

Police Policy Committee Minutes

February 21, 2019

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on February 21, 2019 at the Department of Public Safety Standards and Training located in Salem, Oregon. Chair John Teague called the meeting to order at 10:00 a.m.

Committee Members:

John Teague, Chair, Oregon Association of Chiefs of Police
Brian Wolfe, Vice Chair, Oregon State Sheriff's Association
Liz Lawrence, Non-Management Law Enforcement
Loren 'Renn' Cannon, Federal Bureau of Investigation
Pat Garrett, Oregon State Sheriff's Association
Travis Hampton, Superintendent, Oregon State Police
Andy Heider, OSP Command Staff Representative
Chris Davis, Portland Police Bureau (Designee for Chief Outlaw)
Craig Zanni, Oregon State Sheriff's Association
Zachary Kenney, Non-Management Law Enforcement
Kristine Allison, Oregon Association of Chiefs of Police (phone)
Mark Rauch, Public Member
Bradley Robertson, Non-Management Law Enforcement
Laurence (Craig) Halupowski, Non-Management Law Enforcement
Dale Cummins, Oregon Association of Chiefs of Police (phone)

Guests:

Pete Marcellais
Judith Marcellais
Greg Williams
Brandalee Davis
Carl Stubbs
James Wolfer

DPSST Staff:

Eriks Gabliks, Director
Mike Leloff, Training Division Director
Linsay Hale, Professional Standards Division Director
Kristen Hibberds, Professional Standards Coordinator/Investigator



1. Introductions

Introductions of members, guest and staff were presented.

2. Minutes of November 15, 2018 Meeting

Approve the minutes of the November 15, 2018 Police Policy Committee.

- *Craig Halupowski moved that the committee approve the minutes of the November 15, 2018 Police Policy Committee meeting. Liz Lawrence seconded the motion. The motion carried unanimously.*

3. ***Proposed Rule Changes for OAR 259-008-0070; Criminal Justice Moral Fitness Workgroup Recommendations, Part One**

Presented by Linsay Hale

On October 17, 2018, the Criminal Justice Moral Fitness Workgroup began a review of the denial, suspension and revocation standards that were updated and implemented in August, 2017. The Workgroup was formed to review a number of unintended tensions in the revised administrative rule language as well as address some additional issues that have arisen based upon procedural and legal changes. While the review process is still ongoing, the Workgroup's discussions have resulted in the following recommendations:

- Current administrative rule requires Policy Committee review of all criminal dispositions received by current and future public safety professionals. The current definitions of a criminal disposition includes convictions, violations, adjudications, entered pleas of guilty or no contest, or finding of guilty except for insanity or its equivalent in Oregon or any other jurisdiction. The Workgroup recommends adding of civil compromises to the definition of criminal disposition.
- Allowing public safety professionals who are the subject of a complaint filed with DPSST the ability to submit mitigation prior to Policy Committee review.
- Adjusting the administrative closure criteria to allow staff to recommend administrative closure of cases that involve a criminal disposition that occurred five years prior to employment in public safety, the only criminal dispositions are the result of a single incident in the public safety professional's history, the conduct did not involve dishonesty or deceit, and the public safety has met all court-ordered obligations, including the payment of fines and fees.

Craig Halupowski moved to recommend the Board adopt the changes as proposed and that the Board approve filing the changes to OAR 259-008-0070 as a permanent rule change with the Secretary of State if no comments are received. Chris Davis seconded the motion. The motion passed unanimously.

By consensus the committee found no fiscal impact to small businesses.

4. ***Review of Policy Committee Bylaws**

Presented by Linsay Hale

In an effort to enhance professionalism of the policy committee professional standards case review process, the Criminal Justice Moral Fitness Workgroup recommends the following revisions to the Policy Committee bylaws:

- Expansion of the Board Chair authority to remove a policy committee member for non-participation, lack of participation or unexcused absences.

- The addition of mandatory Board/Policy Committee orientation training prior to participating in policy committee discussions or votes.
- The addition of a requirement to record all member votes by conducting a verbal roll-call.
- The addition of a definition for conflict of interest.
- The addition of a non-participation clause for a committee member who is the subject individual in an open DPSST professional standards case.

Craig Halupowski moved to adopt the recommended changes to the Police Policy Committee Bylaws. Zachary Kenney seconded the motion. The motion carried unanimously.

5. ***Administrative Closures**

Presented by Kristen Hibberds

Officer	Certifications	Summary	Flagged for Review (if hired in future)
Adams, Gordon #44152 Umatilla Tribal PD	Intermediate	Separation – Adams accepted employment with another agency in violation of a verbal agreement with Chief.	No
Mecum, Darren #58789 Douglas County SO	None	Separation – Untruthful during background about buying, selling and using steroids	Yes
Apodaca, Daniel #54584 DPSST – Instructor	Instructor	Separation – Inability to follow directions & creating a disruptive learning environment	No
Dey, Arjun #59216 Lincoln City PD	None	Separation – Untruthful during background about criminal history	Yes
Lane, Cody #42516 Marion County SO	Multi-Discipline/ Advanced	Separation – Reinstated by arbitrator who found investigative conclusions unsupported by evidence	No

- *Zachary Kenney moved to approve the recommendations made by staff to administratively close the above listed cases. Bradley Robertson seconded the motion. The motion carried unanimously.*

6. **Overview of Changes to Professional Standards Case Review**

Presented by Linsay Hale

Staff highlighted the changes to the processes involved in reviewing discretionary professional standards cases for the Committee. These changes were reviewed and approved by the Criminal Justice Moral Fitness Workgroup and are procedural only and do not impact the current standards.

7. ***Williams, Gregory DPSST #59293 – Application for Training/Subsequent Certification – Oregon State Police**

Presented by Kristen Hibberds

Issue: In October, 2018, Williams submitted an Application for Training and self-disclosed a 2012 conviction of Sell, Furnish or Assist Minor to Obtain Alcoholic Beverage in the State of Nevada.

Andy Heider recused himself due to a conflict of interest.

Gregory Williams presented verbal mitigation.

Vote/Consensus	Second	Vote	Outcome
Pat Garrett moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based.	Bradley Robertson	13 ayes; 0 nays; 1 abstention (Heider)	Motion passes.
Consensus reached that Williams' behavior did violate the Board's moral fitness standards, specifically by engaging in Gross Misconduct as defined by administrative rule when he recklessly disregarded the law and was convicted of a crime.			
<p>The Police Policy Committee reviewed and considered the Aggravating and Mitigating circumstances specific to this case.</p> <p>Pursuant to OAR 259-0080070(4)(f)(F), there are aggravating circumstances present: The conduct resulted in a criminal disposition and the individual was found guilty of a misdemeanor. The Committee did not find any additional aggravating circumstances.</p> <p>Pursuant to OAR 259-008-0070(4)(f)(F), there are mitigating circumstances present: The conduct occurred before employment in public safety; Mr. Williams does not have more than one criminal disposition; the individual has met all court ordered obligations; the conviction occurred over six years ago; and Mr. Williams self-reported the conviction. The Committee found additionally mitigating Mr. Williams presented mitigation accepting responsibility for his actions and the fact that OSP was aware of his history and hired him.</p>			
Zachary Kenney made a motion that after considering the totality of the case that no Board action be taken on Williams' certification.	Craig Halupowski	13 ayes; 0 nays; 1 abstention (Heider)	Motion passes.

8. ***Marcellais, Pete DPSST #45295 Basic Police Certification – Marion County Sheriff's Office**

Presented by Kristen Hibberds

Issue: In August 2018, DPSST received a Personnel Action Report (F-4s) from the Marion County Sheriff's Office indicating that Marcellais had been terminated. In October 2018, DPSST received an amended F-4s stating that Marcellais had resigned during an investigation.

Pete Marcellais presented verbal mitigation.

Vote/Consensus	Second	Vote	Outcome
Liz Larence moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based.	Andy Heider	14 ayes; 0 nays	Motion passes unanimously.
Consensus reached that Marcellais' behavior did violate the Board's moral fitness standards, specifically by engaging in Gross Misconduct as defined by administrative rule when he engaged in sexually harassing behavior impacting the efficient operations of his agency.			
<p>The Police Policy Committee reviewed and considered the Aggravating and Mitigating circumstances specific to this case.</p> <p>Pursuant to OAR 259-0080070(4)(f)(F), there are aggravating circumstances present: The conduct occurred during employment in public safety; and the conduct occurred multiple times. The Committee found additionally aggravating the lack of awareness, remorse and responsibility shown by Mr. Marcellais.</p> <p>Pursuant to OAR 259-008-0070(4)(f)(F), there are no mitigating circumstances present. The Committee found additionally mitigating the length of time Mr. Marcellais had been allowed to engage in the bad behavior; the apparent culture of his employing agency at the time of the behavior; the letters of reference provided; and the fact that Mr. Marcellais was open and honest about his behavior.</p>			
Chris Davis made a motion after considering the totality of the case to recommend to the Board that action be taken against Marcellais' certification.	Bradley Robertson	13 ayes; 1 nays (Halupowski)	Motion passes.
Zachary Kenney made a motion that after considering the totality of the case to recommend to the Board that Marcellais be ineligible to hold public safety certification for three years.	Craig Halupowski	4 ayes (Allison, Halupowski, Kenney, Teague); 10 nays	Motion fails

Travis Hampton made a motion that after considering the totality of the case to recommend to the Board that Marcellais be ineligible to hold public safety certification for five years plus one day.	Zachary Kenney	13 ayes; 1 nays (Halupowski)	Motion passes.
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9. *Wolfer, James DPSST #51798 Basic Police Certification – Grande Ronde Tribal Police Department

Presented by Kristen Hibberds

Issue: In August, 2017, DPSST received notification that Wolfer separated from employment with the Grand Ronde Tribal Police Department.

James Wolfer presented verbal mitigation on his behalf.

Vote/Consensus	Second	Vote	Outcome
Craig Zanni moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based	Craig Halupowski	13 ayes; 0 nays	Motion passes unanimously.
Consensus reached that Wolfer's behavior that led to the separation from his employment did not violate any the Board's moral fitness standards as defined by administrative rule.			

10. *Hald, Dustin DPSST #33090 Basic, Intermediate and Advanced Police Certifications – Columbia County Sheriff's Office

Presented by Kristen Hibberds

Issue: In February, 2018, DPSST received a Personnel Action Report (F-4) from the Columbia County Sheriff's Office indicating that Hald has resigned in lieu of termination. In September, 2018, DPSST received an amended F-4 stating that Hald has retired.

Vote/Consensus	Second	Vote	Outcome
Brian Wolfe moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based	Craig Zanni	12 ayes; 0 nays	Motion passes unanimously.
Consensus reached that Hald's behavior that led to the separation from his employment did not violate any the Board's moral fitness standards as defined by administrative rule.			

**11. *Newberry, Tommy DPSST #21603 Basic, Intermediate and Advanced Police
Certifications – West Linn Police Department**

Presented by Kristen Hibberds

Issue: On February, 2017, DPSST received a Personnel Action Report (F-4) from the West Linn Police Department indicating that Newberry had been discharged for cause. DPSST stayed their certification review pending his grievance and subsequent arbitration.

On July 17, 2018, an Opinion and Order was issued by the arbitrator upholding Newberry's termination.

Vote/Consensus	Second	Vote	Outcome
Craig Zanni moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based	Craig Halupowski	12 ayes; 0 nays	Motion passes unanimously.
Consensus reached that Newberry's behavior did violate the Board's moral fitness standards, specifically by engaging in Gross Misconduct as defined by administrative rule when he engaged in on-duty political activity via social media that was considered racist and inflammatory, directly impacting the efficient operations of his agency.			
<p>The Police Policy Committee reviewed and considered the Aggravating and Mitigating circumstances specific to this case.</p> <p>Pursuant to OAR 259-0080070(4)(f)(F), there are aggravating circumstances present: The conduct occurred during employment in public safety; the conduct occurred multiple times; and the conduct occurred while Newberry was acting in his official capacity. The Committee found additionally aggravating the egregiousness of the behavior and the lack of accountability shown by Mr. Newberry.</p> <p>Pursuant to OAR 259-008-0070(4)(f)(F), there are no mitigating circumstances present. The Committee found no circumstances additionally mitigating.</p>			
John Teague made a motion after considering the totality of the case to recommend to the Board that action be taken against Newberry's certifications.	Bradley Robertson	12 ayes; 0 nays	Motion passes unanimously.
Craig Halupowski made a motion that after considering the totality of the case to recommend to the Board that Newberry be ineligible to hold public safety certification for 10 years.	Brain Wolfe	12 ayes; 0 nays	Motion passes unanimously.

12. *Lineberry, Joshua DPSST #51879 Basic, Intermediate and Advanced Police Certifications – Columbia County Sheriff's Office

Presented by Kristen Hibberds

Issue: In January, 2018, DPSST received a Personnel Action Report (F-4) from the Columbia County Sheriff's Office regarding Lineberry's resignation in lieu of termination.

Vote/Consensus	Second	Vote	Outcome
Craig Halupowski moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based	Liz Lawrence	12 ayes; 0 nays	Motion passes unanimously.
Consensus reached that Lineberry's behavior that led to the separation from his employment did not violate any the Board's moral fitness standards as defined by administrative rule.			

13. *Dedek, Abraham DPSST #43390 Basic, Intermediate and Advanced Police Certifications – Salem Police Department

Presented by Kristen Hibberds

Issue: In October, 2017, DPSST received a Personnel Action Report (F-4) from the Salem Police Department indicating that Dedek had resigned during an investigation.

John Teague recused himself due to a conflict of interest.

Vote/Consensus	Second	Vote	Outcome
Craig Zanni moved that the Police Policy Committee adopts the staff report as the record upon which its recommendations are based	Craig Halupowski	11 ayes; 0 nays; 1 abstention	Motion passes unanimously.
Consensus reached that Dedek's behavior did violate the Board's moral fitness standards, specifically by engaging in Gross Misconduct as defined by administrative rule when he engaged in an inappropriate sexual relationship with the parent of a child attending the school he was assigned to as a School Resource Officer, directly impacting the efficient operations of his agency. Consensus reached that Dedek also engaged in Misuse of Authority as defined by administrative rule when he used his public safety position to engage in this relationship, and that Dedek engaged in Dishonesty as defined by administrative rule when he was dishonesty during the investigation.			

The Police Policy Committee reviewed and considered the **Aggravating and Mitigating** circumstances specific to this case.

Pursuant to OAR 259-0080070(4)(f)(F), there are aggravating circumstances present: The conduct occurred during employment in public safety; the conduct occurred multiple times; and the conduct occurred while Dedek was acting in his official capacity. The Committee found additionally aggravating the fact that Dedek asked the women to send her children away so they could engage in sexual activity, that Dedek blamed the woman for the relationship and that Dedek engaged in a pattern of deceit.

Pursuant to OAR 259-008-0070(4)(f)(F), there are no mitigating circumstances present. The Committee found no circumstances additionally mitigating.

Craig Zanni made a motion after considering the totality of the case to recommend to the Board that action be taken against Newberry's certifications.	Halupowski	11 ayes; 0 nays; 1 abstention (Teague)	Motion passes.
Craig Halupowski made a motion that after considering the totality of the case to recommend to the Board that Dedek be ineligible to hold public safety certification for life.	Bradley Robertson	11 ayes; 0 nays; 1 abstention (Teague)	Motion passes.

14. *Stubbs, Carl DPSST #36091 – Complaint 2018-129CJ

Presented by Kristen Hibberds

Issue: In June, 2018, DPSST received a complaint alleging misconduct by Carl Stubbs, a certified police officer not currently employed as a public safety officer.

This complaint was presented to the Policy Committee for review and determination of next steps in accordance with OAR 259-008-0070(4)(c)(B).

Travis Hampton moved to open a Professional Standards case allowing the Policy Committee to review this matter to determine if the Board's moral fitness standards have been violated. Brian Wolfe seconded the motion. The motion passes unanimously.

15. Department Update

Eriks Gabliks reported:

The 2019 legislative session is under way. More than 2,000 bills have already been introduced and many believe just as many more will be introduced before the session is done. There are dozens of bills that will impact law enforcement agencies ranging from trauma informed care to use of force. OACP and OSSA are actively tracking all bills and are a great source for information.

DPSST presented its 2019-2021 budget to joint ways and means last week. DPSST appreciates the support and testimony provided by all of our statewide association partners.

DPSST will host the OACP Leadership Institute at the Academy from March 11-15. More info on the OACP website.

DPSST will host the OACP 2019 Small Agency Chiefs summit at the Academy next week. This is for 70 law enforcement agencies around Oregon that employ less than the officers.

DPSST will host the IACP Women's Leadership Institute at the Academy from May 19-24. There will be no charge for the training and lodging will be made available for participants more than 75 miles away.

DPSST issued a letter to all law enforcement agencies regarding the changes made at the Academy to address the recent BOLI investigation and findings. An updated was also shared during the Chiefs and Sheriffs meeting at ELTS in Seaside. If folks have any questions they can contact Mike Leloff at DPSST. DPSST considers the matter closed.

At its meeting last month, the Board (BPSST) approved the new curriculum for the three-week Basic Telecommunications Course for 9-1-1 operators. The new course, with the additional week, will begin in the Spring.

The Board also approved phase two changes to the 16-week Basic Police Course based on the unanimous support of the PPC through formal action at its last meeting. The changes will be implemented over the next few months with the new course fully implemented by July 1st. To make the transition to the new curriculum, to mitigate the impact on agencies hiring new officers, and by using agency hiring data, DPSST will not start a Basic Police class during the month of June. The Phase II changes identified three items that are better suited for agency delivery instead of the Academy. This includes blood borne pathogens, harassment training, and K-9 familiarization. The Department of Homeland Security AWR-160 class is also removed from the Academy as this training is now available as an online class free of charge and the work group recommend this be completed at the local agency instead of using six hours of limited time which can be used to address other needs. A letter to chiefs, sheriffs and agency heads with this information was sent out by DPSST earlier this week. The transition of the four items from the Academy to the employing agency will be added to the Police Field Training Manual with an effective date of July 1, 2019.

The Oregon Fallen Officer Memorial is scheduled for Tuesday, May 7 at 1:00 pm at the Academy. The names of four fallen officers have been approved by the Board for addition. Ashland Police Officer Malcus Williams, Bend Police Sgt. John Lawrence, and two Multnomah County Sheriff's Deputies who were seriously injured in the line of duty and retired as a result of their injuries. Both of these are being added under the historic

recognition program which allows fallen officers from previous years to be honored on the memorial after careful review and approval.

DPSST will begin an overview and update on the Supervision and Management classes over the next few months. Committee members and stakeholders from around the state will be invited to assist.

Linsay Hale reported:

The Criminal Justice Moral Fitness Workgroup is continuing its work. The first phase of the recommendations were presented and approved during today's meeting. All remaining recommendations from that group will be presented to the Police Policy Committee for consideration and recommendation.

DPSST is in the final stages of purchasing A/V equipment to assist with public meeting transparency and security of future policy committee meetings.

Meeting adjourned at approximately 2:00 pm.

Administrative Notes:

- *The PPC went on break at 11:10, coming back on the record at 11:20.*
- *These minutes reflect the order of the discussion/voting items as they appear on the official meeting agenda. The actual order in which they were discussed may vary.*

** All documents reviewed and discussed in this meeting are subject to Oregon Public Records Law (ORS 192.410 to ORS 192.505). These documents can be requested by contacting DPSST at dpsst.records@state.or.us.*