

Corrections Policy Committee

Minutes

February 12, 2013

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, February 12, 2013, in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. Chair Diana Simpson called the meeting to order at 1:30 p.m.

Attendees:

Committee Members:

Diana Simpson, Oregon State Sheriff's Association, Chair
Rick Angelozzi, Department of Corrections Superintendent
Daryl Borello, Department of Corrections Training Division
Brian Burger, Department of Corrections AFSCME Representative
Erik Douglass, Non-Management Corrections Officer
Tami Jackson, Non-Management DOC
Andy Long, Oregon State Sheriff's Association
Joseph Pishioneri, Non-Management Law Enforcement
Amanda Rasmussen, Non-Management Corrections Officer
Lisa Settell, Parole and Probation Officer
Barbara Shipley, Oregon Sheriff's Jail Command Council

Committee Members Absent:

Michael Gower, Designee for Director of Department of Corrections
Jeff Wood, Oregon Association of Community Corrections Directors
Linda Yankee, Oregon Sheriff's Jail Command Council

DPSST Staff:

Eriks Gabliks, Director
Todd Anderson, Training Division Director
Leon Colas, Professional Standards Coordinator/Investigator
Theresa King, Professional Standards Coordinator/Investigator
Linsay Hale, Certification Coordinator
Sharon Huck, JTA Coordinator
Kristy Witherell, Administrative Support

Guests:

Steve Beck, Oregon Council of Police Association
Rene Bravo, Marion County Sheriff's Office



1. Minutes of November 13, 2012 Meeting

Approve the minutes of the November 13, 2012 Corrections Policy Committee meeting.

See Appendix A for details.

- *Joseph Pishioneri moved that the committee approve the minutes of the November 13, 2012 Corrections Policy Committee meeting. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

2. OAR 259-008-0025 – Proposed Rule

Presented by Linsay Hale

See Appendix B for details.

- *Brian Burger moved that the Corrections Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0025 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Lisa Settell seconded the motion. The motion carried unanimously.*

It is the consensus of the committee there is no fiscal impact on small business.

3. Quarterly Review of DOC Basic Corrections Course by the DPSST Audit Team

Presented by Theresa King

See Appendix C for details.

- *The reporting period was October through December of 2012.*
- *DOC began its new six-week curriculum which mirrors DPSST's Basic Corrections Local program.*
- *The 2011 audit of the DOC BCC program meets the minimum training standards for the certification of corrections officers.*

4. Richard Brown, Marion County Sheriff's Office – DPSST #32135

Presented by Leon Colas

See Appendix D for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the Staff report as the record upon which its recommendations are based. Andy Long seconded the motion. The motion carried unanimously.*
- *By discussion and consensus:*
 - a. *Identify and articulate the misconduct that is specific to this case. **Failure to make security checks and inmate counts, and unauthorized use of agency computer.***

- b. The identified conduct did not involve **Dishonesty in a 6-4 vote**.
- c. The identified conduct did involve a **Disregard for the Rights of Others based on BROWN not conducting welfare checks**.
- d. The identified conduct did not involve **Misuse of Authority**.
- e. The identified conduct did involve **Gross Misconduct based on BROWN not conducting welfare checks, a gross deviation of standard of care to be expected of him in that position**.
- f. The identified conduct did involve **Misconduct based on BROWN's violation of ORS 169-076 and violation of practice and standards**.
- g. The identified conduct did involve **Insubordination based on BROWN being coached and instructed various times on proper ways of following policies. He was told not to use instant messenger on the county's computers and did anyway**.

By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances BROWN being frank and forthcoming with his discussions. He did not intentionally skirt the issues directed at him. BROWN was able to make it to a Senior Deputy status and perform in the same manner throughout his career. BROWN was allowed to have lazy logs throughout his career.

The committee noted as aggravating circumstances BROWN having multiple counseling sessions with his supervisors about his log entries. BROWN recently attended training on how to conduct head counts in March 2011.

- *Brian Burger moved that the Corrections Policy Committee finds BROWN's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Joseph Pishioneri seconded the motion. The motion carried unanimously.*
- *Brian Burger moved that the Corrections Policy Committee recommends to the Board that BROWN's conduct encapsulated the lowest end of the categories noted above with a focus on Disregard for the Rights of Others, therefore recommending a five year disqualifier; BROWN may reapply for certification five years from the date of revocation. Tami Jackson seconded the motion. The motion carried unanimously.*

5. Chris J. Dunsworth, Department of Corrections – DPSST #49672

Presented by Leon Colas

See Appendix E for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Darryl Borello seconded the motion. The motion carried unanimously with Amanda Rasmussen abstaining.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: ***DUNSWORTH's relationship with a former inmate who was on parole, misuse of sick leave, and sexual harassment.***
 - b. The identified conduct did involve ***Dishonesty based on DUNSWORTH's misuse of sick leave.***
 - c. The identified conduct did not involve a ***Disregard for the Rights of Others.***
 - d. The identified conduct did involve ***Misuse of Authority based on DUNSWORTH making contact with an inmate while on duty.***
 - e. The identified conduct did involve ***Gross Misconduct based on DUNSWORTH's deviation from the standard of care and having a relationship with a former inmate.***
 - f. The identified conduct did involve ***Misconduct based on DUNSWORTH's violation of multiple policies.***
 - g. The identified conduct did involve ***Insubordination DUNSWORTH has been talked to by supervisors about boundaries.***

By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee did not note any mitigating circumstances.

The committee noted as aggravating circumstances DUNSWORTH not providing his side of the story.

- *Lisa Settell moved that the Corrections Policy Committee finds DUNSWORTH's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Rick Angelozzi seconded the motion. The motion carried unanimously with Amanda Rasmussen abstaining.*
- *Joseph Pishioneri moved that the Corrections Policy Committee recommends to the Board that DUNSWORTH's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore, recommending a lifetime disqualifier; DUNSWORTH may never reapply for certification. Brian Burger seconded the motion. The motion carried unanimously with Amanda Rasmussen abstaining.*

6. Robert S. Ferris, Marion County Sheriff's Office – DPSST #22724

Presented by Leon Colas

See Appendix F for details.

- **Brian Burger moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Amanda Rasmussen seconded the motion. The motion carried unanimously.**
- By discussion and consensus:
 - a. Identify the conduct that is at issue: ***FERRIS not conducting welfare checks and falsifying logs.***
 - b. The identified conduct did involve ***Dishonesty based on FERRIS falsifying his logs. After Ferris falsified the logs, he admitted that he had done so.***
 - c. The identified conduct did involve a ***Disregard for the Rights of Others based on FERRIS not conducting proper welfare checks.***
 - d. The identified conduct did not involve ***Misuse of Authority.***
 - e. The identified conduct did involve ***Gross Misconduct based on FERRIS not making the proper welfare checks which put a risk to persons.***
 - f. The identified conduct did involve ***Misconduct based on FERRIS not making welfare checks.***
 - g. The identified conduct did involve ***Insubordination based on FERRIS being counseled multiple times by supervisors in regard to not making welfare checks.***

By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances FERRIS being truthful when confronted. He has “meets and exceeds expectations” on all of his evaluations. FERRIS was under a lot of stress as a result of a bad relationship with a coworker. He saved the county over \$80,000 with his recycling efforts.

The committee noted as aggravating circumstances FERRIS’ prior disciplines in regard to making proper welfare checks. He was trying to divert the whole mess and blame it on bullying from coworkers. FERRIS did not take responsibility for his actions.

- **Joseph Pishioneri moved that the Corrections Policy Committee finds FERRIS’ conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Lisa Settell seconded the motion. The motion carried unanimously.**
- **Amanda Rasmussen moved that the Corrections Policy Committee recommends to the Board that FERRIS’ conduct encapsulated the highest end of the categories noted**

above with a focus on DISHONESTY, therefore, recommending a lifetime disqualifier; FERRIS may never reapply for certification. Tami Jackson seconded the motion. The motion carried unanimously.

7. John A. Frost, Snake River Correctional Facility – DPSST #39914

Presented by Leon Colas

See Appendix G for details.

- *Amanda Rasmussen moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Andy Long seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: *FROST's four counts of contempt of court conviction in August 2012.*
 - b. The identified conduct did not involve Dishonesty.
 - c. The identified conduct did not involve a Disregard for the Rights of Others
 - d. The identified conduct did not involve Misuse of Authority.
 - e. The identified conduct did not involve Gross Misconduct.
 - f. The identified conduct did involve Misconduct based on FROST's contempt of court convictions.
 - g. The identified conduct did not involve Insubordination.

- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The policy committee noted as mitigating circumstances FROST notifying his agency immediately after the hearing. He was not given any jail time and he paid his fines.

The policy committee did not identify any aggravating circumstances.

- *Brian Burger moved that the Corrections Policy Committee finds FROST's conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

8. Caroline A. Kruse, Dept. of Corrections Oregon State Penitentiary – DPSST #44228

Presented by Leon Colas

See Appendix H for details.

- *Joe Pishioneri moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Andy Long seconded the motion. The motion carried unanimously.*
- By discussion and consensus:

- a. Identify the conduct that is at issue: ***KRUSE's inappropriate sexual relationship with an inmate, receiving 900+ phone calls from the inmate, and putting \$2,000 dollars on the inmate's account.***
- b. The identified conduct **did** involve ***Dishonesty based on KRUSE creating fictitious names and phone numbers in order for the inmate to contact her. KRUSE described the relationship as a friendship but she was involved with him sexually.***
- c. The identified conduct **did** involve a ***Disregard for the Rights of Others based on KRUSE putting others in danger with her behavior.***
- d. The identified conduct **did** involve ***Misuse of Authority based on KRUSE printing out the inmate's visitor list for personal use. Her employment allowed her to gain physical access to the inmate.***
- e. The identified conduct **did** involve ***Gross Misconduct based on KRUSE compromising the efficient operation of the agency. Her conduct was a gross deviation from the standard a regular public safety officer would adhere to.***
- f. The identified conduct **did** involve ***Misconduct based on KRUSE's behavior which violated laws, practices, and standards.***
- g. The identified conduct **did** involve ***Insubordination based on KRUSE violating policies and safe operation of the agency.***

By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances KRUSE's letter admitted fault.

The committee noted as aggravating circumstances KRUSE's letter was untruthful. The amount of phone calls that were made was outstanding. She bragged about almost being caught in the inmate's cell. Her behavior was official misconduct and she should have been arrested. KRUSE blamed her resignation on a lack of proper preparation for representation when she was given a 24 hour notice in order to get representation and prepare. KRUSE deposited large sums of money into the inmate's account.

- ***Brian Burger moved that the Corrections Policy Committee finds KRUSE's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Tami Jackson seconded the motion. The motion carried unanimously.***
- ***Erik Douglass moved that the Corrections Policy Committee recommends to the Board that KRUSE's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore, recommending a lifetime disqualifier; KRUSE may never reapply for certification. Amanda Rasmussen seconded the motion. The motion carried unanimously.***

9. David B. Nielsen, Two Rivers Correctional Institute – DPSST #34485

Presented by Leon Colas

See Appendix I for details.

- *Tami Jackson moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Joseph Pishioneri seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: ***Untruthfulness.***
 - b. The identified conduct did involve **Dishonesty based on NIELSEN claiming that he did not receive the training manual needed for a class he was teaching. NIELSEN's versions of his statements changed each time a different person spoke to him, making reference to conversations he had with instructors and DOC administration when conversations never took place. NIELSEN alleged that he had never seen the learning goals for the classes he was instructing. He stated instructors previously had not gone over learning goals with him.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others in regard to students not getting the proper training in classes NIELSEN instructed. The students had to go back and take the classes over again.**
 - d. The identified conduct did involve **Misuse of Authority based on NIELSEN being an instructor. He was in a position of trust and responsibility to the students.**
 - e. The identified conduct did involve **Gross Misconduct based on NIELSEN not properly training the students. He created a risk to efficient operation of the agency. The students had to go back through the class.**
 - f. The identified conduct did involve **Misconduct based on NIELSEN violating practices and standards generally followed in the public safety profession.**
 - g. The identified conduct did involve **Insubordination based on NIELSEN calling Tom Cramer a liar without any factual information to support it. NIELSEN had been instructed on exactly how to teach the classes, to go over the learning objectives, and he did not do that. NIELSEN was denied internet access in the units by his superintendent. He kept pushing the issue with helpdesk.**

By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances NIELSEN taking the steps to be an instructor.

The committee noted as aggravating circumstances NIELSEN's letter that was deflecting; he was making demands. NIELSEN was a previous Corrections Policy Committee member. NIELSEN threw out a lot of unsubstantiated allegations. He did not take responsibility for his actions. DOC had to retrain the students.

Joseph Pishioneri moved that the Corrections Policy Committee finds NIELSEN's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Lisa Settell seconded the motion. The motion carried unanimously.

- *Joseph Pishioneri moved that the Corrections Policy Committee recommends to the Board that NIELSEN's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore, recommending a lifetime disqualifier; NIELSEN may never reapply for certification. Rick Angelozzi seconded the motion. The motion carried unanimously.*

10. Justin Sinks, Marion County Sheriff's Office – DPSST #49362

Presented by Leon Colas

See Appendix J for details.

- *Amanda Rasmussen moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Rick Angelozzi seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: *SINKS having a relationship with a female under supervision. SINKS holding outside employment without proper notification to the employer. SINKS using county computers for personal use. Sexual misconduct.*
 - b. The identified conduct did involve **Dishonesty based on omission.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others based on the female being under supervision and SINKS met her at a bar. SINKS communicating with the female while he was on duty. Having a sexual relationship with a female who is under supervision.**
 - d. The identified conduct did involve **Misuse of Authority based on SINKS meeting the female when she came in for booking. He used the county computer to look her up.**
 - e. The identified conduct did involve **Gross Misconduct based on SINKS dating a parolee.**
 - f. The identified conduct did involve **Misconduct based on SINKS violating practices and standards as well as laws.**
 - g. The identified conduct did involve **Insubordination based on SINKS admitting to looking up the policy in regards to dating someone who is under supervision and continuing the relationship anyway. He had been given a directive by a sergeant to stop using county resources for personal reasons, but he continued. SINKS was told not to make contact with the female during the investigation, but he did anyhow.**

By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances SINKS being honest during the interview.

The committee noted as aggravating circumstances SINKS having a previous written reprimand for misuse of computer equipment. SINKS communicated with the female when directed not to. He caused the Marion County Sheriff's office embarrassment by having to get a neighboring County to investigate this matter. SINKS was employed in the correctional field but stated that he has a hard time saying no to anyone.

- *Brian Burger moved that the Corrections Policy Committee finds SINKS' conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Andy Long seconded the motion. The motion carried unanimously.*
- *Brian Burger moved that the Corrections Policy Committee recommends to the Board that SINKS' conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore recommending a lifetime disqualifier; SINKS may never reapply for certification. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

11. Staff Update

- *Basic Corrections Local class #011 started on February 18. Another corrections class has been added before the end of the fiscal year.*
- *DPSST continues to work with the Oregon Association of Corrections Directors (OACCD) on the addition of a fifth week to the Basic Parole and Probation class. This is slated to start in July of 2014.*
- *The Oregon Department of Corrections received a \$291,000 SMART Grant from the Federal Department of Justice. It will provide three one-week advanced Parole and Probation courses. DOC is developing the curriculum and wants all of the classes to be held at DPSST. They will be bringing in consultants and instructors from all over the United States as well as using local instructors.*
- *During the legislative session, DPSST is working with the Parole Board on a small housekeeping issue in regards to when a Parole and Probation officer goes to work with the Parole Board; their certifications lapse.*
- *DPSST's budget is up for review the first week of March.*
- *Parole and Probation Class #65 graduated Friday February 8.*
- *DPSST is updating the medical F-2 form. A request for proposal is being put together to find an occupational medical group to help us with standards.*
- *The Law Enforcement Officer's Memorial will be held at DPSST on May 7, 2013 at 1:00 p.m. There will be three historic additions from the Portland Police Bureau.*

During the program, DPSST will recognize John Whitney from DOC and his role as Captain of the Honor Guard.

Andy Long would like to see the equivalency for high school requirements for corrections be similar to police. Linsay Hale is reviewing the process in all disciplines. At this time, Linsay does not have an answer for what direction she is going. Linsay will give an update at the next Corrections Policy Committee meeting.

Erik Douglass would like to have clearer copies of pictures that are included as evidence in the packet. At times, it is difficult to see what the picture depicts. Leon Colas will try to get better copies from the agencies.

Chair Simpson asked the committee if they would prefer the packet to be sent out electronically. It is the consensus of the committee that they would like to continue to receive the packet in paper form.

12. Next Scheduled Meeting – May 14, 2013 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 3:36 p.m.

Appendix A

Corrections Policy Committee Minutes November 13, 2012

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, November 13, 2012, in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. Chair Diana Simpson called the meeting to order at 1:32 p.m.

Attendees:

Committee Members:

Diana Simpson, Oregon State Sheriff's Association, Chair
Rick Angelozzi, Department of Corrections Superintendent
Daryl Borello, Department of Corrections Training Division
Brian Burger, Department of Corrections AFSCME Representative
Erik Douglass, Non-Management Corrections Officer
Michael Gower, Designee for Director of Department of Corrections
Tami Jackson, Non-Management DOC
Andy Long, Oregon State Sheriff's Association
Joseph Pishioneri, Non-Management Law Enforcement
Amanda Rasmussen, Non-Management Corrections Officer
Lisa Settell, Parole and Probation Officer
Barbara Shipley, Oregon Sheriff's Jail Command Council
Linda Yankee, Oregon Sheriff's Jail Command Council

Committee Members Absent:

Jeff Wood, Oregon Association of Community Corrections Directors

DPSST Staff:

Eriks Gabliks, Director
Todd Anderson, Training Division Director
Leon Colas, Professional Standards Coordinator/Investigator
Ryan Keck, Academy Class Coordinator
Theresa King, Professional Standards Coordinator/Investigator
Marilyn Lorange, Standards and Certifications Supervisor
Kristy Witherell, Administrative Support

Guests:

Steve Beck, Oregon Council of Police Association
Michael Vokral, Snake River Correctional Institute



13. Minutes of August 14, 2012 Meeting

Approve the minutes of the August 14, 2012 Corrections Policy Committee meeting.

See Appendix A for details.

- *Joseph Pishioneri moved that the committee approve the minutes of the August 14, 2012 Corrections Policy Committee meeting. Michael Gower seconded the motion. The motion carried unanimously.*

Update on House Bill 2712

Presented by Marilyn Lorange

The workgroup representing telecommunications, corrections, and police met and reviewed the content of all of the crimes that had been identified as a part of HB2712 and made recommendations that will be coming back to the committees. In the course of the conversation, they wanted to answer a more global question about whether there will be a way to better address crimes that are only in the misconduct category. That required Lorraine Anglemier to go back and work on comparing existing crimes that are only in the misconduct category. They are in the category because they violate the law, not the other minimum standards definitions. Lorraine is still doing the comparison work. We hope to have information by early December for the workgroup members to make decisions that will come back to the policy committees in February.

14. Quarterly Review of DOC Basic Corrections Course by the DPSST Audit Team

Presented by Theresa King

See Appendix B for details.

- *The reporting period was July through September of 2012.*
- *There were a limited number of audits due to fewer training.*
- *The next scheduled class for 2012 started in October, so the next reporting period will have a lot of audits of the new curriculum.*
- *The 2011 audit of the DOC BCC program meets the minimum training standards for the certification of corrections officers.*

15. Basic Corrections Local Update

Presented by Ryan Keck

See Appendix C for details.

- *Ryan Keck showed a video of the students' six week training overview in the Basic Corrections Local class.*
- *There has been positive student feedback.*
- *Students have been responding well to scenarios.*

- *There has been a 30% overall academic improvement.*

16. Removal/Replacement of Curriculum in Basic Parole & Probation Academy

Presented by Ryan Keck

See Appendix D for Details

- *The Oregon Case Management System class is now obsolete due to changes in how to assess risk. The Public Safety Checklist (PSC) has been created. With addition to a Risk Management class, this will include new curriculum that will include some references to the PSC.*
- *Michael Gower moved that the committee recommend to the Board removal of the Oregon Case Management class and replace it with a Risk Management class in the Basic Parole & Probation Academy. Joseph Pishioneri seconded the motion. The motion carried unanimously.*

17. William Brotton, Marion County Sheriff's Office – DPSST #32156

Presented by Leon Colas

See Appendix E for details.

- *Brian Burger moved that the Corrections Policy Committee adopts the Staff report as the record upon which its recommendations are based. Joseph Pishioneri seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - h. Identify and articulate the misconduct that is specific to this case. *DUII arrest, overuse of agency computer, and failure to supervise his caseload.*
 - i. The identified conduct did not involve **Dishonesty**
 - j. The identified conduct did involve a **Disregard for the Rights of Others based on BROTTON's failure to conduct assessments and failure to supervise his caseload. BROTTON did not protect potential victims.**
 - k. The identified conduct did not involve **Misuse of Authority.**
 - l. The identified conduct did involve **Gross Misconduct based on BROTTON's failure to act created a danger or risk to persons and the efficient operation of the agency. BROTTON spent six times longer on the computer than any other officers in the office. BROTTON admitted that he did not work for two months and hadn't been in the field for three months.**
 - m. The identified conduct did involve **Misconduct based on BROTTON's overuse of the agency computer and his failure to supervise his caseload. BROTTON was arrested for DUII while on a last chance agreement. The incident that involved BROTTON smelling of alcohol at the courthouse.**

- n. The identified conduct did involve **Insubordination based on BROTTON not meeting contact standards with his caseload. He violated the last chance agreement.**

By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances BROTTON's unusually highly stressful personal life. He was honest when questioned. BROTTON was a 17 year employee who met expectations up until two years before his termination.

The committee noted as aggravating circumstances BROTTON smelling of alcohol when he arrived at the courthouse. He used Facebook for personal reasons on agency computers. BROTTON's letter to the committee was aggravating. He did not take responsibility for his actions.

- *Lisa Settell moved that the Corrections Policy Committee finds BROTTON's conduct does rise to the level to warrant the revocation of his certifications(s) and, therefore, recommends to the Board that these certification(s) be revoked. Andy Long seconded the motion. The motion carried unanimously.*
- *Amanda Rasmussen moved that the Corrections Policy Committee recommends to the Board that BROTTON's conduct encapsulated the highest end of the categories noted above with a focus on Disregard for the Rights of Others, therefore recommending a 15 year disqualifier; BROTTON may reapply for certification 15 years from the date of revocation. Nancy Howton seconded the motion. The motion carried unanimously.*

18. Gilbert K. Cordell, DOC/Douglas County Community Corrections – DPSST #32156 4/17/14 Staff Addendum: A final order was issued by DPSST on October 8, 2013 setting aside the Department's Contested Case Notice of Intent to Revoke, Opportunity to Be Heard and Final Order Revoking Certifications If No Request for Hearing Received related to this matter.

Presented by Leon Colas

See Appendix F for details.

- *Erik Douglass moved that the Corrections Policy Committee adopts the Staff report as the record upon which its recommendations are based. Joseph Pishioneri seconded the motion. The motion carried unanimously.*
- By discussion and consensus:

- a. Identify and articulate the misconduct that is specific to this case. ***CORDELL's inappropriate off duty contact with a subordinate employee, taking items from a deceased officer's car, general unprofessionalism; he inappropriately touched a female officer during a defensive tactics training class, and made derogatory comments regarding professionals at the department.***
- b. The identified conduct ***did*** involve ***Dishonesty based on CORDELL not being truthful when questioned about having the items from the car. CORDELL gave conflicting statements when interviewed.***
- c. The identified conduct ***did not*** involve a ***Disregard for the Rights of Others.***
- d. The identified conduct ***did*** involve ***Misuse of Authority based on CORDELL asking a subordinate to influence the undersheriff in regard to his daughter's trial service.***
- e. The identified conduct ***did*** involve ***Gross Misconduct based on CORDELL's unprofessional acts, such as gossiping in the office and making disparaging comments about fellow coworkers. He was a detriment to the efficient operation of the office.***
- f. The identified conduct ***did*** involve ***Misconduct based on CORDELL's inappropriate search of a subordinate during DT training. He did not follow protocol in regard to having possession of a knife that was taken from the car.***
- g. The identified conduct ***did*** involve ***Insubordination based on CORDELL being directed by the Director not to get involved with the personnel matter involving PO Baker and doing so anyway.***

By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances that CORDELL had great employee reviews up until this incident. The committee noted that there may have been more to the relationship that lead CORDELL to believe his actions were acceptable. Coworkers submitted letters to DPSST in support of CORDELL.

The committee noted as aggravating circumstances CORDELL being a supervisor and using poor judgment. He perpetuated gossip in the workplace. CORDELL did not take accountability for his actions in the letter he submitted. He resigned from his position in the middle of the investigation.

- ***Michael Gower moved that the Corrections Policy Committee finds CORDELL's conduct does rise to the level to warrant the revocation of his certifications(s) and,***

therefore, recommends to the Board that these certification(s) be revoked. Daryl Borello seconded the motion. The motion carried unanimously.

- *Michael Gower moved that the Corrections Policy Committee recommends to the Board that CORDELL's conduct encapsulated the highest end of the categories noted above with a focus on Dishonesty, therefore recommending a lifetime disqualifier; CORDELL may never reapply for certification. Joseph Pishioneri seconded the motion. The motion carried unanimously.*

19. Chris J. Dunsworth, Department of Corrections – DPSST #49672

Presented by Leon Colas

See Appendix G for details.

- *Brian Burger moved that the Corrections Policy Committee adopts the Staff report as the record upon which its recommendations are based. Michael Gower seconded the motion. The motion carried unanimously.*
- *It is the consensus of the committee that the case brought before them did not have enough information to find any misconduct.*
- *Michael Gower moved to once again postpone hearing DUNSWORTH's case until further information is provided. Amanda Rasmussen seconded the motion. The motion carried unanimously.*

20. Donald R. Ross – DPSST #28318

Presented by Leon Colas

See Appendix H for details.

- *Brian Burger moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Tami Jackson seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - h. Identify the conduct that is at issue: *ROSS' certifications were revoked in 2002 based on dishonesty. ROSS is now eligible to reapply for recertification.*
 - i. The identified conduct did involve *Dishonesty based on ROSS falsifying documents to renew his polygraph license.*
 - j. The identified conduct did not involve a *Disregard for the Rights of Others.*
 - k. The identified conduct did not involve *Misuse of Authority.*
 - l. The identified conduct did not involve *Gross Misconduct.*

- m. The identified conduct did involve **Misconduct based on ROSS falsifying documents.**
- The identified conduct did not involve **Insubordination.**
By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.
The committee noted as mitigating circumstances the letters that coworkers submitted to DPSST in support of ROSS. He took responsibility for his actions.
The committee noted as aggravating circumstances that ROSS was determining the truthfulness of others. The polygraphs he administered were poorly done and incomplete. He had a lack of understanding. ROSS' credibility was diminished.
- *Amanda Rasmussen moved that the Corrections Policy Committee recommends to the Board that ROSS' eligibility for recertification not be restored. Rick Angelozzi seconded the motion. The motion carried unanimously.*

21. Michael A. Vokral, Snake River Correctional Institution – DPSST #37004
Presented by Leon Colas

See Appendix I for details.

- *Michael Gower moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Andy Long seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - h. Identify the conduct that is at issue: **2012 hit and run and disturbing the peace conviction.**
 - i. The identified conduct did not involve **Dishonesty.**
 - j. The identified conduct did involve a **Disregard for the Rights of Others based on VOKRAL damaging private property.**
 - k. The identified conduct did not involve **Misuse of Authority.**
 - l. The identified conduct did not involve **Gross Misconduct.**
 - m. The identified conduct did involve **Misconduct based on VOKRAL's hit and run conviction.**
 - n. The identified conduct did not involve **Insubordination.**
- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.
The policy committee noted as mitigating circumstances VOKRAL being present at the corrections policy meeting. He notified his employer of the hit and run. He is seeking treatment. His employer gave him a written reprimand and VOKRAL was demoted from captain to lieutenant.

The policy committee noted as aggravating circumstances that this was VOKRAL's second time before the CPC. He was arrested in 2006. VOKRAL left the scene of the accident because he had been drinking and did not want to be caught.

- Andy Long moved that the Corrections Policy Committee finds VOKRAL's conduct did rise to the level to warrant the revocation of his certifications(s) and, therefore, recommends to the Board that these certification(s) be revoked. Linda Yankee seconded the motion. The motion carried unanimously.*
- Brian Burger moved that the Corrections Policy Committee recommends to the Board that VOKRAL's conduct encapsulated the lowest end of the categories noted above with a focus on Misconduct, therefore recommending a three year disqualifier; VOKRAL may reapply for certification in three years. Erik Douglass seconded the motion. The motion carried unanimously.*

22. Staff Update

- Kim Fulton, our Parole and Probation Coordinator, is leaving DPSST and going back into the field of P&P. She accepted a supervisor position at Lane County Sheriff's Office.*
- DPSST is in early stages of adding an extra week in the Basic Parole and Probation curriculum. The projected date for implementation is July 2014.*
- The intermediate and advanced matrix has moved forward from the Board and has been adopted.*
- There has been an uptick in students coming through the basic corrections local class. The next class is full. DPSST has been in contact with jail command staff to see if there is a need to add another class between the January and July classes.*
- There has been interest in running another Police to Corrections class. As of right now, there hasn't been enough students interested to run a class.*
- DPSST is working with DOC on the sunset of the training program. The program sunsets in 2013. We are working with DOC to get the legislation adopted.*
- Marilyn Lorange is retiring at the end of December. She has agreed to stay on during the legislative session to help with the transition.*

23. Next Scheduled Meeting – February 12, 2013 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 4:33 p.m.

Appendix B

Department of Public Safety Standards and Training Memo

Date: February 12, 2013
To: Corrections Policy Committee
From: Linsay Hale
Rules Coordinator
Subject: OAR 259-008-0025 – Proposed Rule
Minimum Standards for Training

Issue: Current administrative rule requires law enforcement officers who have not been employed in a full-time law enforcement position for an extended period of time to complete additional training before becoming recertified. Specifically, officers away from the profession between 2 ½ to five years must satisfactorily complete a two-week Career Officer Development course and field training program. Officers who have been out of the profession for five or more years must repeat the full Basic Course. These requirements are in place to ensure that all certified, active law enforcement officers are current in the knowledge and abilities of their profession.

In rare instances, an officer's employment history may not require additional training to retain certification, but the periods of employment are so limited and sporadic, not requiring additional training could potentially create a liability for the employing agency and the Department. Staff is requesting to add an exception to rule to address these unusual situations.

The following revised language for OAR 259-008-0025 contains recommended additions (**bold and underlined**) and deletions (~~striketrough text~~).

259-008-0025

Minimum Standards for Training

(8) Notwithstanding this rule, the Department may prescribe additional training for Basic certification, up to and including completion of the full Basic course, in situations in which previous periods of employment have been limited.

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0025 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0025 with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses.

Appendix C

Department of Public Safety Standards and Training

DATE: February 12, 2013

TO: Eriks Gabliks, Director

FROM: Theresa M. King
DOC BCC Audits Unit Coordinator

SUBJECT: Quarterly Review of DOC BCC by DPSST Audit Team

Issue:

Is the DOC BCC meeting the established standards for Basic Corrections Training?

Background:

The concept of Oregon Department of Corrections (DOC) providing its own training as an alternative to the DPSST 200-hour Basic Corrections Course (BCC) was proposed in the 2009 Governors' Recommended Budget as a cost saving for DOC. This concept was given statutory approval for a period of four years with the requirement that it meets or exceeds the DPSST BCC, that DPSST audit the DOC BCC and that DPSST provide a written report to the legislature in 2011.

Since 2010, the Audit Team has provided the Corrections Policy Committee with quarterly updates of the DOC BCC. Within the quarterly updates, the Audit Team has identified areas in which the DOC BCC has met the minimum standards or has exceeded the minimum standard. In cases in which the DOC BCC has not met the minimum standards, the Audit Team has identified the areas of non-compliance and the required remedy.

During this reporting period, **October through December 2012**, the Audit Team conducted a series of on-site and administrative record audits of the 2011 and 2012 DOC BCC. Observations and recommendations were made in areas of concern. ¹

¹ Exhibits 1 – 5 analysis; Exhibits 6 – 56 and 59 Audits

Audit Program Overview

DOC BCC Training

During this reporting period, DOC BCC began two new classes using the 2012 DOC BCC curriculum.² Four classes were still in progress at some phase of their 2011 BCC training.³

DOC COD

During this reporting period, DOC submitted no applications for Career Officer Development (COD) to DPSST.

DOC BCC Testing Results

During this reporting period, the cumulative average for Test #1 was 86.65%⁴ and the cumulative average for Test #2 was 87.5%.⁵

DOC Training Failures requiring remediation

During this reporting period there was one academic failure, one firearms failure, several defensive tactics and health and fitness failures and a number of scenario and problem-based learning failures. These failures have either been successfully remediated or are scheduled to be remediated.⁶

Firearms

During this reporting period DOC's firearms failure rate continued to decrease.⁷

Basic Corrections Certifications

DOC BCC Basic Corrections certifications issued

During this reporting period DOC PDU has submitted 26 applications for certification and there were 37 Basic Corrections certifications granted.

Curriculum

2012 DOC BCC Curriculum

On August 14, 2012, the CPC reviewed and approved the new six week 2012 DOC BCC. This new program was subsequently approved by the Executive Committee.

² BCC 059 and 060

³ BCC 049, 050, 051 and 052

⁴ BCC 059 and 060

⁵ BCC 050 and 052

⁶ Ex 61, provided by DOC PDU

⁷ Ex 57, Audit Team analysis

In October 2012, DOC BCC began two classes under the new curriculum. The Audit Team conducted a number of audits and provided feedback to PDU. Prior to the delivery of these two new classes, the Audit Team advised DOC PDU that the first classes would not be rated for equivalency, but the Audit Team would provide mentoring analysis. The Audit Team conveyed feedback through memorandums and informational audits outlining areas of concern and recommendations.⁸ PDU provided comments and made curriculum updates.⁹ Subsequent to this the Audit Team and PDU met and further clarified standards and processes.¹⁰

Instructor Training and Certification

Instructor Development Courses

DOC PDU has delivered five Instructor Development classes within this reporting period.¹¹

Instructor Applications

During this reporting period 34 BCC instructors were certified for the 2012 BCC program, for a total of 288 BCC instructors.

Audits

Training On-Site Audits

During this reporting period, the Audit Team conducted multiple on-site audits of training. These included observation of the training, review of the lesson plans, student handout materials, instructor presentation, student participation, skills sheets or online courses and student surveys.¹²

Administrative Records Audits

During this reporting period, the Audit Team conducted one administrative records audit of BCC 040 (Westside). This audit included reviewing the timekeeping records and shift assignments of the trainees and the trainers, as well as training documentation.

In general, for purposes of documentation of training, the recordkeeping meets standards.¹³

⁸ Ex 1 - 5

⁹ Ex 65 - 70

¹⁰ Ex 71

¹¹ Ex 64

¹² Ex 6 – 56 and 58

¹³ Ex 59

CORPAT Data Collection:

During this reporting period, two CORPATs were delivered and the data collected.

Findings

In general, the 2011 DOC BCC *meets* the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than the Department of Corrections.

On January 28, 2013, the new 2012 DOC BCC course will be evaluated for equivalency, beginning with BCC 063 and 064.

Attachments:

- Ex 1 2012 DOC BCC Comparison of Subject Hour Breakdown
- Ex 2 Analysis of the Participatory Learning Activities
- Ex 3 Analysis of the BCC Scenarios, Sections B, D and E
- Ex 4 2012 BCC Learning Events
- Ex 5 2012 BCC Test 2 Analysis
- Ex 6 BCC 049/051 Firearms
- Ex 7 BCC 059 DT 2 Self Defense/Control & Restraint
- Ex 8 BCC 059 On-line Training
- Ex 9 BCC 059 Reality Based Training Day 1
- Ex 10 BCC 059 Problem Based Learning Event 1
- Ex 11 BCC 059 Decision Making
- Ex 12 BCC 059 Security Procedures Reality Based Scenarios
- Ex 13 BCC 059 Security Procedures Reality Based Scenarios
- Ex 14 BCC 059 Reality Based Training Part 1 Remediation
- Ex 15 BCC 059 Defensive Tactics Weapons Retention
- Ex 16 BCC 059 Security Procedures Reality Based Scenarios
- Ex 17 BCC 059 Security Procedures Reality Based Scenarios
- Ex 18 BCC 059 Defensive Tactics Ground Defense
- Ex 19 BCC 059 Reality Based Training Part 2
- Ex 20 BCC 060 CORPAT (Pre)
- Ex 21 BCC 060 Ethics and Professionalism
- Ex 22 BCC 060 Correctional Case Management
- Ex 23 BCC 060 Oregon Accountability Model

- Ex 24 BCC 060 BCC Orientation
- Ex 25 BCC 060 Respectful Workplace
- Ex 26 BCC 060 Employee Wellness Part 1
- Ex 27 BCC 060 Health and Fitness Part 1
- Ex 28 BCC 060 Prison Rape Elimination Act (PREA)
- Ex 29 BCC Interpersonal Communications Part 1
- Ex 30 BCC 060 Bloodborne Pathogens
- Ex 31 BCC 060 Communicable Diseases
- Ex 32 BCC 060 Prohibited Inmate Conduct
- Ex 33 BCC 060 Report Writing
- Ex 34 BCC 060 Use of Force
- Ex 35 BCC 060 Defensive Tactics Basic Combatives
- Ex 36 BCC 060 Basic Security Practices
- Ex 37 BCC 060 Supervision of Inmates
- Ex 38 BCC 060 Maintaining Boundaries
- Ex 39 BCC 060 Suicide Awareness and Intervention
- Ex 40 BCC 060 Interpersonal Communication Part 2
- Ex 41 BCC Mental Health and Disabilities
- Ex 42 BCC 060 Legal Issues
- Ex 43 BCC 060 Evidence Handling and Crime Scene Preservation
- Ex 44 BCC 060 Security Threat Management
- Ex 45 BCC 060 Defensive Tactics Self Defense/Control and Restraints
- Ex 46 BCC 060 Online Training
- Ex 47 BCC 060 Defensive Tactics Weapons Retention
- Ex 48 BCC 060 Reality Based Training Day 1
- Ex 49 BCC 060 Security Procedures Reality Based Scenarios
- Ex 50 BCC 060 Problem Based Learning Event Part 1
- Ex 51 BCC 060 Decision Making
- Ex 52 BCC 060 Security Procedures Reality Based Scenarios
- Ex 53 BCC 060 Security Procedures Reality Based Scenarios
- Ex 54 BCC 060 Security Procedures and Inmate Supervision Reality Based Scenarios

- Ex 55 BCC 060 Defensive Tactics Ground Defense
- Ex 56 BCC 060 Reality Based Training Day 2
- Ex 57 DOC BCC Firearms Remediation Overview
- Ex 58 Student Survey
- Ex 59 BCC 040 Administrative Audit
- Ex 60 DOC BCC Master Calendar (2012)
- Ex 61 DOC BCC Corrective Action Classes
- Ex 62 DOC BCC Student Progress Reports
- Ex 63 DOC BCC Student Training
- Ex 64 DOC BCC Instructor Development Courses
- Ex 65 DOC Email and comments on Audit Team Memos
- Ex 66 DOC updated Reality Based Scenarios, Section B25
- Ex 67 DOC updated Reality Based Scenarios, Section C 20
- Ex 68 DOC updated Reality Based Scenarios, Section D10
- Ex 69 DOC updated Reality Based Scenarios, Section E3
- Ex 70 DOC comments on Auditor's feedback on BCC 059/060
- Ex 71 Audit Team/PDU meeting recap regarding BCC 20

Appendix D

Department of Public Safety Standards and Training Memorandum

DATE: February 12, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: RICHARD E. BROWN DPSST #32135
Marion County Sheriff's Office**

ISSUE:

Should Richard E. Brown's Basic, Intermediate and Advanced Corrections certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves BROWN's resignation pursuant to a Settlement Agreement after an internal investigation sustained violations of agency policies related to inmate headcounts, security checks, and proper documentation of those activities.

BACKGROUND and OVERVIEW:

1. *On February 12, 1995, BROWN was hired by the Marion County Sheriff's Office, initially as a corrections officer, and later as a deputy sheriff.¹⁴ He attended training, signed his Code of Ethics,¹⁵ and ultimately obtained Basic, Intermediate and Advanced Corrections certifications.¹⁶*
2. *In January 2012, DPSST received a Personnel Action Report form F-4 showing that BROWN had been discharged for cause, effective November 30, 2011.¹⁷ DPSST sought and obtained information relating to the discharge.¹⁸*
3. *In March 2012 DPSST sent BROWN a Notice of Intent to Revoke Certifications based on the discharge for cause.¹⁹ BROWN responded with a request for a hearing but also requested*

¹⁴ Ex A1

¹⁵ Ex A2

¹⁶ Ex A1

¹⁷ Ex A3

¹⁸ Ex A4, A5, A6

¹⁹ Ex A7

that DPSST stay its proceedings, as he was grieving the discharge.²⁰ DPSST did stay its proceedings.

- 4. In June 2012 DPSST received an amended F-4 showing that BROWN had resigned pursuant to a Settlement Agreement.²¹ DPSST obtained the information related to the resignation.²²*
- 5. In November 2012, DPSST notified BROWN via certified mail that we were withdrawing the Notice of Intent to Revoke based on the discharge for cause, that his case would be heard before the Corrections Policy Committee (CPC), and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.²³*
- 6. BROWN did not provide a response.*

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

²⁰ Ex A8

²¹ Ex A9

²² Ex A10

²³ Ex A11

* * *

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the

applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) Whether the misconduct involved domestic violence;*
- (F) Whether the public safety professional or instructor self reported the misconduct;*
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke BROWN's certifications based on violation of the established moral fitness standards:

2. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

3. By discussion and consensus:

- a. Identify and articulate the **misconduct that is specific to this case**.

- b. The identified conduct *did/did not* involve **Dishonesty**.

- c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

- d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not involve* **Gross Misconduct**.

f. The identified conduct *did/did not involve* **Misconduct**.

g. The identified conduct *did/did not involve* **Insubordination**.

4. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

5. By vote, the Policy Committee finds BROWN's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

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

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

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case 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 ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix E

Department of Public Safety Standards and Training Memorandum

DATE: February 12, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: CHRIS J. DUNSWORTH DPSST #49672
Dept. of Corrections – Coffee Creek Correctional Facility

ISSUE:

Should Chris J. Dunsworth's Basic Corrections certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves DUNSWORTH's resignation during an internal investigation for violations of agency policies regarding relationships with former inmates.

BACKGROUND and OVERVIEW:

7. *On May 19, 2008, DUNSWORTH was hired by the Department of Corrections as a corrections officer. He attended training, obtained his Basic Corrections certification²⁴ and signed his Code of Ethics.²⁵*
8. *In March 2012, DPSST received a Personnel Action Report form F-4 showing that DUNSWORTH had resigned during an investigation.²⁶ DPSST sought and obtained information relating to the resignation.²⁷*
9. *In May 2012, DPSST notified DUNSWORTH via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.²⁸*
10. *DUNSWORTH did not provide a response.*

²⁴ Ex A1

²⁵ Ex A2

²⁶ Ex A3

²⁷ Ex A4

²⁸ Ex A5

11. *On August 14, 2012, this matter was presented to the CPC. After review, the committee requested further investigation, having determined that there was not enough information on which to make a decision.*²⁹
12. *In September, 2012, DPSST requested and obtained further information from DOC.*³⁰ *DDPSST also sent DUNSWORTH another letter via certified mail advising him of the committee's request, giving him another opportunity to provide mitigating circumstances for the committee's consideration, and requesting that he come in for an interview.*³¹ *DUNSWORTH did not respond.*
13. *On November 13, 2012, this case was presented to the Corrections Policy Committee with the additional information obtained from DOC. During the committee's discussion, committee member Rasmussen indicated that she was aware of additional information on the matter that had not yet been provided. The CPC then requested further investigation, with the case to be presented at the February CPC meeting.*³²
14. *During December and January, DPSST staff sought and obtained Rasmussen's and others' information and documentation on this matter, as well as information on two additional instances of misconduct by DUNSWORTH. One of the additional incidents is sustained through affidavits, emails, related documents and photo identification, and the other incident was alleged but not investigated due to DUNSWORTH's resignation.*³³

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

²⁹ Ex A6

³⁰ Ex A7- A9

³¹ Ex A10

³² Ex A11 – A12

³³ Ex A13 – A21

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*

- (C) *Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) *Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) *Whether the misconduct involved domestic violence;*
- (F) *Whether the public safety professional or instructor self reported the misconduct;*
- (G) *Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) *Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) *What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke DUNSWORTH's certification based on violation of the established moral fitness standards:

6. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

7. By discussion and consensus:

- a. Identify and articulate the **misconduct that is specific to this case**.

- b. The identified conduct *did/did not* involve **Dishonesty**.

- c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

- d. The identified conduct *did/did not* involve **Misuse of Authority**.

- e. The identified conduct *did/did not involve* **Gross Misconduct**.

- f. The identified conduct *did/did not* involve **Misconduct**.

- g. The identified conduct *did/did not* involve **Insubordination**.

8. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

9. By vote, the Policy Committee finds DUNSWORTH's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

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

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

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case 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 ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix F

Department of Public Safety Standards and Training Memorandum

DATE: February 12, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: ROBERT S. FERRIS DPSST #22724
Marion County Sheriff's Office**

ISSUE:

Should Robert S. Ferris' Basic, Intermediate and Advanced Corrections certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves FERRIS' retirement during an internal investigation that sustained violations of agency policies related to inmate headcounts and security checks, institution logs, and truthfulness.

BACKGROUND and OVERVIEW:

- 15. On February 16, 1989, FERRIS was hired by the Marion County Sheriff's Office as a corrections officer, and later as a deputy sheriff. He attended training and ultimately obtained Basic, Intermediate and Advanced Corrections certifications.³⁴*
- 16. In September 2012, DPSST received a Personnel Action Report form F-4 showing that FERRIS had retired while under investigation.³⁵ DPSST sought and obtained information relating to the retirement.³⁶*
- 17. In November 2012, DPSST notified FERRIS via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.³⁷*
- 18. FERRIS provided a response.³⁸*

³⁴ Ex A1

³⁵ Ex A2

³⁶ Ex A3 – A7

³⁷ Ex A8

³⁸ Ex A9

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) *When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) *If the misconduct resulted in a conviction:*
 - (i) *Whether it was a misdemeanor or violation;*
 - (ii) *The date of the conviction(s);*
 - (iii) *Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) *Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) *Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) *Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) *Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) *Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) *Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) *Whether the misconduct involved domestic violence;*
- (F) *Whether the public safety professional or instructor self reported the misconduct;*
- (G) *Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) *Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) *What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke FERRIS' certification(s) based on violation of the established moral fitness standards:

10. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

11. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

- g. The identified conduct *did/did not* involve **Insubordination**.

12. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

13. By vote, the Policy Committee finds FERRIS' conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

*Information Only - **SUBSEQUENT DUE PROCESS:***

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

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

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

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case 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 ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix G

Department of Public Safety Standards and Training Memorandum

DATE: February 12, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: JOHN A. FROST DPSST #39914
Dept. of Corrections – Snake River Correctional Institution

ISSUE:

Should John A. Frost's Basic, Intermediate and Advanced Corrections certifications be revoked, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4), and as referenced in OAR 259-008-0010?

This case involves FROST's conviction of four counts of Contempt of Court in Idaho in 2012.

BACKGROUND and OVERVIEW:

- 19. Since September 2000, Frost has been employed as a public safety officer, except for a four-year period from 2002 to 2006. He was first with the Malheur County Sheriff's Office as a deputy sheriff, and has been with the Department of Corrections since January 2008.³⁹ He attended training, signed his Code of Ethics,⁴⁰ and ultimately obtained Basic, Intermediate and Advanced Corrections certifications.⁴¹*
- 20. In August 2012, DPSST received information that FROST had been convicted in Idaho of four counts of Contempt of Court.⁴² DPSST sought and obtained information relating to the convictions.⁴³*
- 21. In November 2012, DPSST notified FROST via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.⁴⁴*
- 22. FROST provided a response.⁴⁵*

³⁹ Ex A1

⁴⁰ Ex A2

⁴¹ Ex A1

⁴² Ex A3

⁴³ Ex A4 – A5

⁴⁴ Ex A6

23. *The agency also forwarded a copy of their investigation, which resulted in a written reprimand issued to FROST.*⁴⁶

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(b)For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

⁴⁵ Ex A7

⁴⁶ Ex A8

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of Contempt of Court as Category V, Misconduct. It carries a presumptive length of ineligibility for reconsideration of certification of three to seven years.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) Whether the misconduct involved domestic violence;*
- (F) Whether the public safety professional or instructor self reported the misconduct;*
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke FROST's certifications based on violation of the established moral fitness standards:

14. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

15. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not involve* **Gross Misconduct**.

f. The identified conduct *did/did not involve* **Misconduct**.

g. The identified conduct *did/did not involve* **Insubordination**.

16. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

17. By vote, the Policy Committee finds FROST's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

*Information Only - **SUBSEQUENT DUE PROCESS:***

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

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

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

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case 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 ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix H

Department of Public Safety Standards and Training Memorandum

DATE: February 12, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: CAROLINE A. KRUSE DPSST #44228
Dept. of Corrections – Oregon State Penitentiary

ISSUE:

Should Caroline A. Kruse's Basic Corrections certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves KRUSE' resignation during an internal investigation regarding violations of agency policies related to staff/ inmate relationships.

BACKGROUND and OVERVIEW:

24. *On May 5, 2008, KRUSE was hired by the Oregon Department of Corrections as a corrections officer.⁴⁷ She attended training, signed her Code of Ethics⁴⁸ and ultimately obtained a Basic Corrections certification.⁴⁹*
25. *In April 2012, DPSST received a Personnel Action Report form F-4 showing that KRUSE had resigned while under investigation.⁵⁰ DPSST sought and obtained information relating to the resignation.⁵¹*
26. *In November 2012, DPSST notified KRUSE via certified mail that her case would be heard before the Corrections Policy Committee (CPC), and allowed her an opportunity to provide mitigating circumstances for the Committee's consideration.⁵²*
27. *KRUSE provided a response.⁵³*

⁴⁷ Ex A1

⁴⁸ Ex A2

⁴⁹ Ex A1

⁵⁰ Ex A3

⁵¹ Ex A4 – A5

⁵² Ex A6

⁵³ Ex A7

28. Upon my review of the internal investigation documents and KRUSE's response, I followed up with the issues raised that did not get addressed because of KRUSE's resignation. The Oregon State Police, after being assigned the investigation, contacted the District Attorney's Office. The DA's office advised that there was no crime involved in KRUSE's activities, therefore the State Police did not do an investigation, so there are no documents to provide to the committee. I also requested the other DOC investigators to contact me regarding the content of the phone calls that they listened to, and received a response, which rebuts KRUSE's claim about the nature of her relationship with the inmate.⁵⁴ There was also a reference in the investigation of an earlier matter involving KRUSE and the same inmate, so I obtained that documentation. No allegations were substantiated in that investigation, but it rebuts some of KRUSE's information in her response to the CPC.⁵⁵

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements

⁵⁴ Ex A8, A10, A11

⁵⁵ Ex A9

of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) Whether the misconduct involved domestic violence;*
- (F) Whether the public safety professional or instructor self reported the misconduct;*
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*

(H) *Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*

(I) *What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke KRUSE's certification based on violation of the established moral fitness standards:

18. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

19. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

g. The identified conduct *did/did not* involve **Insubordination**.

20. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

21. By vote, the Policy Committee finds KRUSE's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

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

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

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case 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 ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix I

Department of Public Safety Standards and Training Memorandum

DATE: February 12, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: DAVID B. NIELSEN DPSST #34485
Department of Corrections – Two Rivers Correctional Institution

ISSUE:

Should David B. Nielsen's Basic Corrections certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves Nielsen's resignation pursuant to a Settlement Agreement after an internal investigation sustained violations of agency policies related to truthfulness.

BACKGROUND and OVERVIEW:

29. On August 18, 1997, NIELSEN was hired by the Department of Corrections as a corrections officer.⁵⁶ He attended training, signed his Code of Ethics,⁵⁷ and obtained a Basic Corrections certification.⁵⁸
30. In March 2011, DPSST staff member Theresa King of the DOCC BCC Audit Team and Professional Standards Investigator/ Coordinator, during the course of a BCC audit, identified inconsistencies between information provided by NIELSEN and that provided by other members of the Dept. of Corrections and corroborating documents. KING investigated further and forwarded her concerns and the information she developed to DOC Director Williams.⁵⁹ She also notified then-Sheriff Anderson, as Chair of the Corrections Policy Committee (CPC) because of NIELSEN's membership on that committee.⁶⁰ Subsequently,

⁵⁶ Ex A1

⁵⁷ Ex A2

⁵⁸ Ex A1

⁵⁹ Ex A3

⁶⁰ Ex A4, A5

the Chair of the Board on Public Safety Standards and Training (BPSST), then-Sheriff Bentz, removed NIELSEN from his position as CPC member.⁶¹

- 31. Thereafter, KING withdrew as investigator on this matter due to the conflict between her role as Professional Standards Investigator/Coordinator and her position in the DOC BCC Audit Program.⁶² She assisted DOC in its subsequent investigation on NIELSEN.⁶³*
- 32. In October 2011, DPSST received a Personnel Action Report form F-4 showing that NIELSEN had been discharged for cause.⁶⁴ DPSST sought and obtained information relating to the discharge.⁶⁵*
- 33. In February 2012 DPSST sent NIELSEN a Notice of Intent to Revoke Certifications based on the discharge for cause.⁶⁶ NIELSEN responded with a request for a hearing.⁶⁷ In May 2012 a pre-hearing conference was held and from that, a hearing was scheduled for November 2012.⁶⁸ DPSST later learned that NIELSEN had grieved his discharge and that his case was scheduled for arbitration in September 2012⁶⁹.*
- 34. In October 2012 DPSST received an amended F-4 and a Settlement Agreement showing that NIELSEN had resigned pursuant to the Settlement Agreement.⁷⁰*
- 35. In November 2012, DPSST notified NIELSEN via certified mail that we were withdrawing the Notice of Intent to Revoke based on the discharge for cause, that his case would be heard before the Corrections Policy Committee (CPC), and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.⁷¹*
- 36. NIELSEN provided a response. One item in his submission is an audio cd which contains recordings of his interviews conducted during the original DOC investigation in 2011. These were not transcribed by NIELSEN despite clear instruction that only written documentation is to be submitted for consideration, so no transcriptions are available from his cd. The cd is available should the CPC wish to listen to it during its meeting.⁷²*

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

⁶¹ Ex A6

⁶² Ex A7

⁶³ Ex A8

⁶⁴ Ex A9

⁶⁵ Ex A10, A11 – A15

⁶⁶ Ex A16

⁶⁷ Ex A17

⁶⁸ Ex A19

⁶⁹ Ex A18

⁷⁰ Ex A20

⁷¹ Ex A21

⁷² Ex A22

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

(A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

(iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;

- (iv) *Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
- (v) *Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
- (vi) *Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
- (vii) *Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) *Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) *Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) *Whether the misconduct involved domestic violence;*
- (F) *Whether the public safety professional or instructor self reported the misconduct;*
- (G) *Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) *Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) *What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke NIELSEN's certification(s) based on violation of the established moral fitness standards:

- 22. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
- 23. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case.**

- b. The identified conduct *did/did not* involve **Dishonesty**.

- c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

- d. The identified conduct *did/did not* involve **Misuse of Authority**.

- e. The identified conduct *did/did not involve* **Gross Misconduct**.

- f. The identified conduct *did/did not* involve **Misconduct**.

- g. The identified conduct *did/did not* involve **Insubordination**.

24. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

25. By vote, the Policy Committee finds NIELSEN's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

*Information Only - **SUBSEQUENT DUE PROCESS:***

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

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

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

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case 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 ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix J

Department of Public Safety Standards and Training Memorandum

DATE: February 12, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JUSTIN S. SINKS DPSST #49362
Marion County Sheriff's Office**

ISSUE:

Should Justin S. Sinks' Basic Corrections certification be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves SINKS' resignation during an internal investigation that sustained violations of agency policies related to an improper personal relationship with a corrections client, code of conduct, and use of agency resources.

BACKGROUND and OVERVIEW:

37. *On February 25, 2008, SINKS was hired by the Marion County Sheriff's Office as a deputy sheriff.⁷³ He attended training, signed his Code of Ethics,⁷⁴ and obtained a Basic Corrections certification.⁷⁵*
38. *In September 2012, DPSST received a Personnel Action Report form F-4 showing that SINKS had resigned while under investigation.⁷⁶ DPSST sought and obtained information relating to the resignation.⁷⁷*
39. *In November 2012, DPSST notified SINKS via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration.⁷⁸*

⁷³ Ex A1

⁷⁴ Ex A2

⁷⁵ Ex A1

⁷⁶ Ex A3

⁷⁷ Ex A4 – A9

⁷⁸ Ex A10

40. SINKS did not provide a response.

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(b)For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the

principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee

and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) Whether the misconduct involved domestic violence;*
- (F) Whether the public safety professional or instructor self reported the misconduct;*
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke SINKS' certification based on violation of the established moral fitness standards:

26. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

27. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

g. The identified conduct *did/did not* involve **Insubordination**.

28. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

29. By vote, the Policy Committee finds SINKS' conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

*Information Only - **SUBSEQUENT DUE PROCESS:***

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

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

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

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case 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 ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.