has been raised, both internally and by constituent agencies, about the ability of new police or corrections officers to retain newly learned critical and essential knowledge and skills when they have no opportunity to practice or apply them in the workplace. If knowledge and skills are not retained, then there may be significant risk in the following areas:

- To DPSST when providing training at the time of remediation.
- To DPSST when certifying that the student has mastered all critical and essential skills required of Basic students, when training has been interrupted for an extended period of time.
- To the employer when returning a student to full duties based on their completion of the requirements of Basic training.
- To the officer who may no longer possess the current knowledge, skills and abilities to safely begin or resume their field training and serve in their community.

Based on these concerns, Steve Winegar, DPSST's Research Analyst, was asked to conduct the needed research and make a recommendation regarding how much time a trainee should be given to remediate a skills deficiency before the student would need to re-take the full Basic course. His memorandum and recommendation are attached.

Action Requested: Staff requests that the Policy Committee review the attached information and determine whether to concur with the recommendation of a six-month maximum period to remediate skills deficiencies, if the student has not been working at their agency in their certifiable position prior to remediation.

Appendix F

Department of Public Safety Standards and Training Memorandum

DATE: November 17, 2011
TO Police Policy Committee
FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: JASON M. BROWN DPSST #40958
Dept. of Public Safety Standards and Training

Executive Session: If medical information is discussed, this matter must be moved to executive session.

ISSUE:

Should Jason M. BROWN's Basic and Intermediate Police certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves BROWN's resignation in lieu of termination.

BACKGROUND and OVERVIEW

1. *Between 2001 and 2006, BROWN was employed as a police officer by the City of Springfield. He obtained his Basic and Intermediate Police Certifications and signed his Code of Ethics. He later resigned from the Springfield Police Dept. and was employed by DPSST as a training officer.*
2. *In July 2010, DPSST received information that BROWN had been arrested on a domestic assault charge in Stayton, Oregon. Subsequently DPSST requested and received the investigation that led to BROWN's arrest. This charge was later dismissed upon BROWN's completion of court-ordered counseling.*
3. *In May 2011 DPSST, as BROWN's employer, commenced a pre-dismissal process against BROWN. The basis for the proceeding was the domestic violence case and two subsequent arrests, one for DUII in August 2010 and one for violating his release agreement on the previous domestic assault charge.*
4. *In June 2011 BROWN was discharged for cause from his employment with DPSST. However, BROWN subsequently entered into a Settlement Agreement with DPSST in which the parties agreed that BROWN would resign in lieu of termination.*
5. *In August 2011, DPSST notified BROWN via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*
6. *BROWN has provided a response. This response includes medical information that may require executive session review. He also sent, at my request, a copy of his DUII arrest report and related documents.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT

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

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

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

(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (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;

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

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

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

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

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

POLICY COMMITTEE AND BOARD REVIEW:

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

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
 2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case.**

- b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not involve* **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
 4. By vote, the Policy Committee finds BROWN's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Appendix G

Department of Public Safety Standards and Training Memorandum

DATE: November 17, 2011
TO: Police Policy Committee
FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: DONALD A. DENISON DPSST #15298
Toledo Police Dept.**

ISSUE:

Should Donald A. DENISON's Basic, Intermediate, Advanced, Supervisory, Management and Executive Police certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves DENISON's investigations by the Government Standards and Practices Commission (nka the Oregon Government Ethics Commission) and related conduct.

BACKGROUND and OVERVIEW

1. *Between 1982 and 2006, DENISON was employed as a police officer, obtained his Basic, Intermediate, Advanced, Supervisory, Management and Executive Police Certifications and signed his Code of Ethics.*
2. *In July 2006, DPSST received information that the Government Standards and Practice Commission had made a preliminary finding that DENISON violated provisions of Government Standards and Practices law found in ORS Chapter 244.*
3. *In August of 2006 DPSST received information that DENISON was in Iraq and had requested a contested case hearing. DPSST deferred action on the matter.*
4. *On December 31, 2006, DENISON resigned from his position as Chief of the Toledo Police Dept.*
5. *In September 2007, DENISON entered into a Stipulated Final Order with the Oregon Government Ethics Commission, which resolved his case with the Commission.*
6. *In January 2009, DPSST received information that DENISON was not on active military duty in Iraq.*
7. *In June 2011, DPSST notified DENISON via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. DENISON did not provide a response, and the mailing came back as 'insufficient address.'*
8. *In August 2011 DPSST re-issued the notice of the PPC review, with another Stipulated Order, via certified mail. That notice was returned September 12, 2011 with the notation 'undeliverable as addressed, unable to forward.'*
9. *On September 14, 2011 DPSST contacted DENISON via e-mail, advising him of the inability to send mail to him, and sent the notice of PPC review, and Stipulated Order as attachments to the e-mail. DENISON replied the same day with more questions and indicated he would respond after those*

were answered. DPSST replied that day that the information previously provided was the information on which we were proceeding, and there would be no other information forthcoming.

10. DENISON has provided a response for PPC consideration.

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT

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

(4)(a) (A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;
(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or
(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (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;

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

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

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

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

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

POLICY COMMITTEE AND BOARD REVIEW:

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

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
 2. By discussion and consensus:
 - a. The identified conduct *did/did not* involve **Dishonesty**.
 - b. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - c. The identified conduct *did/did not* involve **Misuse of Authority**.
 - d. The identified conduct *did/did not* involve **Gross Misconduct**.
 - e. The identified conduct *did/did not* involve **Misconduct**.
 - f. The identified conduct *did/did not* involve **Insubordination**.
 3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
 4. By vote, the Policy Committee finds DENISON's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Appendix H

Department of Public Safety Standards and Training Memorandum

DATE: November 17, 2011
TO: Police Policy Committee
FROM: Leon S. Colas
Professional Standards Investigator/Coordinators

SUBJECT: HENRY E. FILIPPONI DPSST #49765
Ontario Police Dept.

ISSUE:

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

The issue in this case involves FILIPPONI's 2011 conviction for Inattentive Driving in Idaho, a misdemeanor traffic crime equivalent to Oregon's Reckless Driving criminal offense.

BACKGROUND and OVERVIEW

1. *During the years 2004 to 2008, FILIPPONI was employed out of state as a police officer. In June 2008 FILIPPONI was hired by the Ontario Police Dept. as a police officer. He attended the DPSST Basic Police COD Course, signed his Code of Ethics, and ultimately was granted his Basic, Intermediate and Advanced Police Certifications.*
2. *In April 2011, DPSST received information that FILIPPONI had been arrested in Payette County, Idaho for DUII. Subsequently, DPSST sought and obtained the information leading to FILIPPONI's arrest. DPSST monitored the case and later learned that FILIPPONI ultimately pled guilty to a reduced charge of Inattentive Driving. A comparison of the statutes indicates that Oregon's Reckless Driving statute, ORS 811.140, is the equivalent of the Idaho statute 49-1401(3).*
3. *In September 2011, DPSST notified FILIPPONI via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*
4. *FILIPPONI has provided a response. FILIPPONI's agency head, Chief Alexander, provided a statement as well.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT

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

- (4)(a) (A) *The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;*
- (B) *The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or*

(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (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;

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

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

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

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

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

SPECIFIC TO THIS CASE:

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

Reckless Driving is the Oregon equivalent to Idaho's Inattentive Driving.

POLICY COMMITTEE AND BOARD REVIEW:

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

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

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

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;

(vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;

(C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;

(D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;

- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke FILIPPONI's certifications based on discretionary disqualifying misconduct:

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
 2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not* involve **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.
 3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
 4. By vote, the Policy Committee finds FILIPPONI's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Appendix I

Department of Public Safety Standards and Training Memorandum

DATE: November 17, 2011
TO: Police Policy Committee
FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: SEAN M. GILHOUSEN DPSST #37612
Coburg Police Dept.**

ISSUE:

Should Sean M. GILHOUSEN's Basic Police certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves GILHOUSEN's resignation during an internal investigation.

BACKGROUND and OVERVIEW

1. *Between 1999 and 2011, GILHOUSEN was employed by the Coburg Police Dept. as a police officer, and at one point was acting Chief of Police. He signed his Code of Ethics, attended training, and ultimately obtained his Basic Police certification*
2. *In February 2011, DPSST received information that GILHOUSEN resigned during an internal investigation. Subsequently, DPSST requested and received the investigation that led to GILHOUSEN'S resignation.*
3. *In June 2011, DPSST notified GILHOUSEN via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*
4. *GILHOUSEN did not provide a response.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT

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

- (4)(a) (A) *The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;*
- (B) *The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or*

(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (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;

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

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

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

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

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

POLICY COMMITTEE AND BOARD REVIEW:

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

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

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

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke GILHOUSEN certifications based on violation of the established moral fitness standards:

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
 2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not* involve **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.

3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Policy Committee finds GILHOUSEN's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Appendix J

Department of Public Safety Standards and Training Memorandum

DATE: November 17, 2011
TO: Police Policy Committee
FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JUSTIN D. MORRIS DPSST #46101
Hillsboro Police Dept.**

ISSUE:

Should Justin D. MORRIS' Basic and Intermediate Police certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves MORRIS' resignation in lieu of termination after an internal investigation.

EXECUTIVE SESSION: If medical information is discussed, this matter must be moved to executive session.

BACKGROUND and OVERVIEW

1. *Between 2005 and 2011, MORRIS was employed as a police officer, attended training, obtained his Basic and Intermediate Police Certifications and signed his Code of Ethics.*
2. *In June 2011, DPSST received information that MORRIS resigned from the Hillsboro Police Dept. in lieu of termination. Subsequently, DPSST requested and received the investigation that led to MORRIS' resignation.*
3. *In August 2011, DPSST notified MORRIS via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*
4. *MORRIS has provided a response.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT

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

- (4)(a) (A) *The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;*
- (B) *The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or*

(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (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;

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

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

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

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

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

POLICY COMMITTEE AND BOARD REVIEW:

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

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

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

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke MORRIS' certifications based on violation of the established moral fitness standards:

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
 2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not* involve **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.

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3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
 4. By vote, the Policy Committee finds MORRIS' conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

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

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

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

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

Appendix K

Department of Public Safety Standards and Training Memorandum

DATE: November 17, 2011
TO: Police Policy Committee
FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: RYAN J. MURPHY DPSST #43617
Hillsboro Police Dept.**

ISSUE:

Should Ryan J. MURPHY's Basic and Intermediate Police certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

The issue in this case involves MURPHY's resignation during an internal investigation.

BACKGROUND and OVERVIEW

1. *During the years 2004 to 2011, MURPHY was employed as a police officer, first by the City of Beaverton, and then by the City of Hillsboro. He ultimately completed the DPSST Basic Police course, signed his Code of Ethics, and obtained his Basic and Intermediate Police certifications.*
2. *In May 2011, DPSST received information that MURPHY had resigned his employment during an internal investigation. Subsequently, DPSST sought and received the information leading to MURPHY's resignation.*
3. *In August 2011, DPSST notified MURPHY via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*
4. *MURPHY has provided a response for the Committee's consideration.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT

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

- (4)(a) (A) *The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;*
- (B) *The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or*

(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (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;

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

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

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

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

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

POLICY COMMITTEE AND BOARD REVIEW:

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

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

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

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

(vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
 2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not* involve **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.
 3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

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

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

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

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

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

Appendix L

Department of Public Safety Standards and Training Memorandum

DATE: November 17, 2011
TO: Police Policy Committee
FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: CHRISTOPHER C. NOFFSINGER DPSST #35989
Douglas County Sheriff's Office

ISSUE:

Should Christopher C. NOFFSINGER's Basic and Intermediate Police certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves NOFFSINGER's resignation during an internal investigation.

BACKGROUND and OVERVIEW

1. *Between 1998 and 2011, NOFFSINGER was employed by the Douglas Co. S.O as a deputy sheriff. He signed his Code of Ethics, attended training, and ultimately obtained his Basic and Intermediate Police certifications.*
2. *In May 2011, DPSST received information that NOFFSINGER resigned during an internal investigation. Subsequently, DPSST requested and received the investigation that led to NOFFSINGER'S resignation.*
3. *In June 2011, DPSST notified NOFFSINGER via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. That notice came back undelivered due to an expired forwarding address. In September 2011, DPSST served the same notice to NOFFSINGER to the new address and gave him additional time to provide a response.*
4. *NOFFSINGER provided a response for PPC consideration.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT

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

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

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

(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (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;

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

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

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

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

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

POLICY COMMITTEE AND BOARD REVIEW:

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

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

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

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

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

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
 2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not* involve **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.
 3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

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

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

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

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

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

Appendix M

Department of Public Safety Standards and Training Memorandum

DATE: November 17, 2011
TO: Police Policy Committee
FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: DANIEL M. SWAIN DPSST #50263
Salem Police Dept.

ISSUE:

Should Daniel M. SWAIN's Basic and Intermediate Police certifications be revoked based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

The issue in this case involves SWAIN's 2003 resignation during an internal investigation.

BACKGROUND and OVERVIEW

1. *In November 2008, SWAIN was hired as a police officer by the Salem Police Dept. He ultimately signed his Code of Ethics and obtained his Basic and Intermediate Police certifications.*
2. *In January 2011, DPSST received information that SWAIN had resigned from the Salem Police Dept. during an investigation. Subsequently, DPSST sought and obtained the information leading to SWAIN's resignation.*
3. *The investigative reports show that SWAIN resigned during investigation into his DUII arrest and conduct during that arrest. Although SWAIN entered into diversion on the DUII matter, the Table of DUII Related Cases is included as an exhibit for the committee's reference.*
4. *In April 2011, DPSST notified SWAIN via certified mail that his case would be heard before the Police Policy Committee (PPC) and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.*
5. *SWAIN provided a response.*

DISCUSSION:

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

DISCRETIONARY DISQUALIFYING MISCONDUCT

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

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

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

(C) The public safety professional or instructor has been convicted of an offense, listed in subsection (4), punishable as a crime, other than a mandatory disqualifying crime listed in section (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;

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

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

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

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

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

POLICY COMMITTEE AND BOARD REVIEW:

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

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

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

(iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;

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

STANDARD OF PROOF:

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

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to deny SWAIN's certification based on discretionary disqualifying misconduct:

1. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
 2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.
 - b. The identified conduct *did/did not* involve **Dishonesty**.
 - c. The identified conduct *did/did not* involve a **Disregard for the Rights of Others**.
 - d. The identified conduct *did/did not* involve **Misuse of Authority**.
 - e. The identified conduct *did/did not involve* **Gross Misconduct**.
 - f. The identified conduct *did/did not* involve **Misconduct**.
 - g. The identified conduct *did/did not* involve **Insubordination**.
 3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

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

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

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

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

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