



PERMANENT ADMINISTRATIVE ORDER

DPSST 5-2020
CHAPTER 259
DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

FILED
02/10/2020 8:46 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Public Safety Professional Denial and Revocation: Amending standards and processes, and dividing the rules.

EFFECTIVE DATE: 05/01/2020

AGENCY APPROVED DATE: 01/23/2020

CONTACT: Jennifer Howald
503-378-2432
jennifer.howald@state.or.us

DPSST
4190 Aumsville Hwy SE
Salem, OR 97317

Filed By:
Jennifer Howald
Rules Coordinator

RULES:

259-008-0005, 259-008-0010, 259-008-0011, 259-008-0070, 259-008-0310, 259-008-0320, 259-008-0330, 259-008-0340, 259-008-0400

AMEND: 259-008-0005

NOTICE FILED DATE: 12/19/2019

RULE SUMMARY: OAR 259-008-0005 maintains the definitions that apply to interpretation of OAR chapter 259 division 8. OAR 259-008-0005 is amended to provide the definitions for a criminal disposition and jurisdiction. Both of these terms support the denial and revocation standards and processes.

CHANGES TO RULE:

259-008-0005
Definitions ¶¶

- (1) "Assistant Department Head" means a public safety officer employed in the first position subordinate to a Department Head who is primarily responsible for supervision of middle managers and supervisors.¶¶
- (2) "Board" means the Board on Public Safety Standards and Training.¶¶
- (3) "Casual employment" means employment that is occasional, irregular, or incidental for which the employee does not receive seniority rights or fringe benefits.¶¶
- (4) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181A.410.¶¶
- (5) "Commissioned" means being authorized to perform various acts or duties of a police officer, certified reserve officer or reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.¶¶
- (6) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the

needs of a geographical area by providing educational services, including, but not limited to, vocational or technical education programs or lower division collegiate programs.¶

(7) "Corrections Officer" means an officer or member employed full-time by a law enforcement unit who:¶

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

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

(c) Is any full-time employee of the Department who possesses the requisite qualifications and is so certified pursuant to ORS 181A.570.¶

(8) "Criminal Disposition" means a conviction, violation, adjudication, civil compromise, an entered plea of guilty or no contest, or a finding of guilty except for insanity or its equivalent for any violation of a criminal law under the law of the jurisdiction where the criminal disposition occurred.¶

(9) "Department" and "DPSST" means the Department of Public Safety Standards and Training.¶

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

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

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

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

(134) "First-Level Supervisor" means a public safety officer employed in a position between the operational level and the middle manager, who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.¶

(145) "Full-time employment" means the employment of a person who has the responsibility for, and is paid to perform the duties of a public safety professional for more than 80 hours per month for a period of more than 90 consecutive calendar days. For purposes of this rule, any employment that meets the definition of seasonal, casual, or temporary employment is not considered full-time employment as a public safety professional.¶

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

(167) "Jurisdiction" means any tribunal with authority to render a criminal disposition, including but not limited to municipal, state, federal including military, tribal tribunals, and any tribunal outside the United States or a United States owned territory where a criminal offense must be proven beyond a reasonable doubt. ¶

(18) "Law Enforcement Officers" means police, corrections, parole and probation officers and regulatory specialists as described in the Public Safety Standards and Training Act.¶

(179) "Law Enforcement Unit" means:¶

(a) A police force or organization of the state, a city, university that has established a police department under ORS 352.383 or 353.125, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal governments as defined in section 1, chapter 644, Oregon Laws 2011, that employs authorized tribal police officers as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, the Security and Emergency Preparedness Office of the Judicial Department or common carrier railroad the primary duty of which, as prescribed by law, ordinance, or directive, is any one or more of the following:¶

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

(B) The custody, control, or supervision of individuals convicted of or arrested for a criminal offense and confined

to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or¶

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

(b) A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area the employees of which are commissioned by a county sheriff;¶

(c) A district attorney's office;¶

(d) The Oregon Liquor Control Commission with regard to regulatory specialists; or¶

(e) A humane investigation agency as defined in ORS 181A.340.¶

~~(1820)~~ "Leave" means an authorized absence granted to a public safety professional by their employing public or private safety agency.¶

~~(219)~~ "Limited Duration, Administrative Position" means a non-elected, certifiable public safety position where the primary duties relate to the administration, operation, and accountability of a public safety agency, including, but not limited to, the responsibility for command assignments and the supervision of subordinate managers.¶

(a) Primary duties are regular or recurring supervisory or managerial duties that are performed in a continuous manner and are the foundation of a limited duration, administrative position.¶

(b) Non-supervisory or non-managerial public safety duties, such as patrol, criminal investigations, or enforcement actions are not primary duties of a limited duration, administrative position.¶

~~(202)~~ "Middle Manager" means a public safety officer working in a position that is between a first-level supervisor and a department head, who is primarily responsible for management and command duties. A middle manager position does not include a position with limited or acting middle management duties.¶

~~(213)~~ "Multi-disciplined Officer" or "Multi-discipline Certified" means a law enforcement officer, telecommunicator or emergency medical dispatcher who is employed by one public safety agency in more than one discipline for employment and certification purposes that support the efficient operation of the employing agency.¶

~~(224)~~ "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties of a public safety professional for 80 hours or less per month for a period of more than 90 consecutive calendar days.¶

~~(235)~~ "Parole and Probation Officer" means:¶

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

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

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

(b) Any officer who:¶

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

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

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

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

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

(c) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181A.570.¶

~~(246)~~ "Police Officer" means:¶

(a) An officer, member or employee of a law enforcement unit employed full-time as a peace officer who is:¶

(A) Commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.383 or 353.125, the Governor

or the Department of State Police; and¶

(B) Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;¶

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

(c) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011;¶

(d) A humane special agent commissioned under ORS 181A.340;¶

(e) A judicial marshal appointed under ORS 1.177 who is trained pursuant to ORS 181A.540; or¶

(f) Any full-time employee of the Department who possesses the requisite qualifications and is so certified pursuant to ORS 181A.570.¶

(257) "Primary Discipline" means the discipline specified by the employing agency as the discipline that a public safety officer is assigned to for the majority of their employment functions or duties when a public safety officer is employed and certified as a multi-disciplined officer.¶

(268) "Public or private safety agency" means:¶

(a) A law enforcement unit; or¶

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

(279) "Public Safety Professional", "Public Safety Personnel" and "Public Safety Officer" include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, reserve officers, telecommunicators and regulatory specialists.¶

(2830) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public Safety Academy.¶

(2931) "Regulatory Specialist" means a full-time employee of the Oregon Liquor Control Commission (OLCC) who is authorized to act as an agent of the OLCC in conducting inspections or investigations, making arrests and seizures, aiding in prosecutions for offenses, issuing citations for violations and otherwise enforcing Chapter 471, ORS 474.005 to 474.095 and 474.115, OLCC rules and any other statutes the OLCC considers related to alcoholic liquor or marijuana.¶

(302) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181A.665, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses incurred while officers attend approved training courses certified by the Department.¶

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

(a) A volunteer or employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.383 or 353.125, the Governor, or the Department of State Police;¶

(b) Armed with a firearm; and¶

(c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.¶

(324) "Seasonal Employment" means employment that can be carried on only at certain seasons or fairly definite portions of the year, with defined starting and ending dates based on a seasonally determined need.¶

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

(346) "Telecommunicator" means:¶

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

(b) A full-time employee of the Department who possesses the requisite qualifications and is so certified pursuant to ORS 181A.570.¶

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

(368) "The Act" refers to the Public Safety Standards and Training Act (ORS 181A.355 to 181A.670).¶

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

Statutory/Other Authority: ORS 181A.410

Statutes/Other Implemented: ORS 181A.410

RULE SUMMARY: OAR 259-008-0010 outlines the minimum standards for employment of a law enforcement officer. The changes to OAR 259-008-0010 are supporting rule changes relating to the amendments to the denial and revocation standards and processes. The rule section that addressed criminal records was deleted. The deleted language referenced only 2 of the 4 mandatory conviction disqualifiers and a list of discretionary convictions that no longer exists in the denial/revocation rules. Deleting the language did not eliminate disqualifying criminal history because these disqualifiers are represented in the grounds for denying or revoking certification (OAR 259-008-0070 which is subsequently renumbered to 259-008-0300). Section (5), addressing the moral fitness requirement, provides revised language but maintains the existing rule intent. Additional language specifies that moral fitness applies once hired, while certified and when certification has lapsed.

CHANGES TO RULE:

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer or Utilization as a Reserve Officer ¶

(1) Citizenship.¶

(a) A person may not be employed as a corrections officer for more than one year unless the person is a citizen of the United States or a nonimmigrant legally admitted to the United States under a Compact of Free Association.¶

(b) A person may not be employed as a police officer or a parole and probation officer for more than 18 months unless the person is a citizen of the United States or a nonimmigrant legally admitted to the United States under a Compact of Free Association.¶

(c) A person may not be employed as a regulatory specialist for more than 18 months unless the person is a citizen of the United States.¶

(d) The citizenship requirement found in (c) does not apply to a person employed as a regulatory specialist on March 16, 2012, who continues full-time employment as a regulatory specialist without a lapse. ¶

(2) Age. No law enforcement unit in this state may employ or utilize any person under the age of 21 years as a police officer, corrections officer, parole and probation officer, regulatory specialist or reserve officer.¶

(3) Fingerprints. Within 90 days of the date of employment in a certifiable position, each law enforcement officer must be fingerprinted on a standard applicant fingerprint card.¶

(a) The hiring agency is responsible for fingerprinting and must forward one card to the Oregon State Police Identification Services Section for processing and the assignment of an identification number.¶

(b) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department must comply with the most current requirements.¶

(c) Applications for certification will not be processed until an applicant's fingerprints have cleared Oregon State Police Identification Services.¶

~~(4) Criminal Records. No law enforcement officer may have been convicted:¶~~

~~(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;¶~~

~~(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;¶~~

~~(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.¶~~

(5) Notification of Arrest or Criminal Citation to Appear. A law enforcement officer who is arrested, or receives a criminal citation to appear or its equivalent, for any offense punishable as a crime must notify the Department within five business days. Notification must be in writing and include the date of the arrest or citation, the location of the arrest or citation, the reason for the arrest or citation and the arresting or citing agency.¶

~~(65) Moral Fitness (Professional Fitness). All law enforcement officers must be of good meet moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:~~

~~(a) Mandatory grounds for denying or revoking certification as described in OAR 259-008-0070(2); or~~
~~(b) Discretionary grounds for denying, suspending or revoking certification as described in OAR 259-008-0070(4).~~
standards for certification. The moral fitness standards defined in OAR 259-008-0300 apply to law enforcement officers who are employed in a certifiable position but not yet certified, currently certified law enforcement officers and law enforcement officers with lapsed certification.

~~(76) Education:~~

~~(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:~~

~~(A) High School diploma;~~

~~(B) Successful completion of the General Educational Development (GED) Test; or~~

~~(C) A four-year, post-secondary degree issued by an accredited, degree-granting college or university recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604.~~

~~(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.~~

~~(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.~~

~~(b) Evidence of the above must consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.~~

~~(c) Academic Proficiency Standard. Before beginning basic training or beginning the career officer development course, each applicant must provide evidence to DPSST that the applicant possesses the academic tools necessary to successfully complete basic training.~~

~~(A) The hiring agency is responsible for ensuring a law enforcement proficiency test or validated written test designed to evaluate predictors of job-related skills and behaviors has been administered. The hiring agency must verify the completion of the test and report the date of completion to the Department on a Form F-5 (Application for Training) prior to the applicant being admitted to basic training.~~

~~(B) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by the Department under the provisions of OAR 259-008-0045 are exempt from this testing requirement.~~

~~(C) Individuals who have successfully completed training resulting in the award of certification in the discipline they are applying for training are exempt from this testing requirement. Individuals must submit proof of training and certification.~~

~~(87) Physical Standards:~~

~~(a) Prior to admittance into a basic training course, as described in OAR 259-008-0025, all law enforcement officers or applicants must demonstrate the physical abilities to perform the critical and essential tasks of a law enforcement officer. The critical and essential tasks for law enforcement officers have been determined by the following:~~

~~(A) The 2015 DPSST Job Task Analysis for Police Officers;~~

~~(B) The 2015 DPSST Job Task Analysis for Parole & Probation Officers;~~

~~(C) The 2016 DPSST Job Task Analysis for Corrections Officers; and~~

~~(D) The 2013 Job Task Analysis for Liquor Enforcement Inspectors.~~

~~(b) The following minimum physical standards are required for all law enforcement officers:~~

~~(A) Visual Acuity:~~

~~(i) Monocular vision must be at least 20/30 (Snellen) corrected in each eye and not worse than 20/100 (Snellen) uncorrected in either eye.~~

~~(ii) Binocular vision must be at least 20/20 (Snellen) corrected.~~

~~(iii) Officers or applicants whose uncorrected vision is worse than 20/100 must wear soft contact lenses to meet~~

the corrected vision requirement.¶

(B) Color Vision.¶

(i) Law enforcement officers or applicants must be able to distinguish red, green, blue, and yellow, as determined by the HRR Test, 4th Edition.¶

(ii) Red or green deficiencies may be acceptable, providing the officer or applicant can read at least nine of the first 13 plates of the Ishihara Test.¶

(iii) Officers or applicants who fail to meet the color vision standard may meet the standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer as approved by the examining licensed physician or surgeon.¶

(C) Depth Perception. Random Stereo Test equal to 60 seconds of arc or better.¶

(D) Peripheral Vision. Visual Field Performance must be 140 degrees in the horizontal meridian combined.¶

(E) Hearing.¶

(i) Law enforcement officers or applicants must have no average hearing loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.¶

(ii) Law enforcement officers or applicants who fail to meet the hearing standard must be examined by a licensed audiologist or otorhinolaryngologist to determine if an amplification device will allow them to meet the hearing standard.¶

(iii) An amplification device may be used to meet the hearing standard, if a licensed audiologist or otorhinolaryngologist determines an amplification device will allow the officer or applicant to meet the hearing standard.¶

(F) Cardiovascular.¶

(i) Resting blood pressure must be less than or equal to 160 mmHg systolic and 100 mmHg diastolic.¶

(ii) Law enforcement officers or applicants who fail to meet the cardiovascular standards must be examined by a general practitioner to address the issue.¶

(iii) Law enforcement officers or applicants who have a history of organic cardiovascular disease will necessitate further medical evaluation.¶

(G) Pulmonary Capacity. Officers and applicants with obstructive or restrictive spiograms (FVC or FEV1 less than 80% or FVC/FEV1 ratio of less than 70%) require further evaluation.¶

(H) Medications. The side effects of any prescribed medication must not interfere with the law enforcement officer's or applicant's ability to perform the critical and essential tasks of the job.¶

(I) Medical Recommendations.¶

(i) It is recommended that officers or applicants with a history of seizures or diabetes be evaluated following American College of Occupational and Environmental Medicine's Guidance for the Medical Evaluation of Law Enforcement Officers, to include post-employment monitoring.¶

(ii) It is recommended that officers or applicants with a history of hypertension (resting blood pressure exceeding 160 mmHg systolic and 100 mmHg diastolic (160/100) have post-employment medical monitoring.¶

(98) Medical Examinations. To ensure that law enforcement officers and applicants meet the minimum physical standards listed in section (87) of this rule, all officers and applicants must be examined by a licensed physician or surgeon.¶

(a) The licensed physician or surgeon performing the medical examination must be provided with a current DPSST Medical Examination Report (Form F-2) for completion at the time of the examination.¶

(b) The medical examination must conform to applicable standards of the Americans with Disabilities Act (ADA) Title 42 USC 1210.¶

(c) The medical examination must be completed within 180 days prior to the start of employment as a law enforcement officer.¶

(d) Upon completion of the medical examination, the examining licensed physician or surgeon must sign the final page of the Form F-2 (Form F-2A) attesting that the officer or applicant has met or has not met the minimum physical standards listed in section (87) of this rule.¶

(e) The Form F-2A must be submitted to the Department no later than 90 days after the start of employment.¶

- (f) Law enforcement officers and applicants will not be admitted into a basic course until the Department receives a Form F-2A attesting that the minimum physical standards have been met or a physical standard waiver has been granted, as described in section (~~109~~) of this rule.¶
- (g) DPSST may require that a law enforcement officer or applicant take a subsequent examination by a licensed physician or surgeon of the Department's choice at the expense of the officer, the applicant or the hiring agency.¶
- (h) Certified individuals who are hired into a discipline they are not certified for are required to successfully complete a new physical examination.¶
- (i) A law enforcement officer whose certification has lapsed will be required to complete a new medical examination prior to re-applying for certification.¶
- (j) Individuals employed in a limited duration, administrative position, as described in OAR 259-008-0078, are exempt from the medical examination requirement.¶
- (k) Regulatory Specialists employed by OLCC prior to July 1, 2015 who have previously completed OLCC basic training are exempt from completion of the physical examination.¶
- ~~(109)~~ Physical Standard Waivers.¶
- (a) An individual or department head may request a waiver of any physical standard in section (~~87~~) of this rule by:¶
- (A) Submitting a request to the Department in writing; and¶
- (B) Providing documentation or pertinent testimony that supports the physical standard waiver request.¶
- (C) If further clarification is needed, the Department may require additional documentation or testimony from the individual or department head requesting the physical standard waiver.¶
- (D) The requesting individual may be required to demonstrate the ability to perform the critical and essential job tasks.¶
- (E) If the Department finds that the physical standard waiver request would not prohibit the requesting individual's ability to successfully complete training and the performance of the critical and essential tasks, the waiver will be granted.¶
- (F) Any expense associated with providing physical standard waiver documentation or testimony will be the responsibility of the requesting individual or the requesting agency.¶
- (G) If an individual requests and is granted a medical waiver, but does not obtain employment within one year from the date the waiver is granted, the waiver will be void.¶
- (H) If the Department denies a request for a waiver of any physical standard in section (~~87~~) of this rule, the Department will issue Notice and proceed as provided in section (~~109~~)(b) of this rule.¶
- (b) Contested Case Hearing Process for Denial of Physical Standard Waivers.¶
- (A) Initiation of Proceedings: A contested case notice will be prepared when the Department denies a physical standard waiver after determining that factual data meeting the statutory and administrative rule requirements justifies the denial.¶
- (B) Contested Case Notice: The contested case notice will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.¶
- (C) Response Time: A party who has been served with a "Contested Case Notice of Intent to Deny a Waiver" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.¶
- (D) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver pursuant to OAR 137-003-0672.¶
- (E) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.¶
- (F) Proposed and Final Orders: In cases where a hearing is requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.¶
- (~~110~~) Police Officer and Reserve Officer Pre-employment Psychological Screening. Effective January 1, 2020, a law enforcement unit may not hire a police officer or a reserve officer without a pre-employment psychological screening conducted in accordance with this rule. ¶

- (a) This requirement applies to police officers and reserve officers hired on or after January 1, 2020, including:¶
- (A) Police officers and reserve officers who move from one law enforcement unit to another law enforcement unit on or after January 1, 2020; and ¶
 - (B) A reserve officer employed by a law enforcement unit prior to January 1, 2020, when the reserve officer becomes a police officer for the law enforcement unit on or after January 1, 2020, and the reserve officer has not completed a pre-employment psychological screening conducted in accordance with this rule.¶
- (b) The psychological screening process is used to identify mental conditions, personality disorders, personality traits or behavior patterns that may adversely affect the officer's ability to perform the essential functions of a police officer or reserve officer with reasonable skill, safety and judgement based upon the pre-employment psychological screening criteria established by the law enforcement unit.¶
- (c) The psychological screening must be conducted by a licensed mental health professional who can demonstrate, to the law enforcement unit's satisfaction, expertise in clinical assessment and the assessment of normal personality characteristics, skills and abilities relevant to public safety personnel selection. "Licensed Mental Health Professional" includes:¶
- (A) A psychologist who is licensed by the Oregon Board of Psychology or the licensing body in the state where the person provides the psychological services; or ¶
 - (B) A mental health professional who is licensed by the licensing body in the state where the person provides mental health services. ¶
- (d) The psychological screening must include the following:¶
- (A) A written psychological test battery relevant to the pre-employment psychological screening criteria established by the law enforcement unit. The results of the written test should be reviewed and verified by the licensed mental health professional prior to the in-person interview;¶
 - (B) An in-person interview conducted by the licensed mental health professional; and¶
 - (C) A report provided by the licensed mental health professional in the manner requested by the law enforcement unit. ¶
- (e) The psychological screening must conform to applicable standards of the Americans with Disabilities Act (ADA) Title 42 USC 1210.¶
- (f) Psychological screenings older than one year are no longer valid for the purposes of satisfying the pre-employment psychological screening requirement.¶
- (g) Hiring decisions are the responsibility of each law enforcement unit. The law enforcement unit hiring the police officer or reserve officer maintains the discretion to determine how the information provided in a psychological screening report impacts the hiring decision.

Statutory/Other Authority: ORS 181A.410, ORS 183.341, Chapter 78 Oregon Laws 2019

Statutes/Other Implemented: ORS 181A.410, ORS 183.341, ORS 181A.395, ORS 181A.490, ORS 181A.520, ORS 181A.530, ORS 181A.550, ORS 181A.640, Chapter 78 Oregon Laws 2019

RULE SUMMARY: OAR 259-008-0011 outlines the minimum standards for employment of a telecommunicator or emergency medical dispatcher. The changes to OAR 259-008-0011 are supporting rule changes relating to the amendments to the denial and revocation standards and processes. The rule section that addressed criminal records was deleted. The deleted language referenced only 2 of the 4 mandatory conviction disqualifiers and a list of discretionary convictions that no longer exists in the denial/revocation rules. Deleting the language did not eliminate disqualifying criminal history because these disqualifiers are represented in the grounds for denying or revoking certification (OAR 259-008-0070 which is subsequently renumbered to 259-008-0300). Section (3), addressing the moral fitness requirement, provides revised language but maintains the existing rule intent. Additional language specifies that moral fitness applies once hired, while certified and when certification has lapsed.

CHANGES TO RULE:

259-008-0011

Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher ¶

(1) Fingerprints. Within 90 days of the date of employment in a certifiable position, each telecommunicator and emergency medical dispatcher must be fingerprinted on a standard applicant fingerprint card.¶

(a) If the hiring agency is a public agency, it is responsible for fingerprinting and forwarding one fingerprint card to the Oregon State Police Identification Services Section for processing and the assignment of an identification number.¶

(b) If the hiring agency is a private agency, it is responsible for fingerprinting and forwarding one fingerprint card to the Department along with the appropriate fee.¶

(c) Applications for certification will not be processed until an applicant's fingerprints have cleared Oregon State Police Identification Services.¶

(d) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department will comply with the most current requirements.¶

~~(2) Criminal Records. No telecommunicator or emergency medical dispatcher will have been convicted:¶~~

~~(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;¶~~

~~(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;¶~~

~~(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.¶~~

(3) Notification of Arrest or Criminal Citation to Appear. A telecommunicator or emergency medical dispatcher who is arrested, or receives a criminal citation to appear or its equivalent, for any offense punishable as a crime must notify the Department within five business days. Notification must be in writing and include the date of the arrest or citation, the location of the arrest or citation, the reason for the arrest or citation and the arresting or citing agency.¶

(4) Moral Fitness (Professional Fitness). All telecommunicators and emergency medical dispatchers must be of good meet moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:¶

(a) Mandatory grounds for denying or revoking certification as described in OAR 259-008-0070(2); or¶

(b) Discretionary grounds for denying, suspending or revoking certification as described in OAR 259-008-0070(4) standards for certification. The moral fitness standards defined in OAR 259-008-0300 apply to telecommunicators and emergency medical dispatchers who are employed in a certifiable position but not yet certified, currently certified telecommunicators and emergency medical dispatchers, and telecommunicators and emergency medical dispatchers with lapsed certification.¶

(54) Education:¶¶

(a) Applicants for the position of a telecommunicator or emergency medical dispatcher will be required to furnish documentary evidence of one of the following:¶¶

(A) High School diploma;¶¶

(B) Successful completion of the General Educational Development (GED) Test; or¶¶

(C) A four-year, post-secondary degree issued by a degree-granting college or university accredited by a recognized national or regional accrediting body, or recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604.¶¶

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.¶¶

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.¶¶

(b) Evidence of the above must consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.¶¶

(65) Academic Proficiency Standard. Before beginning basic telecommunicator or Emergency Medical Dispatcher (EMD) training or challenging basic telecommunicator training, each applicant must provide evidence to DPSST that the applicant possesses the academic tools necessary to successfully complete basic telecommunicator or EMD training.¶¶

(a) The hiring agency is responsible for ensuring a telecommunicator/EMD proficiency test or validated written test designed to evaluate predictors of job-related skills and behavior has been administered. The hiring agency must verify the completion of the test and report the date of completion to the Department on a Form F-5 (Application for Training) prior to the applicant being admitted to basic telecommunicator or EMD training.¶¶

(b) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by DPSST under the provisions of OAR 259-008-0045 are exempt from this testing requirement.¶¶

(c) Individuals who have successfully completed training resulting in the award of certification in the discipline they are applying for training are exempt from this testing requirement. Individuals must submit proof of training and certification.¶¶

(76) Physical Standards.¶¶

(a) Prior to admittance into a basic training course, as described in OAR 259-008-0025, all telecommunicators, emergency medical dispatchers and applicants must demonstrate the physical abilities to perform the critical and essential tasks of a telecommunicator or emergency medical dispatcher.¶¶

(A) The critical and essential tasks for telecommunicators have been determined by the 2015 DPSST Job Task Analysis for Telecommunicators.¶¶

(B) The critical and essential tasks for emergency medical dispatchers have been determined by the 1995 National Highway Traffic Safety Administration Emergency Medical Dispatcher (EMD) National Standards Curriculum.¶¶

(b) The following minimum physical standards are required for all telecommunicators and emergency medical dispatchers.¶¶

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) when tested using both eyes together.¶¶

(B) Color Vision.¶¶

(i) Telecommunicators, emergency medical dispatchers and applicants must be able to distinguish red, green, blue, and yellow as determined by the HRR Test, 4th Edition.¶¶

(ii) Red or green deficiencies may be acceptable, providing the telecommunicator, emergency medical dispatcher or applicant can read at least nine of the first 13 plates of the Ishihara Test.¶¶

(iii) Telecommunicators, emergency medical dispatchers or applicants who fail to meet the color vision standard may meet the standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer as approved by the examining licensed health professional.¶¶

(C) Hearing.¶¶

- (i) Telecommunicators, emergency medical dispatchers or applicants must meet National Emergency Number Association (NENA) hearing standard NENA-STA-007.2-2014 (June 14, 2014).¶
- (ii) Telecommunicators, emergency medical dispatchers or applicants who fail to meet the hearing standard must be examined by a licensed audiologist or otorhinolaryngologist to determine if an amplification device will allow them to meet the hearing standard.¶
- (iii) An amplification device may be used to meet the hearing standard, if a licensed audiologist or otorhinolaryngologist determines an amplification device will allow the telecommunicator, emergency medical dispatcher or applicant to meet the hearing standard.¶
- (D) Medications. The side effects of any prescribed medication must not interfere with the telecommunicator's, emergency medical dispatcher's or applicant's ability to perform the essential functions and tasks of the job.¶
- (87) Medical Examinations. To ensure that telecommunicators, emergency medical dispatchers, and applicants meet the minimum physical standards listed in section (76) of this rule, telecommunicators, emergency medical dispatchers, and applicants must be examined by a licensed health professional.¶
- (a) The licensed health professional performing the medical examination must be provided with a current DPSST Medical Examination Report (Form F-2T) for completion at the time of the examination.¶
- (b) The medical examination must conform to applicable standards of the Americans with Disabilities Act (ADA) Title 42 USC 1210.¶
- (c) The medical examination must be completed within 180 days prior to the start of employment as a telecommunicator or emergency medical dispatcher.¶
- (d) Upon completion of the medical examination, the examining licensed health professional must sign the final page of the Form F-2T (Form F-2TA) attesting that the telecommunicator, emergency medical dispatcher or applicant has met or has not met the minimum physical standards listed in section (76) of this rule.¶
- (e) The Form F-2TA must be submitted to the Department no later than 90 days after the start of employment.¶
- (f) Telecommunicators, emergency medical dispatchers or applicants will not be admitted into a basic course until the Department receives a Form F-2TA attesting that the minimum physical standards have been met or a physical standard waiver has been granted, as described in section (98) of this rule.¶
- (g) The Department may require that a telecommunicator or emergency medical dispatcher take a subsequent examination by a licensed health professional of the Department's choice at the expense of the applicant or the hiring agency.¶
- (h) Certified individuals who are hired into a discipline for which they are not certified are required to successfully complete a new physical examination.¶
- (i) A telecommunicator or emergency medical dispatcher whose certification has lapsed will be required to complete a new medical examination prior to re-applying for certification.¶
- (j) Individuals employed in a limited duration, administrative position, as described in OAR 259-008-0078, are exempt from the medical examination requirement.¶
- (98) Physical Standard Waivers.¶
- (a) An individual or department head may request a waiver of any physical standard in section (76) of this rule by:¶
- (A) Submitting a request to the Department in writing; and¶
- (B) Providing documentation or pertinent testimony that supports the physical standard waiver request.¶
- (C) If further clarification is needed, the Department may require additional documentation or testimony from the individual or department head requesting the physical standard waiver.¶
- (D) The requesting individual may be required to demonstrate the ability to perform the critical and essential job tasks.¶
- (E) If the Department finds that the physical standard waiver request would not prohibit the requesting individual's ability to successfully complete training and the performance of the critical and essential tasks, the waiver will be granted.¶
- (F) Any expense associated with providing physical standard waiver documentation or testimony will be the responsibility of the requesting individual or the requesting agency.¶
- (G) If an individual requests and is granted a physical standard waiver, but does not obtain employment within one

year from the date the waiver is granted, the waiver will be void.¶¶

(H) If the Department denies a request for a waiver of any physical standard in section (76) of this rule, the Department will issue Notice and proceed as provided in section (98)(b) of this rule.¶¶

(b) Contested Case Hearing Process for Denial of Physical Standard Waivers.¶¶

(A) Initiation of Proceedings: A contested case notice will be prepared when the Department denies a physical standard waiver after determining that factual data meeting the statutory and administrative rule requirements justifies the denial.¶¶

(B) Contested Case Notice: All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.¶¶

(C) Response Time: A party who has been served with a "Contested Case Notice of Intent to Deny a Waiver" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.¶¶

(D) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver pursuant to OAR 137-003-0672.¶¶

(E) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.¶¶

(F) Proposed and Final Orders: In cases where a hearing was requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

Statutory/Other Authority: ORS 181A.410, ORS 183.341

Statutes/Other Implemented: ORS 181A.410, ORS 183.341

AMEND: 259-008-0070

NOTICE FILED DATES: 05/29/2019, 07/12/2019, 12/19/2019

RULE SUMMARY: OAR 259-008-0070 is the rule that outlines the grounds for denial and revocation. This rule change amends those grounds and transfers procedures for review of a professional standards case to separate purpose specific rules under newly adopted rule numbers. OAR 259-008-0070 will be renumbered to OAR 259-008-0300 so that the rules will remain together numerically.

The standards that have been amended are changes that were recommended by the Criminal Justice Moral Fitness Workgroup; reviewed by the Telecommunications (TPC), Corrections (CPC) and Police (PPC) Policy Committees; and approved by the Board on Public Safety Standards and Training. The changes are briefly outlined below.

Section (2) defines grounds for mandatory denial and revocation including the definition used for "Discharge for Cause" in subsection (2)(e). The definition of discharge for cause is amended to include destruction of evidence and to delete the category titles. The language maintains the behavior that was defined with the category titles.

Section (3) defines grounds for discretionary denial and revocation including the moral fitness violation categories and descriptions in subsection (3)(a). This rule change includes minor edits such as word order and punctuation for Dishonesty, Misuse of Authority and Misconduct. Misconduct was further revised by a title change - it was previously titled Gross Misconduct. The category of Disregard for the Rights of Others was deleted.

CHANGES TO RULE:

259-008-0070

Denial/Suspension/RevoGrounds for Denial, Revocation or Emergency Suspension of Public Safety Professional Certifications ¶¶

~~(1) It is the responsibility of the Board to set the minimum standards, and of the Department to uphold them, to ensure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public nor respect of the profession is compromised.¶¶~~

~~(2) Mandatory Grounds for Denying or Revoking Certifications of a Public Safety Professional.¶¶~~

~~(a) The Department must deny or revoke the certifications of any public safety professional after written Notice, and a hearing if requested, based upon a finding that:¶¶~~

~~(A) The public safety professional has been discharged for cause from employment as a public safety professional;¶¶~~

~~(i) For the purposes of this rule, "discharged for cause" means an employer initiated termination of employment as a public safety professional for conduct that falls within any of the following categories and that occurred while acting under the color of office:¶¶~~

~~(I) Deliberately obtaining false confessions;¶¶~~

~~(II) Initiating false arrests;¶¶~~

~~(III) Creation and use of falsified evidence, including false testimony;¶¶~~

~~(IV) Intimidation: Includes wrongfully compelling an individual to abstain from doing, or to do, any act which the individual has a legal right to do or abstain from doing;¶¶~~

~~(V) Brutality: Includes the use of any force exceeding that reasonably necessary to accomplish a lawful enforcement purpose;¶¶~~

~~(VI) Corruption: Includes the abuse of a public safety professional's authority for personal gain, to gain advantage~~

for a public or private safety agency or to attempt or succeed in depriving another person or persons of their legal rights; or¶¶

(VII) Sexual abuse.¶¶

(ii) If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the public safety professional provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action, pending a final determination.¶¶

(B) The public safety professional has a conviction for an offense designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;¶¶

(C) The public safety professional has a conviction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug, except the Department may deny certification under section (4) of this rule for a criminal disposition for possession of less than one ounce of marijuana that occurred prior to July 1, 2015 and prior to public safety certification;¶¶

(D) The offense for which the public safety professional's conviction required registration as a sex offender; or¶¶

(E) The offense for which the public safety professional's conviction involves any elements of domestic violence as defined in ORS 135.230 or the offense involves elements of abuse as defined in ORS 107.705 against a child who is under 18 years of age and is a natural child, adopted child, stepchild, a child under the guardianship of, or a child who regularly resides or formerly resided in the same household as the public safety professional.¶¶

(b) The Department must take action on any conduct that has been determined to be a mandatory disqualifier regardless of when the conduct occurred unless the Department, or the Board, has previously reviewed the conduct and determined the conduct not to be disqualifying under a previous set of standards.¶¶

(c) Denial or revocation for mandatory grounds will be subject to the contested case procedure in section (7) of this rule.¶¶

(d) Any application for training or certification submitted by an individual whose certifications have been denied or revoked for mandatory grounds as defined in subsection (2)(a) of this rule will be denied pursuant to section (7) of this rule.¶¶

(3) Emergency Suspension: If, upon a review pursuant to subsection (4)(f) of this rule, the Policy Committee and Board find that there is a serious danger to public health and safety, the Department may issue an Emergency Suspension Order, pursuant to OAR 137-003-0560, immediately suspending a public safety professional's certifications.¶¶

(a) An Emergency Suspension Order will be served on the public safety professional, by the Department, following the contested case notice process outlined in section (7) of this rule.¶¶

(b) The Department may combine the hearing on the Emergency Suspension Order with any underlying proceeding affecting the certification of a public safety professional.¶¶

(c) A public safety professional, whose certifications have been suspended by an Emergency Suspension Order, is prohibited from performing the duties of a public safety professional beginning on the date the Emergency Suspension Order is served on the public safety professional.¶¶

(d) The emergency suspension will remain in effect until the issuance of a Final Order to revoke certifications or receipt of evidence provided to the Department that the affected public safety professional no longer poses a serious danger to public health and safety.¶¶

(4) Discretionary Grounds for Denying, Suspending or Revoking Certifications of a Public Safety Professional.¶¶

(a) The Department may deny, suspend or revoke the certifications of any public safety professional after written Notice, and a hearing if requested, based upon a finding that the public safety professional engaged in misconduct. For the purposes of this rule, misconduct is defined as:¶¶

(A) Conduct that resulted in a criminal disposition for any offense other than convictions constituting mandatory grounds as defined in subsection (2)(a) of this rule. For the purpose of this section, a criminal disposition includes a conviction, violation, adjudication, civil compromise, an entered plea of guilty or no contest, or a finding of guilty except for insanity or its equivalent, for any offense punishable as a crime in this state or any other jurisdiction.¶¶

(B) Conduct that includes any of the elements identified in subsection (4)(f) of this rule;¶¶

- (C) Conduct that fails to meet the applicable standards as described in OAR Chapter 259 Division 012, or any of the administrative rules promulgated under ORS 181A.410;¶
- (D) Falsification of any information on any documents submitted to the Board or the Department; or¶
- (E) A police officer's failure to attend at least one session with a mental health professional within six months after the police officer was involved in using deadly physical force, as required by ORS 181A.790.¶
- (b) Standards and Certification will initiate a professional standards case upon receipt or discovery of information that would lead an objectively reasonable person to conclude that the public safety professional has violated Board established employment, training, or certification standards for Oregon public safety professionals. For the purpose of this rule, receipt of information may include, but is not limited to:¶
- (A) Notification of an arrest, a criminal citation to appear or its equivalent, a conviction, or any other criminal disposition, of a certified public safety professional or a public safety professional who is employed in a certifiable position but is not yet certified;¶
- (B) Notification of a non-voluntary separation of employment from a certifiable position; or¶
- (C) Any complaint submitted to the Department alleging that a public safety professional has potentially engaged in misconduct as defined in subsection (4)(a) of this rule.¶
- (c) All complaints will be reviewed by Standards and Certification to determine if the allegations, if founded, may violate the statutory and administrative rule requirements for employment and certification of a public safety professional. Complaints determined to fall outside of DPSST's jurisdiction will be administratively closed.¶
- (A) Standards and Certification will work with the public safety professional's employing agency upon receipt of a complaint containing allegations that a public safety professional has engaged in conduct that, if proven, may violate the statutory and administrative rule requirements for employment and certification of a public safety professional to determine if there is a reasonable basis to proceed with a professional standards case. Standards and Certification will defer any further investigation, discipline or remedy to the employing agency when a complaint is received against a public safety professional who is currently employed. The employing agency will be required to respond to Standards and Certification that the allegations made in the complaint have been reviewed and handled in an appropriate manner as dictated by the employing agency.¶
- (B) Complaints made against a certified public safety professional who is not currently employed in a certifiable position; complaints made against an employed public safety professional whose employing agency is non-responsive to Standards and Certification's requests for further review; or complaints made against an elected official serving as a public safety professional that may fall within the Department's statutory and administrative rule requirements for denial, suspension or revocation may be presented to a Policy Committee for disposition, up to and including initiating a Standards and Certification investigation. Prior to presenting a complaint to a Policy Committee, the Department will notify the affected person and provide the affected person the opportunity to submit written mitigation or rebuttal for the Policy Committee's consideration.¶
- (d) The following are guidelines for Standards and Certification to administratively close a professional standards case involving a criminal disposition for any offense other than convictions constituting mandatory grounds as defined in subsection (2)(a) of this rule:¶
- (A) Standards and Certification will administratively close any case involving a criminal disposition that occurred prior to January 1, 2001.¶
- (B) Standards and Certification will administratively close any case based on a criminal disposition that was reviewed by Standards and Certification or the Board under the standards in place prior to August 1, 2017 and determined to not meet the statutory and administrative rule requirements for denial, suspension or revocation under previous administrative rules.¶
- (C) Standards and Certification will administratively close any deferred adjudications in which the only charge is for ORS 813.010 (Driving Under the Influence of Intoxicants) upon confirmation of dismissal.¶
- (D) Nothing in this rule precludes a Policy Committee or the Board from considering previous criminal dispositions as an aggravating factor in a separate disciplinary investigation.¶
- (e) Review of a Professional Standards Case by Standards and Certification:¶
- (A) When Standards and Certification receives factual information from any source, Standards and Certification

will review the information to determine if the conduct may meet statutory and administrative rule requirements for denial, suspension or revocation by initiating a professional standards case.¶¶

(B) Standards and Certification may recommend administrative closure of a professional standards case to the Policy Committee if Standards and Certification determines that the conduct being reviewed does not meet the statutory and administrative rule requirements for denial, suspension or revocation or the conduct being reviewed involves one or more criminal dispositions that meet all of the following criteria:¶¶

(i) The criminal dispositions occurred five years or more prior to the date the public safety professional began employment as a public safety professional;¶¶

(ii) The criminal dispositions are the result of one criminal act arising out of one set of facts and circumstances which is the only criminal incident in the public safety professional's history;¶¶

(iii) The conduct involved did not include dishonesty or deceit;¶¶

(iv) The public safety professional has completed any court-ordered form of supervision; and¶¶

(v) The public safety professional does not have any unpaid restitution, court fines or fees resulting from the criminal disposition.¶¶

(C) If Standards and Certification determines that the conduct being reviewed may meet the statutory and administrative rule requirements for denial, suspension or revocation, but is not supported by adequate factual information, Standards and Certification may request further information from the employer pursuant to ORS 181A.670 or conduct its own investigation of the matter.¶¶

(D) If Standards and Certification determines that a public safety professional may have engaged in misconduct listed in subsection (4)(a) of this rule, the case may be submitted to the Board, through a Policy Committee.¶¶

(E) When Standards and Certification submits a professional standards case to a Policy Committee, a notification will be sent to the affected public safety professional by Standards and Certification. The notification will include the deadlines for the affected public safety professional to provide evidence of factors that may support mitigation. A public safety professional may provide mitigation evidence by one or both of the following:¶¶

(i) Submitting documents or written statements as supporting evidence for mitigation of the conduct under review to Standards and Certification for Policy Committee and Board consideration.¶¶

(ii) Arranging with Standards and Certification to attend the Policy Committee and present a verbal statement. Verbal statements are limited to a maximum of five minutes and must be presented, in person, by the affected public safety professional, or the representative of their choice.¶¶

(F) In professional standards cases where there has been an arbitrator's opinion related to the public safety professional's employment, Standards and Certification will proceed as follows:¶¶

(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, Standards and Certification will proceed as identified in subsections (4)(e) and (f) of this rule.¶¶

(ii) If the arbitrator has ordered employment reinstatement after a non-voluntary separation of employment without a finding related to whether the misconduct occurred, Standards and Certification will proceed as identified in subsections (4)(e) and (f) of this rule.¶¶

(iii) If the arbitrator's opinion finds that underlying facts did not support the allegations of misconduct, Standards and Certification will recommend administrative closure of the professional standards case, unless Standards and Certification receives or discovers additional information that would lead an objectively reasonable person to conclude that the public safety professional has violated Board established employment, training, or certification standards for Oregon public safety professionals.¶¶

(f) Professional Standards Cases submitted to the Board through a Policy Committee. The Policy Committee in the relevant discipline will review the case for the purpose of recommending to the Board whether or not there is a reasonable basis to deny, suspend or revoke certifications and to recommend a period of ineligibility.¶¶

(A) In order to determine whether or not the conduct engaged in by a public safety professional demonstrates a lack of moral fitness, the Board and a Policy Committee will review the misconduct for the following elements:¶¶

(i) Dishonesty: Includes conduct that is knowingly dishonest and includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth;¶¶

(ii) Disregard for the Rights of Others: Includes conduct that knowingly violates the constitutional or civil rights of

others;¶

(iii) Misuse of Authority: Includes the use or attempt to use one's position to obtain a benefit, avoid a detriment, or harm another while acting under the color of office; or¶

(iv) Gross Misconduct: Includes behavior that deliberately or recklessly disregards the law, threatens persons or property or the efficient operations of any agency.¶

(B) The Board and a Policy Committee must also consider, at a minimum, the following mitigating and aggravating circumstances:¶

(i) Whether the conduct occurred before, during or after the public safety professional's employment in public safety;¶

(ii) Whether the public safety professional engaged in the same conduct more than once and over what period of time;¶

(iii) Whether the conduct occurred while the public safety professional was acting in the official capacity of a public safety professional;¶

(iv) Whether the public safety professional has been reviewed by a Policy Committee or Board for prior conduct;¶

(v) Whether the conduct involved any elements of domestic violence as defined in ORS 135.230 or child abuse as defined in ORS 419B.005 where the child involved is under 18 years of age and is a natural child, adopted child, stepchild, a child under the guardianship of or a child dwelling in the same household as the public safety professional;¶

(vi) Whether the public safety professional self-reported the conduct;¶

(vii) Whether the conduct resulted in a criminal disposition and if so:¶

(I) The classification of the crime or violation for which the public safety professional was convicted, adjudicated, plead guilty or no contest to, or was found guilty except or insanity or its equivalent;¶

(II) The date of the criminal disposition;¶

(III) The age of the public safety professional at the time of the offense that resulted in the criminal disposition;¶

(IV) Whether the public safety professional was sentenced to prison, jail time or probation;¶

(V) Whether restitution was ordered and all court ordered obligations have been met;¶

(VI) Whether the public safety professional has more than one criminal disposition; and¶

(viii) Documents and statements provided for mitigation by the public safety professional when provided in accordance with paragraph (4)(e)(E) of this rule.¶

(C) Employment and Certification Ineligibility Period:¶

(i) Where there is a reasonable basis to deny, suspend or revoke an individual or a public safety professional, the Board and a Policy Committee must consider how long the individual or public safety professional will be ineligible for public safety certifications and employment in a certifiable public safety professional position based on the totality of the professional standards case which includes review of the misconduct and factors supporting aggravation or mitigation pursuant to paragraphs (4)(f)(A) and (B) of this rule.¶

(ii) The minimum and maximum periods of ineligibility are identified for each element as follows:¶

(I) Dishonesty: Ineligibility period: 10 years to lifetime;¶

(II) Disregard for the Rights of Others: Ineligibility period: three to 15 years;¶

(III) Misuse of Authority: Ineligibility period: three to 10 years;¶

(IV) Gross Misconduct: Ineligibility period: three to 10 years;¶

(iii) An individual whose certifications have been denied, suspended or revoked is prohibited from performing the duties of a certifiable public safety professional.¶

(iv) The minimum period of ineligibility will be included in any Final Order of the Department.¶

(v) The ineligibility period will cease when the applicable timeframe stated in the Final Order has been satisfied.¶

(vi) If the public safety professional is determined to be ineligible because of a criminal disposition, the first day of the ineligibility period is the date that the judgment of criminal disposition was entered.¶

(vii) If the public safety professional is determined to be ineligible due to a non-voluntary separation from employment as a public safety professional, the first day of the ineligibility period is the date of the separation from a certifiable position as reported to Standards and Certification pursuant to OAR 259-008-0020.¶

(D) The Board will review the professional standards case, aggravation and mitigation, and the Policy Committee's recommendations to determine whether or not to approve all or part of the Policy Committee's recommendations.¶¶

(i) Upon initial consideration, the Board may either approve the recommendation in its entirety or defer a decision and return the recommendation to the originating Policy Committee.¶¶

(ii) The Board may approve a Policy Committee recommendation by a majority vote of the members present. Where the Policy Committee's recommendation is to deny, suspend or revoke certification, the Notice of Intent issued under section (7) of this rule will remain in effect.¶¶

(iii) The Board, by a majority vote of the members present, may defer its decision and return the recommendation with instructions to the Policy Committee to reconsider the recommendation. The Board may also instruct the Department to obtain further information and revise the case for a second review and recommendation by the originating policy committee. The Board may return a recommendation only once.¶¶

(I) The Policy Committee must reconsider its recommendation, along with the Board's instructions and any new information the Department submits to the Policy Committee.¶¶

(II) The Policy Committee will submit a revised or renewed recommendation to the Board.¶¶

(iv) The Board will review the revised or renewed recommendation to decide whether to approve all or part of the recommendation. The Board may approve the recommendation by a majority vote of the members present and may disapprove the recommendation by a two-thirds vote of the total voting members. A failure to achieve a two-thirds vote to disapprove a recommendation will result in the approval of the recommendation.¶¶

(I) When the Board disapproves a recommendation that proposes denial, suspension or revocation of certification, the Board will instruct the Department to withdraw the Notice of Intent issued under section (7) of this rule.¶¶

(II) When the Board disapproves a recommendation that proposes no action be taken to deny, suspend or revoke certification, the Board must make its own determination as to whether the individual or public safety professional has engaged in conduct that violates the discretionary grounds for denial, suspension or revocation of certification and must consider the elements of the misconduct, aggravation and mitigation, and ineligibility periods as outlined in paragraphs (A), (B) and (C) above.¶¶

(III) The Board may identify their own findings or adopt all or any part of the Policy Committee's findings as the basis for the determination.¶¶

(IV) If the Board proposes to take action that is adverse to an individual or public safety professional, the Department will issue a contested case notice pursuant to section (7) of this rule. Where the Board does not propose adverse action, the issued Notice of Intent will be withdrawn and the professional standards case will be closed.¶¶

(g) The Board's action to deny, suspend or revoke certifications will be subject to the contested case procedure described in section (7) of this rule.¶¶

(h) Denial of Certifications. If the individual is determined to be ineligible for public safety certifications the individual's certification will be denied for the ineligibility period as approved by the Board. Denial of certification based on an application may be combined with the suspension or revocation of all public safety professional certifications.¶¶

(i) Suspension of Certifications. If the public safety professional is determined to be ineligible for public safety certifications and employment in a certifiable public safety professional position for a period of time between three to five years, the public safety professional's certifications will be suspended for the ineligibility period as approved by the Board.¶¶

(j) Revocation of Certifications. If the public safety professional is determined to be ineligible for public safety certifications and employment in a certifiable public safety professional position for a period of time greater than five years, the public safety professional's certifications will be revoked and the public safety professional will be ineligible for certification for the ineligibility period as approved by the Board.¶¶

(k) Eligibility for Certifications after Satisfying an Ineligibility Period:¶¶

(A) An individual whose certifications were denied, suspended or revoked is prohibited from performing the duties of a certifiable public safety professional until the ineligibility period stated in the Final Order has been satisfied.¶¶

- (B) In order to be eligible for the award of certifications after satisfying an ineligibility period, the public safety professional must meet all of the minimum requirements for employment, training and certification as described in OAR Chapter 259 Division 008.¶¶
- (C) Any application for training or certification submitted by an individual whose ineligibility period has not been satisfied or whose certifications have been denied or revoked for misconduct that was determined, as approved by the Board, to include the element of dishonesty and determined to have a lifetime ineligibility period, will be denied pursuant to section (7) of this rule.¶¶
- (5) Scope of Suspension or Revocation. Whenever the Department suspends or revokes the certifications of any public safety professional under the provisions of OAR 259-008-0070, the suspension or revocation will encompass all public safety professional and instructor certifications, subject to these administrative rules, the Department has issued to that person.¶¶
- (6) A public safety professional may request the Department accept the surrender of the individual's public safety certifications.¶¶
- (a) In considering whether to accept the request to surrender public safety certifications, Standards and Certification may request further information from the employer pursuant to ORS 181A.670 or conduct its own investigation to determine if any minimum standards for certification have been violated and proceed pursuant to this rule.¶¶
- (b) If an administrative proceeding has commenced pursuant to subsection (7) of this rule, the Department may, in its discretion, withdraw its Contested Case Notice of Intent and accept the individual's surrender of the public safety certifications.¶¶
- (c) The public safety professional will remain certified until the Department accepts the surrender.¶¶
- (d) Once the surrender has been accepted by the Department, the individual may no longer perform the duties of a certifiable public safety professional.¶¶
- (7) Initiation of Proceedings: Upon determination to proceed with denial, suspension or revocation, a Contested Case Notice will be prepared and served on the public safety professional by the Department.¶¶
- (a) Contested Case Notice:¶¶
- (A) All Contested Case Notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.¶¶
- (B) In discretionary cases heard by a Policy Committee, the Contested Case Notice will be served on the public safety professional prior to Board review.¶¶
- (b) Response Time:¶¶
- (A) A party who has been served with an Emergency Suspension Order has 90 days from the date of mailing or personal service of the Order in which to file a written request for a hearing with the Department.¶¶
- (B) A party who has been served with a Contested Case Notice of Intent to Deny Certification has 60 days from the date of mailing or personal service of the Notice in which to file a written request for a hearing with the Department.¶¶
- (C) A party who has been served with a Contested Case Notice of Intent to Revoke Certification has 20 days from the date of mailing or personal service of the Notice in which to file a written request for hearing with the Department.¶¶
- (D) A party who has been served with a Contested Case Notice of Intent to Suspend Certification has 20 days from the date of mailing or personal service of the Notice in which to file a written request for a hearing with the Department.¶¶
- (c) Default Orders:¶¶
- (A) If a timely request for a hearing is not received, the Contested Case Notice will become a Final Order denying, suspending or revoking certification pursuant to OAR 137-003-0672.¶¶
- (B) If a timely request for a hearing is not received in cases heard by a Policy Committee, the Contested Case Notice will become a Final Order denying, suspending or revoking certification pursuant to OAR 137-003-0672, pending Board affirmation.¶¶
- (d) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the

Office of Administrative Hearings in accordance with OAR 137-003-0515.¶

(e) Proposed and Final Orders:¶

(A) In cases in which a hearing is requested, Proposed Orders, Exceptions, and Final Orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.¶

(B) Department-proposed amendments to a Proposed Order issued by an Administrative Law Judge in a case that was originally reviewed by a Policy Committee and the Board must be considered by the Policy Committee before a Final Order can be issued.¶

(C) The administrative law judge presiding at a contested case hearing may not adjust the ineligibility period determined by the Board under section (4)(f) of this rule.¶

(f) The Department may enter a Final Order permanently revoking the certifications of a public safety professional upon the individual's withdrawal of a request for hearing and written agreement to accept the Department's permanent revocation of all public safety certifications. If the public safety professional's certifications are revoked pursuant to this subsection, the individual is permanently ineligible for certification as a public safety professional. The Department will deny any application that the individual submits for certification as a public safety professional.¶

(g) Appeal Procedure. A public safety professional, aggrieved by the findings and an Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department. 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 that the conduct of a public safety professional or an applicant does not reflect adversely on the public safety profession. The Board finds by adopting this rule that a violation of these standards is substantially related to the duties performed by a certified public safety professional.¶

(2) Mandatory Denial or Revocation of a Public Safety Professional's Certifications. The Department must deny or revoke a public safety professional's certifications based upon a finding that:¶

(a) The public safety professional has a conviction for any offense designated under the law of the jurisdiction where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;¶

(b) The public safety professional has a conviction in any jurisdiction for any offense involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug, except for criminal dispositions involving use or possession of marijuana which are reviewed as discretionary cases under section (3) of this rule;¶

(c) The public safety professional has a conviction in any jurisdiction for any offense involving domestic violence. For the purposes of this rule, domestic violence includes abuse of a child, and the term "domestic violence" has the meaning given by ORS 135.230, the term "abuse" has the meaning given by ORS 107.705, and the term "child" means a child who is under 18 years of age and is a natural child, adopted child, stepchild, a child under the guardianship of, or a child who regularly resides or formerly resided in the same household as the public safety professional;¶

(d) The public safety professional is a sex offender pursuant to ORS 163A.005(6); or¶

(e) The public safety professional has been discharged for cause from employment as a public safety professional. For the purposes of this rule, "for cause" means intentional conduct performed under the color of office to:¶

(A) Obtain false confessions;¶

(B) Make false arrests;¶

(C) Create or use falsified evidence, including false testimony, or to destroy evidence to create a false impression;¶

(D) Compel a person to abstain from doing, or to do, any act that the person has a legal right to do or abstain from doing;¶

(E) Deprive, or attempt to deprive, another person or persons of their legal rights; or¶

(F) Gain advantage for a public or private safety agency or for personal gain.¶

(3) Discretionary Denial or Revocation of a Public Safety Professional's Certifications.

(a) The Department may deny or revoke a public safety professional's certifications based upon a finding that the public safety professional engaged in conduct that includes any or all of the following elements:

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

(B) Misuse of Authority. Misuse of Authority is intentional conduct that includes the use or attempted use of one's position or authority as a public safety professional to obtain a benefit, avoid a detriment or harm another; or

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

(b) For the purposes of this rule, conduct subject to discretionary review includes, but is not limited to:

(A) A criminal disposition when the criminal disposition is not a conviction constituting mandatory grounds as defined in section (2) of this rule;

(B) Conduct related to an arrest, a criminal citation to appear or its equivalent, or a criminal disposition;

(C) Conduct related to circumstances concurrent to a separation of employment from a certifiable position such as, but not limited to, investigation, settlement agreement or allegations of misconduct;

(D) Conduct that violates the standards of student conduct defined in OAR 259-012-0010;

(E) Falsification of any information on any documents submitted to the Board or the Department; or

(F) Conduct identified through receipt or discovery of information that would lead an objectively reasonable person to conclude that the public safety professional violated Board established employment, training, or certification standards for public safety professionals.

(c) Review of discretionary criminal dispositions applies to criminal dispositions that occurred on or after January 1, 2001. The Department will not open a case to review criminal dispositions that occurred prior to January 1, 2001.

(4) The Department will not open a case on a criminal disposition or conduct that was previously reviewed by the Department, a Policy Committee or the Board and determined not to violate standards for public safety professional certification or resulted in no action to deny or revoke certification using the administrative rules in effect at the time of the review.

(a) Nothing in this rule precludes the Department from opening a case upon discovery of additional mandatory or discretionary grounds for denial or revocation.

(b) Nothing in this rule precludes the Department, a Policy Committee or the Board from considering previous criminal dispositions or conduct as an aggravating circumstance in a separate discretionary case review.

(5) The moral fitness standards defined in administrative rule in effect on the date the Department or the Board determined that the applicant or public safety professional was unfit for certification will continue to apply until the Final Order has been issued and all appeal rights have been exhausted regardless of whether the moral fitness standards have been subsequently amended or repealed.

(6) Emergency Suspension. The Department must issue an Emergency Suspension Order immediately suspending a public safety professional's certifications when a Policy Committee, the Board or the Board's Executive Committee finds that there is a serious danger to public health and safety.

(7) Any Board or Department action to deny, revoke or emergency suspend a public safety professional's certifications will be administered in accordance with OAR 259-008-0300 through OAR 259-008-0340 and the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

Statutory/Other Authority: ORS 181A.410, ORS 183.341, ORS 181A.640

Statutes/Other Implemented: ORS 181A.410, ORS 181A.630, ORS 181A.640, ORS 181A.650, ORS 183.341

ADOPT: 259-008-0310

NOTICE FILED DATES: 05/29/2019, 07/12/2019, 12/19/2019

RULE SUMMARY: OAR 259-008-0310 is adopted to transfer the processes for review of a professional standards case to a separate, purpose specific rule. The processes were previously found under OAR 259-008-0070.

The standards or processes that have been amended are changes that were recommended by the Criminal Justice Moral Fitness Workgroup; reviewed by the Telecommunications (TPC), Corrections (CPC) and Police (PPC) Policy Committees; and approved by the Board on Public Safety Standards and Training. The changes are briefly outlined below.

Section (3) - Addresses when a case will be reviewed for cases where the individual has not yet been certified and is no longer employed as a public safety professional. If the individual returns to employment as a public safety professional, they will again be subject to the certification and moral fitness standards and the case will be reviewed after re-employment to determine fitness for certification.

Section (6) - Adds process language outlining Policy Committee review of a recommendation from DPSST staff to administratively close a professional standards case. The additional language represents the current process followed by the Department and the Policy Committees. The intent to adding the process to rule is to provide a clear outline and expectation that is accessible to anyone.

Section (10) - Includes simplified language reflecting the Policy Committee case review process. Through this rule change the predetermined list of circumstances that must be considered in every case as either aggravation or mitigation has been deleted. The Policy Committee case review process maintains that the Policy Committee will identify and weigh aggravating and mitigating circumstances when determining the impact that the person's conduct has on their fitness for certification. The rule still includes language that provides general interpretation of what is considered as aggravation and mitigation.

CHANGES TO RULE:

259-008-0310

Denial/Revocation - Initiation and Review of a Professional Standards Case

(1) When the Department receives information from any source that a certifiable public safety professional or an applicant may not meet the established standards for public safety professionals, the Department will review the information to determine if substantial evidence exists to support denial, revocation or emergency suspension of certifications under the statutory and administrative rule requirements for public safety professional certification.

¶

(2) In professional standards cases where the Department has determined that the conduct being reviewed violates the moral fitness standards established by the Board as mandatory grounds for denial or revocation as defined in OAR 259-008-0300(2), the Department will administratively process the denial or revocation.¶

(3) The Department will defer review of professional standards cases for individuals who have not been certified and are not currently employed as a public safety professional until the individual is re-employed as a certifiable public safety professional except when the Department has the authority to proceed pursuant to ORS 181A.640

(9).¶

(4) The Department will administratively close discretionary professional standards cases for deferred

adjudications in which the only charge is for ORS 813.010 (Driving Under the Influence of Intoxicants) upon confirmation of dismissal.

(5) The Department may recommend administrative closure of a discretionary professional standards case to a Policy Committee under circumstances including but not limited to:

(a) Cases in which the Department determines that the conduct being reviewed does not meet the statutory and administrative rule requirements for denial or revocation; or

(b) Cases in which the conduct being reviewed involves one or more criminal dispositions and the conduct and criminal dispositions meet all of the following criteria:

(A) The criminal dispositions occurred five years or more prior to the date the public safety professional began employment as a certifiable public safety professional;

(B) The criminal dispositions are the result of one criminal act arising out of one set of facts and circumstances which is the only criminal incident in the public safety professional's history;

(C) The conduct involved did not include dishonesty or deceit;

(D) The public safety professional has completed any court-ordered form of supervision; and

(E) The public safety professional does not have any unpaid restitution, court fines or fees resulting from the criminal disposition.

(6) When the Department recommends administrative closure of a discretionary professional standards case to a Policy Committee, the Policy Committee must either approve or overturn the Department's recommendation.

(a) When the Policy Committee approves the recommendation for administrative closure, the Department will administratively close the professional standards case.

(b) When the Policy Committee overturns the recommendation for administrative closure, the Department will prepare the case for a complete review by the Policy Committee pursuant to sections (9) and (10) of this rule.

(7) In professional standards cases where the Department has determined that the conduct being reviewed may meet the statutory and administrative rule requirements for denial or revocation but is not supported by adequate factual information, the Department may request further information from the employer pursuant to ORS 181A.670 or conduct its own investigation of the matter.

(8) In professional standards cases where there has been an arbitrator's opinion related to the public safety professional's employment, the Department will proceed as follows:

(a) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the Department will proceed with review of the professional standards case pursuant to this rule.

(b) If the arbitrator has ordered employment reinstatement after a separation of employment without a finding related to whether the misconduct occurred, the Department will proceed with review of the professional standards case pursuant to this rule.

(c) If the arbitrator's opinion finds that underlying facts did not support the allegations of misconduct, the Department will recommend administrative closure of the professional standards case to a Policy Committee, unless the Department receives or discovers additional information that would lead an objectively reasonable person to conclude that the public safety professional has violated Board established employment, training, or certification standards for Oregon public safety professionals.

(9) When the Department submits a discretionary professional standards case to a Policy Committee, the Department will notify the public safety professional. The notification will include the deadlines for the public safety professional to provide evidence of factors that may support mitigation. A public safety professional may provide mitigation evidence by one or both of the following:

(a) Submitting documents or written statements as supporting evidence for mitigation of the conduct under review to the Department for Policy Committee and Board consideration.

(b) Arranging with the Department to attend a Policy Committee meeting and present a verbal statement. The verbal statement is limited to a maximum of five minutes and must be presented in person by the public safety professional or their representative.

(10) Policy Committee Review of Discretionary Professional Standards Cases.

(a) In professional standards cases where the Department has determined that the conduct being reviewed

violates the moral fitness standards established by the Board as discretionary grounds for denial or revocation as defined in OAR 259-008-0300(3), the Department will submit its findings to a Policy Committee for disposition. The Policy Committee's disposition will be submitted as a recommendation to the Board for approval.¶

(b) The Policy Committee will review the professional standards case to:¶

(A) Affirm, modify or negate the Department-identified moral fitness violations:¶

(B) Identify aggravating and mitigating circumstances unique to the professional standards case:¶

(C) Determine how the moral fitness violations and aggravating or mitigating circumstances impact the public safety professional's fitness for certification; and¶

(D) When recommending denial or revocation of public safety professional certifications, determine how long the individual should be ineligible for certification. ¶

(c) Aggravating and mitigating circumstances are conditions, factors or actions that increase or decrease the total impact that the identified moral fitness violation has on the public safety professional's fitness for certification.¶

(A) Aggravating circumstances generally increase the severity of the impact the moral fitness violation has on fitness for certification and may, in addition to the moral fitness violation, be grounds to deny or revoke certification. Aggravating circumstances may increase the recommended ineligibility period. Circumstances that may be considered aggravating include, but are not limited to, the degree of the criminal disposition, prior criminal dispositions or misconduct, lack of accountability, number of persons involved in the underlying conduct, number of separate incidents, passage of time from date of incident or incidents, or any other circumstance the Department or the Policy Committee consider aggravating given the specific issues in the case. ¶

(B) Mitigating circumstances do not excuse or justify the conduct, but generally decrease the severity of the impact the moral fitness violation has on fitness for certification and may decrease the recommended ineligibility period. Circumstances that may be considered mitigating include, but are not limited to, written letters of support, truthfulness, cooperation during the incident or investigation, or any other circumstance the Department or the Policy Committee consider mitigating given the specific issues in the case.¶

(d) The ineligibility period is the timeframe that the public safety professional or applicant is ineligible for public safety certifications and prohibited from performing the duties of a certifiable public safety professional as the result of the total impact of the moral fitness violations and the aggravating and mitigating circumstances on the public safety professional's fitness for certification.¶

(A) When the identified moral fitness violations include Dishonesty as defined in OAR 259-008-0300(3)(a)(A), the Policy Committee may recommend an ineligibility period from three years to lifetime.¶

(B) When the identified moral fitness violations do not include Dishonesty as defined in OAR 259-008-0300(3)(a)(A), the Policy Committee may recommend an ineligibility period from three years to ten years.¶

(11) Board Review of a Professional Standards Case. The Board will review the professional standards case, aggravation and mitigation, and the Policy Committee's recommendations to determine whether or not to approve all or part of the Policy Committee's recommendations.¶

(a) Upon initial consideration, the Board may either approve the recommendation in its entirety or defer a decision and return the recommendation to the Policy Committee.¶

(b) The Board may approve the Policy Committee recommendation by a majority vote of the members present.¶

(c) The Board, by a majority vote of the members present, may defer its decision and return the recommendation with instructions to the Policy Committee to reconsider the recommendation. The Board may also instruct the Department to obtain further information and revise the case for a second review and recommendation by the Policy Committee. The Board may return a recommendation only once.¶

(A) The Policy Committee must reconsider its recommendation, along with the Board's instructions and any new information the Department submits to the Policy Committee.¶

(B) The Policy Committee will submit a revised or renewed recommendation to the Board.¶

(d) The Board will review the revised or renewed recommendation to decide whether to approve all or part of the recommendation. The Board may approve the recommendation by a majority vote of the members present and may disapprove the recommendation by a two-thirds vote of the total voting members. A failure to achieve a two-thirds vote to disapprove a recommendation will result in the approval of the recommendation.¶

(A) When the Board disapproves a recommendation that proposes no action be taken to deny or revoke certification, the Board must make its own determination as to whether the public safety professional has engaged in conduct that violates the discretionary grounds for denial or revocation of certifications. The Board's review of the case must follow the process for Policy Committee review as outlined in section (10) of this rule.¶

(B) The Board may identify their own findings or adopt all or any part of the Policy Committee's findings as the basis for the determination.¶

(C) If the Board review results in a determination to deny or revoke public safety professional certifications, the Department will issue a Notice of Intent pursuant to OAR 259-008-0340. Where the Board review results in no action to deny or revoke public safety professional certifications, the issued Notice of Intent will be withdrawn and the professional standards case will be closed.

Statutory/Other Authority: ORS 181A.410, ORS 181A.640, ORS 183.341

Statutes/Other Implemented: ORS 181A.410, ORS 181A.640, ORS 181A.630, ORS 181A.650, ORS 183.341

ADOPT: 259-008-0320

NOTICE FILED DATES: 05/29/2019, 07/12/2019, 12/19/2019

RULE SUMMARY: OAR 259-008-0320 is adopted to transfer the scope of denial or revocation and eligibility for certification after a person is denied or revoked. While the majority of the interpretations for existing rule content have been carried over from OAR 259-008-0070, some of the rule language has been revised for simplification and readability while maintaining the original intent of the current rule language.

The standards or processes that have been amended are changes that were recommended by the Criminal Justice Moral Fitness Workgroup; reviewed by the Telecommunications (TPC), Corrections (CPC) and Police (PPC) Policy Committees; and approved by the Board on Public Safety Standards and Training. The changes are briefly outlined below.

Section (3) - The option to suspend certification for an ineligibility period that is less than 5 years is deleted. Regardless of the prescribed ineligibility period, the certification action will result in denial or revocation.

Section (4) - The first day of the ineligibility period for a discretionary denial/revocation is amended to reflect multiple scenarios. If the discretionary disqualifier is a pre-employment or post-employment criminal disposition, the effective date remains the date of the criminal disposition. If the discretionary disqualifier is a separation and the person has been separated for the entirety of the case, the effective date remains the date of separation. If the discretionary disqualifier does not result in a separation or the person becomes re-employed prior to the review of the case the effective date becomes the date the Board approves the denial/revocation.

CHANGES TO RULE:

259-008-0320

Scope of Denial/Revocation and Eligibility for Certification Following Denial/Revocation

(1) When the Department denies or revokes public safety professional certifications pursuant to OAR 259-008-0300 through OAR 259-008-0340, the denial or revocation will encompass all of the public safety professional certifications subject to OAR chapter 259 division 8.

(2) An individual denied or revoked for mandatory grounds is prohibited from performing the duties of a certifiable public safety professional and the individual is permanently ineligible for certification as a public safety professional.

(3) An individual denied or revoked for discretionary grounds is prohibited from performing the duties of a certifiable public safety professional and ineligible for new public safety professional certifications until the prescribed ineligibility period has been satisfied.

(4) The first day of a discretionary denial or revocation ineligibility period is determined by the following circumstances:

(a) When certifications are denied or revoked for a criminal disposition that resulted from conduct that occurred prior to or after separation from employment as a public safety professional, the first day of the ineligibility period is the date of the conviction or the plea of guilt for a deferred sentence or other criminal disposition. When there is more than one criminal disposition determined to be a moral fitness violation, the most recent disposition will be used to determine the first day of the ineligibility period.

(b) When certifications are denied or revoked for any moral fitness violation concurrent to a separation of employment as a public safety professional, the first day of the ineligibility period is the date of the separation from the certifiable position as reported to the Department pursuant to OAR 259-008-0020; or

(c) When certifications are denied or revoked for any moral fitness violation that occurred during employment as a public safety professional and the public safety professional is employed in a certifiable position at the time of the Board's review, the first day of the ineligibility period is the date that the Board makes the final determination to deny or revoke. Periods of separation from a certifiable position as a result of the moral fitness violation will be applied to the satisfaction of the ineligibility period.

(5) Any application for training or certification submitted by an individual whose ineligibility period has not been satisfied will be denied pursuant to OAR 259-008-0340.

(6) In order to be eligible for the issuance of new certifications after satisfying an ineligibility period, the individual must meet all of the minimum requirements for employment, training and certification as defined in OAR chapter 259 division 008.

Statutory/Other Authority: ORS 181A.410, ORS 181A.640, ORS 183.341

Statutes/Other Implemented: ORS 181A.410, ORS 181A.640, ORS 181A.630, ORS 181A.650, ORS 183.341

ADOPT: 259-008-0330

NOTICE FILED DATES: 05/29/2019, 07/12/2019, 12/19/2019

RULE SUMMARY: OAR 259-008-0330 is adopted to transfer the standards and procedures for surrendering public safety professional certifications to a separate, purpose specific rule as a part of the rule reorganization and simplification aspect of these rule changes and adoptions. While the new rule contains some minor revisions from the original content previously located in OAR 259-008-0070, the language in the newly adopted rule number does not include any changes to the existing intent.

CHANGES TO RULE:

259-008-0330

Surrendering Certifications

- (1) A public safety professional may request that the Department accept the surrender of their public safety certifications.¶
 - (2) In considering whether to accept the request to surrender public safety certifications, the Department may request further information from the present or prior employer pursuant to ORS 181A.670 or conduct its own investigation to determine if any minimum standards for certification have been violated and proceed with initiation and review of a professional standards case pursuant to OAR 259-008-0310.¶
 - (3) If an administrative proceeding has commenced pursuant to OAR 259-008-0340, the Department may, in its discretion, withdraw its Notice of Intent and accept the individual's surrender of the public safety certifications.¶
 - (4) The public safety professional will remain certified until the Department accepts the surrender.¶
 - (5) Once the surrender has been accepted by the Department, the individual may no longer perform the duties of a certifiable public safety professional.¶
 - (6) The Department will enter a Final Order permanently revoking the certifications of a public safety professional.¶
 - (7) An individual with public safety professional certifications revoked pursuant to this rule is permanently ineligible for certification as a public safety professional.
- Statutory/Other Authority: ORS 181A.410, ORS 181A.640, ORS 183.341
- Statutes/Other Implemented: ORS 181A.410, ORS 181A.640, ORS 181A.630, ORS 181A.650, ORS 183.341

ADOPT: 259-008-0340

NOTICE FILED DATES: 05/29/2019, 07/12/2019, 12/19/2019

RULE SUMMARY: OAR 259-008-0340 is adopted to transfer the Notice and Contested Case Procedures for denial or revocation of public safety professional certifications to a separate, purpose specific rule. The Board and the Department have adopted the Attorney General's Model Rules for Contested Case Procedures therefore, the timelines and notices that are outlined are predetermined by the Model Rules but included in the Board/DPSST rules for information and accessibility for anyone. As a result of the transfer of the language from OAR 259-008-0070 to OAR 259-008-0340, some of the rule language has been revised or reorganized for simplification and readability while maintaining the original intent of the current rule language.

CHANGES TO RULE:

259-008-0340

Issuance of Notice of Intent/Request for Hearing and Contested Case Procedures

(1) Upon a determination to proceed with an emergency suspension or a denial or revocation, the Department will prepare and serve a Notice of Intent on the individual or public safety professional.¶

(2) Response Time:¶

(a) A party who has been served with an Emergency Suspension Order has 90 days from the date of mailing or personal service of the Order to file a written request for a hearing with the Department.¶

(b) A party who has been served with a Notice of Intent to Deny Certification has 60 days from the date of mailing or personal service of the Notice to file a written request for a hearing with the Department.¶

(c) A party who has been served with a Notice of Intent to Revoke Certification has 20 days from the date of mailing or personal service of the Notice to file a written request for a hearing with the Department.¶

(3) Default Orders. If the Department does not receive a timely request for a hearing, the Notice of Intent will become a Final Order denying or revoking certification pursuant to OAR 137-003-0672.¶

(4) Hearing Request. If the Department receives a timely request for a hearing, it will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.¶

(5) Proposed and Final Orders. When a hearing is requested, Proposed Orders, Exceptions, and Final Orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.¶

(6) Notice and Hearing Procedures Specific to Professional Standards Cases.¶

(a) When a Policy Committee recommends denial or revocation of public safety professional certifications, the Department will serve the Notice of Intent on the individual or public safety professional prior to the Board's review.¶

(b) Department-proposed amendments to a Proposed Order issued by an Administrative Law Judge in a case that was originally reviewed by a Policy Committee and the Board must be considered by the Policy Committee and the Board before a Final Order can be issued.¶

(c) The administrative law judge presiding at a contested case hearing may not adjust the ineligibility period approved by the Board under OAR 259-008-0310.¶

(d) If the Department does not receive a timely request for a hearing in cases heard by a Policy Committee, the Notice of Intent will become a Final Order denying or revoking certification pursuant to OAR 137-003-0672 upon final approval by the Board.

Statutory/Other Authority: ORS 181A.410, ORS 181A.640, ORS 183.341

Statutes/Other Implemented: ORS 181A.410, ORS 181A.640, ORS 181A.630, ORS 181A.650, ORS 183.341

ADOPT: 259-008-0400

NOTICE FILED DATES: 05/29/2019, 07/12/2019, 12/19/2019

RULE SUMMARY: OAR 259-008-0400 is adopted to transfer the procedures for review of complaints the Department receives regarding public safety professionals to a separate, purpose specific rule. The majority of the existing rule content has been carried over from OAR 259-008-0070 with revisions for simplification and readability while maintaining the original intent of the current rule language. The standards or processes that have been added are changes that were recommended by the Criminal Justice Moral Fitness Workgroup; reviewed by the Telecommunications (TPC), Corrections (CPC) and Police (PPC) Policy Committees; and approved by the Board on Public Safety Standards and Training.

Changes to the standards and processes included the following:

Section (7) - In certain circumstances a complaint may need to be submitted to a Policy Committee for further review. This section added Department Staff discretion to review the mitigation that is received as referenced in section (6) in order to determine whether or not to submit the complaint to the Policy Committee for review.

Section (8) - Added process language outlining Policy Committee review of a complaint. The additional language represents the current process followed by the Department and the Policy Committees. The intent to adding the process to rule is to provide a clear outline and expectation that is accessible to anyone.

CHANGES TO RULE:

259-008-0400

Review of Complaints

- (1) The Department will review all complaints received to determine if the allegations contained in the complaint, if proven, would lead an objectively reasonable person to conclude that the public safety professional or applicant violated Board established employment, training, or certification standards for public safety professionals.¶
- (2) Complaints determined to be unrelated to the statutory and administrative rule requirements for public safety professional certification or complaints that fall outside of DPSST's statutory authority for other reasons will be closed and not reviewed for further action.¶
- (3) When a complaint against a currently employed public safety professional is for conduct that, if proven, may violate the statutory and administrative rule requirements for public safety professional certification, the Department will refer the complaint to the public safety professional's employing agency. ¶
 - (a) The Department will defer any further investigation, discipline or remedy to the employing agency.¶
 - (b) The employing agency will be required to respond to the Department that the allegations made in the complaint have been reviewed and handled in an appropriate manner as dictated by the employing agency.¶
 - (c) If the public safety professional's employing agency is non-responsive to the Department's requests for response, the Department may present the complaint to a Policy Committee for disposition.¶
- (4) When a complaint against a certified public safety professional who is not currently employed in a certifiable position is for conduct that, if proven, may violate the statutory and administrative rule requirements for public safety professional certification, the Department may present the complaint to a Policy Committee for disposition.¶
- (5) When a complaint against an elected official serving as a public safety professional is for conduct that, if proven, may violate the statutory and administrative rule requirements for public safety professional certification, the Department may present the complaint to a Policy Committee for disposition.¶

(6) Prior to presenting a complaint to a Policy Committee, the Department will notify the person against whom the complaint was made and provide that affected person the opportunity to submit written mitigation or rebuttal for consideration.¶¶

(7) The Department will review any mitigation or rebuttal submitted by the affected person in accordance with the notice provided by section (6) of this rule.¶¶

(a) Where the Department finds that the mitigation or rebuttal provides information that the conduct, even if proven, does not violate the statutory and administrative rule requirements for public safety professional certification or does not fall within the Department's statutory authority, the Department will close the complaint.¶¶

(b) Where the Department finds that the mitigation or rebuttal does not disprove or otherwise resolve the complaint, the Department will present the complaint to a Policy Committee for disposition.¶¶

(8) When a complaint is submitted to a Policy Committee, the Policy Committee will review the complaint and any mitigation or rebuttal submitted by the affected person to determine how to proceed with the complaint.¶¶

(a) Where the Policy Committee finds no basis for investigating the complaint further, the Department will close the complaint.¶¶

(b) Where the Policy Committee finds a basis for an investigation, the Policy Committee may direct the Department to conduct an investigation and present the complaint as a professional standards case to the Policy Committee for review pursuant to OAR 259-008-0310.

Statutory/Other Authority: ORS 181A.410

Statutes/Other Implemented: ORS 181A.410