

**OREGON DPSST**  
***ETHICS BULLETIN***  
**Volume No. 64**



The Board on Public Safety Standards and Training (BPSST) has the legislative mandate to establish and enforce minimum standards for all law enforcement officers, fire service professionals, 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 individual who has fallen below the minimum 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 have resulted in consideration of **revocation or denial** of certifications by DPSST in **January 2009**.

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.

---

**January Statistics**

<b>Cases Opened</b>	<b>40</b>	<b>Of the 49 Cases Closed:</b>	
<b>Cases Closed</b>	<b>49</b>	<b>Revoked</b>	<b>08</b>
<b>Cases Pending</b>	<b>181</b>	<b>Denied</b>	<b>00</b>
		<b>No Action</b>	<b>41</b>

**Officer A** resigned from public safety. A number of years later he was convicted of DUII after he crashed his vehicle and had a .18 breath test reading. Officer A was advised that his case would be heard before the Police Policy Committee and was allowed an opportunity to provide mitigating circumstances on his behalf. DPSST routinely encloses a Stipulated Order Revoking Certification that the affected officer may consider. In this case, Officer A voluntarily signed the Stipulated Order Revoking Certifications. Officer A's misconduct ended his 3-year career.

**Officer A's Basic Police Certification was Revoked.**

**Officer B** was convicted of Official Misconduct in the First Degree as a result of inappropriate contact with a local high school student. Officer B was issued a Notice of Intent to Revoke Certifications. He did not make a timely request for a hearing and was subsequently issued a Default Final Order Revoking Certifications. Officer B's misconduct ended his 14-year career.

**Officer B's Basic, Intermediate, Advanced Police and Basic Telecommunicator Certifications were Revoked.**

---

**PLEASE DISSEMINATE THIS INFORMATION TO ALL PUBLIC SAFETY OFFICERS**

[www.dpsst.state.or.us](http://www.dpsst.state.or.us) 503-378-2305 – January 2009 Ethics Bulletin

Page 1 of 6

**Officer C** resigned from his position as a Corrections Officer after being charged with two counts of Sodomy in the First Degree and two counts of Sexual Abuse in the First Degree. Officer C was later convicted of all charges. Officer C was issued a Notice of Intent to Revoke Certification. He did not make a timely request for a hearing and was subsequently issued a Default Final Order Revoking Certification. Officer C's misconduct ended his 1-year career.  
**Officer C's Basic Corrections Certification was Revoked.**

**Officer D** was discharged for cause after an internal investigation revealed that he lied to criminal investigators about his conduct that resulted in a DUI, Hit and Run, Reckless Endangering and Reckless Driving investigation. The internal investigation also revealed that he violated other agency policies. Officer D was issued a Notice of Intent to Revoke Certification. Officer D made a timely request for a hearing. DPSST filed a Motion for Ruling on Legal Issues (Summary Determination) 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 issues for which a decision is sought. Ultimately the ALJ granted the Motion and Affirmed DPSST's decision to revoke Officer D's certifications. DPSST issued a Final Order Revoking Certification. Officer D's misconduct ended his 25-year career.  
**Officer D's Basic, Intermediate, Advanced and Supervisory Police Certifications were Revoked.**

**Officer E** was discharged for cause after the City's prosecuting attorney notified the agency that he had concerns about Officer E's credibility and determined that he would no longer be able to offer Officer E's testimony as a witness in cases he was obligated to prosecute. The basis of the prosecutor's determination was that Officer E had lied on the stand. In its termination determination the agency found, "To testify in court on behalf of the City in criminal proceedings is a job requirement. Your preclusion from the ability to testify makes you no longer qualified to hold the position of Police Officer and warrants termination of employment as non-disciplinary action." Officer E was issued a Notice of Intent to Revoke Certification. Officer E made a timely request for a hearing. DPSST filed a Motion for Ruling on Legal Issues (Summary Determination) 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 issues for which a decision is sought. Ultimately the ALJ granted the Motion and Affirmed DPSST's decision to revoke Officer E's certifications. DPSST issued a Final Order Revoking Certification. Officer E's misconduct ended his 25-year career.  
**Officer E's Basic, Intermediate and Advanced Police Certifications were Revoked.**

**Officer F** was convicted of two counts of Sexual Abuse in the First Degree and two counts of Sexual Abuse in the Third Degree as a result of sexually abusing an underage girl. Officer F was issued a Notice of Intent to Revoke Certification. He did not make a timely request for a hearing and was subsequently issued a Default Final Order Revoking Certification. Officer F's misconduct ended his 3-year career.  
**Officer F's Basic Police Certification was Revoked.**

**Officer G** was discharged for cause after an internal investigation revealed that he had attempted to form personal relationships with female inmates, had supplied extra food and hot water to female inmates and had requested or permitted female inmates to expose themselves to him. Additionally, Officer G requested that the female inmates not report his activities because it would get him in trouble. Officer G was issued a Notice of Intent to Revoke Certification. Officer G made a timely request for a hearing. DPSST filed a Motion for Ruling on Legal Issues (Summary Determination) 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 issues for which a decision is sought. Ultimately the ALJ granted the Motion and Affirmed DPSST's decision to revoke Officer G's certification. DPSST issued a Final Order Revoking Certification. Officer G's misconduct ended his 6-year career.

**Officer G's Basic Corrections Certification was Revoked.**

---

On January 22, 2009, The Board on Public Safety Standards and Training met and reviewed cases which had previously been reviewed by the various Policy Committees. In the following cases, the Board upheld Policy Committee recommendations NOT to revoke the officers' certification:

---

In **Officer H's** case, the Staff Report and associated documents were adopted as the record on which the determination was based. The conduct at issue was multiple police contacts and a discretionary disqualifying conviction. Mitigating circumstances included Officer H's drug treatment, discipline by the employer and that he accepted responsibility for his actions. Also mitigating were that Officer H initiated counseling with EAP and he had positive work performance since the incidents. Aggravating circumstances included Officer H's pattern of police contact involving alcohol, which included a 1998 DUUI, the current 2006 DUUI and a Trespass citation which was ultimately dismissed. By a preponderance it was determined that Officer H engaged in the cited misconduct, and that the conduct may constitute grounds for revocation but that based on the mitigating circumstances the conduct did not rise to the level to warrant revocation of his certifications.

**Officer H will retain his Basic and Intermediate Corrections Certifications.**

In **Officer I's** case, the Staff Report and associated documents were adopted as the record on which the determination was based. Officer I resigned during an investigation. The conduct at issue involved a sustained allegation that Officer I did not make a mandatory domestic violence arrest. By a preponderance, it was determined that Officer I engaged in misconduct which involved poor police work but that it was an employer discipline matter that did not rise to the level to warrant revocation of his certifications.

**Officer I will retain his Basic, Intermediate and Advanced Police Certifications.**

In **Officer J's** case, the Staff Report and associated documents were adopted as the record on which a determination was based. Officer J resigned as a result of a Settlement Agreement. The conduct at issue involved a sustained allegation that

---

Officer J engaged in a pattern of misconduct involving inability to control his emotions. By a preponderance it was determined that Officer J engaged in the cited misconduct but that it was an employer discipline matter and did not rise to the level to warrant revocation of his certifications.

**Officer J will retain his Basic Corrections, Basic and Intermediate Police, and Survival Skills and Firearms Instructor Certifications.**

In **Officer K's** case, the Staff Report and associated documents were adopted as the record on which the determination was based. Officer K retired after an internal investigation resulted in the employer sustaining an allegation that Officer K engaged in inappropriate contact with a minor school child while serving as a School Resource Officer. A subsequent police contact by the same minor brought into question the minor's veracity. By a preponderance it was determined that Officer K engaged in misconduct that involved not complying with an order and being disrespectful when speaking about a supervisor but that it was an employer discipline matter and did not rise to the level to warrant revocation of his certifications.

**Officer K will retain his Basic, Intermediate and Advanced Police Certifications and his Basic and Intermediate Corrections Certifications.**

In **Officer L's** case, the Staff Report and associated documents were adopted as the record on which the determination was based. The conduct at issue was two DUII arrests which resulted in one diversion and one conviction. Mitigating factors included Officer L's 28-year career and his positive work performance since the DUII conviction, and his treatment and compliance with the court requirements. Concern was expressed about Officer L's untruthfulness with the police but members recognized that he was intoxicated at the time and was not subsequently untruthful. Concern was also expressed about a second incident involving alcohol following an earlier diversion, but there had been no apparent problems after the last incident. By preponderance it was determined that Officer L engaged in this misconduct, that the conduct may constitute grounds for revocation but based on the mitigating circumstances the conduct does not rise to the level to warrant revocation.

**Officer L will retain his Basic and Intermediate Corrections Certifications.**

---

**Officer M** resigned and was subsequently convicted of Official Misconduct in the First Degree. In this case, Officer M was taking prescription medication from probation clients without their knowledge and for her personal use. As a part of sentencing, Officer M agreed to relinquish her DPSST certification. Officer M signed a Stipulated Order Revoking her certification. Officer M's misconduct ended her 2-year career.

**Officer M's Basic Parole and Probation Certification was Revoked.**

## Oregon Court of Appeals Action:

In 2006, Ethics Bulletin 36-G cited the following case:

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, 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.**

Officer G made a petition for a judicial review with the Oregon Court of Appeals. On January 28, 2008, the Oregon Court of Appeals Affirmed without Opinion DPSST's revocation against Officer G.

For additional details, reference *John D. Deck v. Department of Public Safety Standards and Training, A133337(2009)*

---

PLEASE DISSEMINATE THIS INFORMATION TO ALL PUBLIC SAFETY OFFICERS

[www.dpsst.state.or.us](http://www.dpsst.state.or.us) 503-378-2305 – January 2009 Ethics Bulletin

Page 5 of 6

DPSST asked our legal counsel, the Oregon Department of Justice, for an analysis of the recent Supreme Court decision in *Cuff v. Dept. of Public Safety Standards and Training*, 345 Or 462 (2008). Below are excerpts of the analysis provided by Senior Assistant Attorney General Jennifer S. Lloyd:

“The Supreme Court’s opinion in *Cuff v. Dept. of Public Safety Standards and Training*, 345 Or 462 (2008), arose from the court’s review of a DPSST order that revoked the certification of a corrections officer on the ground that he failed to meet minimum moral fitness standards. The Court of Appeals originally had affirmed DPSST’s action. *Cuff v. DPSST*, 217 Or App 292 (2007). The Supreme Court affirmed, but on a different basis.

...  
On judicial review, the petitioner asserted that the agency improperly applied ORS 181.662 “retroactively” and had improperly issued its decertification order based on a finding that the petitioner *in the past* had demonstrated a lack of moral fitness. The Court of Appeals assumed that the statute was applied in such a manner, but concluded that such an application was permissible. See *Cuff*, 345 Or at 469 (describing Court of Appeals decision). On review, the Supreme Court affirmed the Court of Appeals decision affirming the decertification order, but did so based on a different analysis. In short, it concluded that the order was supported by substantial evidence that the petitioner, at the time of the decertification, had a then-present lack of moral fitness.

The Supreme Court began its analysis by interpreting ORS 181.662 to give DPSST only the *present* authority to revoke a certification based on the public safety officer’s *present* failure to “meet the applicable minimum standards” established under ORS 181.640(1)(a) to (d). Thus, it disagreed with the Court of Appeals’ assessment that the statute could be applied to authorize decertification based only on *past* lack of moral fitness.

Nevertheless, it concluded that DPSST properly considered the petitioner’s *past* conduct in determining his then-present moral fitness. As it noted, “it is difficult to conceive of any viable way to evaluate a person’s present moral fitness without considering the person’s past conduct.” *Cuff*, 345 Or at 471. In addition, it concluded that the statutes, in context, in fact *require* DPSST to consider all relevant evidence in making its determination. Although it noted that the evidence of petitioner’s purchase and use of drugs in 1999 was arguably *less* relevant than it would be if it demonstrated more recent conduct, it was nonetheless relevant to the agency’s determination. Thus, under the standard of review established by ORS 183.482(8)(b)(A) and (C), the Supreme Court affirmed on the ground that the agency acted within its discretion in issuing the decertification order.

In sum, *Cuff* concluded that DPSST correctly applied its rule to permit decertification only on a finding of a lack of *present* moral fitness. Under that standard, if the agency relies on the officer’s prior conduct, the agency must provide a rational explanation of why that past conduct causes the agency to believe that the officer lacks moral fitness at present. The court concluded that the purpose of the rule is not to punish the officer for past conduct, but rather is directed to the officer’s *present* moral fitness; nevertheless, it agreed with DPSST in its conclusion that evidence of concrete instances of past conduct is, as a practical matter, simply the only way to determine present fitness

...”

---

**PLEASE DISSEMINATE THIS INFORMATION TO ALL PUBLIC SAFETY OFFICERS**