

OREGON DPSST
ETHICS BULLETIN

Volume No. 36



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** of certifications by DPSST in **August 2006**.

The Department continues to ensure that certified public safety officers and those seeking certification who abuse the public's trust will be held accountable for their actions.

Case 1

Officer A resigned and was later convicted of Menacing and in a separate incident, Furnishing Liquor to a Minor. Both incidents involved his girlfriend. Each is a discretionary disqualifying crime, for purposes of certification. Officer A was notified that his case would be heard before the Police Policy Committee and he could provide any mitigating circumstances he wished to have considered. The Police Policy Committee reviewed the matter and recommended revoking his certifications. The Board affirmed the Committee's recommendation. Officer A was mailed a Notice of Intent to Revoke. He did not make a timely request for a hearing. Officer A's conduct ended his 7-year career.

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

Case 2

Officer B was discharged for cause after he called in sick to work and then was seen volunteering at a sporting event. The case was appealed and an arbitrator upheld the discharge for cause. Officer B was mailed a Notice of Intent to Revoke. He did not make a timely request for a hearing. Officer B's conduct ended his 18-year career.

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

Case 3

Officer C resigned after an internal investigation revealed that she assisted in introducing contraband into the prison and then lied during the investigation. Officer C was notified that her case would be heard before the Corrections Policy Committee and that she could provide any mitigating circumstances she wished to have considered. The Corrections Policy Committee reviewed the matter and recommended revoking her certification. The Board affirmed the

PLEASE DISSEMINATE THIS INFORMATION TO ALL PUBLIC SAFETY OFFICERS

Committee's recommendation. Officer C was mailed a Notice of Intent to Revoke. She did not make a timely request for a hearing. Officer C's conduct ended her 4-year career.

Officer C's Basic Corrections Certification was Revoked.

Case 4

Officer D was discharged for cause after repeated attendance problems that resulted in progressive discipline. Ultimately, Officer D told his employer that he was planning on leaving work early and did so even after he was ordered not to. Officer D was discharged for cause, for insubordination. Officer D was issued a Notice of Intent to Revoke. He 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. The ALJ issued a Proposed Order revoking Officer D's Basic Police certification. Neither Officer D nor his attorney filed exceptions to the Judge's Order. DPSST adopted the Judge's Proposed Order in its entirety and filed a Final Order. Officer D's conduct ended his 32-year career.

Officer D's Basic Police Certification was Revoked

Case 5

Officer E resigned after an internal investigation revealed that she had an inappropriate relationship with an inmate, used a state computer for personal use and was untruthful during the internal investigation. Officer E was notified that her case would be heard before the Corrections Policy Committee and she could provide any mitigating circumstances she wished to be considered. The Corrections Policy Committee reviewed the matter and recommended revoking her certification. The Board affirmed the Committee's recommendation. Officer E was mailed a Notice of Intent to Revoke. She did not make a timely request for a hearing. Officer E's conduct ended her 2-year career.

Officer E's Basic Corrections Certification was Revoked.

Case 6

Officer F was discharged for cause after an internal investigation revealed that he repeatedly instigated verbal confrontations with his co-workers in which he used threatening and profane language and gestures. Officer F had been repeatedly counseled and disciplined for this behavior and had received progressive discipline. Officer F was served with a Notice of Intent to Revoke and made a timely request for a hearing. DPSST, through the Oregon Department of Justice, sought a Motion for Summary Judgment, asserting there was no material fact at issue. Officer F then contacted DPSST and advised that he would not be pursuing his contested case process. DPSST sent Officer F a Stipulated Order, which he signed and returned to DPSST. Officer F's conduct ended his 8-year career.

Officer F's Basic Telecommunicator and Emergency Medical Dispatcher certifications were Revoked.

Case 7

Officer G resigned after criminal charges which had been filed against him were dropped as a part of an agreement that he resign. The charges included that while on duty, Officer G unlawfully and knowingly subjected a prisoner to offensive physical contact, unlawfully and recklessly created a substantial risk of serious injury to the prisoner, and unlawfully and intentionally harassed and annoyed a prisoner by subjecting him to offensive physical contact. Officer G was notified that his

case would be heard before the Corrections Policy Committee on the basis of violating the established moral fitness standards; Officer G intentionally caused a shackled prisoner to strike the cage while being transported, and was untruthful about this event while on probation for lying about the cause of a previous traffic accident. Officer G was advised he could provide any mitigating circumstances he wished to have considered. The Corrections Policy Committee reviewed the matter and recommended revoking his certifications, based on violation of the established moral fitness standards. The Board affirmed the Committee's recommendation. Officer G was mailed a Notice of Intent to Revoke. Officer G made a timely request for a hearing. He examined reports and evidence against him as a part of discovery. A contested case hearing was held before an Administrative Law Judge, and Officer G appeared in person, was represented by counsel, and called witnesses, and cross-examined the Department's witnesses. The Judge subsequently issued a Proposed Order to revoke Officer G's certifications based on violation of the established moral fitness standards. Officer G filed exceptions to the Proposed Order which were reviewed. DPSST adopted the Judge's Proposed Order in its entirety. Officer G's conduct ended his 6-year career.

Officer G's Basic Corrections and Basic Police Certifications were Revoked.

DUE PROCESS IN DENIAL AND REVOCATION OF CERTIFICATIONS

By Marilyn Lorange, DPSST Standards and Certification Supervisor

What is "due process"?

The term "due process" generally refers to fundamental principles relating to notice and an opportunity to be heard concerning a proposed course of action. The scope of due process may vary according to the nature of the proposed action and the interests at stake.

Within the criminal justice system, "due process" embodies a number of familiar and specific constitutional guarantees, such as the rights to a jury trial, to discovery of evidence, to representation by an attorney, to confront and cross-examine witnesses, to have the state prove guilt beyond a reasonable doubt, and to have the benefit of procedures that are speedy, fair, and impartial. The interests at stake are personal liberty and, in the case of some crimes, life itself.

In the civil and administrative law fields, the parameters of "due process" are sometimes less defined. In any particular administrative hearing, specific facts are weighed against the applicable laws, rules and agreements.

For example, in the employment realm, "due process" relating to the process prior to or during the imposition of discipline and termination of employment can be found in employment laws and rules, and collective bargaining agreements.

Appellate case law clearly distinguishes between employment issues and those related to licensing. In the context of licensing, "due process" notice and the opportunity to be heard consists of preliminary fact-finding and review by licensing staff, notice of proposed action, and an opportunity to be heard in a contested case hearing before an impartial administrative law judge. Rules of evidence and discovery exist, but are usually more relaxed and the procedures more informal than in the criminal law context. Witnesses may be called and attorneys may represent the parties. Proposed orders are issued, exceptions can be taken, and a final order is issued. The final order may be reviewed by Oregon's appellate courts. This process is outlined in Oregon's Administrative Procedures Act and in the governing statutes and rules of each licensing or regulatory body.

PLEASE DISSEMINATE THIS INFORMATION TO ALL PUBLIC SAFETY OFFICERS

www.dpsst.state.or.us 503-378-2305 August 2006 Ethics Bulletin

Page 3 of 4

How is due process applied in the denial or revocation process?

DPSST's jurisdiction is over the statewide minimum standards for employment, training and certification as a public safety professional. Notice and opportunity for a hearing must be provided when there is a reasonable basis for revoking a public safety professional's certification (See ORS 181.640, 661-662).

Oregon Administrative Rules detail the grounds to deny or revoke a certification, and define the process (See OAR 259-008-0070). Cases that are discretionary (such as falsification, moral fitness, and discretionary disqualifying criminal convictions) are brought before a policy committee and the Board. *In each case*, the public safety professional is contacted and is given at least 30 days to provide mitigating circumstances on his or her behalf. The individual, his or her attorney, and/or other representative may provide this information in writing. The policy committee and the Board review the written record and make a preliminary determination regarding whether to proceed with denial or revocation. The public safety professional may be present during the committee and Board presentations and deliberations. If the committee and Board determine to proceed, DPSST issues a Contested Case Notice of Intent to Revoke.

In cases involving mandatory disqualifying convictions or discharge for cause, state law requires revocation or denial of certification. In these cases, where DPSST is required to act if the facts meet specific criteria, no committee or Board review is required before DPSST issues a Contested Case Notice of Intent to Revoke.

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered. In all cases, whether revocation is mandatory or discretionary, the Contested Case Notice of Intent to Revoke contains specific due process information about how the public safety professional may proceed, and their right to a contested case hearing. It is at this hearing that DPSST and the party against whom action is contemplated have a formal opportunity to contest allegations in an adversarial proceeding.

If a hearing is requested, no Proposed or Final Order Revoking Certification will be issued until an Administrative Law Judge has issued a Proposed Order following a hearing (or following a ruling on a motion to grant a summary judgment if there are no facts in dispute in a mandatory revocation case).

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- Examine reports and evidence against them as part of discovery.
- Face or cross-examine their accuser.
- Call witnesses.
- Appear in person.
- Be represented by counsel.

The Administrative Law Judge hearing the case is assigned through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures Act. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The Judge issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Even after this, due process allows for a judicial review to the Court of Appeals, where three Oregon justices will review the case.

- For more information on due process under the Administrative Procedures Act, please go to: <http://www.leg.state.or.us/ors/183.html>.
- For more information on DPSST's denial and revocation responsibilities, please go to: <http://www.leg.state.or.us/ors/181.html>, and scroll to 181.640, .661, and .662; and to http://arcweb.sos.state.or.us/rules/OARS_200/OAR_259/259_008.html, and scroll to 259-008-0070.
- If you have additional questions, please contact Marilyn Lorange at (503) 378-2427, or email her at marilyn.lorange@state.or.us