

*A recent Administrative Law Judge decision interpreted the discretionary disqualifying language for criminal justice disciplines in a manner that is inconsistent with the statutory authority or intent of the Department police committees and Board. The language has been changed to clearly indicate that it is the conduct engaged in by the public safety professional or instructor that is reviewed by the policy committees; not simply convictions.*

*In addition, questions have been raised about the intent of the rules "comment" language. Legal counsel has advised that these comments, which were adopted with a goal of adding clarity, be removed as they are only creating confusion.*

## **259-008-0070**

### **Denial/Revocation**

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to insure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

#### *Definitions*

(2) For purposes of this rule, the following definitions apply:

(a) "Denial" or "Deny" means the refusal to grant a certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.

(b) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-008-0070(4).

(c) "Revocation" or "Revoke" means to withdraw the certification of a public safety professional or instructor for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in section (9) of this rule.

#### *Grounds for Mandatory Denial or Revocation of Certification*

(3) Mandatory Grounds for Denying or Revoking Certification of a Public Safety Professional or Instructor:

(a) The Department must deny or revoke the certification of any public safety professional or instructor after written notice and hearing, based upon a finding that:

(A) The public safety professional or instructor has been discharged for cause from employment as a public safety professional or instructor. For purposes of this rule, "discharged for cause," means an employer-initiated termination of employment for any of the following reasons after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the public safety professional or instructor provides notice

to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.

(i) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification; (Comment: Conduct underlying the mandatory disqualifying misdemeanors involving these elements in Subsection (D) and the Category I offenses in section (4), is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(ii) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, 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. (Comment: Conduct underlying the Category II offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(iii) 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; (Comment: Conduct underlying the Category IV offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction).

(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a public safety professional or instructor that remedial measures have been unable to correct.

(v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office. (Comment: Conduct underlying the Category III offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)

(B) The public safety professional or instructor has been convicted in this state or any other jurisdiction of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(C) The public safety professional or instructor has been convicted of violating any law of this state or any other jurisdiction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug except the Department may deny certification for a conviction of possession of less than one ounce of marijuana, which occurred prior to certification; or

(D) The public safety professional or instructor has been convicted in this state of any of the following offenses, or of their statutory counterpart(s) in any other jurisdiction, designated under the law where the conviction occurred as being punishable as a crime:

162.075 (False swearing),

162.085 (Unsworn falsification),  
162.145 (Escape in the third degree),  
162.175 (Unauthorized departure),  
162.195 (Failure to appear in the second degree),  
162.235 (Obstructing governmental or judicial administration),  
162.247 (Interfering with a peace officer),  
162.257 (Interfering with a firefighter or emergency medical technician),  
162.295 (Tampering with physical evidence),  
162.305 (Tampering with public records),  
162.315 (Resisting arrest),  
162.335 (Compounding),  
162.365 (Criminal impersonation),  
162.369 (Possession of false law enforcement identification),  
162.375 (Initiating a false report),  
162.385 (Giving false information to a peace officer for a citation or arrest warrant),  
162.415 (Official misconduct in the first degree),  
163.200 (Criminal mistreatment in the second degree),  
163.454 (Custodial sexual misconduct in the second degree),  
163.687 (Encouraging child sexual abuse in the third degree),  
163.732 (Stalking),  
164.045 (Theft in the second degree),  
164.085 (Theft by deception),  
164.095 (Theft by receiving),  
164.125 (Theft of services),  
164.235 (Possession of a burglary tool or theft device),

164.877 (Unlawful tree spiking; unlawful possession of substance that can damage certain wood processing equipment)

165.007 (Forgery in the second degree),

165.017 (Criminal possession of a forged instrument in the second degree),

165.037 (Criminal simulation),

165.042 (Fraudulently obtaining a signature),

165.047 (Unlawfully using slugs),

165.055 (Fraudulent use of a credit card),

165.065 (Negotiating a bad check),

165.080 (Falsifying business records),

165.095 (Misapplication of entrusted property),

165.100 (Issuing a false financial statement),

165.102 (Obtain execution of documents by deception),

165.825 (Sale of drugged horse),

166.065(1)(b) (Harassment),

166.155 (Intimidation in the second degree),

166.270 (Possession of weapons by certain felons),

166.350 (Unlawful possession of armor-piercing ammunition),

166.416 (Providing false information in connection with a transfer of a firearm),

166.418 (Improperly transferring a firearm),

166.470 (Limitations and conditions for sales of firearms),

167.007 (Prostitution),

167.075 (Exhibiting an obscene performance to a minor),

167.080 (Displaying obscene materials to minors),

167.132 (Possession of gambling records in the second degree),

167.147 (Possession of a gambling device),

167.222 (Frequenting a place where controlled substances are used),  
167.262 (Adult using minor in commission of controlled substance offense),  
167.320 (Animal abuse in the first degree),  
167.330 (Animal neglect in the first degree),  
167.332 (Prohibition against possession of domestic animal),  
167.333 (Sexual assault of animal),  
167.337 (Interfering with law enforcement animal),  
167.355 (Involvement in animal fighting),  
167.370 (Participation in dogfighting),  
167.431 (Participation in cockfighting),  
167.820 (Concealing the birth of an infant),  
475.525 (Sale of drug paraphernalia),  
475.840 (Manufacture or deliver a controlled substance),  
475.860 (Unlawful delivery of marijuana),  
475.864 (Unlawful possession of marijuana),  
475.906 (Distribution of controlled substance to minors),  
475.910 (Application of controlled substance to the body of another person),  
475.912 (Unlawful delivery of imitation controlled substance),  
475.914 (Unlawful acts, registrant delivering or dispensing controlled substance),  
475.916 (Prohibited acts involving records and fraud),  
475.918 (Falsifying drug test results),  
475.920 (Providing drug test falsification equipment),  
475.950 (Failure to report precursor substances transaction),  
475.955 (Failure to report missing precursor substances),  
475.960 (Illegally selling drug equipment),

475.965 (Providing false information on precursor substances report or record),

475.969 (Unlawful possession of phosphorus),

475.971 (Unlawful possession of anhydrous ammonia),

475.973 (Unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine; unlawful distribution),

475.975 (Unlawful possession of iodine in its elemental form),

475.976 (Unlawful possession of iodine matrix),

807.520 (False swearing to receive license),

807.620 (Giving false information to police officer),

Any offense involving any acts of domestic violence as defined in ORS 135.230.

(b) The Department must take action on a mandatory disqualifying conviction, regardless of when it occurred, unless the Department, or the Board, has previously reviewed the conviction and approved the public safety professional or instructor for certification under a prior set of standards.

*Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification*

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Public Safety Professional or Instructor:

(a) The Department may deny or revoke the certification of any public safety professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(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 **has engaged in conduct that** fails to meet the applicable minimum standards **as described in subsection (b)**, minimum training or the terms and conditions established under ORS 181.640;

(C) The public safety professional or instructor has **engaged in conduct that resulted in the conviction** ~~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; or

(D) A public safety professional failed to attend at least one session with a mental health professional within six months after the public safety professional was involved in using deadly physical force, as required by ORS 181.789.

(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; ~~(Comment: Conduct underlying the mandatory disqualifying misdemeanors involving these elements in Subsection (D) and the Category I offenses in section (4), is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)~~

(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~~ or the fundamental duty to protect and serve the public. ~~(Comment: Conduct underlying the Category II offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in criminal conviction.)~~

(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. ~~(Comment: Conduct underlying the Category III offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)~~

(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; ~~(Comment: Conduct underlying the Category IV offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)~~

(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; ~~(Comment: Conduct underlying the Category V offenses identified in section (4) is illustrative of the types of conduct falling within this definition. However, misconduct need not have resulted in a criminal conviction.)~~ 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:

97.931 (Registration of Salesperson for Endowment Care Cemeteries, Pre-construction Sales and Prearrangement Sales) – Category V,

97.933 (Certification of Provider of Prearrangement or Preconstruction) – Category V,

97.937 (Deposit of Trust Funds made by Endowment Care Cemeteries) – Category V,

97.941 (Prearrangement or Preconstruction Trust Fund Deposits) – Category V,

97.990(4) (Maintaining a Nuisance) – Category V,

162.405 (Official Misconduct in the Second Degree) — Category III,

162.425 (Misuse of Confidential Information) — Category III,

162.455 (Interfering with Legislative Operations) — Category V,

162.465 (Unlawful Legislative Lobbying) — Category I,

163.160 (Assault in the Fourth Degree) — Category II,

163.187 (Strangulation) — Category II,

163.190 (Menacing) — Category II,

163.195 (Recklessly Endangering Another Person) — Category IV,

163.212 (Unlawful Use of Stun Gun, Tear Gas or Mace in the Second Degree) — Category IV,

163.415 (Sexual Abuse in the Third Degree) — Category II,

163.435 (Contributing to the Sexual Delinquency of a Minor) — Category II,

163.445 (Sexual Misconduct) — Category II,

163.465 (Public Indecency) — Category II,

163.467 (Private Indecency) — Category II,

163.545 (Child Neglect in the Second Degree) — Category IV,

163.693 (Failure to Report Child Pornography) — Category IV,

163.575 (Endangering the Welfare of a Minor) — Category III,

163.700 (Invasion of Personal Privacy) — Category II,

163.709 (Unlawful Directing of Light from a Laser Pointer) — Category IV,

164.043 (Theft in the Third Degree) — Category V,



164.132 (Unlawful Distribution of Cable Equipment) — Category V,  
164.140 (Criminal Possession of Rented or Leased Personal Property) — Category V,  
164.162 (Mail Theft or Receipt of Stolen Mail) — Category I,  
164.243 (Criminal Trespass in the Second Degree by a Guest) — Category V,  
164.245 (Criminal Trespass in the Second Degree) — Category V,  
164.255 (Criminal Trespass in the First Degree) — Category V,  
164.265 (Criminal Trespass While in Possession of a Firearm) — Category IV,  
164.272 (Unlawful Entry into a Motor Vehicle) — Category V,  
164.278 (Criminal Trespass at Sports Event) — Category V,  
164.335 (Reckless Burning) — Category IV,  
164.345 (Criminal Mischief in the Third Degree) — Category V,  
164.354 (Criminal Mischief in the Second Degree) — Category V,  
164.373 (Tampering with Cable Television Equipment) — Category V,  
164.377 (Computer Crime) — Category V,  
164.775 (Deposit of Trash Within 100 Yards of Water) — Category V,  
164.785 (Placing Offensive Substances in waters/on highways or property) — Category IV,  
164.805 (Offensive Littering) — Category V,  
164.813 (Unlawful Cutting and Transporting of Special Forest Products) — Category V,  
164.815 (Unlawful Transport of Hay) — Category V,  
164.825 (Cutting and Transport of Coniferous Trees without Permit/Bill of Sale) — Category V,  
164.845 (FTA on Summons for ORS 164.813 or 164.825) — Category V,  
164.863 (Unlawful Transport of Meat Animal Carcasses) — Category V,  
164.865 (Unlawful Sound Recording) — Category V,  
164.875 (Unlawful Video Tape Recording) — Category V,  
164.887 (Interference with Agricultural Operations) — Category II,

165.107 (Failing to Maintain a Metal Purchase Record) — Category V,  
165.109 (Failing to Maintain a Cedar Purchase Record) — Category V,  
165.540 (Obtaining Contents of Communications) — Category V,  
165.555 (Unlawful Telephone Solicitation) — Category V,  
165.570 (Improper Use of Emergency Reporting System) — Category IV,  
165.572 (Interference with Making a Report) — Category II,  
165.577 (Cellular Counterfeiting in the Third Degree) — Category I,  
165.805 (Misrepresentation of Age by a Minor) — Category I,  
166.025 (Disorderly Conduct in the Second Degree) — Category IV,  
166.027 (Disorderly Conduct in the First Degree) — Category IV,  
166.075 (Abuse of Venerated Objects) — Category II,  
166.076 (Abuse of a Memorial to the Dead) — Category II,  
166.090 (Telephonic Harassment) — Category II,  
166.095 (Misconduct with Emergency Telephone Calls) — Category IV,  
166.155 (Intimidation in the Second Degree) — Category II,  
166.180 (Negligently Wounding Another) — Category IV,  
166.190 (Pointing a Firearm at Another) — Category IV,  
166.240 (Carrying a Concealed Weapon) — Category V,  
166.250 (Unlawful Possession of a Firearm) — Category V,  
166.320 (Setting of a Springgun or Setgun) — Category IV,  
166.385 (Possession of Hoax Destructive Device) — Category IV,  
166.425 (Unlawful Purchase of Firearm) — Category I,  
166.427 (Register of Transfers of Used Firearms) — Category V,  
166.480 (Sale or Gift of Explosives to Children) — Category IV,  
166.635 (Discharging Weapon or Throwing Object at Trains) — Category IV,

166.638 (Discharging Weapon Across Airport Operational Surfaces) — Category IV,  
166.645 (Hunting in Cemeteries) — Category V,  
166.649 (Throwing Object off Overpass in the Second Degree) — Category IV,  
167.122 (Unlawful Gambling in the Second Degree) — Category V,  
167.312 (Research and Animal Interference) — Category II,  
167.315 (Animal Abuse in the Second Degree) — Category IV,  
167.325 (Animal Neglect in the Second Degree) — Category IV,  
167.340 (Animal Abandonment) — Category IV,  
167.351 (Trading in Nonambulatory Livestock) — Category V,  
167.352 (Interfering with Assistance, Search and Rescue or Therapy Animal) — Category IV,  
167.385 (Unauthorized Use of Livestock Animal) — Category II,  
167.388 (Interference with Livestock Production) — Category II,  
167.390 (Commerce in Fur of Domestic Cats and Dogs) — Category V,  
167.502 (Sale of Certain Items at Unused Property Market) — Category V,  
167.506 (Record Keeping Requirements) — Category V,  
167.808 (Unlawful Possession of Inhalants) — Category IV,  
167.810 (Creating a Hazard) — Category IV,  
167.822 (Improper Repair Vehicle Inflatable Restraint System) — Category IV,  
411.320 (Disclosure and Use of Public Assistance Records) — Category II,  
468.922 (Unlawful disposal, storage or treatment of hazardous waste in the second degree) — Category V,  
468.929 (Unlawful transport of hazardous waste in the second degree) — Category V,  
468.936 (Unlawful Air Pollution in the Second Degree) — Category V,  
468.943 (Unlawful Water Pollution in the Second Degree) — Category V,  
468.956 (Refusal to Produce Material Subpoenaed by the Commission) — Category V,  
471.410 (Providing Liquor to Person under 21 or to Intoxicated Person) — Category IV,

Chapter 496 – 498 (When treated as a misdemeanor crime) — Category based on the elements of the specific crime,

609.341 (Permit Requirement for Keeping of Exotic Animals; Breeding of Animals) — Category V,

609.405 (Requirement for Destroying Dog or Cat) – Category V,

609.505 (Unlawfully Obtaining Dog or Cat) – Category V,

609.520(c) (Animal Dealer Failing to Turn Over Dog or Cat) – Category V,

609.805 (Misrepresentation of Pedigree; Mutilation of Certificate or Proof of Pedigree) – Category I,

609.990(3)(a) (Violation of ORS 609.098 – Maintaining a Dangerous Dog) – Category IV,

717.200 to 717.320 (Any violation) — Category V,

803.225 (Failure to Designate Replica..Vehicle in Title or Registration Application) — Category I,

807.430 (Misuse of Identification Card) — Category I,

807.510 (Transfer of documents for the purpose of misrepresentation) — Category I,

807.530 (False Application for License) — Category I,

807.570 (Failure to Carry or Present License) — Category V,

807.580 (Using Invalid License) — Category I,

807.590 (Permitting Misuse of License) — Category I,

807.600 (Using Another’s License) — Category I,

811.060 (Vehicular Assault of Bicyclist or Pedestrian) — Category V,

811.140 (Reckless Driving) — Category IV,

811.172 (Improperly Disposing of Human Waste) — Category V,

811.182 (Criminal Driving While Suspended or Revoked) — Category V,

811.231 (Reckless Endangerment of Highway Workers) — Category IV,

811.540 (Fleeing or Attempt to Elude a Police Officer) — Category IV,

811.700 (Failure to Perform Duties of Driver when Property is Damaged) — Category V,

811.740 (False Accident Report) — Category I, and

813.010 (Driving Under the Influence of Intoxicants) — Category IV.

830.035(2) (Fleeing; Attempts to Elude) — Category IV,

830.053 (False or Fraudulent Report of Theft of Boat) — Category I,

830.315(1) (Reckless Operation) — Category IV,

830.325 (Operation a Boat while Under the Influence of Intoxicating Liquor or Controlled Substance) — Category IV,

830.383 (Person Required to Remedy Especially Hazardous Condition) — Category V,

830.460(2) (Prohibited Activities — Operating a Vessel that Fails to Comply with Equipment Requirements) — Category V,

830.460(3) (Prohibited Activities — Operating a Vessel without Liability Protection) — Category V,

830.475(1) (Failure to Perform the Duties of an Operator at Accident) — Category V,

830.730 (False Information) — Category I,

830.909 (Abandoning Boat, Floating Home, or Boathouse) — Category V,

830.955(1) (Prohibition of Installation of Submersible Polystyrene Device) — Category V,

830.992 (Purchase of a Boat or Equipment from which Hull or Component Identification Number Removed) — Category V,

830.994 (Operates a Boat in Violation of a Court Order) – Category V

*Initial Periods of Ineligibility*

(d) Upon determination to proceed with the denial or revocation of a public safety professional's or instructor's certification based on discretionary disqualifying misconduct identified in subsection (a), an initial minimum period of ineligibility to apply for certification will be determined based upon the category of misconduct (i.e., Dishonesty, Disregard for Rights of Others, Misuse of Authority, Gross Misconduct, Misconduct or Insubordination).

(e) Following review and recommendation by a Policy Committee, the Board will determine the initial minimum period of ineligibility for discretionary disqualifying misconduct identified in subsection (a) from the time frame identified below for each category of discretionary disqualifying misconduct:

(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).

*Eligibility to Reapply; Ineligibility Periods*

(5) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for:

(a) Mandatory grounds identified in section (3) of this rule; or

(b) Discretionary Disqualifying Misconduct identified in section (4) of this rule that is determined to be a Category I lifetime disqualifier.

(6) Eligibility to reapply for certification:

(a) In determining the initial minimum period of ineligibility within any category for discretionary disqualifying misconduct listed in section (4) of this rule, the Board will take into consideration any mitigating or aggravating factors, subject to the provisions of section (9) of this rule.

(b) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(c) Any subsequent eligibility to apply for certification will be determined by the Board, after Policy Committee review, subject to the provisions of section (11) of this rule.

*Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct*

(7) In determining whether to take action on a conviction, the Department must use the following guidelines:

(a) In making a decision on a discretionary denial or revocation, the Department will consider the implementation dates relating to new mandatory conviction notification requirements adopted in 2003 and statutory changes dealing with lifetime disqualifier convictions for public safety officers adopted in 2001.

(b) The Department will not take action on a conviction constituting discretionary disqualifying misconduct that occurred prior to January 1, 2001. However, the Department may consider such conviction as evidence that a public safety professional or instructor does not meet the established moral fitness guidelines.

(c) The Department may take action on any conviction constituting discretionary disqualifying misconduct that occurred after January 1, 2001.

(d) The Board may reconsider any mandatory conviction which subsequently becomes a conviction constituting discretionary disqualifying misconduct, upon the request of the public safety professional or instructor.

(e) The length of ineligibility for training or certification based on a conviction begins on the date of conviction.

(f) The Department will not take action against a public safety professional, instructor, or agency for failing to report, prior to January 1, 2003, a conviction that constitutes discretionary disqualifying misconduct.

(g) The Department may take action against a public safety professional, instructor, or agency for failing to report, after January 1, 2003, any conviction that constitutes discretionary disqualifying misconduct.

#### *Procedure for Denial or Revocation of a Certificate*

(8) Scope of Revocation. Whenever the Department revokes the certification of any public safety professional or instructor under the provisions of OAR 259-008-0070, the revocation will encompass all public safety certificates, except fire certification(s), the Department has issued to that person.

#### *(9) Denial and Revocation Procedure.*

(a) Agency Initiated Review: When the entity utilizing a public safety professional or instructor requests that a public safety professional's or instructor's certification be denied or revoked, it must submit in writing to the Department the reason for the requested denial or revocation and all factual information supporting the request.

(b) Department Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the public safety professional's or instructor's certification be denied or revoked.

(c) Department Staff Review: When the Department receives information, from any source, that a public safety professional or instructor may not meet the established standards for Oregon public safety professionals or instructors, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation the Department will notify the requestor.

(B) If the reason for the request does meet statutory and administrative rule requirements but is not supported by adequate factual information, the Department will request further information from the employer or conduct its own investigation of the matter.

(C) If the Department determines that a public safety professional or instructor may have engaged in discretionary disqualifying misconduct listed in subsection (4), the case may be presented to the Board, through a Policy Committee.

(D) The Department will seek input from the affected public safety professional or instructor, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(E) In misconduct cases in which there has been an arbitrator's opinion related to the public safety professional's or instructor's employment, the Department will proceed as follows:

(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the department will proceed as identified in paragraphs (A) through (D) of this subsection.

(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.

(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, the Department will proceed as identified in paragraph (A) of this subsection and administratively close the matter.

(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (e) of this rule, based on discretionary disqualifying misconduct, the Policy Committees and Board will consider mitigating and aggravating circumstances, including, but not limited to, the following:

(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; and



(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; and

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

(e) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared and served on the public safety professional or instructor.

(f) Contested Case Notice:

(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules or Procedures adopted under OAR 259-005-0015.

(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the public safety professional or instructor prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.

(g) Response Time:

(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(B) A party who has been served with the "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file a written request for hearing with the Department.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672.

(i) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(j) Proposed and Final Orders:

(A) In cases in which a hearing is requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.

(B) Department-proposed amendments to a proposed order issued by an Administrative Law Judge in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order can be issued.

(k) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a public safety professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification, under the terms and conditions outlined in the stipulated order.

#### *Appeals, Reapplication, and Eligibility Determinations*

(10) Appeal Procedure. A public safety professional or instructor, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

(11) Reapplication Process.

(a) Any public safety professional or instructor whose certification has been denied or revoked pursuant to section (4) of this rule, may reapply for certification within the applicable timeframes described in sections (4) through (6) of this rule. The initial minimum ineligibility period will begin on the date an Order of the Department denying or revoking certification becomes final. The initial minimum ineligibility period will cease when the applicable timeframe stated in the Order has been satisfied.

(b) Any public safety professional or instructor whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until after the maximum initial period of ineligibility identified in (4) of this rule has been satisfied.

(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and a Policy Committee has recommended that a public safety professional's or instructor's eligibility to apply for public safety or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's or instructor's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section 9(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through a Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The public safety professional or instructor is employed or utilized by a public safety agency; and

(D) All requirements for certification have been met.

Stat. Auth.: ORS 181.640, 181.661, 181.662, 181.664 & 183.341

Stats. Implemented: ORS 181.640, 181.661, 181.662 & 181.664