

**MINUTES OF THE
PEACE OFFICER STANDARDS
AND TRAINING BOARD
QUALITY INN (Meeting Room F)
BISMARCK, NORTH DAKOTA
AUGUST 11, 2021**

MEMBERS PRESENT

Tom Falck
Dan Haugen
Joe Cianni
John Klug
Erik Dietrich
Paul Lies

MEMBERS ABSENT

Jesse Jahner
Lyn James
Jason Ziegler

GUESTS

Nate Gustafson
James Brossart
Anthony Hill
Kevin Howe
Shaeleen Hillerson
Eric Goerd
Allyson Middlestead

LEGAL COUNSEL

Mike Mahoney

ADMINISTRATIVE STAFF

Monica Sebastian
Duane Stanley

Chairman John Klug called the meeting to order at 1:01 p.m. Duane Stanley took the roll. All members were present for roll call except Jesse Jahner, Lyn James and Jason Ziegler. There were numerous other individuals present as guests through Teams.

Paul Lies recused himself at 1:02 p.m.

POST Board Hearing – Shaeleen Hillerson (20-004) 1:02 p.m.

On April 4, 2020, the ND POST Board received a termination form and supporting documentation from Eddy County Sheriff's Office regarding Shaeleen Hillerson.

On the termination report it stated that Hillerson was arrested for shoplifting at the Bismarck Target Store.

In the report it stated that Hillerson, on or about March 8, 2020, was involved in an interaction with the Bismarck Police Department in the Kirkwood Mall at the Target store in Bismarck, ND. An agent of Target stopped Hillerson at the self-checkout scanners on the belief that Hillerson had not scanned all the items in Hillerson's cart. The Bismarck Police Department responded and Hillerson was transported to Bismarck PD and fingerprinted.

For more details, see the minutes from the May 27, 2020, POST Board regular meeting.

The criminal case was dismissed with a pre-trial diversion agreement. An amended hearing notice had been sent to Hillerson to revisit the matter as defined in the suspension order that was still in effect.

Chairman Klug gave an overview of the hearing and Shealeen Hillerson was sworn in. Mike Mahoney questioned Hillerson regarding the incidents in question at Target.

Hillerson testified in front of the Board that she went through the self-checkouts and several items did not scan but it was unintentional and stated, "it wasn't intentional". Hillerson stated she wasn't paying attention, was sleep deprived, very distracted, on the phone, and in a toxic relationship.

Eric Goerdt, Target Asset Protection, testified in front of the Board how Hillerson would turn the UPC labels upside down so the tag would not scan and would also place items directly in the cart or on the ground going around the scanner. The self-checkout, when scanning, blinks when properly scanned and there were numerous items where the screen did not blink that was very visible. Goerdt went through each surveillance video of the purchases in question and the days they occurred. In one video there were approximately thirty six items scanned and thirty four items that were not scanned. Goerdt went into detail for the Board on the statistical numbers regarding purchases and the number of items that are mis scanned on an average purchase.

Board members watched the videos as well and had specific questions of Goerdt and of Hillerson.

Motion

Dan Haugen made a motion to amend the previous adverse action order and to revoke Shaeleen Hillerson's peace officer license. Tom Falk seconded the motion. All in favor, motion carried.

POST Board Hearing – Scott Warzecha (20-013) 1:50 p.m.

On November 18, 2020, the POST Board received a termination form for Scott Warzecha from the Mandan PD. The cause of termination stated that Warzecha was terminated after being charged with and two counts of Surreptitious Intrusion (Class C Felony) based on allegations that Warzecha hid a cell phone and video recorded a minor child undressing and showering.

Warzecha was subsequently convicted on one count of Use of a Minor in a Sexual Performance (Class A Felony) and one count of Surreptitious Intrusion (Class C Felony). Warzecha was committed to the ND Department of Corrections for imprisonment for a period of eight years with three years suspended for a period of five years of supervised probation on Count I and five years straight time on Count II. The five-year period of supervised probation shall commence when Warzecha is released from incarceration or at the expiration of parole.

Motion

Dan Haugen made a motion to amend the previous adverse action order and to revoke Scott Warzecha's peace officer license. Paul Lies seconded the motion. All in favor, motion carried.

POST Board Hearing – Mathew Applegate (21-006) 1:54 p.m.

The POST Board received a termination form from the Golden Valley Sheriff's Office on 12/21/2020 regarding Mathew Applegate. Applegate had a limited license through the Golden Valley Sheriff's Office. On that termination form, it stated Applegate was driving a department vehicle while under the influence, with an unauthorized passenger. Applegate was arrested for DUI and was terminated immediately.

In the report it stated that on December 21, 2020, a deputy from the Golden Valley Sheriff's Office received a call from the Golden Valley Sheriff's Office administrative assistant. The administrative assistant stated that Applegate showed up at the sheriff's office and he appeared to be inebriated and Applegate stated he was going to the shooting range. A Sheriff's Deputy was notified located Applegate's vehicle and Applegate was stopped. The deputy noticed Applegate's eyes looked glossy and his eyes were slightly bloodshot. A Highway Patrol trooper was called to take over the stop. The trooper conducted a DUI investigation and subsequently arrested Applegate for DUI.

Chairman Klug began the hearing and Secretary Stanley provided an overview.

The criminal judgement for Case Number 17-2020-CR-34 was a Plea Agreement and Stipulation for Reckless Driving, a Class B Misdemeanor.

Motion

Dan Haugen made a motion that Mathew Applegate did violate the Peace officer Conduct specifically 109-02-05-01(4c) and that Applegate's conduct has a direct bearing on his ability to perform peace officer duties. Paul Lies seconded the motion. All in favor, motion carried.

Motion

Dan Haugen made a motion to start adverse action in accordance with NDCC 12-63-12. Erik Dietrich seconded the motion. All in favor, motion carried.

There was discussion by board members regarding a possible sanction of Applegate's limited license. Board members discussed revoking Applegate's license.

Motion

Dan Haugen made a motion to revoke Applegate's limited license. Paul Lies seconded the motion. All in favor, motion carried.

POST Board Hearing – Kenneth Backen (21-007) 2:00 p.m.

The ND POST Board received a non-voluntary termination from Ward County Sheriff's Office on October 20, 2020, stating that Kenneth Backen was currently under investigation by the North Dakota Bureau of Criminal Investigation for allegations of misconduct involving a message to a juvenile female and admitting to working on multiple occasions while being under the influence of alcohol. In documentation provided to the POST Board Office, Backen had stated to Ward County investigator's that on his days off he would drink a 1.75 of Crown and that he would drink on nights prior to working but not as much. Backen stated that there were a couple of days where he did a breathalyzer on himself to make sure he was not over the legal limit. Backen was asked if he was coming to work with alcohol in his system or drinking while at work and Backen stated no. Backen stated that his drinking is why he went to treatment but admitted that since being out of treatment he did relapse one time. As the interview continued, Backen admitted that he was black out drunk around 3 a.m. and he went to work at 7 a.m. He acknowledged that he would not be able to sober up to be alcohol free by 7 a.m. and did admit to coming into work with alcohol in his system.

Chairman Klug opened the hearing and Secretary Stanley provided an overview of the internal investigation specific to the alcohol allegations.

Motion

Dan Haugen made a motion that Kenneth Backen did violate the Peace Officer Code of Conduct specifically 109-02-05-01(4a) and that Backen's conduct has a direct bearing on his ability to perform peace officer duties. Paul Lies seconded the motion, all in favor motion carried.

Motion

Dan Haugen made a motion to start adverse action in accordance with NDCC 12-63-12. Erik Dietrich seconded the motion. All in favor, motion carried.

There was discussion by board members regarding a possible sanction of Backen's peace officer license. Board members discussed six months suspension contingent upon an alcohol evaluation by a licensed addiction counselor and that Backen must make a personal appearance before the Board will reinstate his license.

Motion

Dan Haugen made a motion for a six month suspension beginning August 11, 2021, conditional of an alcohol evaluation from a license addiction counselor and that Backen must make a personal appearance in front of the Board to get his license back. Paul Lies seconded the motion. All in favor, motion carried.

POST Board Hearing – Leland Morin (21-008) 2:12 p.m.

The ND POST Board received a non-voluntary termination from Dunseith PD on May 6, 2021, stating Leland Morin was asked to resign due to a violation of code of conduct.

Chairman Klug opened the hearing and Secretary Stanley provided an overview of the allegations.

On May 7, 2021, an interview with a special agent from BCI was conducted with Morin. Morin admitted to driving to a homicide scene without being requested, driving under suspension, and ingesting marijuana on May 6, 2021. A urine sample was taken and indicated that Morin had ingested marijuana. During this time, Morin was also having communication with individuals outside of the investigation.

The BCI agent provided a written affidavit to the court for a cease-and-desist order against Morin's peace officer license.

The District Court approved the criminal complaint against Morin for Obstruction of a Government Function and for driving while Morin's driving privilege were suspended when he responded as a police officer to a homicide scene on May 3, 2021. Arrest warrants were issued for Morin.

The District Court also approved the cease-and-desist order against Morin to immediately cease performing peace officer duties under Morin's POST Board license.

Morin subsequently pled guilty to Obstruction of a Government Function (Class A Misdemeanor) and Driving While License Privilege is Suspended or Revoked (Class B Misdemeanor).

Motion

Dan Haugen made a motion that Leland Morin did violate the Peace Officer Code of Conduct specifically 109-02-05-01(4b)(4c) and that Morin's conduct has a direct bearing on his ability to perform peace officer duties. Erik Dietrich seconded the motion. All in favor, motion carried.

Motion

Paul Lies made a motion to start adverse action in accordance with NDCC 12-63-12. Dan Haugen seconded the motion. All in favor, motion carried.

There was discussion by board members regarding a possible sanction of Morin's peace officer license. Revocation was discussed.

Motion

Dan Haugen made a motion to revoke Leland Morin's peace officer license. Paul Lies seconded the motion. All in favor, motion carried.

General License (Criminal History) – James Brossart (Rolette County SO)

The Rolette County Sheriff's Office sent in paperwork to request a general license for James Brossart. Brossart's criminal history background check indicated he had a DUI, Refusal to Halt and Assault on a Police Officer from an incident in January of 2013. Due to the criminal history guidelines, the matter needed to be heard in front of the Board. Brossart along with Sheriff Gustafson were present and answered the questions asked by the board members.

Motion

Paul Lies made a motion to grant a general license for James Brossart. Dan Haugen seconded the motion. All in favor, motion carried.

General License (Criminal History) – Anthony Hill (Surrey PD)

Surrey PD sent in paperwork to request a general license for Anthony Hill. Hills' criminal history background check indicated from the years 2005 to 2015 Hill had charges of Profanity/Public Intoxication, Disorderly Conduct, Underage DUI, Careless driving, Driving Under Suspension, NSF Checks, Failure to Appear, Criminal Mischief and a warrant for driving while license is suspended. Due to the criminal history guidelines, this matter was heard in front of the Board. Hill along with Chief Howe were present and answered the questions asked by the board members.

Motion

Dan Haugen made a motion to grant a general license for Anthony Hill. Tom Falk seconded the motion. Joe Cianni voted no. All others voted yes. Motion carried.

Chairman Klug called for a short recess at 3:00PM
At 3:08 Chairman Klug called the meeting back to order.

Course Approval

Burleigh County sent in their Correctional Officer Basic course to get re-approved. Executive Secretary Duane Stanley went over the information from the previous correctional officer basic course that was approved relaying to Board members that all the paperwork was in order.

Sgt. Allyson Middlestead from the Burleigh County Sheriff's Office was present to answer questions from the Board.

Motion

Paul Lies made a motion to approve the Burleigh County Correctional Officer Basic course. Dan Haugen seconded the motion. All in favor, motion carried.

OLD BUSINESS

Dakota Smith

Secretary Stanley relayed that a Settlement Agreement was signed by all parties on May18, 2021, for a 15-day suspension and 1 year probation period.

Kevin Thorson

Secretary Stanley relayed that a Settlement Agreement was mailed out to Thorson and never returned.

Shannon Lackey

Secretary Stanley relayed that a Dismissal Order was mailed out to Lackey on May 18.

Ryan Welsh

Secretary Duane Stanley relayed that the Order of Reinstatement was sent out to Welsh July, 4, 2021 as directed by the Board at a previous meeting. Secretary Stanley per legal counsel recommendation asked the Board to ratify the Reinstatement Order that was issued.

Motion

Paul Lies made a motion to approve the Welsh Reinstatement Order Secretary Stanley sent out. Dan Haugen seconded the motion. All in favor, motion carried.

John Pagano

On March 4, 2021, John Pagano was initially charged with DUI and subsequently pled guilty to Reckless Driving. Pagano had refused a chemical test and had his license suspended for 180 days. A previous Suspension Order was in effect suspending Pagano's license until such time Pagano had his driver's license reinstated and made an appearance in front of the Board. Secretary Stanley relayed to board members that the Driver's License Division had reinstated Pagano's license. Pagano called into the meeting and answered questions from the Board.

Motion

Paul Lies made a motion to reinstate John Pagano's license. Dan Haugen seconded the motion. All in favor motion carried.

Agencies using an Excel Spreadsheet to submit training hours

At the May 12, 2021, regular meeting, the POST Board voted to accept alternative forms (Excel Spreadsheet) that have the necessary information required by the Board for training from the ND Highway Patrol and Fargo PD until review at the next POST Board meeting in August.

Administrative Officer Monica Sebastian informed the Board that sending in the excel spreadsheets and automatically uploading the information to the POST Board program was working very well

MOI Instructor Waiver

Chief David Zibolski – Fargo PD

The POST Board Office received documentation from the Fargo Police Department indicating Chief David Zibolski attended multiple instructor training courses from the Beloit Police Department in Wisconsin in 2002, 2006 and 2010 and is asking for a waiver to become a MOI certified instructor in ND.

Motion

Dan Haugen made a motion to approve the waiver for MOI instructor for Chief David Zibolski and that he attends the online one-hour MOI refresher course. Tom Falck seconded the motion. Paul Lies and Joe Cianni voted no. All others voted yes. Motion carried.

Officer Hunter Nelson – Grand Forks PD

Officer Hunter Nelson attended the Army Basic Instructor course in 2015 and is asking for a waiver to come a MOI instructor in ND. He was an instructor until he was discharged in 2018. Documentation was provided to the office that explained the course that had been taken.

Motion

Dan Haugen made a motion to approve the waiver for MOI instructor for Hunter Nelson and that he attends the four-hour online MOI refresher course. Erik seconded the motion. Paul Lies and Joe Cianni voted no. All others voted yes. Motion carried.

Training Certification Request

The NASBLA Boat Accident Investigation course was approved as a one-time training June 5, 2020, for training in Minnesota for the dates of July 13-17, 2020. Two ND Game & Fish Officers attended the training in SD July 16, 2021. The course was not approved at that time.

Motion

Paul Lies made a motion to approve the NASBLA training in SD July 16, 2021. Tom Falck seconded the motion. Erik Dietrich and Joe Cianni voted no. All others voted yes. Motion carried.

Funding Request

The Minot Police Department is asking for \$12,375 for a training titled Survival Spanish for Law Enforcement. The training date is set for November 1-5, 2021.

Motion

Paul Lies made a motion to approve funding Survival Spanish for Law Enforcement training for \$12,375. Dan Haugen seconded the motion. All in favor, motion carried.

Funding Request

The Jamestown Police Department is asking for \$12,750 for a training titled Patrol Counter Ambush. The training date is set for September 7-8, 2021.

Motion

Paul Lies made a motion to approve funding Patrol Counter Ambush training for \$12,750. Dan Haugen seconded the motion. All in favor, motion carried.

Funding Request

The ND LETA is asking for \$25,000 for a training titled Leadership in Police Organizations – IACP. The training date is set for February 21-25, March 21-25 and April 25-29, 2021.

Motion

Paul Lies made a motion to approve funding for Leadership in Police Organizations - IACP training for \$25,000. Erik Dietrich seconded the motion. All in favor, motion carried.

It should be noted Joe Cianni left the meeting at 4:13PM

NEW BUSINESS

Administrative Rule/Reserve Officer Rule Changes

POST Board Legal Counsel Mike Mahoney went over the proposed administrative rules re-write for Title 109. Mahoney explained that since the POST Board is responsible for a general license, part time license and reserve license, the rules were changed in some places to reflect all licenses. During Board discussion, it was brought up that the word “peace” was taken out of 109-01-01-01. History and function. The word peace should not have been taken out and needs to be added back in. Mahoney went over the changes that were made and the Board agreed with the changes.

Motion

Dan Haugen made a motion to approve the administrative code for reserve officers as they sit today. Tom Falck seconded the motion. All in favor motion carried.

Motion

Paul Lies made a motion to approve the administrative changes with the changes in 109-01-01-01. History and function. Tom Falck seconded the motion. All in favor, motion carried.

A/G Office conducting Board Training on October 18, 2021

Mike Mahoney brought up that the Attorney General’s Office is going to be conducting a Board training on October 18, 2021, regarding what boards like the POST Board can and cannot do. It was recommended that new members as well as existing members attend.

Meeting Minutes

Minutes were reviewed from the May 12, 2021, regular meeting.

Motion

Paul Lies made a motion to approve the May 12, 2021, regular meeting minutes. John Klug made a motion, hearing no objection, the minutes from May 12, 2021, are approved as distributed.

Financial Report

Executive Secretary Stanley went over the details and explained the financial report from January 1, 2021, to August 11, 2021.

Motion

Paul Lies made a motion to approve the financial report from January 1, 2021, to August 11, 2021. John Klug made a motion, hearing no objection, the financial report from January 1, 2021, to August 11, 2021, is approved as distributed.

Extension of Basic Training

Erik Dietrich sent in a request asking if Kevin Kirkey, Rhian Smith and Matthew Schanandore, who were scheduled for the September basic training, could attend the winter 2022 basic training because of hardship. Dietrich provided a detailed explanation.

Motion

Tom Falck made a motion to grant the wavier for Kevin Kirkey, Rhian Smith and Matthew Schanandore to attend the winter 2022 basic training. Paul Lies seconded the motion. Dan Haugen voted no, all others voted yes. Motion carried.

Motion

Paul Lies made a motion to adjourn the meeting. John Klug seconded the motion. The meeting was adjourned at 4:30 p.m.