



PERMANENT ADMINISTRATIVE ORDER

DPSST 19-2021

CHAPTER 259

DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

FILED

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FILING CAPTION: Clarifying amendments to the definition of discharge for cause relating to revocation of fire certifications.

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AMEND: 259-009-0120

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RULE SUMMARY: OAR 259-009-0120 defines the grounds for denial or revocation of fire service professional certifications.

This rule change implemented the following recommendations.

Section (2)(d) – replaced the phrase “under color of office” with language to clarify DPSST’s interpretation that discharge for cause applies to intentional conduct that the fire service professional engaged in while on-duty or performing the duties of a fire service professional.

Section (2)(d)(E) - corrected punctuation in the definition for Neglect of Duty.

CHANGES TO RULE:

259-009-0120

Grounds for Denial or Revocation ¶¶

(1) The Board recognizes the core values of integrity and professionalism as critical to upholding the public's trust in the certification of fire service professionals, protecting the public, and ensuring that the conduct of a certified fire service professional or an applicant does not reflect adversely on the fire service as a public safety profession. The Board finds by adopting this rule that a violation of these standards is substantially related to certification as a fire service professional and a violation of the core values of integrity and professionalism.¶¶

(2) The Department must deny or revoke a fire service professional's certifications based upon a finding that:¶¶

(a) The fire service professional has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state, would constitute a crime listed in 137.700;¶¶

(b) The fire service professional has a conviction in any jurisdiction for any offense involving a bias or hate crime;¶¶

(c) The fire service professional is a sex offender pursuant to ORS 163A.005 (6); or¶¶

(d) The fire service professional has been discharged for cause from employment as a fire service professional. For the purposes of this rule, "for cause" means engaging in intentional conduct performed under the color of

office while training, while on-duty or while performing the duties of a fire service professional that constitutes any of the following:¶

(A) Interference in a Fire Investigation: Includes the creation or use of falsified evidence, reports or records, and includes false testimony;¶

(B) Theft or Fraud: Includes theft of services or property, embezzlement, misuse of resources, or falsification of contracts, reports or records;¶

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

(D) Corruption: Includes the abuse of a fire service 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;¶

(E) Neglect of Duty: Includes ~~the an~~ intentional or reckless failure to perform any mandatory duty as required by law; knowingly performing an act which the fire service professional knows to be forbidden by law to perform, or behavior that endangers the health and safety of the employee or others;¶

(F) Cheating: Includes actual, intended, or attempted deception or dishonest action by a fire service professional in relation to the administration or documentation of any training, testing or certification;¶

(G) Discrimination: Discrimination includes a course of conduct or a single egregious act that evidences discrimination based on the fire service professional's perception of a person's race, color, national origin, sex, religion, age, disability or any other protected class as defined by state or federal law;¶

(H) Harassment, including Sexual Harassment: Includes unwanted, unwelcomed and uninvited behavior that demeans, threatens or offends the victim and results in a hostile environment for the victim;¶

(I) Abuse, including Sexual Abuse: Includes physical or mental maltreatment that results in mental, emotional, sexual or physical injury; or¶

(J) Use of illegal drugs.¶

(3) The Department may deny or revoke a fire service professional's certifications based upon a finding that:¶

(a) The fire service professional falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;¶

(b)(A) The fire service professional has a conviction for any offense, other than the mandatory grounds defined in section (2) of this rule, for which a maximum term of imprisonment of more than one year may be imposed under the law of the jurisdiction where the conviction occurred; and¶

(B) The conviction occurred while certified or within the 10 years prior to application for certification; or¶

(c)(A) The fire service professional has a conviction for any offense, other than the mandatory grounds defined in section (2) of this rule, for which a term of imprisonment of more than 30 days but not more than 364 days may be imposed under the law of the jurisdiction where the conviction occurred;¶

(B) The conviction occurred while certified or within the 5 years prior to application for certification; and¶

(C) The crime or the underlying conduct includes dishonesty or deceit, a sexual offense, a drug offense, discrimination, destruction of property, a crime against a public agency, illegal use or possession of a deadly weapon, or violence, abuse or neglect against a person or animal.¶

(4) The certification standards defined in administrative rule in effect on the date the Department or the Board determined that the fire service professional violated the standards for certification will continue to apply until the Final Order has been issued and all appeal rights have been exhausted regardless of whether the certification standards have been subsequently amended or repealed.¶

(5) Any Board or Department action to deny or revoke a fire service professional's certifications will be administered in accordance with OAR 259-009-0115 through OAR 259-009-0130 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

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