

**Fire Policy Committee
Minutes
March 2, 2009**

The Fire Policy Committee of the Board on Public Safety Standards and Training held a Special meeting at 9:00 a.m. on March 2, 2009 at the Oregon Public Safety Academy in Salem, Oregon. Chair Jim Whelan called the meeting to order at 9:05 a.m.

Attendees

Committee Members:

James Whelan, Oregon Volunteer Firefighters' Association, Chair
Kelly Bach, Oregon State Fire Fighters Council, Vice Chair
William Klein, Community College Fire Programs
John Klum, Portland Fire & Rescue
William Lafferty, Oregon Department of Forestry
Mark Prince, Oregon Fire Chiefs' Association
Joe Seibert, Non-Management Firefighter
Rod Smith, Oregon Fire Instructors Association

Committee Members Absent:

Larry Goff, Oregon Fire District Directors' Association
Randy Simpson, Oregon State Fire Marshal

DPSST Staff:

Eriks Gabliks, Deputy Director
Julie Olsen-Fink, Senior Fire Certification Coordinator
Tina Diehl, Fire Certification Specialist
Allison Sebern, Fire Certification Support Specialist
Marilyn Lorange, Standards & Certification Program Supervisor
Theresa King, Professional Standards Coordinator
Bonnie Salle-Narvaez, Certification Coordinator
Kristen Turley, Standards & Compliance Coordinator

Guests:

Michelle Stevens, Oregon State Fire Marshal's Association (for Charles Chaffin)
Jack Carriger, Stayton Fire District
Allen Aschim, Amity Fire District
Mark Standley, Amity Fire District

1. **Proposed Rule Change to OAR 259-009-0070(4)**

Bonnie Sallé-Narváez thanked the Fire Policy Committee (FPC) for all the valuable feedback and input. All the comments that were made by the group were captured in the changes.

BACKGROUND: The Board on Public Safety Standards and Training previously reviewed and approved filing a proposed permanent rule with the Secretary of State's office to adopt rules relating to the denial or revocation of a fire service professional's or instructor's certification. Since those rules were adopted, questions have been raised about the circumstances under which denial or revocation would be initiated.

Fire Policy Committee Meeting: On February 20, 2009, the Fire Policy Committee met and reviewed staff's proposed language for OAR 259-009-0070. They recommended conceptual approval of several changes to current language, to reflect committee discussion and consensus. Committee discussion is reflected in the minutes of the February 20, 2009 meeting.

For ease of review, only the relevant language is attached. If the Committee approves the language, staff will incorporate the changes with other changes currently under review and renumber sections accordingly.

The following proposed language contains recommended additions (**bold and underlined text**) as recommended at the February 20, 2009 meeting.

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Fire Service Professional or Instructor:

* * *

~~(b) The Department will not initiate revocation proceedings for a discretionary conviction against any certification that a fire service professional or instructor has been granted prior to the effective date of this rule.~~

~~(c) The Department may initiate denial or revocation proceedings for a discretionary conviction that occurred prior to the effective date of this rule for any fire service professional or instructor who applies for a fire service certification not held prior to the effective date of this rule.~~

* * *

(b) If a fire service professional or instructor held certification on or before January 15, 2008 and applies for a new certification, the Department will proceed as follows:

(A) No action will be taken on a discretionary conviction that occurred prior to January 15, 2003.

(B) The Department will not initiate revocation proceedings based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.

(C) The Department may initiate denial of a new certification based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.

(c) If a fire service professional or instructor held no certification on January 15, 2008 and applies for or obtains certification after that date, the Department may initiate denial or revocation of all certifications held based on a discretionary disqualifying conviction that occurred prior to January 15, 2008.

(d) If a fire service professional or instructor is convicted of a discretionary disqualifying crime on or after January 15, 2008, the Department may initiate denial or revocation of all certification(s) upon learning of the conviction.

* * *

Initial Minimum Periods of Ineligibility

~~(8)~~ **(7) Scope of Revocation.** **Except as provided in (4) above,** Whenever **when** the Department **denies or** revokes the certification of any fire service professional or instructor, the revocation shall embrace all fire service certificates the Department has issued to that person.

Action Item I: Determine whether to recommend filing the proposed language for OAR 259-009-0070 with the Secretary of State as proposed rule.

Action Item II: Determine whether to recommend filing the proposed language for OAR 259-009-0070 with the Secretary of State as permanent rule if no comments are received.

Action Item III: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses. (See House Bill 3238) *No fiscal impact by consensus.*

Kelly Bach moved to recommend to the Board to file the proposed language for OAR 259-009-0070(4) with the Secretary of State as proposed rule and as permanent rule if no comments are received. Mark Prince seconded the motion. The motion carried in a unanimous vote.

2. Proposed Rule Change to OAR 259-009-0070(6)

BACKGROUND: As professional standards staff has begun reviewing criminal background information for firefighters, they have identified some concerns related to the list of mandatory and discretionary disqualifying convictions.

Fire Policy Committee Meeting: The Fire Policy Committee (FPC) met on February 20, 2009 and reviewed staff's proposed language for OAR 259-009-0070 and

recommended approving the language with an amendment that includes an “attempt” to commit any measure 11 crime as a discretionary disqualifying offense.

The following proposed language contains recommended additions (**bold and underlined text**) discussed under this section during the February 20, 2009 meeting. (Changes that the FPC reviewed at that meeting and voted to move forward are not identified in bold underlined text.)

259-009-0070

Denial/Revocation

* * *

(6) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

162.015 (Bribe Giving) – Category III,
162.025 (Bribe Receiving) – Category III,
162.065 (Perjury) – Category I,
162.117 (Public Investment Fraud) – Category I,
162.155 (Escape in the Second Degree) – Category II,
162.165 (Escape in the First Degree) – Category II,
162.185 (Supplying Contraband) – Category II,
162.205 (Failure to Appear in the First Degree) – Category II,
162.265 (Bribing a Witness) – Category III,
162.275 (Bribe Receiving by a Witness) – Category III,
162.285 (Tampering with a Witness) – Category III,
162.305 (Tampering with Public Records) – Category III,
162.325 (Hindering Prosecution) – Category III,
162.355 (Simulating Legal Process) – Category III,
162.365 (Criminal Impersonation) – Category I,
162.367 (Criminal Impersonation of a Peace Officer) – Category I,
162.415 (Official Misconduct in the First Degree) – Category II,
163.145 (Criminally Negligent Homicide) – Category III,
163.160 (Assault in the Fourth Degree) – Category III,
163.165 (Assault in the Third Degree) – Category III,
163.205 (Criminal Mistreatment in the First Degree) – Category III,
163.207 (Female Genital Mutilation) – Category III,
163.208 (Assaulting a Public Safety Officer) – Category III,
163.213 (Unlawful Use of an Electrical Stun Gun, Tear Gas or Mace in the First Degree) – Category II,
163.245 (Custodial Interference in the Second Degree) – Category III,
163.257 (Custodial Interference in the First Degree) – Category III,
163.275 (Coercion) – Category III,
163.355 (Rape in the Third Degree) – Category III,
163.425 (Sexual Abuse in the Second Degree) – Category III,
163.465 (Public Indecency) – Category III,
163.515 (Bigamy) – Category III,
163.525 (Incest) – Category III,
163.535 (Abandonment of a Child) – Category III,
163.537 (Buying or Selling a Person Under 18 years of age) – Category III,
163.547 (Child Neglect in the First Degree) – Category III,

163.555 (Criminal Non-Support) – Category III,
163.670 (Using Child in Display of Sexually Explicit Conduct) – Category III,
163.684 (Encouraging Child Sexual Abuse in the First Degree) – Category III,
163.686 (Encouraging Child Sexual Abuse in the Second Degree) – Category III,
163.688 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) – Category III,
163.689 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) – Category III,
163.732 (Stalking) – Category III,
163.750 (Violating Court’s Stalking Protective Order) – Category III,
164.045 (Theft in the Second Degree) – Category I,
164.055 (Theft in the First Degree) – Category I,
164.057 (Aggravated Theft in the First Degree) – Category I,
164.075 (Theft by Extortion) – Category I,
164.125 (Theft of Services: by Deception) – Category I,
164.135 (Unauthorized Use of a Vehicle) – Category I,
164.140 (Criminal Possession of Rented or Leased Personal Property: felony only) – Category I,
164.170 (Laundering a Monetary Instrument) – Category I,
164.172 (Engaging in a Financial Transaction in Property Derived from Unlawful Activity) – Category I,
164.215 (Burglary in the Second Degree) – Category III,
164.225 (Burglary in the First Degree) – Category III,
164.235 (Possession of a Burglary Tool or Theft Device) – Category III,
164.315 (Arson in the Second Degree) – Category II,
164.325 (Arson in the First Degree – If not a conviction under ORS 137.700) – Category II,
164.365 (Criminal Mischief in the First Degree) – Category III,
164.377 (Computer Crime) – Category III,
164.395 (Robbery in the Third Degree) – Category III,
164.868 (Unlawful Labeling of a Sound Recording) – Category III,
164.869 (Unlawful Recording of a Live Performance) – Category III,
164.872 (Unlawful Labeling of a Videotape Recording) – Category III,
164.885 (Endangering Aircraft) – Category II,
164.889 (Interference with Agricultural Research) – Category III,
165.013 (Forgery in the First Degree) – Category I,
165.022 (Criminal Possession of a Forged Instrument in the First Degree) – Category I,
165.032 (Criminal Possession of a Forgery Device) – Category I,
165.055 (Fraudulent Use of a Credit Card: Felony Only) – Category I
165.065 (Negotiating a Bad Check) – Category I,
165.070 (Possessing Fraudulent Communications Device) – Category I,
165.074 (Unlawful Factoring of Payment Card Transaction) – Category I,
165.085 (Sports Bribery) – Category III,
165.090 (Sports Bribe Receiving) – Category III,
165.579 (Cellular Counterfeiting in the Second Degree) – Category III,
165.581 (Cellular Counterfeiting in the First Degree) – Category III,
165.692 (Making False Claim for Health Care Payment) – Category I,
165.800 (Identity Theft) – Category I,
165.810 (Unlawful Possession of a Personal Identification Device) – Category I,
165.813 (Unlawful Possession of Fictitious Identification) – Category I,
166.005 (Treason) – Category II,
166.015 (Riot) – Category II,
166.085 (Abuse of Corps in the Second Degree) – Category II,
166.087 (Abuse of Corps in the First Degree) – Category II,
166.155 (Intimidation in the Second Degree) – Category III,
166.165 (Intimidation in the First Degree) – Category III,
166.220 (Unlawful Use of Weapon) – Category II
166.270 (Possession of Weapons by Certain Felons: Felony only) – Category II,
166.275 (Possession of Weapons by Inmates of Institutions) – Category II,
166.370 (Possession of Firearm or Dangerous Weapon in Public Building or Court Facility; Exceptions; Discharging Firearm at School) – Category II,
166.382 (Possession of Destructive Device Prohibited) – Category II,

166.384 (Unlawful Manufacture of Destructive Device) – Category II,
166.429 (Firearms Used in Felony) – Category II,
166.438 (Transfer of Firearms at Gun Shows: Felony Only) – Category II,
166.450 (Obliteration or Change of Identification Number on Firearms) – Category II,
166.642 (Felon in Possession of Body Armor) – Category II,
166.643 (Unlawful Possession of Body Armor) – Category II,
166.649 (Throwing an Object Off an Overpass in the Second Degree) – Category III,
166.660 (Unlawful Paramilitary Activity) – Category III,
166.720 (Racketeering Activity Unlawful) – Category II,
167.012 (Promoting Prostitution) – Category III,
167.062 (Sodomasochistic Abuse or Sexual Conduct in Live Show: Felony Only) – Category III,
167.164 (Possession of Gray Machine) – Category I,
167.212 (Tampering with Drug Records) – Category I,
167.262 (Adult Using Minor in Commission of Controlled Substance Offense: Felony Only) – Category III,
167.322 (Aggravated Animal Abuse in the First Degree) – Category III,
167.339 (Assaulting Law Enforcement Animal) – Category III,
475.840 (Prohibited Acts Generally: Manufacture or Deliver a Controlled Substance) – Category II,
475.846 (Unlawful Manufacture of Heroin) – Category II,
475.848 (Unlawful Manufacture of Heroin Within 1,000 Feet of School) – Category III,
475.850 (Unlawful Delivery of Heroin) – Category II,
475.852 (Unlawful Delivery of Heroin Within 1,000 Feet of School) – Category III,
475.854 (Unlawful Possession of Heroin) – Category II,
475.856 (Unlawful Manufacture of Marijuana) – Category II,
475.858 (Unlawful Manufacture of Marijuana Within 1,000 Feet of School) – Category III,
475.860 (Unlawful Delivery of Marijuana: Felony only) – Category II,
475.862 (Unlawful Delivery of Marijuana Within 1,000 Feet of School) – Category III,
475.864 (Unlawful Possession of Marijuana: Felony only) – Category II,
475.866 (Unlawful Manufacture of 3,4-Methylenedioxymethamphetamine (Ecstasy)) – Category II,
475.868 (Unlawful Manufacture of 3,4-Methylenedioxymethamphetamine (Ecstasy) Within 1,000 Feet of School) – Category III,
475.870 (Unlawful Delivery of 3,4-Methylenedioxymethamphetamine (Ecstasy)) – Category II,
475.872 (Unlawful Delivery of 3,4-Methylenedioxymethamphetamine (Ecstasy) Within 1,000 Feet of School) – Category II,
475.874 (Unlawful Possession of 3,4-Methylenedioxymethamphetamine (Ecstasy)) – Category II,
475.876 (Unlawful Manufacture of Cocaine) – Category II,
475.878 (Unlawful Manufacture of Cocaine Within 1,000 Feet of School) – Category III,
475.880 (Unlawful Delivery of Cocaine) – Category II,
475.882 (Unlawful Delivery of Cocaine Within 1,000 Feet of School) – Category III,
475.884 (Unlawful Possession of Cocaine) – Category II,
475.886 (Unlawful Manufacture of Methamphetamine) – Category II,
475.888 (Unlawful Manufacture of Methamphetamine Within 1,000 Feet of School) – Category III,
475.890 (Unlawful Delivery of Methamphetamine) – Category II,
475.892 (Unlawful Delivery of Methamphetamine Within 1,000 Feet of School) – Category III,
475.894 (Unlawful Possession of Methamphetamine) – Category II,
475.904 (Unlawful Manufacture or Delivery of Controlled Substance Within 1,000 Feet of School) – Category III,
475.908 (Causing Another Person to Ingest a Controlled Substance) – Category III,
475.910 (Application of Controlled Substance to the Body of Another Person) – Category III,
475.914 (Prohibited Acts for Registrants: Deliver or Dispense Controlled Substance) – Category II,
475.962 (Distribution of Equipment, Solvent, Reagent or Precursor Substance with Intent to Facilitate Manufacture of Controlled Substances) – Category II,
475.967 (Possession of Precursor Substance With Intent to Manufacture Controlled Substance) – Category II,
475.977 (Possessing or Disposing of Methamphetamine Manufacturing Waste) – Category II,
811.182 (Criminal Driving While Suspended or Revoked) – Category II,
811.540 (Fleeing or Attempting to Elude Police Officer: Felony Only) – Category II,
811.705 (Failure to Perform Duties of a Driver to Person Injured) – Category II,
813.010 (DUII: Felony Only) – Category II

Any crime that requires the fire service professional or instructor to register as a sex offender.

An “attempt” to commit a crime listed in ORS 137.700 or in any other jurisdiction that, if committed in this state would constitute an attempt to commit a crime listed in ORS 137.700 (and identified in OAR 259-009-0070(3)).

Action Item I: Determine whether to recommend filing the proposed language for OAR 259-009-0070(6) with the Secretary of State as proposed rule.

Action Item II: Determine whether to recommend filing the proposed language for OAR 259-009-0070(6) with the Secretary of State as permanent rule if no comments are received.

Action Item III: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses. (See House Bill 3238)

Mark Prince made a recommendation to table this vote for two weeks and post a telephonic meeting. At that point determine whether to recommend to the Board to file the proposed language for OAR 259-009-0070(6) with the Secretary of State as proposed rule and as permanent rule if no comments are received. There was consensus to this recommendation.

3. Revocation/Denial Case Review for Adam G. Cole DPSST #24255

Presented by Theresa King

ISSUE:

Should Adam COLE’s NFPA Driver Apparatus Operator and Hazardous Materials Responder certifications be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)

BACKGROUND and OVERVIEW

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

*On August 13, 2000, COLE was arrested for Possession of a Controlled Substance – Methamphetamine and for Possession of less than one ounce of Marijuana (ref CFH10026)¹. In 2001, as part of a plea agreement, COLE pleaded guilty to the Possession of Controlled Substance and the marijuana charge was dismissed.² **This is a discretionary disqualifying conviction for purposes of certification.***

On August 20, 2000, COLE was arrested for Possession of Controlled Substance – Methamphetamine. As a part of a plea agreement, this charge was dismissed. (ref CFH00223)

¹ Ex A8

² ORS 475.992.4. b. was renumbered to 475.840 in the 2005 legislative session

*On December 8, 2000, COLE was arrested for Possession of a Controlled Substance – Methamphetamine and Forgery in the First Degree, both felony crimes.³ (ref CFH10116) In 2001, as part of a plea agreement, COLE pleaded guilty to Forgery in the First Degree and the Possession of Controlled Substances was dismissed.⁴ **This is a discretionary disqualifying conviction for purposes of certification.***

On December 16, 2000, COLE was arrested for Forgery in the First Degree, a felony crime.⁵ (ref CFH10156) This charge was ultimately dismissed.

On January 18, 2001, COLE was arrested for Possession of a Forged Instrument, a felony.⁶ (ref CFO10287) As a part of a plea agreement, this charge was dismissed.

*On January 29, 2001, COLE was arrested for two counts of Burglary in the First Degree, felony crimes.⁷ (ref CF010093) COLE was also charged with two counts of Theft in the First Degree, felony crimes. In 2001 as a part of a plea agreement, COLE pleaded guilty to the two counts of Burglary in the First Degree and the two counts of Theft in the First Degree were dismissed.⁸ **These are discretionary disqualifying convictions for purposes of certification.***

On February 2, 2001, COLE was arrested for Forgery in the Second Degree.⁹ (ref CRH010116) COLE was convicted of this crime.¹⁰ This is not a discretionary crime, for purposes of certification.

*On June 21, 2001, COLE was arrested on a warrant and was ultimately charged with new crimes of Theft and Forgery.¹¹ (ref CFH010317) COLE had an outstanding out-of-state warrant for the crime of Theft in the Second Degree and was extradited on the warrant.¹² In 2002, as a part of a plea agreement, COLE pleaded guilty to Theft in the First Degree and the Forgery in the First Degree was dismissed.¹³ **This is a discretionary disqualifying conviction for purposes of certification.***

On May 1, 2007, COLE was hired by the Boardman RFPD as a fire service professional.¹⁴

On December 6, 2007, COLE was issued a NFPA Fire Fighter 1 certificate.¹⁵

On June 27, 2008, COLE made application for his Hazardous Materials Responder certification.¹⁶

³ Ex A10

⁴ Ex A11

⁵ Ex A13

⁶ Ex A14

⁷ Ex A15

⁸ Ex A16

⁹ Ex A19

¹⁰ Ex A21, A23

¹¹ Ex A26

¹² Ex A23, A27

¹³ Ex A29

¹⁴ Ex A3

¹⁵ Ex A3

On October 14, 2008, COLE made application for his NFPA Driver Apparatus Operator certification.¹⁷

The discretionary crimes of Possession of A Controlled Substances - Methamphetamine, two counts of Forgery in the First Degree, and two counts of Burglary in the First Degree are discretionary disqualifying convictions, for purposes of certification. These convictions must be reviewed by the Fire Policy Committee (FPC).

A DMV address verification was completed for COLE. On November 25, 2008, KING mailed COLE a certified letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. As a policy, DPSST also provides a Stipulated Order Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.¹⁸

On December 19, 2008, COLE provided a letter and supporting documentation for the Committee's consideration.¹⁹

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-009-0070(4) specifies discretionary disqualifying conduct which includes criminal convictions and falsification issues. Subsection 6 of the rule identifies a list of discretionary disqualifying crimes that *must* be reviewed by the FPC.

OAR 259-009-0070(5) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

(a) Category I: **Honesty**. Honesty includes fairness and straightforwardness of conduct; integrity. Adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

¹⁶ Ex A1

¹⁷ Ex A2

¹⁸ Ex A32

¹⁹ Ex A33 – AA38

(c) Category III: **Justice**. Justice includes just treatment, the quality or characteristic of being just, impartial, or fair; integrity and honesty.

OAR 259-009-0070(6) (6) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

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

OAR 259-009-0070(9)(d) provides that the FPC will consider aggravating and mitigating circumstances, which include:

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

ACTION REQUESTED:

Part One

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

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.

2. By discussion and consensus:
 - a. Identify the conduct that is at issue
 - b. The conduct *does/does not* violate the core value of honesty.
 - c. The conduct *does/does not* violated the core value of professionalism.
 - d. The conduct *does/does not* violate the core value of justice.
3. By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that COLE's conduct *does/does not* rise to the level to warrant denial of his certification(s), and therefore recommends to the Board that COLE's certifications *be denied/not be denied*.

Part Two (to be considered if denial is recommended)

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

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

Bill Lafferty moved that the committee adopts the Staff report as the record on which their recommendations are based. John Klum seconded the motion. The motion carried in a unanimous vote.

By discussion and consensus:

- a. Identify the conduct that is at issue:
The discretionary crimes of Possession of A Controlled Substances - Methamphetamine, two counts of Forgery in the First Degree, and two counts of Burglary in the First Degree are discretionary disqualifying convictions, for purposes of certification.
- b. The conduct **did** violate the core value of honesty.
- c. The conduct **did** violate the core value of professionalism.
- d. The conduct **did** violate the core value of justice.

By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances. ***The committee agreed that there were mitigating circumstances.***

Mark Prince moved that the committee finds that COLE's conduct does not rise to the level to warrant denial of his certification(s), based on mitigating circumstances, and therefore recommends to the Board that COLE's certifications not be denied. Joe Seibert seconded the motion. The motion carried in a unanimous vote.

4. Revocation/Denial Case Review for Mark Standley, Jr. DPSST #19035

Presented by Theresa King

ISSUE:

Should Mark STANDLEY's Wildland Interface certification be denied based on discretionary disqualifying criminal convictions defined in OAR 259-009-0070(4)

BACKGROUND and OVERVIEW

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

On March 5, 2003, STANDLEY was hired by the Amity Fire Department.²⁰

On February 15, 2007, STANDLEY was granted a NFPA Fire Fighter I certification.²¹

On May 21, 2008, STANDLEY applied for the WILDLAND Interface certification.²²

*A routine records check showed STANDLEY was convicted of Assault in the Fourth Degree in 2001. **This is a discretionary disqualifying crime, for purposes of certification.**²³*

DPSST sought and obtained copies of the incident report and related documents, and the court judgment, and related documents.²⁴

On October 13, 2008, KING mailed STANDLEY a certified letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. This letter was sent certified mail. As a policy, DPSST also provides a Stipulated Order Revoking and Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order Revoking Certification(s), which ends the denial or revocation process.²⁵

On or about October 20, 2008, KING received the certified mail return receipt from STANDLEY. On or about November 7, 2008, KING received a response from STANDLEY which included his letter to the Committee and a number of letters of support of him.²⁶

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

²⁰ Ex A1

²¹ Ex A1

²² Ex A2-A3

²³ Ex A4

²⁴ Ex A5 – A35

²⁵ Ex A36

²⁶ Ex A37 – A47

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

DISCRETIONARY DISQUALIFYING CONDUCT

OAR 259-009-0070(4) specifies discretionary disqualifying conduct which includes criminal convictions and falsification issues. Subsection 6 of the rule identifies a list of discretionary disqualifying crimes that *must* be reviewed by the FPC.

OAR 259-009-0070(5) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

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

OAR 259-009-0070(6) (6) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

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

OAR 259-009-0070(9)(d) provides that the FPC will consider aggravating and mitigating circumstances, which include:

- (A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);
- (B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;
- (C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;
- (D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;
- (E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;
- (F) Whether the conduct involved domestic violence;

- (G) Whether the fire service professional or instructor self reported the conduct;
- (H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;
- (I) Whether the conduct was prejudicial to the administration of justice;
- (J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and
- (K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

ACTION REQUESTED:

Part One

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

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

Part Two (to be considered if denial is recommended)

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

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

Rod Smith moved that the committee adopts the Staff report as the record on which their recommendations are based. John Klum seconded the motion. The motion carried in a unanimous vote.

By discussion and consensus:

- a. Identify the conduct that is at issue:
Conviction of Assault in the Fourth Degree in 2001
- b. The conduct ***did*** violate the core value of honesty.

- c. The conduct did not violate the core value of professionalism because he was not in the profession at the time the crime occurred.
- d. The conduct did violate the core value of justice.

By discussion and consensus, the Fire Policy Committee must identify and consider any mitigating and aggravating circumstances. ***The committee agreed that there were mitigating circumstances.***

John Klum moved that the committee finds that STANDLEY's conduct does not rise to the level to warrant denial of his certification(s), based on mitigating circumstances, and therefore recommends to the Board that STANDLEY's certifications not be denied. Rod Smith seconded the motion. The motion carried in a unanimous vote.

The next FPC telephonic meeting is scheduled for 3/16/09 at 1:00 p.m.
The next regular FPC meeting is scheduled for 5/22/09.

Jim Whelan thanked everyone for coming and staff for their contributions in helping the committee walk thru this process.

Eriks Gabliks also commented that staff appreciated the committee's candor during the last meeting to get the issues resolved. "I think you will see and you can tell your organizations that the process does work. It's how **you** want the industry to be regulated which you represent. You are part of the state process and the discussions that you have are very good."

Meeting adjourned at 10:10 a.m.