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RULES:

259-008-0290, 259-008-0300, 259-008-0310

AMEND: 259-008-0290

NOTICE FILED DATE: 11/25/2020

RULE SUMMARY: This rule applies to the review of discretionary criminal dispositions that occurred prior to employment in public safety when those criminal dispositions violate the Board's discretionary standards. These cases are reviewed by the Applicant Review Committee.

This rule change adds discriminatory conduct to the definition of Gross Misconduct and includes a definition for discriminatory conduct. [259-008-0290 (4)(b)(D)]

CHANGES TO RULE:

259-008-0290

Denial of Public Safety Professional Certifications for Pre-employment Criminal Dispositions

(1) The Board has established moral fitness standards that it has determined are critical to upholding the public's trust in the public safety profession, protecting the public and ensuring 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) This rule defines the grounds for denial and processes for review of professional standards cases where the public safety professional is a new applicant for DPSST training and certification and the professional standards case is based on a criminal disposition that occurred prior to employment in public safety. For the purposes of this rule:¶

(a) An applicant is an employed public safety professional applying for DPSST training or certification; and¶

(b) Pre-employment criminal dispositions are criminal dispositions that occurred prior to any employment in any

jurisdiction as a police officer, reserve officer, corrections officer, parole and probation officer, regulatory specialist, telecommunicator or emergency medical dispatcher as those terms are defined in OAR 259-008-0005.¶

(3) Mandatory Grounds for Denial. The Department must deny an applicant's certification based upon a finding that the applicant has a conviction for an offense constituting mandatory grounds for denial of public safety certification as defined in OAR 259-008-0300(2).¶

(4) Discretionary Grounds for Denial. The Department may deny an applicant's certification based upon a finding that the applicant has a pre-employment criminal disposition, other than a conviction constituting mandatory grounds for denial as defined in OAR 259-008-0300(2), in which the criminal disposition or the underlying conduct include either or both of the following elements:¶

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

(b) Gross Misconduct. Gross Misconduct includes:¶

(A) Deliberate or reckless conduct that caused or could have caused significant harm to persons or property;¶

(B) Conduct that includes violence against another person; ~~or~~¶

(C) Conduct resulting in a criminal disposition for a sex-related offense; or ¶

(D) Discriminatory conduct. For the purposes of this rule, discriminatory conduct includes a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the applicant cannot perform the duties of office in a fair and impartial manner.¶

(5) The Department will not open a discretionary case under this rule for the following:¶

(a) A criminal disposition that occurred prior to January 1, 2001; or¶

(b) A criminal disposition for a successfully completed deferred adjudication or diversion in which the only charge is for driving under the influence of intoxicants. For the purposes of this rule the term "intoxicant" includes intoxicating liquor, cannabis, a controlled substance, an inhalant or any combination of these intoxicants.¶

(6) The Board delegates the review of discretionary professional standards cases for an applicant's pre-employment criminal dispositions to the Department and the Applicant Review Committee.¶

(a) The Department will review an applicant's pre-employment criminal disposition and open a case when the criminal disposition or underlying conduct may constitute discretionary grounds for denial as defined in section (4) of this rule.¶

(b) The Applicant Review Committee will review discretionary cases opened by the Department and determine whether the applicant is denied or not denied certification for the discretionary grounds defined in section (4) of this rule.¶

(7) Prior to submitting a discretionary case to the Applicant Review Committee, the Department will notify the applicant. The notification will include the deadlines for the applicant to provide evidence of factors that may support mitigation. The applicant 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 the Applicant Review Committee to consider.¶

(b) Arranging with the Department to attend an Applicant Review 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 applicant or their representative.¶

(8) The Applicant Review Committee will review the case to:¶

(a) Affirm, modify or negate the Department-identified moral fitness violations;¶

(b) Identify aggravating and mitigating circumstances unique to the case;¶

(c) Determine how the moral fitness violations and aggravating or mitigating circumstances impact the applicant's fitness for certification; and¶

(d) When denying certification, determine how long the individual should be ineligible for certification.¶

(9) 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 applicant'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 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 Applicant Review 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.¶¶

(A) Circumstances that must be considered mitigating include the fact that the applicant was not employed in a certifiable position at the time of the conduct and the fact that the applicant has been hired by a public safety agency who is aware of the criminal background.¶¶

(B) 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 Applicant Review Committee consider mitigating given the specific issues in the case.¶¶

(10) The ineligibility period is the timeframe that the applicant is ineligible for public safety certifications and employment as 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 applicant's moral fitness for certification. The Applicant Review Committee may prescribe an ineligibility period from zero days to ten years.¶¶

(11) The moral fitness standards defined in administrative rule in effect on the date the Department or the Applicant Review Committee determined that the applicant was unfit for certification will continue to apply until the Final Order has been issued and all appeal rights have been exhausted, regardless of any subsequent amendment or repeal of the rules.¶¶

(12) Any Department action to deny an applicant's public safety professional certification will be administered in accordance with OAR 259-008-0290 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 183.341, ORS 181A.640, ORS 181A.630, ORS 181A.650

AMEND: 259-008-0300

NOTICE FILED DATE: 11/25/2020

RULE SUMMARY: This rule defines the grounds to deny or revoke certification as a public safety professional.

Section (2) outlines the mandatory grounds. A violation of the mandatory grounds requires denial or revocation. Staff handle mandatory cases administratively.

They result in permanent ineligibility for certification in criminal justice public safety employment.

There are two changes to the mandatory grounds.

The first change to the mandatory grounds adds convictions of a bias or hate crime as mandatory grounds for denial or revocation. Application of this rule language requires the use of the statutory definition for the conviction of a bias or hate crime. Any other criminal disposition that includes this egregious behavior but is not convicted under the statute as a bias or hate crime will be processed in accordance with the other mandatory and discretionary standards. [259-008-0300 (2)(d)]

The second change to the mandatory grounds amends the definition of discharge for cause to include intentional conduct performed under the color of office that constitutes discrimination against a person of a protected class. [259-008-0300 (2)(f)(G)]

Section (3) of this rule identifies the discretionary grounds for denial and revocation.

Discretionary cases for conduct that occurs while employed as a public safety professional are reviewed by discipline-specific Policy Committees. Discretionary cases are opened when there is a criminal disposition or a separation of employment.

Under this rule, the moral fitness categories include Dishonesty, Misuse of Authority, and Misconduct.

This rule change adds discriminatory conduct to the definition of Misconduct and includes a definition for discriminatory conduct. [259-008-0300 (3)(a)(C)]

CHANGES TO RULE:

259-008-0300

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

(1) The Board has established moral fitness standards that it has determined are critical to upholding the public's trust in the public safety profession, protecting the public and ensuring 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 has a conviction in any jurisdiction for a bias or hate crime;¶

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

(ef) 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;~~or~~¶

(G) Discriminate against a person based on the public safety professional's perception of that person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law.¶

(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.¶

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

(ii) For the purposes of this rule, discriminatory conduct includes a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the public safety professional cannot perform the duties of office in a fair and impartial manner.¶

(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

AMEND: 259-008-0310

NOTICE FILED DATE: 11/25/2020

RULE SUMMARY: This rule includes the Policy Committee review process for a discretionary professional standards case. The Policy Committee review includes recommending an ineligibility period when recommending the Board take action to deny or revoke certification.

This rule change adds Misconduct that is discriminatory as a violation that can be prescribed a lifetime ineligibility period. Misconduct that is not discriminatory has a maximum ineligibility period of 10 years. [259-008-0310 (10)(d)]

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 when the Department determines that the conduct being reviewed does not meet the statutory and administrative rule requirements for denial or revocation.¶

(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 or Misconduct that is discriminatory 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 or Misconduct that is discriminatory 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