

Police Policy Committee

Minutes

May 11, 2010

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on May 11, 2010 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 Andrew Bentz.

Attendees

Policy Committee Members:

Andrew Bentz, Oregon State Sheriffs' Association, Chair
Stuart Roberts, Oregon Association Chiefs of Police, Vice Chair
Kent Barker, Oregon Association Chiefs of Police
Rob Gordon, Oregon State Sheriffs' Association
Michael Healy, Oregon Association of Chiefs of Police
Ryan Humphrey, Non-Management Law Enforcement
Holly Russell, Oregon State Sheriffs' Association
Glen Scruggs, Non-Management Law Enforcement
Marc Tisher, Non-Management Law Enforcement

Committee Members Absent

Arthur Balizan, Federal Bureau of Investigation-Oregon
Richard Evans, Oregon State Police Command Officer
Brandon Kaopuiki, Non-Management Law Enforcement
Tim McLain, Oregon State Police, Superintendent
Larry O'Dea, Portland Police Bureau, Asst. Chief (Designee for Rosie Sizer)
Steven Piper, Non-management Law Enforcement

Guests

Craig Halupowski, Woodburn Police Department

DPSST Staff:

Eriks Gabliks, Director
Marilyn Lorance, Certification and Records Supervisor
Mindy Tucker, Professional Standards Investigative Coordinator
Carolyn Kendrick, Administrative Specialist



1. Minutes of February 18, 2010 Meeting

Approve minutes from the February 18, 2010 meeting.

See Appendix A for details

Kent Barker moved to approve the minutes from the February 18, 2010 meeting. Rob Gordon seconded the motion. The motion carried unanimously.

The committee convened in executive session at 1:35 p.m. to discuss matters exempt from disclosure under ORS 192.660(1)(h) related to the Roger L. KADELL case.

The committee reconvened in regular session at 1:43 p.m. to take final action regarding the recommendation to the Board the restoration of KADELL's eligibility to apply for public safety certification.

2. Roger L. Kadell – DPSST #15106

Presented by Mindy Tucker

See Appendix B for details

- *Rob Gordon moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Kent Barker seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - 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 the girl's involvement in the cadet program**.
 - e. The identified conduct did involve **Gross Misconduct**.
 - f. The identified conduct did involve **Misconduct**.
 - g. The identified conduct did not involve **Insubordination**.
- By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee noted the letters showing KADELL's treatment and that there have been no further issues in his public service career.*
- *Based on the period of time and efforts toward rehabilitation, Rob Gordon moved that the Police Policy Committee finds KADELL's eligibility to apply for public safety certification be restored and recommends such to the Board. Ryan Humphrey seconded the motion. The motion carried unanimously.*

3. Travis D. Caulder – DPSST #41972

Presented by Mindy Tucker

See Appendix C for details

- *Kent Barker 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.

- b.) The identified conduct did involve **Dishonesty based on lies about being in court when he wasn't; misrepresentation in references letters, and lies about not applying for employment to other agencies.**
 - 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 CAULDER not responding to a call to continue on the computer.**
 - f.) The identified conduct did not involve **Misconduct.**
 - g.) The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee did not state any mitigating circumstances. The committee viewed as aggravating the continued misconduct after the agency addressed the issue, misrepresentation of himself, and the letter from the district attorney stating that CAULDER's conduct was deceitful.*
 - *Kent Barker moved that the Police Policy Committee finds CAULDER'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. Rob Gordon seconded the motion. The motion carried unanimously.*
 - *Rob Gordon moved that the Police Policy Committee recommends to the Board that CAULDER's misconduct is a lifetime disqualifier; he may never reapply for certification Kent Barker seconded the motion. The motion carried unanimously.*

4. Christopher C. Ernst – DPSST #49096

Presented by Mindy Tucker

See Appendix D for details

Kent Barker recused himself from conversation and voting since ERNST was one of his officers.

- *Rob Gordon moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Glen Scruggs seconded the motion. The motion the motion carried unanimously with Kent Barker abstaining.*
- By discussion and consensus:
 - a.) Identify the conduct that is at issue:
 - 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 not involve **Misconduct.**
 - g.) The identified conduct did not involve **Insubordination.**

- By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee did not identify any mitigating or aggravating circumstances.*
- *Rob Gordon moved that the Police Policy Committee finds ERNST'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. Ryan Humphrey seconded the motion. The motion carried unanimously with Kent Barker abstaining.*

5. Michael L. Throop – DPSST #16613

Presented by Mindy Tucker

See Appendix E for details

- *Rob Gordon moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Kent Barker seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct did involve **Dishonesty based on the election documents**.
 - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
 - d. The identified conduct did involve **Misuse of Authority in that THROOP obtained a benefit**.
 - e. The identified conduct did involve **Gross Misconduct based on his lack of leadership and malicious intent**.
 - 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 Police Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee did not identify any mitigating circumstances. As an immensely aggravating circumstance the committee noted the fact that THROOP was Sheriff which makes the committed misconduct even more grievous.*
- *Rob Gordon moved that the Police Policy Committee finds THROOP's eligibility to apply for public safety certification not be restored and recommends such to the Board. Michael Healy seconded the motion. The motion carried unanimously.*

6. Additional Business

Presented by Eriks Gabliks

Question to Staff: When an officer is dual certified and misconduct occurs, which Policy Committee does the case go to? Staff said the question would be discussed and decided when the next Executive Committee meets.

Director Gabliks introduced Mindy Tucker as the new Professional Standards Coordinator who took over for Theresa King.

2011-13 Budget: The good news is that we are moving forward with the request for restoration of Regional and Leadership training. The bad news is that agencies with general funding are being asked to submit a 25% budget reduction in 5% increments. We are continuing to work through the process however nothing is finalized.

Legislative Update: There are two bills DPSST is tracking but is not involved in.

1. The Oregon University System is seeking to employ officers with full police authority on campus. This bill would impact approximately 60-100 officers.
2. Tribal law enforcement agencies are seeking legislation for police power off tribal land. Should this happen, they will have to comply with all of DPSST certification and training requirements. DPSST is not initiating the legislation but we are being asked to sit at the table to address what issues may arise.

Board and Policy Committees: Chief Michael Healy has announced his retirement and will no longer be serving on committee. OACP has nominated Chief Kent Barker to serve as its representative. This leaves a vacancy in which Chief James Hunter from Klamath Falls has been nominated to fill.

Brandon Kaopuiki has indicated he is not able to serve a second term due to his work commitments. Craig Halupowski of Woodburn Police Department has been nominated to serve in his place.

The Leadership Conference being put on jointly by Chiefs, Sheriff's, State Police, and Corrections will be taking place here at the academy the end of June. We are anticipating approximately 180 attendees.

Last week DPPST held the Law Enforcement Memorial and had over 300 participants attend as well as over 60 family members. The ceremony and family luncheon was well received.

The Fallen Law Enforcement and Firefighter License Plate fundraiser, spearheaded by Mary Nunnenkamp, has raised \$27,000 in about 6 weeks to make this project a reality. Ultimately proceeds from the sale of the license plates will help families attend the national memorial when their loved one's name is added to the wall.

The DPSST sponsored Media Use of Force Training Day was not well attended but very successful. Attendees participated in Range 3000, use of force scenarios with simunitions, and listened to a presentation on Senate Bill 111. The feedback from media participants and law enforcement agencies who were present was very positive. We anticipate offering this training for legislators in the future.

7. **Next Police Policy Committee Meeting**

The next regularly scheduled Police Policy Committee meeting is August 10, 2010 at 1:30 p.m.

With no further business before the committee the meeting adjourned at 2:48 p.m.

Appendix A

Police Policy Committee Minutes (Draft) February 18, 2010

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on February 18, 2010 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:33 p.m. by Chair Andrew Bentz.

Attendees

Policy Committee Members:

Andrew Bentz, Chair, Oregon State Sheriffs' Association
Kent Barker, Oregon Association Chiefs of Police
Rich Evans, Oregon State Police
Robert Gordon, Oregon State Sheriffs' Association
Michael Healy, Oregon Association Chiefs of Police
Jeremy Ryan Humphrey, Non-Management Law Enforcement
Brandon Kaopuiki, Non-Management Law Enforcement
Tim McLain, Superintendent, Oregon State Police
Larry O'Dea, Assistant Chief, Portland Police Bureau
Stuart Roberts, Vice-Chair, Oregon Association Chiefs of Police
Glen Scruggs, Non-Management Law Enforcement
Marc Tisher, Non-Management Law Enforcement

Committee Members Absent

Arthur Balizan, Oregon Federal Bureau of Investigation
Steven Piper, Non-Management Law Enforcement
Holly Russell, Oregon State Sheriffs' Association

Guests

Christopher Ernst
Jeff Martin, Chair, Private Security Policy Committee

DPSST Staff:

Eriks Gabliks, Director
Marilyn Lorance, Certification and Records Supervisor
Kristen Turley, Professional Standards Coordinator
Carolyn Kendrick, Administrative Specialist
Teresa Naugle, Private Security/Private Investigator Program Manager



8. Minutes of November 10, 2009 Meeting

Approve minutes from the November 10, 2009 meeting.

See Appendix A for details

Kent Barker moved to approve the minutes from the November 10, 2009 meeting. Michael Healy seconded the motion. The motion carried unanimously.

9. OAR 259-008-0005(18) – Proposed Rule Change

Definition(s) – “Leave”

Presented by Marilyn Lorange

See Appendix B for details

Staff asked the committee to bear with the long background of this rule as it is the background for all the subsequent rules and suggested the option of combining all the rule changes into one motion.

10. OAR 259-008-0020 – Proposed Rule Change

Personnel Action Reports related to “Leave”

Presented by Marilyn Lorange

See Appendix C for details

11. OAR 259-008-0030 – Proposed Rule Change

Extension of Time Limit related to “Leave”

Presented by Marilyn Lorange

See Appendix D for details

12. OAR 259-008-0060 – Proposed Rule Change

Public Safety Officer Certification related to “Leave”

Presented by Marilyn Lorange

See Appendix E for details

13. OAR 259-008-0065 – Proposed Rule Change

Maintenance of Certification related to “Leave” – Police

Presented by Marilyn Lorange

See Appendix F for details.

7. OAR 259-008-0067 – Proposed Rule Change

Lapsed Certification related to “Leave”

Presented by Marilyn Lorange

See Appendix G for details

8. OAR 259-008-0076 – Proposed Rule Change.

Eligibility Requirements related to “Leave” – Police

Presented by Marilyn Lorange

See Appendix H for details

Kent Barker moved to combine the motions for OAR 259-008-005(18), OAR 259-008-0020, OAR 259-008-0030, OAR 259-008-0060, OAR 259-008-0065, OAR 259-008-0067, and OAR 259-008-0076 into one motion. Rob Gordon seconded the motion. The motion carried unanimously.

Rob Gordon moved to approve filing the language for OAR 259-008-005(18), OAR 259-008-0020, OAR 259-008-0030, OAR 259-008-0060, OAR 259-008-0065, OAR 259-008-0067, and OAR 259-008-0076 as proposed rules with the amendment to OAR 259-008-0020 limiting leave. Tim McLain seconded the motion. The motion carried unanimously.

Kent Barker moved to approve filing the language for OAR 259-008-005(18), OAR 259-008-0020, OAR 259-008-0030, OAR 259-008-0060, OAR 259-008-0065, OAR 259-008-0067, and OAR 259-008-0076 as permanent rules if no comments are received with the amendment to OAR 259-008-0020 limiting leave. Rob Gordon seconded the motion. The motion carried unanimously.

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

9. Travis D. Caulder – DPSST #41972

Presented by Kristen Turley

This case was held over to the May 11, 2010 Police Policy Committee meeting.

10. Christopher C. Ernst – DPSST #49096

Presented by Kristen Turley

Due to incomplete information, Brandon Kaopuiki moved to table this case until the May 11, 2010 Police Policy Committee meeting. Larry O’Dea seconded the motion. The motion carried unanimously.

11. Loren J. Gochenour – DPSST #45266

Presented by Kristen Turley

See Appendix I for details

Rob Gordon recused himself from voting on this case.

- *Kent Barker moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Tim McLain seconded the motion. The motion carried unanimously with Rob Gordon abstaining.*
- By discussion and consensus:
 - h. Identify the conduct that is at issue.
 - i. The identified conduct did involve **Dishonesty based on GOCHENOUR’s statement of personal history**.
 - j. The identified conduct did not involve a **Disregard for the Rights of Others**.

- k. The identified conduct **did not** involve **Misuse of Authority**.
 - l. The identified conduct **did** involve **Gross Misconduct based on GOCHENOUR's failure to act as a peace officer which could have created a danger to other persons**.
 - m. The identified conduct **did** involve **Misconduct based on GOCHENOUR's failure to act as a peace officer which could have created a danger to other persons**.
 - n. The identified conduct **did not** involve **Insubordination**.
- By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee stated as a mitigating circumstance that the remainder of GOCHENOUR's stay was positive. The aggravating circumstance noted by the committee was the fact that he was assigned to the Drug Enforcement Unit and the crime was drug related.*
 - *Kent Barker moved that the Police Policy Committee finds GOCHENOUR'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. Jeremy Ryan Humphrey seconded the motion. The motion carried unanimously with Rob Gordon abstaining.*
 - *Tim McLain moved that the Police Policy Committee recommends to the Board that GOCHENOUR's misconduct was a lifetime disqualifier; he may never reapply to the policy committee for certification(s). Larry O'Dea seconded the motion. The motion carried unanimously with Rob Gordon abstaining.*

12. Charles R. Irving – DPSST #41622

Presented by Kristen Turley

See Appendix J for details

Rob Gordon recused himself from voting on this case.

- *Kent Barker moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Tim McLain seconded the motion. The motion carried unanimously with Rob Gordon abstaining.*
- By discussion and consensus:
 - h. Identify the conduct that is at issue.
 - i. The identified conduct **did not** involve **Dishonesty**.
 - j. The identified conduct **did not** involve a **Disregard for the Rights of Others**.
 - k. The identified conduct **did not** involve **Misuse of Authority**.
 - l. The identified conduct **did not** involve **Gross Misconduct**.
 - m. The identified conduct **did** involve **Misconduct**.
 - n. The identified conduct **did not** involve **Insubordination**.

- By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee identified the photo as the aggravating circumstance. No mitigating circumstances were identified by the committee.*
- *Kent Barker moved that the Police Policy Committee finds IRVING's conduct does not rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) not be revoked. Rich Evans seconded the motion. The motion carried unanimously with Rob Gordon abstaining.*

13. Gregory A. Kroeplin – DPSST #13209

Presented by Kristen Turley

See Appendix K for details

- *Tim McLain moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Larry O'Dea seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue. *The Chief had an on-going leadership responsibility in the agency. Information came to him that should have been prompted aggressive action. Action was not taken.*
 - b. The identified conduct did involve **Dishonesty based information omitted (not provided) to the City Manager. KROEPLIN failed to supply documents he had access to under subpoena.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others based on the citizens' right to be protected.**
 - d. The identified conduct did involve **Misuse of Authority based on abuse of public trust.**
 - e. The identified conduct did involve **Gross Misconduct.**
 - f. The identified conduct did involve **Misconduct.**
 - g. The identified conduct did involve **Insubordination.**
- By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee identified as aggravating circumstances KROEPLIN's letter, the lack of follow through given his level of responsibility, and the total loss of trust by the community due to KROEPLIN's actions. No mitigating circumstances were identified.*
- *Tim McLain moved that the Police Policy Committee finds KROEPLIN's conduct does rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) be revoked. Larry O'Dea seconded the motion. The motion carried unanimously.*
- *Rob Gordon moved that the Police Policy Committee recommends to the Board that KROEPLIN's misconduct was a lifetime disqualifier; he may never reapply to the policy*

committee for certification(s). Jeremy Ryan Humphrey seconded the motion. The motion carried unanimously.

14. Renee McClintock – DPSST #20978

Presented by Kristen Turley

See Appendix L for details

- *Kent Barker moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Michael Healy seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct did involve **Dishonesty based on McCLINTOCK'S misrepresentation of employment in an attempt to gain favoritism.**
 - 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 crash which created danger to persons and property.**
 - 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 Police Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee identified McCLINTOCK's claim of sobriety and the fact she has not been on the job for many years as a mitigating circumstance. Aggravating circumstances identified by the committee included her multiple probation violations and that McCLINTOCK's letter did not identify consequences of her actions.*
- *Brandon Kaopuiki moved that the Police Policy Committee finds McCLINTOCK's conduct does not rise to the level to warrant the revocation of her certifications(s), and therefore recommends to the Board that these certification(s) not be revoked. Rob Gordon seconded the motion. The motion carried in a 6 to 4 vote with Jeremy Ryan Humphrey, Tim McLain, Larry O'Dea and Rich Evans voting no.*

15. Christina L. Nelson – DPSST #28000

Presented by Kristen Turley

See Appendix M for details

Larry O'Dea recused himself from voting on this case.

- ***Rob Gordon moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Brandon Kaopuiki seconded the motion. The motion carried unanimously with Larry O’Dea abstaining.***
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct ***did*** involve ***Dishonesty based on NELSON’s untruthfulness on the application for funds from the Portland Police Bureau special contributions committee.***
 - 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.***
 - g. The identified conduct ***did not*** involve ***Insubordination.***
- By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. ***The mitigating circumstances identified by the committee are the change of disposition on this matter by the agency regarding discharge, and the nature at hand being a medical issue. The committee identified the fact that NELSON took advantage of lax procedures to gain funds as a aggravating circumstance.***
- ***Rob Gordon moved that the Police Policy Committee finds NELSON’s conduct does rise to the level to warrant the revocation of her certification(s), and therefore recommends to the Board that these certification(s) be revoked. Michael Healy seconded the motion. The motion carried unanimously with Larry O’Dea abstaining.***
- ***Brandon Kaopuiki moved that the Police Policy Committee recommend to the Board that the minimum period of ineligibility to reapply for certification will be five years from the date of revocation. Jeremy Ryan Humphrey seconded the motion. The motion failed in a 3 to 7 vote with Jeremy Ryan Humphrey, Marc Tisher, and Brandon Kaopuiki voting yes and Larry O’Dea abstaining.***
- ***Rob Gordon moved that the Police Policy Committee recommend to the Board that NELSON’s misconduct was a lifetime disqualifier; she may never reapply to the committee for certification(s). Tim McLain seconded the motion. The motion carried in a 6 to 3 vote with Brandon Kaopuiki, Jeremy Ryan Humphrey and Andrew Bentz voting no.***

16. Jamie Rogers – DPSST #36661

Presented by Kristen Turley

See Appendix N for details

Rob Gordon recused himself from voting on this case.

- *Jeremy Ryan Humphrey moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based. Brandon Kaopuiki seconded the motion. The motion carried unanimously with Rob Gordon abstaining.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - 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 policy**.
 - g. The identified conduct did involve **Insubordination by ROGERS working overtime after being told not to**.
- By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. *The committee identified the fact that ROGERS was counseled multiple times on policy and behavior as an aggravating circumstance. The committee stated for the record their belief that the Sheriff's Office handled the situation appropriately and gave ROGERS plenty of opportunities.*
- *Kent Barker moved that the Police Policy Committee finds ROGERS' 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. Brandon Kaopuiki seconded the motion. The motion failed in a 5 to 5 vote with Rob Gordon abstaining.*
- *After further discussion, Tim McLain moved that the Police Policy Committee finds ROGERS' 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. Larry O'Dea seconded the motion. The motion carried in a 6 to 4 vote with Stuart Roberts, Michael Healy, Rich Evans and Jeremy Ryan Humphrey voting no, and Rob Gordon abstaining.*
- *Larry O'Dea moved that the Police Policy Committee recommend to the Board that the minimum period of ineligibility to reapply for certification will be seven years from the date of revocation. With no second, the motion died.*
- *Jeremy Ryan Humphrey moved that the Police Policy Committee recommend to the Board that the minimum period of ineligibility to reapply for certification will be three years from the date of revocation. Brandon Kaopuiki seconded the motion. The motion carried unanimously.*

17. Greg Schuster – DPSST #42457

Presented by Kristen Turley

See Appendix O for details

Jeremy Ryan Humphrey recused himself from voting on this case.

- ***Kent Barker 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 with Jeremy Ryan Humphrey abstaining.***
- By discussion and consensus:
 - a. Identify the conduct that is at issue.
 - b. The identified conduct ***did*** involve ***Dishonesty based on SCHUSTER's untruthfulness regarding his personal relationship with a person on probation.***
 - 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 SCHUSTER's failure to report drug use and weapon possession of the person on parole.***
 - f. The identified conduct ***did*** involve ***Misconduct based on violation of policy.***
 - g. The identified conduct ***did*** involve ***Insubordination based on SCHUSTER's continued contact with the person after being told not to have any contact.***
- By discussion and consensus, the Police Policy Committee must identify and consider any mitigating and aggravating circumstances. ***The committee identified SCHUSTER's conduct involved colleagues and that some visits were made while on duty as aggravating circumstances.***
- ***Michael Healy moved that the Police Policy Committee finds SCHUSTER's conduct does rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) be revoked. Kent Barker seconded the motion. The motion carried unanimously with Jeremy Ryan Humphrey abstaining.***
- ***Kent Barker moved that the Police Policy Committee recommend to the Board that SCHUSTER's misconduct was a lifetime disqualifier; he may never reapply to the committee for certification(s). Rob Gordon seconded the motion. The motion carried unanimously with Jeremy Ryan Humphrey abstaining.***

18. Additional Business

Presented by Eriks Gabliks

- ***Regarding the Tort claimed filed against the agency and past Director of DPSST: The agency is fully cooperating both with BOLI and DOJ to make sure that issue is resolved. John Minnis did sign a Stipulated Order voluntarily revoking his police certifications therefore his case will not come before the Police Policy Committee.***
- ***DPSST did receive funding from the Ways and Means Committee for two additional Basic Police Classes. This will address the backlog we are experiencing. We appreciate the Chiefs, Sheriff's, Council of Police Associations, and League of Cities who all helped to get this moved forward.***

- *DPSST is still working to try to restore the Leadership Training Program and Regional Training Coordinators lost due to budget cuts. There are a lot of people making connections at the capitol building, however we are not seeing a lot of forward momentum.*
- *Theresa King accepted the Lead Coordinator position of the DOC Auditing Program. DPSST is in the process of recruiting for a new Professional Standards Coordinator.*
- *Leadership Symposium: DPSST, DOC, the Sheriff's Association, the Chief's Association, and the Oregon State Police are working on a one-week Leadership Symposium. It will not be a full replacement of the former Supervision/Middle Management Program, but will help supervisors and middle managers get training toward that certification level.*
- *DPSST has received a number of media calls regarding use of force incidents both in Portland and Salem. We are very candid when talking with the media that we will not provide guidance or input on incidents which agencies are or have been involved in, however we will provide information regarding what training is offered here at the academy. DPSST has set up a one-day Use of Force Media Training Event here at the academy in partnership with constituent agencies. This training will put the media in the position where they will have to make decisions on use of force through scenario training and Range 3000 (Milo). DOJ will also come in and talk about Senate Bill 111 which is about what happens when an incident occurs. This training is not in response to any incident that has occurred but rather to get the message across that a 15 minute sound bite does not tell the whole story of what officers, deputy, troopers go through when they have to make those types of decisions.*
- *DPSST is setting up an orientation for new committee and board members.*
- *With Bonnie Narvaez retiring, DPSST is recruiting for a new Rules Coordinator.*
- *The committee asked staff to change the order of discussion and consensus points in the denial/revocation process. The suggested order is as follows: Misconduct, Gross Misconduct, Insubordination, Misuse of Authority, Disregard for the Rights of Others, and then Dishonesty. This will be implemented during the next meeting cycle.*

19. Next Police Policy Committee Meeting

The next regularly scheduled Police Policy Committee meeting is May 11, 2010 at 1:30 p.m.

With no further business before the committee, Kent Barker moved to adjourn the meeting. Rob Gordon seconded the motion. The meeting adjourned at 4:25 p.m.

Appendix B

DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING MEMORANDUM

DATE: May 11th, 2010
TO: Police Policy Committee
FROM: Mindy S. Tucker
Professional Standards Investigator/Coordinator

SUBJECT: ROGER L. KADELL - DPSST #15106

ISSUE:

Should Roger Kadell's eligibility to apply for public safety certification be restored under OAR 259-008-0070(11) and through incorporation of OAR 259-008-0010?

NOTE: This case involves medical information which, if discussed, must be done so in Executive Session.

BACKGROUND and OVERVIEW

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

On January 1st, 1979, KADELL was hired by the Hillsboro Police Department as a police officer, where he remained employed until June 20th, 1982.

On June 21st, 1982, KADELL was hired by the OHSU Department of Public Safety as a police officer, where he remained employed until August 14th, 1983.

On August 15th, 1983, KADELL was hired by the Tillamook Police Department as a police officer, where he remained until June 15th, 1985.

On August 17th, 1984, KADELL was granted a Basic Police Certificate.

On June 17th, 1985, KADELL was hired by the Hillsboro Police Department as a police officer, where he remained employed until December 19th, 1994.

On June 19th, 1987, KADELL was granted an Intermediate Police Certificate.

On September 13th, 1994, KADELL was granted an Advanced Police Certificate.

On July 25th, 1995, KADELL was convicted of the crime of Contributing to the Sexual Delinquency of a Minor.

On May 3rd, 1996, DPPST issued KADELL a Notice of Intent to Revoke Certification and Opportunity to be Heard. This Notice of Intent to Revoke required DPSST to revoke the certification of a police officer who had been convicted of ORS 163.435, pursuant to ORS 181.662(3)(d) and OAR 259-08-070(1)(b)(D).

On July 18th, 1996, DPSST issued an Order of Default Revoking Certifications to KADELL.

On February 5th, 1999, KADELL's conviction was set aside. On February 8th, 1999, KADELL contacted DPSST acknowledging his understanding that, although his criminal conviction and criminal record were now sealed, that action did not impact his 1996 revocation from DPSST.

On August 10th, 2000, KADELL submitted another letter to DPSST seeking clarification of DPSST's answers to his February 5th, 1999 letter. DPSST responded in a letter to KADELL, addressing his questions.

On September 9th, 2006, KADELL submitted a letter to DPSST requesting consideration for a re-eligibility review of his revoked certifications.

In May 2007, KADELL initiated an email to a representative of the Oregon AFSCME Council 75 inquiring about his eligibility for recertification. KADELL was seeking employment as an animal control officer. On May 10th, 2007, DPSST replied to the email.

On May 17th, 2007, DPSST staff, Theresa KING, prepared a case overview for Marilyn LORANCE, Standards and Certification Manager, which included a chronological order of facts, inquiries, correspondence and a recommendation.

On October 2nd, 2007, KADELL initiated an email to DPSST staff requesting process information to apply for recertification; to which DPSST replied.

On February 15th, 2009, KADELL submitted an application for eligibility determination under OAR 259-008-0070. In this correspondence, KADELL disclosed specific actions he needed to complete in order to be considered in compliance with his self disclosed conviction [Reference Exhibit A18, page 1 of 5 under subtitle "Order"].

KADELL presented DPSST with reference recommendations he solicited from his co-workers and law enforcement officers in his area; adding that each person who wrote a letter, was aware of his past issues and wrote with that knowledge.

KADELL presented DPSST with a written mental stability opinion from Levi MIGNEAULT, M.S.W., Psy. D; presenting his credentials as a Washington State Certified Sex Offender Treatment Evaluator-Treatment Provider. This written opinion from MIGNEAULT was dated March 12th, 2009. KADELL also provided a copy of Exhibit A19, but added his own handwritten notes, along with highlighted areas of the report.

On April 30th, 2009, KADELL sent an email to KING inquiring the status of the re-eligibility review. In December 2009, KING sent an email to Lorraine ANGLEMEIER requesting a review of the governing verbiage of ORS 163.435 in 1996.

On December 28th, 2009, KING submitted a report to LORANCE with a recommendation to prepare this matter for presentation to the Police Policy Committee.

In its first eligibility determination case (Sherwood), DPSST relied upon the new administrative rules which allow for such a review. As staff explained in that case, an expungement (set aside) does not rewrite history; it simply restores certain civil rights. Further, if DPSST has information on the crime prior to the expungement, the underlying conduct may be reviewed by the PPC for purposes of current public safety officer standards.

It is important to note that any underlying arrest or court documents relating to an expunged in-state conviction cannot be considered in these cases. However, the Oregon Department of Justice has clarified that administrative documents in DPSST's records are not part of the sealed record and can therefore, be used in Committee and Board processes.

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))

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)]

DISCRETIONARY DISQUALIFYING MISCONDUCT

OAR 259-008-0010(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness includes, but is not limited to:

- (A) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or
- (B) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

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.

OAR 259-008-0070(11) details the reapplication process:

(a) Any public safety professional or instructor whose certification has been denied or revoked pursuant to section (4) of this rule, may reapply for certification within the applicable timeframes described in sections (4) through (6) of this rule. The initial minimum ineligibility period will begin on the date an Order of the Department denying or revoking certification becomes final. The initial minimum ineligibility period will cease when the applicable timeframe stated in the Order has been satisfied.

(b) Any public safety professional or instructor whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

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

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

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

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

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

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

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

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

(D) All requirements for certification have been met.

POLICY COMMITTEE AND BOARD REVIEW:

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, 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.

ACTION ITEM:

Staff requests the Police Policy Committee review the matter and make a recommendation to the Board whether KADELL's eligibility to apply for public safety certification should be restored.

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 the conduct that is at issue.
 - 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 Roger KADELL's eligibility to apply for public safety certification *be restored/not be restored* and recommends such to the Board.

Appendix C

Department of Public Safety Standards and Training Memorandum

DATE: May 11th, 2010
TO: Police Policy Committee
FROM: Mindy S. Tucker
Professional Standards Investigator/Coordinator

SUBJECT: Travis D. CAULDER DPSST #41972

ISSUE:

Should Travis CAULDER'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?

NOTE: This case involves medical information which, if discussed, must be done so in Executive Session.

BACKGROUND and OVERVIEW

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

On February 23, 2002, CAULDER was hired by the Seaside Police Department as a police officer.

On February 7, 2007 was granted a Basic Police Certificate.

On April 4, 2006, CAULDER signed his Criminal Justice Code of Ethics.

On June 22, 2009, CAULDER resigned from the Seaside Police Department.

DPSST sought and obtained the investigation that led to CAULDER's resignation in lieu of termination.

In December 2009, DPSST mailed CAULDER a letter advising him that his case would be heard before the Police Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail.

CAULDER provided information for the Committee's consideration. Because there were areas that conflicted with the information that the employer had provided, DPSST sought follow up information for the Committee's consideration after the Committee's February 18th, 2010 scheduled meeting.

DPSST sought clarification from CAULDER relating to the context of obtaining the letters of recommendation; specifically from law enforcement officers and District Attorney Marquis. In response to DPSST's request for clarification, CAULDER retained legal counsel, who requested a delay of this matter to the May PPC. DPSST granted CAULDER's request.

CAULDER subsequently provided additional information for the Committee's consideration, through his legal counsel.

In March 2010, DPSST further received information about CAULDER's contact with one of the authors of a character reference, expressing his concerns involving CAULDER.

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))

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)]

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:

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.

ACTION ITEM 1:

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

1. By vote, the Police 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 the conduct that is at issue.
 - 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 Police Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Police Policy Committee finds CAULDER'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 Police 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 D

Department of Public Safety Standards and Training Memorandum

DATE: May 11th, 2010
TO: Police Policy Committee
FROM: Mindy S. Tucker
Professional Standards Investigator/Coordinator

SUBJECT: Christopher C. Ernst DPSST #49096

ISSUE:

Should Christopher ERNST'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?

BACKGROUND and OVERVIEW

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

On January 22, 2008, ERNST was hired by the Tualatin Police Department as a police officer.

On April 7, 2009, ERNST was granted a Basic Police Certificate.

On September 17, 2009, ERNST resigned in lieu of a probationary discharge from the Tualatin Police Department.

DPSST sought and obtained information that led to ERNST's resignation in lieu of probationary discharge.

In November 2009, DPSST mailed ERNST a letter advising him that his case would be heard before the Police Policy Committee and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail.

In December 2009, ERNST called and made inquiry of the basis for the review. This conversation was condensed to a memorandum to file. Subsequent to this ERNST provided information for the Policy Committee's consideration.

This case was reviewed before the Police Policy Committee on February 4th, 2010. Member Kent BARKER, Tualatin Police Chief, recused himself from the discussion. Chief BARKER had previously informed staff that he had information he believed was relevant to the case. However, because he recused himself, his statements would have been provided as an individual involved in the matter, not as a Committee member. Because the policy committees do not take oral testimony, the Committee tabled the matter until Chief BARKER could provide his information in writing to the staff, for inclusion in the staff report and exhibits.

During March 2010, DPSST requested and received the written information from Chief BARKER.

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))

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)]

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:

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.

ACTION ITEM 1:

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

1. By vote, the Police 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 the conduct that is at issue.
 - 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 Police Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Police Policy Committee finds ERNST'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 Police 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 D

DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING MEMORANDUM

DATE: May 11th, 2010
TO: Police Policy Committee
FROM: Mindy S. Tucker
Professional Standards Investigator/Coordinator

SUBJECT: MICHAEL L. THROOP - DPSST #16613

ISSUE:

Should Michael Throop's eligibility to apply for public safety certification be restored under OAR 259-008-0070(11) and through incorporation of OAR 259-008-0010?

BACKGROUND and OVERVIEW

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

From September 1st, 1979 to April 30th, 1983, THROOP worked in law enforcement for an out of state agency.

On May 6th, 1983, THROOP was hired by the Warm Springs Police Department as a police officer.

On March 7th, 1984, THROOP was granted a Basic Police Certificate.

On March 19th, 1984, THROOP was hired by the Jefferson County Sheriff's Office as a deputy sheriff.

On November 18th, 1987, THROOP was granted an Intermediate Police Certificate.

On January 3rd, 1989, THROOP was elected to the position of Sheriff of the Jefferson County Sheriff's Office where he remained employed until 1997.

On June 9th, 1997, THROOP was reported to DPSST as having been Discharged for Cause. The circumstances surrounding his separation from the Jefferson County Sheriff's Office were identified in several news articles at the time. DPSST processed the F-4 Personnel Action Report on July 10th, 1997.

On June 13th, 1997, DPPST issued THROOP a Notice of Proposed Revocation of Certification and Opportunity to be Heard. On June 23rd, 1997, DPSST received a timely Request for Hearing.

On October 29th, 1997, DPSST issued a Contested Case Hearings Notice to the Public, advising the date and time DPSST would be conducting a contested case hearing regarding THROOP's revocation. On October 29th, 1997, THROOP's legal counsel submitted a letter to DOJ withdrawing THROOP's request for a hearing.

Subsequently, DPSST issued an Order of Default Revoking Certifications to THROOP on November 21st, 1997 based on THROOP's criminal convictions.

On November 28th, 2001, DPSST received Sheriff's Eligibility Application forms (F-25 & F26) from THROOP. THROOP provided inconsistent responses on the F-25 & F-26 documents.

On December 7th, 2001, DPSST sent a letter in response to THROOP's Sheriff's Eligibility Application and advised THROOP that, due to legislation being implemented January 1st, 2002, the conviction of "official misconduct" was deemed a permanent disqualifier for recertification with DPSST.

In 2007, THROOP's convictions were set aside.

On January 4th, 2010, THROOP contacted DPSST, seeking to have his revoked certification reviewed for a re-eligibility determination. THROOP was advised his certification file would have to be retrieved from archived storage. On January 21, 2010, DPSST staff notified THROOP that they had received the records and would begin a review. The basis of THROOP's request was twofold: he had his conviction set aside in 2007 and had applied to become the interim Sheriff of Jefferson County.

On January 22nd, 2010, DPSST sought and obtained all information relating to THROOP's discharge from Jefferson County Sheriff's Office; which included documents relating to the crimes and PERS separation information.

The identified bases for the 1997 Notice of Intent to Revoke were the mandatory disqualifying conviction of a crime punishable as a felony and discretionary disqualifying conviction of Official Misconduct in the 1st degree, (2) counts. The crime of Receiving a Contribution in a False Name under ORS 260.402 is a felony; THROOP was convicted of (2) counts.

In its first eligibility determination case (Sherwood), DPSST relied upon the new administrative rules which allow for such a review. As staff explained in that case, an expungement (set aside) does not rewrite history; it simply restores certain civil rights. Further, if DPSST has information on the crime prior to the expungement, the underlying conduct may be reviewed by the PPC for purposes of current public safety officer standards.

It is important to note that any underlying arrest or court documents relating to an expunged in-state conviction cannot be considered in these cases. However, the Oregon Department of Justice has clarified that administrative documents in DPSST's records are not part of the sealed record and can therefore, be used in Committee and Board processes.

On February 24th, 2010, DPSST advised THROOP of the procedure by which he could seek a re-eligibility review. THROOP submitted his written request for a re-eligibility determination before the PPC.

On April 13th, 2010, DPSST staff, Mindy TUCKER, located two recent news articles online, indicating THROOP had submitted an application to the Jefferson County Commissioners for the position of Sheriff. Both news articles included references to THROOP's 1997 convictions.

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))

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)]

DISCRETIONARY DISQUALIFYING MISCONDUCT

OAR 259-008-0010(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

(b) For purposes of this standard, lack of good moral fitness includes, but is not limited to:

- (C) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or
- (D) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

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.

OAR 259-008-0070(11) details the reapplication process:

(a) Any public safety professional or instructor whose certification has been denied or revoked pursuant to section (4) of this rule, may reapply for certification within the applicable timeframes described in sections (4) through (6) of this rule. The initial minimum ineligibility period will begin on the date an Order of the Department denying or revoking certification becomes final. The initial minimum ineligibility period will cease when the applicable timeframe stated in the Order has been satisfied.

(b) Any public safety professional or instructor whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

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

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

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

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

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

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

(iii) After reviewing a written request for an eligibility determination, the Board, through a Policy Committee, may determine that the individual’s eligibility to apply for certification be restored if the

criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

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

(D) All requirements for certification have been met.

POLICY COMMITTEE AND BOARD REVIEW:

OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances for discretionary disqualifying conduct, 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.

ACTION ITEM:

Staff requests the Police Policy Committee review the matter and make a recommendation to the Board whether THROOP's eligibility to apply for public safety certification should be restored.

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 the conduct that is at issue.
 - 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 Michael Throop's eligibility to apply for public safety certification *be restored/not be restored* and recommends such to the Board.