

Fire Policy Committee Minutes

August 25th, 2021

The Fire Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on August 25th, at 9:00 a.m. in the Boardroom at the Oregon Public Safety Academy located at 4190 Aumsville Hwy SE, Salem, Oregon. The meeting was called to order at 9:03 a.m.

Committee Members:

James Oeder, Chair, Oregon Volunteer Firefighters Association
Mariana Ruiz-Temple, Oregon State Fire Marshal
Jim Adams, Oregon State Fire Fighters Council
Sara Boone (Designee Ryan Gillespie), Portland Fire & Rescue
Darren Bucich, Oregon Fire Chiefs Association
Tim Holschbach, Forest Protection Agencies
Mark Kreutzer, Oregon Fire District Director's Association
Kevin Larson, Oregon State Fire Fighters Council
Bruce Riley, Public Member
Gert Zoutendijk, Oregon Fire Marshals Association

Absent Members:

Richard Cearns, Oregon Fire Instructor Association
Paula Simone, Community College Fire Programs

DPSST Staff:

Jerry Granderson, Director
Julie Olsen, Fire Program Manager
Jennifer Howald, Rules Coordinator
Kayla Ballrot, Fire Certification Supervisor
Brooke Bell-Urbe, Fire Certification Specialist
Julia Budlong, Fire Program Support Specialist
Connor Lane, Fire Program Training Specialist
Aaron Bielemeier, Fire Program Training Specialist



1. Introductions

Introductions of members and staff were presented. Julie Olsen welcomes everyone and explains the role of the Fire Program staff during the Fire Policy Committee meetings which is to provide any support and guidance needed.

2. ***Minutes**

Approve the February 24th, 2021 Meeting Minutes.

- *Bruce Riley moved that the committee approve the minutes of the February 24th, 2021 Fire Policy Committee (FPC) meeting. Mariana Ruiz-Temple seconded the motion. The motion passes unanimously.*

3. **Revocation and Denial Update**

Presented by Kayla Ballrot

On November 1st, 2020, new rules regarding the revocation and denial process were implemented.

Some of the major changes are:

- The status of ‘sex offender’ is now grounds for mandatory revocation and denial. As soon as an individual is no longer required to register as a sex offender they will be eligible to apply for certifications again.
- The look back period for revocation and denial cases was previously 7 years – this has been updated to 10 years for felony offenses and 5 years for misdemeanors.
- Misdemeanors must fall within certain categories in order to be considered for revocation and denial. These categories include dishonesty & deceit, a sexual offense, a drug offense, destruction of property, a crime against a public agency, illegal use or possession of a deadly weapon, violence, neglect or abuse against a person or animal. The conviction or the nature of the crime itself can fit in one of these categories.
- A specific list of aggravating and mitigating circumstances will no longer be used in considering revocation and denial cases. Instead, more discretion will be given to the committee in determining these circumstances.
- Committee members will now be able to consider verbal mitigation from fire service professionals directly. They will have the option to present up to 5 minutes of verbal mitigation in their case.
- The removal of the review process for all individuals with lapsed certifications. If notice of criminal convictions - past or present – is made to DPPST, but the individual in question has all lapsed certifications, there will be no revocation or denial case opened. However, if that individual tries to recertify at any point, a revocation and denial case will be opened.
- The 30 day to 7 year ineligibility period has been replaced with a 1 year ineligibility period. (Note: Any application received that again triggers the review process will be re-presented to the FPC for review.)
- The manner in which cases are presented to the FPC has now changed. The staff report will include mention of what triggered the revocation and denial case. The staff report will also include why the issue is being brought before the FPC as a result of Oregon Administrative Rule.

The case flow during FPC meetings has now changed to the following structure:

- First, staff will present the case as normal by describing the nature of the conviction(s) and what lead to the case being brought to the attention of DPSST.

- Next, the firefighter will have the opportunity to present verbal mitigation if they so choose.
- The committee will then be able to discuss the case in its entirety, without the need to separate aggravating and mitigating circumstances into different discussions.
- Finally, a decision will be made to adopt the staff report, and then a decision will be made regarding whether or not to take action.

4. **Director's Update**

Presented by Director Granderson

- Welcoming new DPSST staff: Julia Budlong, Connor Lane, and Aaron Bielemier.
- Upswing in Covid cases and DPSST will be reverting back to previous protocols.
- No Legislative matters to report.
- DPSST's Strategic Plan completed and will be provided to Committee Members.
- Give respects to Sergeant Burright's family.
- Student vaccination requirements-TBD.
- *Jim Oeder*- Keep Oregon fallen firefighter's family in mind.

5. **Administrative Actions**

Presented by Brooke Bell-Urbe

HOUSTON, ROGER H. DPSST #11506 – DISCHARGE FOR CAUSE

Houston was affiliated with Tualatin Valley Fire & Rescue and is certified as an NFPA Driver, NFPA Pumper Operator, First Responder Operations, Hazardous Materials Technician, Wildland Interface Fire Fighter, Advanced Wildland Interface Fire Fighter (FFT1), Wildland Interface Engine Boss, NFPA Fire Fighter I and NFPA Fire Fighter II. On or around January 17, 2020 Tualatin Valley Fire District discharged Houston from their fire service agency. Subsequently, Department of Public Safety Standards and Training (DPSST) Fire Certification staff requested the termination letter and underlying investigation that led to his discharge. Upon review, staff determined that Houston's discharge meets the Board on Public Safety Standards and Training's (Board) established definition of a discharge for cause as defined in Oregon Administrative Rule (OAR) 259-009-0120 due to his behavior of harassment on multiple occasions while acting under the color of office.

Staff has issued Houston a Notice of Intent to Revoke Certifications and Proposed/Final Order on Default.

GRAY, CORY A. DPSST #23009 – DISCHARGE FOR CAUSE

Gray was affiliated with Eugene Springfield Fire and is certified as a NFPA Driver, First Responder Operations, Wildland Interface Firefighter, NFPA Fire Fighter I and NFPA Fire Fighter II. On or around December 20, 2019 Eugene Springfield Fire discharged Gray from their fire service agency. Subsequently, DPSST Fire Certification staff requested the termination letter and underlying investigation that led to his discharge. Upon review, staff determined that Gray's discharge meets the

Board-established definition of a discharge for cause as defined in OAR 259-009-0120 due to his behavior of harassment while acting under the color of office.

Staff has issued Gray a Notice of Intent to Revoke Certifications and Proposed/Final Order on Default.

LARSON, JEFFREY G. DPSST #32746 – DISCHARGE FOR CAUSE

Larson was affiliated with Siuslaw Valley Fire & Rescue and is certified as an NFPA Operations Level Responder, NFPA Hazardous Materials Incident Commander, NFPA Fire Apparatus Driver/Operator, NFPA Apparatus Equipped with Fire Pump, NFPA Apparatus Equipped with an Aerial Device, Firefighter Type 2 (FFT2), Firefighter Type 1 (FFT1), Engine Boss, Single Resource (ENGB), NFPA Fire Fighter I, NFPA Fire Fighter II, NFPA Fire Instructor I, NFPA Fire Instructor II, NFPA Fire Officer I and NFPA Technical Rescuer. On or around August 19, 2019 Siuslaw Valley Fire & Rescue discharged Larson from their fire service agency. Subsequently, DPSST Fire Certification staff requested the termination letter and underlying investigation that led to his discharge. Upon review, staff determined that Larson’s discharge meets the Board-established definition of a discharge for cause as defined in OAR 259-009-0120 due to his behavior of harassment while acting under the color of office.

Staff has issued Larson a Notice of Intent to Revoke Certifications and Proposed/Final Order on Default.

THOMPSON, KELTON D. DPSST #35209 – DISCHARGE FOR CAUSE

Thompson was affiliated with Winston-Dillard RFPD # 5 and is certified as an NFPA Fire Apparatus Driver/Operator and NFPA Fire Fighter I. On or around September 25, 2020 Winston-Dillard RFPD # 5 discharged Thompson from their fire service agency. Subsequently, DPSST Fire Certification staff requested the termination letter and underlying investigation that led to his discharge. Upon review, staff determined that Thompson’s discharge meets the Board-established definition of a discharge for cause as defined in OAR 259-009-0120 due to his behavior of harassment while acting under the color of office.

Staff has issued Thompson a Notice of Intent to Revoke Certifications and Proposed/Final Order on Default.

6. *Kelly R. Vallance, DPSST No. 34182

Presented by Kayla Ballrot

Issue: In April 2019, DPSST received a PAF separating Kelly Vallance from McMinnville Fire Department. Upon further research, DPSST staff learned that the reason for Vallance’s separation from McMinnville Fire Department did not fit the Oregon Administrative Rule (OAR) definition of a discharge for cause. Staff did find that Vallance had been convicted of Assaulting a Public Safety Officer, Resisting Arrest, and Assault in the Fourth Degree on November 27, 2019. These convictions were all classified as Misdemeanor Class A’s and DPSST staff presented this case to the Fire Policy Committee (FPC) as discretionary disqualifying convictions under the previous OAR related to revocation and denial of fire certifications. The FPC recommended to the Board on Public Safety

Standards and Training (Board), and the Board later affirmed, the revocation of Vallance’s certifications for five years from the date of her convictions.

Vallance requested a hearing to contest the Board’s revocation. While preparing for the hearing, DPSST staff learned that this case was opened and presented for consideration in error. To remedy that error, DPSST is re-presenting Vallance’s case to the FPC under the newly implemented revocation and denial rules. Vallance’s convictions of Assaulting a Public Safety Officer, Resisting Arrest, and Assault in the Fourth Degree occurred within the last five years and the crime involves abuse against people.

Staff has determined Vallance’s conduct violates the core values of integrity and professionalism, requiring review by the FPC to determine if Vallance’s certifications should be revoked. Vallance’s certifications were issued before receiving this conviction, and no new applications for certification have been submitted on Vallance’s behalf since her convictions in 2019. The trigger for this review was the separation from her affiliation with McMinnville Fire Department.

Vote/Consensus	Second	Vote	Outcome
Mark Kreutzer moved that the FPC adopt the staff report as the record upon which its recommendations are based.	Gert Zoutendijk	10 ayes	Motion passes unanimously
The FPC found the nature of the crime and convictions egregious, specifically, assaulting Law Enforcement Officers, and considered as aggravating circumstances . <i>*It’s been noted Bruce Riley considers the time and distance between the event and today and active probation as an aggravating contributor.</i>			
The majority of the FPC found that Vallance’s progress and track record since the incident is considered to be mitigating circumstances .			
After considering the totality of the case Kevin Larson moved to recommend a vote of <i>No Action</i> to the Board for Vallance’s certifications.	Darren Bucich	9 ayes 1 nay (Riley)	Motion passes

7. ***Jesse K. West, DPSST No. 18744**

Presented by Kayla Ballrot

Issue: In July of 2019, DPSST received an anonymous notice in the mail that a fire service professional at Lane Fire Authority, Jesse West, had been arrested and received a subsequent criminal conviction. Upon further review, DPSST staff learned that on February 21, 2019 West had been convicted of two counts of Assault in the Fourth Degree. West’s convictions were classified as Misdemeanor Class As and DPSST staff presented this case to the Fire Policy Committee (FPC) as a discretionary disqualifying conviction under the previous Oregon Administrative Rules (OAR) related

to revocation and denial of fire certifications. The FPC recommended to the Board on Public Safety Standards and Training (Board), and the Board later affirmed, the revocation of West’s certifications for three years from the date of his conviction.

West requested a hearing to contest the Board’s revocation. While preparing for the hearing, DPSST staff learned that this case was opened and presented for consideration in error.

To remedy that error, DPSST is re-presenting West’s case to the FPC under the newly implemented revocation and denial rules. West’s convictions of Assault in the Fourth Degree occurred within the last five years and the crime involves abuse against a person.

Staff has determined West’s conduct violates the core values of integrity and professionalism, requiring review by the FPC to determine if West’s certifications should be revoked. West’s certifications were issued before receiving this conviction, and no new applications for certification have been submitted on West’s behalf since his conviction in 2019. The trigger for this review was the notification of convictions from the anonymous letter.

Vote/Consensus	Second	Vote	Outcome
Bruce Riley moved that the FPC adopt the staff report as the record upon which its recommendations are based.	Mark Kreutzer	9 ayes 1 abstain (Bucich)	Motion passes
The FPC found the nature of West’s crime egregious, specifically, assaulting a minor, and that he’s actively on probation to be considered as aggravating circumstances .			
The majority of the FPC found West’s actions taken since the incident and the support of Fire Service members considered to be mitigating circumstances .			
After considering the totality of the case Bruce Riley moved to recommend a vote of <i>Action</i> to the Board for West’s certifications.	Ryan Gillespie	5 ayes 4 nays (Adams, Kreutzer, Larson, Zoutendijk) 1 abstain (Bucich)	Motion passes

8. Proposed Rule Changes for OAR 259-009-0120: Amending Discharge for Cause

Presented by Jennifer Howald

Under ORS 181A.640 (4), DPSST must deny or revoke the certifications of a fire service professional who has been discharged for cause. OAR 259-009-0120 provides the Board’s definition of discharge for cause as it relates to a fire service professional’s certifications. The discharge for cause standard identifies conduct that is egregious and harmful to the public trust in the fire service profession.

As mandatory grounds for decertification, DPSST staff process discharge for cause cases administratively. The information related to the separation from employment or utilization is reviewed to determine whether the conduct the fire service professional engaged in constitutes any of the

misconduct identified in the OAR definition of discharge for cause. The review is fact-based and does not include consideration of any situational or potentially mitigating circumstances.

When a fire service professional's certifications are denied or revoked based on the definition of discharge for cause, the person becomes permanently ineligible to hold DPSST-issued fire service professional certifications.

Clarification/Correction Needed

DPSST staff identified two sections within the rule that need further clarification or correction to improve interpretation and legal defensibility.

First, the rule states that “for cause” means intentional conduct performed under the color of office. DPSST interprets this as intentional conduct that the fire service professional engaged in while on-duty or performing the duties of a fire service professional. DPSST recommends replacing the phrase “under color of office” with plain language that identifies when conduct is considered a discharge for cause for the purposes of certification. This change is located in **OAR 259-009-0120** section (2)(d).

Second, the definition for Neglect of Duty contains a punctuation error that causes confusion for interpretation. This change is located in **OAR 259-009-0120** subsection (2)(d)(E).

Policy Discussion

Over the past year, there have been three instances where a fire service agency separated a fire service professional for being intoxicated when arriving for duty, attending training, or responding to a call. The fire service professionals were separated from employment or utilization for violating the fire service agencies' policies.

DPSST staff administratively closed these cases because the conduct did not meet the current definition of discharge for cause that is used for certification purposes.

Should a separation for reporting for duty or training while under the influence of alcohol result in mandatory revocation under the discharge for cause standard?

Considerations:

- It is conduct and a policy violation that impacts not only public trust but also the safety of the firefighter, their team, and the public.
- Draft rule language that would add this conduct to the definition of discharge for cause is included in subsection (2)(d)(K) on page 4.
- A mandatory revocation due to a discharge for cause results in permanent ineligibility to reapply for fire service professional certifications.
- Mandatory cases are handled administratively by staff and do not include consideration of any situational or potentially mitigating circumstances.

Fire Policy Committee Discussion:

- The Fire Policy Committee expressed concerns over the proposed policy discussion of whether or not reporting for duty or training while under the influence of alcohol should result in mandatory revocation under the discharge for cause standard [proposed change to OAR 259-009-0120 subsection (2)(d)(K)]. Specifically, the harshness of the mandatory revocation as a result of this behavior. The committee members feel this is too extreme considering a Measure 11 crime yields the same result but is a much more egregious act. Likewise, a felony conviction results in a maximum revocation of 10 years, but an individual who reported for duty or training under the influence would be revoked permanently should this rule be imposed. Additionally, fire service professionals sometimes suffer from Post-Traumatic Stress Disorder or other behavioral health disorders due to the nature of their job, and sometimes turn to alcohol. Members of the committee feel that permanently revoking a firefighter for a potential reaction to a behavioral health disorder is too harsh.
- Jennifer Howald explains we can separate the items we vote on today. We could move forward with changing the language located in **OAR 259-009-0120** section (2)(d) and subsection (2)(d)(E). This would change the definition of “Under Color of Office” and correcting the punctuation in “Neglect of Duty”. If we move forward with just this rule change, there would be no rule changes that would add conduct to the definition of discharge for cause included in **OAR 259-009-0120** subsection (2)(d)(K).
- *The FPC affirms the fiscal impact statement presented by staff.*
- *Gert Zoutendijk moved to recommend that the Board approve filing the proposed rule change for **OAR 259-009-0120** sections (2)(d) and (2)(d)(E) and NOT (2)(d)(K). Mark Kreuzter seconded the motion. Motion passes unanimously.*

9. Proposed Rule Changes for 259-009-0005, 259-009-0062, and 259-009-0065 NFPA

Presented by Kayla Ballrot

On July 7, 2021 the NFPA Fire Officer Task Force convened virtually at the direction of the Fire Policy Committee (FPC) to review and discuss the National Fire Protection Association (NFPA) 1006 Standard for Technical Rescue Personnel Professional Qualifications, 2021 Edition. At present, the Oregon Administrative Rule (OAR) for fire related to NFPA Technical Rescue refers to the 2017 Edition of the NFPA standard. It was the intent of the Task Force to evaluate the currently adopted standard and compare it against the 2021 Edition of NFPA 1006. As a result of their work, the Task Force established the importance of the Oregon fire service maintaining the most current standards available from NFPA and made the recommendation to adopt the 2021 Edition of NFPA 1006 into OAR.

After the Task Force meeting, Task Force members expressed concern that some of their decisions created an Oregon-specific standard and requested the opportunity to meet again to reconsider some of their original decisions before the proposed OAR update is sent to the Board on Public Safety Standards and Training. After discussion, the committee agreed to allow the NFPA Technical Rescuer Task Force to meet again to reconsider their original decisions. Those decisions will be re-presented at the November 2021 committee meeting.

- *Bruce Riley motions to not recommend that the Board adopt the recommendations provided by the NFPA 1006 Technical Rescue Task Force. Mark Kreutzer seconded the motion. Motion passes unanimously.*

10. Department Update

Presented by Kayla Ballrot

- Fingerprint fee increasing from \$40.00 to \$46.25, effective 9/1/21.
- Working on a replacement online record submission system. In the meantime, there is an interim online record submission system available for the Oregon fire service's use.
- Working on videos on how to complete Fire Forms.

11. Julie Olsen presents:

- New employees: Julia Budlong, Michelle Hilt, Connor Lane, Aaron Bielemeier.
- Skid truck staff up and going.
- Recruitment for Salem and Southern Oregon Coordinator positions will open soon.
- Completed training in Southern Oregon and plan to go once a quarter while position remains open.
- Communicate training needs so we can accommodate accordingly.
- Legislation approved Fire budget for 21-2023 biennium without any cuts.
- Operating budget is \$5 million.
- Developing grant application system-timeline TBD

Meeting is adjourned at 11:33 am.

12. Next Scheduled EPC meeting –November 17th, 2021 at 9:00am