DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

STATE OF OREGON

In the Matter of the:

Revocation of the Basic Corrections Certification Issued to:

Nicholas Alberts
Respondent
DPSST No. 58569

NOTICE OF PROPOSED REVOCATION OF CERTIFICATION AND PROPOSED FINAL ORDER ON DEFAULT

TO: Nicholas Alberts
[redacted]

The Department of Public Safety Standards and Training (Department) proposes to revoke Respondent's Basic Corrections Certification pursuant to its authority in Oregon Revised Statute (ORS) 181A.410 and ORS 181A.640. The Department proposes revocation because the Respondent does not meet the moral fitness standards required of a public safety professional pursuant to Oregon Administrative Rule (OAR) 259-008-0010(6); OAR 259-008-0300(3)(a)(A) and (C)(i) and OAR 259-008-0300(3)(b)(C). The Department's proposed revocation is based on the following:

FINDINGS OF FACT

1. The Respondent, Nicholas Alberts ("Alberts" or "Respondent") currently holds Basic Corrections Certification.
2. On March 19, 2018, the Respondent was hired by the Multnomah County Sheriff's Office (MCSO) as a Corrections Officer.
3. On August 8, 2018, the Respondent signed a Criminal Justice Code of Ethics.
4. On May 19, 2022, the Respondent resigned from employment with the MCSO during an investigation into his use of force and reporting of an incident on April 6, 2021.
5. The Department determined the Respondent violated the Board's moral fitness standards pursuant to OAR 259-008-0300(3)(a)(A) and (C)(i) and proposes to revoke the Respondent's public safety certification.

ULTIMATE FINDINGS OF FACT

1. Pursuant to ORS 181A.410(1)(c), the Board on Public Safety Standards and Training ("Board"), established by rule reasonable minimum requirements of moral fitness for public safety professionals. Pursuant to this authority, the Board and the policy committees have adopted OAR 259-008-0010(6) and requiring all public safety professionals meet the minimum moral fitness standards for certification as established in the rule by the Board and the policy committees.

2. Under OAR 259-008-0300(1), the Board has established moral fitness standards that it has determined are critical to upholding the public's trust in the public safety profession, protecting the public and ensuring the conduct of a public safety professional does not reflect adversely on the profession. The Board finds by adopting OAR 259-008-0300, that a violation of these standards is substantially related to the duties performed by a public safety professional.

3. The Department is charged with implementing the moral fitness standards and may propose to revoke a public safety professional's certifications when the public safety professional has violated the moral fitness standards for certification defined in OAR 259-008-0300.

4. Under OAR 259-008-0300(3)(a), the Department may revoke a public safety professional's certifications based upon the finding that the public safety professional:

(a)...engaged in conduct that includes any or all of the following elements:

(A) Dishonesty. Dishonesty is intentional conduct that include untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth;

(C) Misconduct.

(i) Misconduct includes conduct that violates criminal laws, conduct that threatens or harms persons, property or the efficient operations of any agency, or discriminatory conduct;

(ii) For the purposes of this rule, discriminatory conduct includes a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person's race, color, religion, sex, sexual orientation, gender

identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the public safety professional cannot perform the duties of office in a fair and impartial manner.

5. The Respondent engaged in conduct involving Dishonesty. The Respondent intentionally omitted information from his reporting of a use of force event. The Respondent omitted from his report that he struck an Adult in Custody (AIC) in the head and in the legs after the AIC had disengaged. After watching video of the use of force event to write his report, the Respondent omitted the strikes from his reporting and states that he wrote his report from memory. The Respondent's conduct is evidence of the Respondent's failure to meet the moral fitness standards in OAR 259-008-0300(3)(a)(A), which specifically provides that the Department may revoke a certification base on conduct involving Dishonesty. The Respondent's violation of OAR 259-008-0300(3)(a)(A) is a separate and sufficient basis to revoke the Respondent's public safety professional certification.

6. The Respondent engaged in conduct involving Misconduct. The Respondent harmed an AIC by punching the AIC during a use of force event without justification. The Respondent punched the AIC in the head while they were disengaging and, in the legs, after they had disengaged. The Respondent's conduct is evidence of the Respondent's failure to meet the moral fitness standards in OAR 259-008-0300(3)(a)(C)(i), which specifically provides that the Department may revoke a certification base on conduct involving Misconduct. The Respondent's violation of OAR 259-008-0300(3)(a)(C)(i) is a separate and sufficient basis to revoke the Respondent's public safety professional certification.

7. Each of these grounds is a separate and distinct basis supporting a finding that the public safety professional does not meet the moral fitness standards required by OAR 259-008-0010(6) and defined in 259-008-0300(3)(a)(A) and (C)(i). The Department is not required to prove that all grounds stated hereinabove, to revoke the Respondent's certification.

8. Pursuant to OAR 259-008-0310(10)(c)(A), there were aggravating circumstances

identified in the Respondent's case. The committee found: The Respondent refused to submit a use of force report after the event. The Respondent participated in four hours of ethics training and use of force training prior to the use of force event on April 6, 2021. The Respondent gave differing statements about how he wrote his report, stating both that he wrote his report from memory and that he reviewed video of the event prior to writing his report. The Respondent's professional standards case review revolves around excessive use of force on an AIC, of which the Respondent was responsible for the care and welfare. The Respondent did not take responsibility or hold himself accountable for the Respondent's conduct or behaviors.

9. Pursuant to OAR 259-008-0310(10)(c)(B), there were no mitigating circumstances identified in the Respondent's case.

10. The Respondent's conduct and subsequent separation from employment is substantially related to the Respondent's fitness and ability to perform the duties of a certified corrections officer. The Respondent's behavior directly violated the Criminal Justice Code of Ethics and compromises the public's trust in the public safety profession. The Respondent intentionally omitted information from his use of force reporting, failing to include that he punched an AIC in the head and leg; and when the Respondent struck the AIC in the head and the leg, he did so without justification. The Respondent's conduct adversely reflects on the public safety profession because the Respondent was responsible for the AIC's care and wellbeing. The Respondent's conduct has compromised their integrity and renders them ineffective to serve in public safety.

11. After review of the facts and weighing the identified aggravating and mitigating circumstances unique to this case the Department proposes that the Respondent's certification be revoked.

CONCLUSION OF LAW

The Department must revoke a public safety professional's certification, if the public safety professional does not meet the minimum requirement of good moral fitness required pursuant to ORS 181A.410, ORS 181A.640, and OAR 259-008-0010(6). Based on Respondent's conduct, the Respondent does not meet the minimum moral fitness standards in OAR 259-008-

0010(6) and OAR 259-008-0300(3)(a)(A) or (C)(i).

PROPOSED/FINAL ORDER

Respondent's Basic Corrections Certification is hereby REVOKED. Respondent's ineligibility period during which they may not apply for any public safety professional certifications is for ten (10) years pursuant to OAR 259-008-0310(10)(d)(A). Pursuant to OAR 259-008-0320(4)(b) the Respondent's ineligibility period is based on the date of his separation from the MCSO on May 19, 2022.

NOTICE OF RIGHT TO A

HEARING AND ISSUANCE OF

DEFAULT FINAL ORDER

You are entitled to a contested case hearing as provided by the Administrative Procedures Act (ORS Chapter 183) and the administrative rules of the Department. If you wish to receive a hearing, you must file your request in writing with the Department no later than 20 (twenty) days from the service date.

If this Notice was served to Respondent in person, the service date is the date Respondent received this Notice. If the Notice was serviced through the mail, the service date is the date the Notice was mailed, not the date Respondent received it.

Your request may be submitted by mail to the address below or by email to melissa.lang@dpsst.oregon.gov, or by facsimile at 503-378-4600.

Department of Public Safety Standards and Training

Melissa Lang-Bacho

4190 Aumsville Hwy, SE

Salem, OR 97317

If a request for hearing is not received within 20 (twenty) days, your right to a hearing is considered waived unless the failure to request a hearing was beyond Respondent's reasonable control. For a hearing request that is mailed to be timely, it must be postmarked within 20 days from the date of service of this Notice. If the hearing request is submitted by email or facsimile,

it must be received by the Department by 5:00 p.m. PT within 20 days from the date the Notice is mailed. If you do not submit a timely request for a hearing, your right to a hearing shall be considered waived.

You have the right to be represented by legal counsel. Legal aid organizations may be able to assist a party with limited financial resources.

When the Department receives a request for a hearing, it will refer the matter to the Office of Administrative Hearings which will designate the time and place for the hearing. You will receive information on the procedure, right of representation and other rights of parties relating to the conduct of the hearing before the commencement of the hearing. The hearing will be conducted, according to the Administrative Procedure Act (ORS Chapter 83), Attorney General's Rules of the Office of Administrative Hearings (OAR Chapter 137) and Department's Administrative Rules (Chapter 259 Divisions 05 and 08).

If you fail to request a hearing within the time specified above, withdraw a hearing request, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, is deemed invalid under OAR 137-003-0550(4), this Notice of Proposed Revocation of Certification and Proposed/Final Order on Default automatically becomes a Final Order by Default effective upon Board affirmation. In the event of a default, the Department designates the file, including any materials you submitted that relate to this matter, as the record for purpose of proving a prima facie case supporting its final order by default.

You are entitled to judicial review of any final order issued in the matter of this Notice of Proposed Revocation of Certifications and Proposed Final Order on Default/Notice of Proposed Denial of Training and Subsequent Certification and Proposed Final Order on Default in accordance with ORS 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date of this order if it becomes a final order.

Notice to Active-Duty Servicemembers. Active-duty service members are entitled to stay these proceedings under the federal Servicemembers Civil Relief Act, 50 U.S.C. App. 501. You may contact the Oregon State Bar toll-free at (800) 452-8260, the Oregon Military

Department toll-free at (800) 511-6944, or the United States Armed Forces Legal Assistance Legal Services Locator via the web at: **Armed Forces Legal Assistance (AFLA)** or **legalassistance.law.af.mil** for assistance.

IT IS SO ORDERED THIS 22nd day of August 2024.

Phil Castle, Agency Director

DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

STATE OF OREGON

In the Matter of the Proposed Revocation of the Certification issued to:

Nicholas Alberts
Respondent
DPSST No. 58569

CERTIFICATE OF SERVICE

I certify that on the 30th day of August, 2024, I served the foregoing, *Notice of Proposed Revocation of Certification and Proposed/Final Order on Default* on the party hereto by mailing, by regular mail, postage prepaid, and certified mail, return receipt requested, true, exact, and full copies thereof to:

Nicholas Alberts
[redacted]

Via Electronic Mail Only
Sheriff Nicole E. Morrisey O'Donnell
Multnomah County Sheriff's Office
3083 NE 170th Place
Portland, OR 97230

Department of Public Safety Standards & Training

By: _____
Melissa Lang-Bacho
Professional Standards Compliance Coordinator

Department of Public Safety Standards and Training
(DPSST or the Department)
Memo

Date: October 24, 2024

To: Board on Public Safety Standards and Training

From: Melissa Lang-Bacho, Professional Standards Compliance Coordinator

Subject: **Professional Standards Review/Recommendation**
Nicholas Alberts; DPSST No. 58569

Reason for Discretionary Review
On May 19, 2022, Nicholas Alberts resigned from his position with the Multnomah County Sheriff's Office (MCSO) during an investigation into his use of force and truthfulness in reporting an incident at the jail that occurred on April 6, 2021.

Policy Committee Recommendation
The Corrections Policy Committee (CPC), in a unanimous vote, recommends that the Board take **ACTION** against Nicholas Alberts' Certification.

The committee, in a unanimous vote, further recommends Alberts be ineligible to hold public safety certification for ten (10) years.

Policy Committee Review
The committee considered the following moral fitness violations and factors in making their decision.

*Moral Fitness Violations**:***
- Dishonesty: Alberts intentionally omitted information from his reporting of a use of force incident.
- Misuse of Authority: The committee did not identify elements of misuse of authority.
- Misconduct: Alberts harmed another person when he punched an AIC during a use of force event without justification.

Aggravating Factors:
- Alberts refused to submit a report after the use of force event.
- Alberts participated in four hours of ethics training and use of force training prior to the use of force event on April 6, 2021.
- Alberts gave differing statements about how he wrote his report in different settings when discussing his report. Alberts states that he wrote his report from memory and also that he reviewed video from the use of force event to write his report.
- Alberts' review revolves around excessive use of force on an Adult in Custody, of which he was responsible for the care and welfare.

- Alberts did not demonstrate a lot of responsibility or accountability for his conduct and behaviors.

Mitigating Factors:

- The committee did not identify any mitigating factors

Information Used in Determination

- Transcript of the verbal mitigation.
- CPC Staff Report, with exhibits.

Action Item

Review the committee recommendation and approve or return the recommendation to the policy committee.

Department of Public Safety Standards and Training
(DPSST or the Department)
Memo

Date: August 13, 2024

To: Corrections Policy Committee

From: Melissa Lang-Bacho
Professional Standards Case Manager

Subject: **Staff Report – Separation**
Nicholas Alberts; DPSST No. 58569

Reason for Discretionary Review

On May 19, 2022, Nicholas Alberts resigned from his position with the Multnomah County Sheriff's Office (MCSO) during an investigation into his use of force and truthfulness in reporting an incident at the jail that occurred on April 6, 2021.

Alberts' case was presented to the Corrections Policy Committee on May 8, 2024. At the meeting, the committee identified the following aggravating circumstances:

Aggravating:

- Alberts' refusal to submit a report after the event.
- Alberts participated in a four hour ethics training and use of force prior training to the incident.

The committee requested additional information from the MCSO to complete their review. The committee requested a copy of the Adult in Custody (AIC's) management plan and asked why Alberts was stationed on a unit with an AIC who required female escorts.

The Department requested additional information from the MCSO and has attached the requested information as additional exhibits A12 through A18. Updated exhibits are marked as **bold** in the Exhibit Reference list at the end of this report. Report content updates based on the additional information are also in **bold**.

The Department determined that the conduct being presented to the committee violates the Board's moral fitness standards. Through the case review process, the committee will affirm, modify, or negate the below identified elements of moral fitness violations and make a determination on the disposition of this case:

Dishonesty: Alberts intentionally omitted information from his reporting of a use of force incident.

Misuse of Authority: The Department did not identify allegations of misuse of authority in Albert's separation.

Misconduct: Alberts harmed another person when he punched an AIC during a use of force incident without justification.

Material Events and Conduct

On April 6, 2021, after witnessing the tail end of a use of force event involving an AIC and Nicholas Alberts, the floor sergeant reviewed the full event from video taken from a newly installed camera system. After reviewing the video footage, the floor sergeant had concerns with the use of force decisions that were made by Alberts and notified his supervisor.

The case was initially referred to a detective with the MCSO to determine if a criminal investigation was needed. No formal interviews or investigation took place, but the detective collaborated with the Multnomah County District Attorney to make a determination. Their review identified no criminal acts and the case was referred back to the MCSO for an administrative review.

Alberts was directed to write an incident report immediately following the use of force event but invoked his Garrity rights, delaying the writing of his report until he was able to watch the video of the incident, which would not occur until after a criminal review concluded[1]. Alberts was placed on administrative leave[2] after refusing to follow a direct order to write his use of force report. Following a determination that it was not a criminal matter and the personnel investigation related to his conduct in refusing to write his use of force report, Alberts returned from leave and submitted an incident report on July 2, 2021. Alberts was provided the opportunity to review the video from the incident to aide him in writing his report.

On December 1, 2021, the MCSO opened an internal investigation into Alberts' use of force and truthfulness in reporting of the incident following a complaint that was received.

The MCSO's investigation centered on Alberts' actions during the use of force incident and his documentation of his conduct in his report. During Alberts' interview for the internal investigation, he and the investigator reviewed his actions and his written documentation. Alberts describes in his interview and documentation that when he and another deputy were attempting to escort an AIC to her cell, the AIC attempted to punch him, and this was his justification for his use of force. When the investigator reviewed the video with Alberts, they discussed that the AIC appeared to break a hand free and use the free hand to attempt to release her other hand and that she had not attempted to hit Alberts. Alberts and the investigator also discussed that during the incident Alberts had punched the AIC in the head, and legs after they had disengaged but this was not included in his report.

Alberts resigned during the investigation and the MCSO concluded their review without sustaining any policy violations.

As described in Alberts' use of force report written on July 2, 2021, on April 6, 2021, at approximately 0900, Alberts was working on one of the two mental health units at the MCSO jail as a module deputy. Three or four AICs were out on a walk. One AIC saw a sergeant standing on a neighboring module and asked through Alberts to speak with him. The sergeant

[1] Alberts did write a major misconduct disciplinary incident report on April 6, 2021, related to the event but the note appears to be unsubmitted or still in draft.

[2] A separate incident occurred involving Alberts and a captain on April 6, 2021. Alberts was placed on administrative leave after he did not write his report as directed and was found to be unprofessional in his interaction with the captain.

was not available at the moment but indicated they would try to come by later. The AIC became upset and stated that he needed to get the sergeant or there was going to be issues. The AIC had a spray bottle in her hand and was becoming increasingly hostile while standing at the officer station. Alberts believed the spray bottle could be used as a weapon to spray him. After failed attempts to de-escalate the situation, Alberts gave the AIC a warning that the AIC would have to cell in. The AIC refused and stated they were not going anywhere. Alberts offered to address the situation again later if the AIC returned to her cell, however, the AIC remained at the officer station. Alberts spotted another deputy walking into a nearby sally port and waived her into the module to help escort the AIC into her cell. Alberts writes that he gave the AIC one additional opportunity to return to her cell on her own, but the AIC refused. Alberts then grabbed the AIC's right wrist, and the other deputy grabbed the AIC's left elbow. As they began to escort the AIC, she began to pull away from the other deputy and attempted to punch Alberts in the face but missed. The AIC pulled downward and wrapped her arms around Alberts' left leg. Alberts administered four to five short punches to the AIC's upper bicep in an attempt to force the AIC to release her grip. This achieved the desired effect, and the AIC released her grip and Alberts backed away to create separation and told the AIC to cell in.

Alberts then called for backup over the radio. The AIC took a fighting stance and advanced towards Alberts with clenched fists. Alberts writes that the AIC stated, "I am going to fucking kill you!" Alberts writes he decided to act first and attempts one focus blow, but the AIC ducked and began to fall to the ground. When the AIC was on the ground, the second deputy got on top of the AIC to gain control. Alberts responded to a radio call seeking the location of the call for backup. Alberts and the other deputy were able to put the AIC in handcuffs. Once backup arrived, the AIC was still focused on Alberts. A sergeant who arrived and noticed this told Alberts to return to the deputy station.

A summary of Alberts' unsubmitted major misconduct disciplinary incident report written on April 6, 2021, includes different details.

At approximately 0900 hours, Alberts was speaking with an AIC who requested to be let into the cleaning closet so she could clean the showers. Alberts contacted the floor sergeant who was unavailable to speak with the AIC at the time. Alberts told the AIC to take a step back and relax. The AIC told Alberts, "You can't do anything with the cameras recording." Further in the note when describing the incident, Alberts writes, he asked the other deputy to help escort the AIC to her cell. Alberts grabbed the AIC's right arm, and the other deputy grabbed her left. As they began walking back to her cell, she began to resist, pulling on the deputy station for leverage. Staff then succeeded in getting her off the station and began to take her towards the cell. At this time the AIC pulled down and grabbed Alberts' left leg with her arm in what felt like an attempt to sweep him off his feet and a use of force ensued to gain control.

During his interview with the MCSO investigators Alberts was asked about several discrepancies in his report:

Investigator: Okay. You wrote in your report that [AIC] tried to punch you in the face, ah, .
Alberts: Yes
Investigator: ... can you explain to me when that happened?
Alberts: When that happened was right when we first started escorting, um, and he got free real quick, um, yeah, ah, right-just' right in the beginning…
Investigator: Okay.

Alberts: ... a second after she grabbed hi-his ar-le-left arm.
Investigator: Okay. You had her right arm…
Alberts: Ye-yeah.
Investigator: ... and [Deputy Name] had her left arm and it was when she broke free of [Deputy Name] hold, ...
Alberts: Yeah and that's when I- ...
Investigator: ... with her left hand?
Alberts: ... that's-that's when it appeared ...
Investigator: Okay.
Alberts: ... that she tried to punch me.
…
Investigator: Okay. So, it looked to me, in the video, that she breaks away and immediately goes for her right arm, to break away from you.
…
Investigator: Okay. So, it looked to me like she was-she broke free and was grabbing her-her right arm and we can ki-kinda have it fast, ...
…
Alberts: A, yeah. I see, ah, I see what you're saying.
…
Investigator: Okay. It appears on the video that you hit [AIC] at least once in the head, ah, when she had her arm around your leg and once while you were separating, um towards the end of that first struggle.
Alberts: Okay.
….
Investigator: Ah, do you want to see it? I…
Alberts: Ah, I'm okay.
Investigator: You're okay? Okay. Um. So I think you said four to five short punches in the upper bicep. Um do you think you hit her in the head at all, during the struggle?
Alberts: It, ah, as far as my recollection, I don't believe so. Um, yeah, as-as far as I recalled at the time and as, ah, as far as I recall, when I wrote my report, that's-that I didn't-don't believe so.
Investigator: Okay. So that's why you didn't say that you did, in your report, because you don't think that you hit her in the head?
Alberts: I-I, yeah, I don't think I did.
Investigator: Ah, do you remember that just as you were separating, ah, a-a punch towards her head?
Alberts: I do not recall that.
….
Investigator: I think I'm gonna play it and I'll, um, actually, I'm not sure how to slow it down on this, ah, co-. Just so we're on the same page, so now I'm playing the video. There's some punches. She's got your leg there at the very end, separation and it looked like a glanced blow to her he-head. You're calling for back-up. Okay. Do-does that look to you like you hit her in the head at the end there?
Alberts: Ah, when we were disengaged?
Investigator: Disengaging.
Alberts: Ah, it does, ah, it does appear that I did.
Investigator: Okay. And that wasn't in your report?

Alberts: No, because I honestly don't remember doing that.
…
Investigator: Can you tell me, take me through that-what happened then, after you disengaged, you came around, um, it looked like you took a fighting stance, ...
Alberts: Yes.
Investigator: You, ah, appear to strike [AIC] in the leg three or four times, ah, what was the reason for those strikes, at that time, and your justification for that?
Alberts: Um, I-that's another one I do not recall doing that, I don't-I don't think I put that in the report, because I-I don't remember that part of this event happening.
…
Investigator: ...I'm sorry, I don't even think I've asked yet, ah, cause I'm gonna ask later, have you watched this video before?
Alberts: I have, so I watched the video about ten weeks after the incident, ah, when I was writing my report, um, however I did not, um, study the video, I watched it once and then I-I wrote my report, but it-there was-there was no verbatim happening, so I watched the video and then I went with what I had remembered from two and a half months prior, to the incident happening and so I went off that, so, I ...

Relevant Circumstances for Consideration

Alberts obtained Basic Corrections certifications.

Alberts was employed in public safety for four years and is seeking re-employment in public safety.

Prior to finalizing findings in the investigation, Alberts resigned. Following his resignation, the MCSO, administratively closed their investigation.

The Department noted in the interview with Alberts and the written documentation that pronouns for the AIC were interchanged between masculine and feminine. The Department requested information from the MCSO related to if the AIC had indicated which pronouns they use and was informed, she used she/her pronouns when she was in custody in 2021.

A note from the Activity Diary indicates that the AIC was upset because she does not feel safe when male staff put their hands on her. According to the AIC, she has an escort plan that includes the use of female staff to conduct escorts and searches. (A3 page 57 of 170)

A management plan dated April 1, 2021, does not specify that female staff are to conduct escorts and searches, only that two female deputies would conduct strip searches. (A13 page 1 of 1)

A separate investigation (21-008) was conducted related to violations of the Agency Manual for Alberts' conduct on April 6, 2021. Following the use of force incident Alberts was directed to write an incident report but was invoking his Garrity Rights and wanted to write the report with the aid of the video from the incident following the criminal investigation. While in the Captain's office discussing the delay in writing the report, Alberts made unprofessional comments towards the captain including "Am I the fucking criminal now?" "what's your fucking problem?" and "Whose fucking side are you on.". Alberts was being placed on

administrative leave for failing to write the use of force report and required an escort to access the jail. Alberts requested to gather personal items from inside the jail and when escorted, walked with his hands behind his back as if he was in handcuffs while walking into the jail.

The MCSO sustained violations of the Agency Manual for Courtesy; Professional Protocol and Member Speech; Criticism. Alberts received a 32-hour (four days) suspension without pay from November 28, 2021, through December 3, 2021.

On July 24, 2019, Alberts received a letter of reprimand for making threatening punitive actions towards an AIC who was on suicide watch. Alberts was said to have picked up a bottle with disinfectant spray from the officer's desk, showed the bottle to the AIC, and then told the AIC if he did not stop his behavior (closing the food port) he would spray the AIC's hand with the spray.

In an interview with a captain, there was a reference to a previous complaint reviewed by the MCSO related to another use of force incident. In the interview, the captain believed Alberts lost his cool in that event.

The unsubmitted major misconduct disciplinary incident report written by Alberts on April 6, 2021, quotes the AIC as stating, "You can't do anything with the cameras recording."

When the AIC was seen by medical staff after the incident, the AIC told her escort that Alberts stated, "You're lucky there's a camera in here." just prior to the use of force incident.

The agency's review of the video of the incident noted that Alberts and the AIC were seen prior to the incident bickering at the officer's station and Alberts can be seen looking into the camera and later Alberts points towards the camera when he is interacting with the AIC.

Alberts is seeking a return to employment as a certified public safety professional.

Exhibits Reference	
DPSST Employee Profile Report	A1
F4s Personnel Action Separation Form	A2
MCSO Investigation and Interviews	A3
Letter from MCSO Detective – no criminal charge	A4
Investigation for Refusal to Write Report	A5
November 23, 2021, Suspension without Pay Letter	A6
July 24, 2019, Letter of Reprimand	A7
MCSO Policy and Procedure Manual	A8
Email from MCSO on AIC Pronouns	A9

Email from Alberts indicating he is seeking employment	A10
Mitigation from Alberts updated 7/5/25	**A11**
Email from MCSO	**A12**
Management Plan dated April 1, 2021	**A13**
Strip Search Preference Form	**A14**
Chapter 19 – AICs that Identify as Transgender	**A15**
Pat Search Policy	**A16**
Post Preference Special Order	**A17**
Roster (4/6/2021)	**A18**
Transcript of Verbal Mitigation from May 8, 2024	A19

Department of Public Safety Standards and Training
(DPSST or the Department)
Memo

Date: May 8, 2024

To: Corrections Policy Committee

From: Melissa Lang-Bacho
Professional Standards Case Manager

Subject: **Staff Report – Separation**
Nicholas Alberts; DPSST No. 58569

Reason for Discretionary Review

On May 19, 2022, Nicholas Alberts resigned from his position with the Multnomah County Sheriff's Office (MCSO) during an investigation into his use of force and truthfulness in reporting an incident at the jail that occurred on April 6, 2021.

The Department determined that the conduct being presented to the committee violates the Board's moral fitness standards. Through the case review process, the committee will affirm, modify, or negate the below identified elements of moral fitness violations and make a determination on the disposition of this case:

Dishonesty: Alberts intentionally omitted information from his reporting of a use of force incident.

Misuse of Authority: The Department did not identify allegations of misuse of authority in Albert's separation.

Misconduct: Alberts harmed another person when he punched an AIC during a use of force incident without justification.

Material Events and Conduct

On April 6, 2021, after witnessing the tail end of a use of force event involving an Adult in Custody (AIC) and Nicholas Alberts, the floor sergeant reviewed the full event from video taken from a newly installed camera system. After reviewing the video footage, the floor sergeant had concerns with the use of force decisions that were made by Alberts and notified his supervisor.

The case was initially referred to a detective with the MCSO to determine if a criminal investigation was needed. No formal interviews or investigation took place, but the detective collaborated with the Multnomah County District Attorney to make a determination. Their review identified no criminal acts and the case was referred back to the MCSO for an administrative review.

Alberts was directed to write an incident report immediately following the use of force event but invoked his Garrity rights, delaying the writing of his report until he was able to watch the video

of the incident, which would not occur until after a criminal review concluded[1]. Alberts was placed on administrative leave[2] after refusing to follow a direct order to write his use of force report. Following a determination that it was not a criminal matter and the personnel investigation related to his conduct in refusing to write his use of force report, Alberts returned from leave and submitted an incident report on July 2, 2021. Alberts was provided the opportunity to review the video from the incident to aide him in writing his report.

On December 1, 2021, the MCSO opened an internal investigation into Alberts' use of force and truthfulness in reporting of the incident following a complaint that was received.

The MCSO's investigation centered on Alberts' actions during the use of force incident and his documentation of his conduct in his report. During Alberts' interview for the internal investigation, he and the investigator reviewed his actions and his written documentation. Alberts describes in his interview and documentation that when he and another deputy were attempting to escort an AIC to her cell, the AIC attempted to punch him, and this was his justification for his use of force. When the investigator reviewed the video with Alberts, they discussed that the AIC appeared to break a hand free and use the free hand to attempt to release her other hand and that she had not attempted to hit Alberts. Alberts and the investigator also discussed that during the incident Alberts had punched the AIC in the head, and legs after they had disengaged but this was not included in his report.

Alberts resigned during the investigation and the MCSO concluded their review without sustaining any policy violations.

As described in Alberts' use of force report written on July 2, 2021, on April 6, 2021, at approximately 0900, Alberts was working on one of the two mental health units at the MCSO jail as a module deputy. Three or four AICs were out on a walk. One AIC saw a sergeant standing on a neighboring module and asked through Alberts to speak with him. The sergeant was not available at the moment but indicated they would try to come by later. The AIC became upset and stated that he needed to get the sergeant or there was going to be issues. The AIC had a spray bottle in her hand and was becoming increasingly hostile while standing at the officer station. Alberts believed the spray bottle could be used as a weapon to spray him. After failed attempts to de-escalate the situation, Alberts gave the AIC a warning that the AIC would have to cell in. The AIC refused and stated they were not going anywhere. Alberts offered to address the situation again later if the AIC returned to her cell, however, the AIC remained at the officer station. Alberts spotted another deputy walking into a nearby sally port and waived her into the module to help escort the AIC into her cell. Alberts writes that he gave the AIC one additional opportunity to return to her cell on her own, but the AIC refused. Alberts then grabbed the AIC's right wrist, and the other deputy grabbed the AIC's left elbow. As they began to escort the AIC, she began to pull away from the other deputy and attempted to punch Alberts in the face but missed. The AIC pulled downward and wrapped her arms around Alberts' left leg. Alberts administered four to five short punches to the AIC's upper bicep in an attempt to force the AIC

[1] Alberts did write a major misconduct disciplinary incident report on April 6, 2021, related to the event but the note appears to be unsubmitted or still in draft.

[2] A separate incident occurred involving Alberts and a captain on April 6, 2021. Alberts was placed on administrative leave after he did not write his report as directed and was found to be unprofessional in his interaction with the captain.

to release her grip. This achieved the desired effect, and the AIC released her grip and Alberts backed away to create separation and told the AIC to cell in.

Alberts then called for backup over the radio. The AIC took a fighting stance and advanced towards Alberts with clenched fists. Alberts writes that the AIC stated, "I am going to fucking kill you!" Alberts writes he decided to act first and attempts one focus blow, but the AIC ducked and began to fall to the ground. When the AIC was on the ground, the second deputy got on top of the AIC to gain control. Alberts responded to a radio call seeking the location of the call for backup. Alberts and the other deputy were able to put the AIC in handcuffs. Once backup arrived, the AIC was still focused on Alberts. A sergeant who arrived and noticed this told Alberts to return to the deputy station.

A summary of Alberts' unsubmitted major misconduct disciplinary incident report written on April 6, 2021, includes different details.

At approximately 0900 hours, Alberts was speaking with an AIC who requested to be let into the cleaning closet so she could clean the showers. Alberts contacted the floor sergeant who was unavailable to speak with the AIC at the time. Alberts told the AIC to take a step back and relax. The AIC told Alberts, "You can't do anything with the cameras recording." Further in the note when describing the incident, Alberts writes, he asked the other deputy to help escort the AIC to her cell. Alberts grabbed the AIC's right arm, and the other deputy grabbed her left. As they began walking back to her cell, she began to resist, pulling on the deputy station for leverage. Staff then succeeded in getting her off the station and began to take her towards the cell. At this time the AIC pulled down and grabbed Alberts' left leg with her arm in what felt like an attempt to sweep him off his feet and a use of force ensued to gain control.

During his interview with the MCSO investigators Alberts was asked about several discrepancies in his report:

Investigator: Okay. You wrote in your report that [AIC] tried to punch you in the face, ah, .
Alberts: Yes
Investigator: ... can you explain to me when that happened?
Alberts: When that happened was right when we first started escorting, um, and he got free real quick, um, yeah, ah, right-just' right in the beginning…
Investigator: Okay.
Alberts: ... a second after she grabbed hi-his ar-le-left arm.
Investigator: Okay. You had her right arm…
Alberts: Ye-yeah.
Investigator: ... and [Deputy Name] had her left arm and it was when she broke free of [Deputy Name] hold, ...
Alberts: Yeah and that's when I- ...
Investigator: ... with her left hand?
Alberts: ... that's-that's when it appeared ...
Investigator: Okay.
Alberts: ... that she tried to punch me.
…
Investigator: Okay. So, it looked to me, in the video, that she breaks away and immediately goes for her right arm, to break away from you.
…

Investigator: Okay. So, it looked to me like she was-she broke free and was grabbing her-her right arm and we can ki-kinda have it fast, ...
…
Alberts: A, yeah. I see, ah, I see what you're saying.
…
Investigator: Okay. It appears on the video that you hit [AIC] at least once in the head, ah, when she had her arm around your leg and once while you were separating, um towards the end of that first struggle.
Alberts: Okay.
….
Investigator: Ah, do you want to see it? I…
Alberts: Ah, I'm okay.
Investigator: You're okay? Okay. Um. So I think you said four to five short punches in the upper bicep. Um do you think you hit her in the head at all, during the struggle?
Alberts: It, ah, as far as my recollection, I don't believe so. Um, yeah, as-as far as I recalled at the time and as, ah, as far as I recall, when I wrote my report, that's-that I didn't-don't believe so.
Investigator: Okay. So that's why you didn't say that you did, in your report, because you don't think that you hit her in the head?
Alberts: I-I, yeah, I don't think I did.
Investigator: Ah, do you remember that just as you were separating, ah, a-a punch towards her head?
Alberts: I do not recall that.
….
Investigator: I think I'm gonna play it and I'll, um, actually, I'm not sure how to slow it down on this, ah, co-. Just so we're on the same page, so now I'm playing the video. There's some punches. She's got your leg there at the very end, separation and it looked like a glanced blow to her he-head. You're calling for back-up. Okay. Do-does that look to you like you hit her in the head at the end there?
Alberts: Ah, when we were disengaged?
Investigator: Disengaging.
Alberts: Ah, it does, ah, it does appear that I did.
Investigator: Okay. And that wasn't in your report?
Alberts: No, because I honestly don't remember doing that.
…
Investigator: Can you tell me, take me through that-what happened then, after you disengaged, you came around, um, it looked like you took a fighting stance, ...
Alberts: Yes.
Investigator: You, ah, appear to strike [AIC] in the leg three or four times, ah, what was the reason for those strikes, at that time, and your justification for that?
Alberts: Um, I-that's another one I do not recall doing that, I don't-I don't think I put that in the report, because I-I don't remember that part of this event happening.
…
Investigator: ...I'm sorry, I don't even think I've asked yet, ah, cause I'm gonna ask later, have you watched this video before?
Alberts: I have, so I watched the video about ten weeks after the incident, ah, when I was writing my report, um, however I did not, um, study the video, I watched it once and then I-I

wrote my report, but it-there was-there was no verbatim happening, so I watched the video and then I went with what I had remembered from two and a half months prior, to the incident happening and so I went off that, so, I ...

Relevant Circumstances for Consideration

Alberts obtained Basic Corrections certifications.

Alberts was employed in public safety for four years and is seeking re-employment in public safety.

Prior to finalizing findings in the investigation, Alberts resigned. Following his resignation, the MCSO, administratively closed their investigation.

The Department noted in the interview with Alberts and the written documentation that pronouns for the AIC were interchanged between masculine and feminine. The Department requested information from the MCSO related to if the AIC had indicated which pronouns they use and was informed, she used she/her pronouns when she was in custody in 2021.

A note from the Activity Diary indicates that the AIC was upset because she does not feel safe when male staff put their hands on her. The AIC has a management and escort plan that includes the use of female staff to conduct escorts. In the use of force event with Alberts, he went hands-on to escort the AIC.

A separate investigation (21-008) was conducted related to violations of the Agency Manual for Alberts' conduct on April 6, 2021. Following the use of force incident Alberts was directed to write an incident report but was invoking his Garrity Rights and wanted to write the report with the aid of the video from the incident following the criminal investigation. While in the Captain's office discussing the delay in writing the report, Alberts made unprofessional comments towards the captain including "Am I the fucking criminal now?" "what's your fucking problem?" and "Whose fucking side are you on.". Alberts was being placed on administrative leave for failing to write the use of force report and required an escort to access the jail. Alberts requested to gather personal items from inside the jail and when escorted, walked with his hands behind his back as if he was in handcuffs while walking into the jail.

The MCSO sustained violations of the Agency Manual for Courtesy; Professional Protocol and Member Speech; Criticism. Alberts received a 32-hour (four days) suspension without pay from November 28, 2021, through December 3, 2021.

On July 24, 2019, Alberts received a letter of reprimand for making threatening punitive actions towards an AIC who was on suicide watch. Alberts was said to have picked up a bottle with disinfectant spray from the officer's desk, showed the bottle to the AIC, and then told the AIC if he did not stop his behavior (closing the food port) he would spray the AIC's hand with the spray.

In an interview with a captain, there was a reference to a previous complaint reviewed by the MCSO related to another use of force incident. In the interview, the captain believed Alberts lost his cool in that event.

The unsubmitted major misconduct disciplinary incident report written by Alberts on April 6, 2021, quotes the AIC as stating, “You can’t do anything with the cameras recording.”

When the AIC was seen by medical staff after the incident, the AIC told her escort that Alberts stated, “You’re lucky there's a camera in here.” just prior to the use of force incident.

The agency’s review of the video of the incident noted that Alberts and the AIC were seen prior to the incident bickering at the officer’s station and Alberts can be seen looking into the camera and later Alberts points towards the camera when he is interacting with the AIC.

Alberts is seeking a return to employment as a certified public safety professional.

Exhibits Reference	
DPSST Employee Profile Report	A1
F4s Personnel Action Separation Form	A2
MCSO Investigation and Interviews	A3
Letter from MCSO Detective – no criminal charge	A4
Investigation for Refusal to Write Report	A5
November 23, 2021, Suspension without Pay Letter	A6
July 24, 2019, Letter of Reprimand	A7
MCSO Policy and Procedure Manual	A8
Email from MCSO on AIC Pronouns	A9
Email from Alberts indicating he is seeking employment	A10
Mitigation from Alberts	A11