

OREGON DPSST
ETHICS BULLETIN

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The Board on Public Safety Standards and Training (BPSST) has the legislative mandate to establish and enforce the physical, mental, and moral fitness standards for all law enforcement officers, telecommunicators and emergency medical dispatchers in the state.

This requirement also defines the procedure for the Department and Board to use when denying or revoking certification of an officer, telecommunicator or emergency medical dispatcher who has fallen below the moral fitness standards.

The Ethics Bulletin is published to provide insight into the types of misconduct that could result in revocation or denial of certification. The following cases of misconduct resulted in **revocation and denial** of certifications by DPSST in **January 2006**.

Case 1

Officer A was discharged for cause after an internal investigation revealed that he had engaged in acts of domestic violence. Officer A was subsequently convicted of two counts of Assault in the Fourth Degree, involving Domestic Violence. Officer A was served with a Notice of Intent to Revoke. Officer A did not make a timely request for a hearing. Officer A's conduct ended his 19-year career.

Officer A's Basic, Intermediate and Advanced Police Certifications were Revoked.

Case 2

Officer B was discharged for cause after an internal investigation revealed that he had violated his Last Chance Agreement relating to reporting for work as scheduled and abiding by the requirements of this Agreement. Officer B was served with a Notice of Intent to Revoke. Officer B did not make a timely request for a hearing. Officer B's conduct ended his 4-year career.

Officer B's Emergency Medical Dispatch Certification was Revoked

Case 3

Officer C received progressive discipline for failure to prepare accurate, timely and truthful reports. Officer C was then placed on suspension during an internal investigation for misconduct relating to an arrest. While on suspension, Officer C attempted to make a stress claim through worker's compensation, which was denied. Officer C then sought and obtained a psychologist's report which rendered him unfit for duty, citing stress and anxiety disorders. Officer C was subsequently discharged for cause due to his inability to perform the duties of a police officer. Officer C was served with a Notice of Intent to Revoke. Officer C did not make a timely request for a hearing. Officer C's conduct ended his 4-year career.

Officer C's Basic Police Certification was Revoked.

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Case 4

Officer D resigned and was subsequently convicted of Assault in the Third Degree, a Class C Felony. This conviction was the result of Officer D's off-duty conduct in which he and another off-duty officer assaulted a citizen outside of a nightclub. Officer D was served with a Notice of Intent to Revoke. Officer D made a timely request for a hearing. DPSST filed a Motion for Ruling on Legal Issues (Summary Judgment) with the Administrative Law Judge (ALJ) asserting that there was no genuine issue as to any material fact that is relevant to resolution of the legal issue for which a decision is sought. Officer D, through his attorney, filed a Response to DPSST's motion and a Motion to Dismiss. DPSST filed a Reply and the ALJ issued a Proposed Order revoking Officer D's Basic Police certification. Officer D, through his attorney, filed exceptions to the Judge's Order. DPSST considered the exceptions and adopted the Judge's Proposed Order in its entirety. Officer D's conduct ended his 3-year career.

Officer D's Basic Police Certification was Revoked

Case 5

Officer E was discharged for cause after an internal investigation revealed that she stole money from her agency. As a part of her job, Officer E took in money from citizens for various fines. When an audit was conducted, it revealed a pattern of unaccounted monies only during the shift that Officer E worked. Officer E grieved her discharge and an independent arbitrator sustained the employer's decision. Officer E was served with a Notice of Intent to Revoke. Officer E made a timely request for a hearing. DPSST filed a Motion for Ruling on Legal Issues (Summary Judgment) asserting that there was no genuine issue as to any material fact relevant to resolution of the legal issue for which a decision was sought. The ALJ issued a Proposed Order revoking Officer E's Emergency Medical Dispatcher and Basic Telecommunicator Certification. DPSST considered the exceptions and adopted the Judge's Proposed Order in its entirety. Officer E's conduct ended her 11-year career.

Officer E's Emergency Medical Dispatcher and Basic, Intermediate and Advanced Telecommunicator Certifications were Revoked

Case 6

Officer F was in a supervisory position. Officer F was discharged for cause after an internal investigation revealed that he disclosed information about an internal investigation to the corrections officer who was the focus of that investigation. Officer F then lied about his disclosure to investigators. Officer F was served with a Notice of Intent to Revoke and he did not make a timely request for a hearing. Officer F's conduct ended his 11-year career.

Officer F's Basic, Intermediate and Advanced Corrections Certifications were Revoked.

Case 7

Officer G was discharged for cause after an internal investigation revealed that he groped the breasts of a female citizen, not known to him, and then lied about it to investigators. Officer G was served with a Notice of Intent to Revoke and he did not make a timely request for a hearing. Officer G's conduct ended his 24-year career.

Officer G's Basic Police Certification was Revoked

“In life, there are often second chances, and sometimes even more. In law enforcement, there are no second chances when it comes to the integrity of our officers and ourselves.”

Jeff Noble

As Oregon public safety officers, we abide by the Criminal Justice Code of Ethics. Within this Code of Ethics is the affirmation that we will be “honest in thought and deed.” What exactly does this mean? In the article “**Police Officer Truthfulness and the Brady Decision**,” Noble explores the impact of on a public safety officer’s effectiveness, the types of lies, the deception continuum, and an analysis of the Brady decision. Noble comments,

“Truthfulness and the 1963 Brady decision have become hot topics in law enforcement circles. Although years went by without much concern with the Brady decision, recent U.S. Supreme Court decisions have enforced Brady to include evidence maintained in a police officer’s personnel files. Under Brady, evidence affecting the credibility of the police officer as a witness may be exculpatory evidence and should be given to the defense during discovery. Indeed, evidence that the officer has had in his personnel file a sustained finding of untruthfulness is clearly exculpatory to the defense. To remind the reader, in 1963 the Supreme Court ruled in *Brady v. Maryland* that the defense has the right to examine all evidence that may be of an exculpatory nature.”

Noble describes various types of lies, such as lies justified by necessity for investigative purposes, lies made in jest, and malicious lies. In this article, our focus is on malicious lies. Noble describes malicious lies as “the true evil of officer misconduct . . . the difference between lies justified by necessity or lies made in jest and malicious lies is the presence of actual malice by the communicator . . . malice would include not only lies told with a bad intent but also lies that exceed the limits of legitimacy.” Noble offers the example of a police officer who is tempted to testify falsely to imprison a criminal; while the intent may be legitimate, the actions are malicious. In this instance Noble comments, “This willingness to betray basic principles of honesty attacks the very public safety that the person believes himself to be pursuing.”

Within Noble’s deception continuum, he describes intentional, malicious, and deceptive conduct taking one of three forms:

1. Deceptive actions in a formal setting, such as testifying in court or during an internal affairs investigation;
2. Failure to bring forward information involving criminal action by other officers, also known as observing the so-called code of silence;
3. Creation of false evidence that tends to implicate another in a criminal act.

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Noble asserts that, "Intentional, malicious, deceptive conduct in any of these three areas will permanently destroy an officer's credibility. Should an officer violate these standards, there is no alternative in an employment context other than termination or permanent removal from any possible activity where the officer could be called upon to be a witness to any action."

Noble also describes other deceptive conduct within the continuum, which may have mitigating factors; such as when the conduct "does no harm" and may include lies made in jest or "minor embellishments and exaggerations [that] are not intended to harm others or convey a benefit to the communicator."

Commenting on the Brady analysis, Noble asserts that,

"Brady stands for the proposition that evidence that may be exculpatory in nature must be given to the defense. In a case where an officer will be testifying as a witness to an event, the officer's credibility is a material issue and his lack of credibility is clearly potentially exculpatory evidence and therefore sustained findings of untruthfulness must be revealed."

Noble is careful to point out that not all exculpatory evidence may be admissible in court, and that it is the court, not the defense that makes this determination. The court will weigh the evidence to determine if it is more probative than prejudicial in its decision to admit evidence.

In summing up his analysis, Noble comments,

"The key in making a decision regarding a particular middle-of-the-continuum deception is whether management can defend their decision or thoughtfully tell their story. The decision must be able to withstand rigorous analysis from those on all sides of the issue. In making the final decision, the chief of police must determine whether he or she can stand in front the community and defend the department's position. If so, then the chief should deal with the issue directly and honestly; if not, there is no alternative other than termination. . . In law enforcement, malicious deceptive conduct includes intentional deceptive conduct in a formal setting, the code of silence, and the false implication of another in a criminal act. A violation of any of these precepts should effectively and permanently end an officer's career. Both honesty and the reputation for honesty in law enforcement are absolutely essential. Those who are not able to meet these expectations simply are not able to fulfill the essential job requirements of a peace officer."

Excerpts from the article "Police Officer Truthfulness and the Brady Decision" were quoted with permission. For a complete review of Noble's article, please visit the International Association of Chiefs of Police website at <http://www.theiacp.org>, or log on to <http://policechiefmagazine.org>, and go to Vol 70, no. 10, October 2003.

Brady v. Maryland, 83 S. Ct. 1194 (1963)

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