

**MINUTES OF THE
PEACE OFFICER STANDARDS
AND TRAINING BOARD
COMFORT INN SUITES
BISMARCK, NORTH DAKOTA
FEBRUARY 7, 2018**

MEMBERS PRESENT

Paul Lies
Sarah Warner
Dan Haugen
John Klug
Chad Kaiser
Tom Falck
Jason Ziegler
Lyn James

GUESTS

Randy Colton II
Alan Howard
Lyle Sinclair
Monique Lopez
Jack Dura
Matt Howell
Lloyd Suhr
Patrick Haug
Jason Bier

ADMINISTRATIVE STAFF

Duane Stanley
Monica Sebastian

MEMBERS ABSENT

Jesse Jahner

LEGAL COUNSEL

Mike Mahoney

The meeting was called to order by Chairman John Klug at 1:01 p.m. Duane Stanley took the roll. All members except Jesse Jahner were present.

Adverse License Action Updates – Monique Lopez

Monique Lopez came in front of the Board at the August 16, 2017, meeting. The POST Board had received a termination form on Ms. Lopez. The form indicated that the Tioga City Commission had fired Ms. Lopez from the Tioga Police Department based on having been charged with theft. POST Board staff reviewed the termination report (PFN5) and thought it odd that Ms. Lopez had been involuntarily terminated but that the box on the form had been checked declining a POST Board review. The form was signed by Tioga Police Chief Corey Murphy. Upon further research, an Affidavit of Probable Cause filed in Williams County District Court alleges that \$5,300.00 had been transferred from the Tioga Police Department evidence account into Ms. Lopez's personnel account.

A motion was made that Ms. Lopez violated the Peace Officer Code of Conduct, specifically Administrative Rule 109-02-05-01(4c). Another motion was made to start adverse action in accordance with NDCC 12-63-12. After discussion with Board members a motion was made to temporarily suspend Ms. Lopez's license until criminal charges are completed and that the Board have the ability to revisit the matter at that time.

Ms. Lopez had a jury trial and was found not guilty. There was a District Court Order of Dismissal on file that was dated 1-17-2018.

Motion

Dan Haugen made a motion that Monique Lopez did not violate the code of conduct. Chad Kaiser seconded the motion. Paul Lies, Tom Falck voted no. Dan Haugen, Jason Ziegler, Lyn James, Sarah Warner, Chad Kaiser, and John Klug voted yes. The motion was carried.

Motion

Dan Haugen made a motion to rescind the order of suspension on Monique Lopez and re-activate her license. Sara Warner seconded the motion. Paul Lies, Tom Falck voted no. Dan Haugen, Jason Ziegler, Lyn James, Sarah Warner, Chad Kaiser, and John Klug voted yes. The motion was carried.

POST Board Hearing – Randy Colton II (18-01) 1:07 p.m.

The North Dakota POST Board received a termination form on Randy Colton II from Towner County Sheriff's Department. The termination form had attached reports that stated that Mr. Colton, on November 17, 2017, was found to have violated several North Dakota Game & Fish laws under NDCC Title 20.1. The game warden issued Mr. Colton two citations. One was for failing to carry a license on a person and the other was exceeding his limit of pheasants by one. Game Warden Allen Howard was sworn in and provided testimony to the Board regarding this incident. Mr. Colton II also was sworn in and provided testimony and answered questions from the Board. In the attached report, even though the game warden issued only two citations, during testimony, Mr. Colton admitted to hunting several times without the proper license.

Motion

Dan Haugen made a motion that Randy Colton II did violate the Peace Officer Code of Conduct specifically 109-02-05-01(4c) and that Mr. Colton'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. Paul Lies seconded the motion. All in favor, motion carried.

There was discussion by board members regarding a possible sanction of Mr. Colton's peace officer license.

Motion

Dan Haugen made a motion to put Mr. Colton II on probation for six months starting February 7, 2018, and that Mr. Colton not commit any administrative rule code of conduct violations or violations of NDCC Criminal Law. Lyn James seconded the motion. All in favor, motion carried.

POST Board Hearing – Matthew Howell (18-02) 1:20 p.m.

The ND POST Board received a termination form on Matthew Howell from the Mandan Police Department. The termination form had attached reports that stated that Mr. Howell lied regarding an incident at Rock Point Bar in Mandan ND.

On September 30, 2017, Mandan Police Officers were dispatched to a fight in progress at Rock Point Bar in Mandan, ND. When officers arrived on scene all parties were gone. The two responding officers had both missed a call from off duty Mandan police officer Howell. Both officers called Mr. Howell back and inquired to why he called. Mr. Howell asked if they were going to a fight call. Mr. Howell stated he was in the neighborhood and saw the patrol cars. The two officers were concerned as to the reason for Mr. Howell calling both officers and inquiring about the fight at Rock Point and reported the calls to their sergeant. The call from Mr. Howell raised suspicions and thought it was odd that Mr. Howell would call just to see what was going on. At that time Mr. Howell did not state that he was involved in the altercation at Rock Point. Mr. Howell was then interviewed by the deputy chief and a lieutenant. In those interviews it was found out the Mr. Howell was at Rock Point and involved in the altercation. Mr. Howell was very vague in the interviews and there were some discrepancies in Mr. Howells story. Deputy Chief Jason Bier and Lt. Pat Haug were sworn in and provided testimony and answered questions by Board members and POST Board legal counsel. Mr. Howell was represented by Attorney Lloyd Surh who made a statement before the Board.

There was lengthy discussion by the Board members on whether or not Mr. Howell actually lied or just evaded telling the entire story and was not forthcoming regarding everything.

Motion

Paul Lies made a motion there was no violation of the code of conduct. Chad Kaiser seconded the motion. Dan Haugen and Jason Ziegler abstained from voting, all others in favor, motion carried.

Chairman Klug called for a short break at 2:09 PM. Chairman Klug called the meeting back to order at 2:19 PM

Funding Request

The Bismarck Police Department is asking for \$3,500 to host Human Elements of Stress. The training will be held April 27, 2018, in Bismarck ND.

Motion

Chad Kaiser made a motion to approve \$3,500 for the Human Elements of Stress training. Sarah Warner seconded the motion. All in favor, motion carried.

Funding Request

The West Fargo Police Department is asking for \$5,500 to host the APTAC Field Training Officer Course. The training will be held February 26-March 2, 2018.

Motion

Paul Lies made a motion to approve \$5,500 for the APTAC Field Training Officer Course. Chad Kaiser seconded the motion. Jason Ziegler, Chad Kaiser, Sarah Warner, Paul Lies, Dan Haugen voted yes. Lyn James, Tom Falk, John Klug voted no. The motion was carried.

Funding Request

The Dickinson Police Department is asking for \$5,500 to host the APTAC Field Training Officer Course. The training will be held May 21-25, 2018, in Dickinson.

There was lengthy discussion by the Board in regards to the recent funding from the last POST Board meeting that funded a Field Training Officer Course in Williston.

Motion

Paul Lies made a motion to deny \$5,500 for the APTAC Field Training Officer Course. Tom Falk seconded the motion. Chad Kaiser and Sarah Warner voted no. Lyn James, Tom Falk, Paul Lies, Jason Ziegler, Dan Haugen and John Klug yes. The motion was carried.

Secretary Report

Meeting Minutes

Minutes were reviewed from the December 14, 2017, regular POST Board meeting.

Motion

Paul Lies made a motion to approve the minutes from the December 14, 2017, regular POST Board meeting. Chad Kaiser seconded the motion. All in favor, motion carried.

Meeting Minutes

Minutes were reviewed from the January 10, 2018, special POST Board meeting.

Motion

Chad Kaiser made a motion to approve the minutes from the January 10, 2018, special POST Board meeting. Paul Lies seconded the motion. Tom Falck abstained, all others voted yes. The motion was carried.

Meeting Minutes

Minutes were reviewed from the January 25, 2018, special POST Board meeting.

Motion

Chad Kaiser made a motion to approve the minutes from the January 10, 2018, special POST Board meeting. Paul Lies seconded the motion. Tom Falck abstained, all others voted yes. The motion was carried.

Financial Report

Duane Stanley provided documentation to Board members and gave a detailed financial report on POST Board activity from January 1, 2018, through February 6, 2018.

Motion

Paul Lies made a motion to approve the financial report from January 1, 2018, through February 6, 2018. Chad Kaiser seconded the motion. All in favor, motion carried.

2015-2016 Audit

Executive Secretary Duane Stanley went over the audit report for years 2015 and 2016 with Board members.

Old Business

Adverse License Action Update – Michael Ficken

In 2009 Michael Ficken was charged with crimes of misconduct of a public officer, disorderly conduct, fourth degree damage to property, and fifth degree assault. In 2010 Mr. Ficken plead guilty and was convicted of fourth degree damage to property and disorderly conduct. Mr. Ficken has requested that this conviction be sealed and expunged.

Executive Secretary Stanley relayed to board members that Mr. Ficken is represented by Attorney Justin Vinge and that a hearing had taken place regarding the issues with Mr. Ficken's criminal conviction. The ruling was in favor of Mr. Ficken. Attorney Vinge had informed Secretary Stanley that the time limit for the appeal process had passed and that the process was still moving forward. Board members and POST board legal counsel agreed to not make a decision until Mr. Ficken is able to access NCIC and CJIS.

Adverse License Action Update – James Watson

James Watson, who is was the Chief at LaMoure PD, was charged with continuous sexual abuse of a child in Stark County; Gross Sexual Imposition (Class AA Felony), Gross Sexual Imposition (Class AA Felony), Gross Sexual Imposition (Class A Felony) in Hettinger County; Continuous Sexual Abuse of a Child in Golden Valley County; and Gross Sexual Imposition (Class AA Felony), Gross Sexual Imposition (Class AA Felony), and Gross Sexual Imposition (Class A Felony) in Billings County. Mr. Watson had a trial jury and was found guilty. Mr. Watson is in custody.

A signed order of revocation went out to Mr. Watson October 26, 2017.

Adverse License Action Update – Dustin Pekas

Dustin Pekas was charged with sexual assault of a minor in Mercer County. On at least two separate occasions Mr. Pekas had sexual contact with a minor over the age of 15 years.

A signed order of revocation went out to Mr. Pekas January 5, 2018, effective December 14, 2017.

Adverse License Action Update – Peter Stark

On February 23, 2017, Mr. Stark was involved in a non-reportable crash where he knowingly entered a road that was closed due to hazardous conditions. This posting was at the point of entry onto the road. Mr. Stark was driving under the influence at the time. During the investigation, it was determined Mr. Stark lied to authorities and asked other people to lie to authorities in reference to what actually happened and who was driving. Mr. Stark was subsequently charged and plead guilty to misdemeanor Reckless Driving. There was a deferred prosecution agreement in reference to the False Information or Report to Law Enforcement with Intent to Falsely Implicate Another that was reached with Mr. Stark's legal counsel and the States Attorney. Mr. Stark was assessed a \$300.00 fine in this agreement.

On March 8, 2017, the Dickey County Sheriff's Office requested the Bureau of Criminal Investigation (BCI) to assist with a Gross Sexual Imposition (GSI) investigation involving two male subjects who allegedly assaulted a female at her residence on or about March 7, 2017. The Dickey County Sheriff's Office requested BCI's help with the investigation due to a conflict of interest since one of the suspects, Peter Stark, who was currently on administrative leave from the Dickey County Sheriff's Office regarding another incident, was one of the subjects involved in this investigation. Mr. Stark ultimately pled guilty to Disorderly Conduct and assessed a \$500.00 fine.

A signed order of revocation went out to Mr. Stark January 3, 2018, effective December 14, 2017.

Adverse License Action Update – Michael Cheeseman

An internal investigation with the Burleigh County Sheriff's Office took place alleging that Michael Cheeseman had excessive text messaging on his work cell phone. During the internal investigation, it was determined that Mr. Cheeseman was texting eight females that he met on the dating site Plenty of Fish while utilizing his work phone. Mr. Cheeseman was going over the allotted text messages allowed through the Burleigh County Sheriff's Office. It should

be noted that Mr. Cheeseman is married and none of these texts were to his wife. It was determined that Mr. Cheeseman was going over to three of the females houses in his patrol vehicle while on duty and having sex with these women.

A signed order of revocation went out to Mr. Cheeseman January 3, 2018, effective December 14, 2017.

Adverse License Action Update – Joshua Chadbourn

Joshua Chadbourn was observed doing a burn out while intoxicated on a residential street in Dickinson, ND. Mr. Chadbourn originally denied using alcohol prior to the burn out and then later stated that he did indeed use alcohol the night he did the burn out.

A signed stipulation of probation went out to Mr. Chadbourn December 20, 2017, effective August 27, 2017, for one year.

Adverse License Action Update – Bryton Dahl

North Dakota court records show that Bryton Dahl had been charged in Williams County District Court with Corruption/Solicitation of a Minor, a Class C Felony, in Case No. 53-2017-CR-01165.

A signed stipulation and order of suspension went out the Mr. Dahl January 18, 2018, effective December 14, 2017.

Adverse License Action Update – David Boelke

An incident occurred with Fargo PD that came in front of the Board. The incidents in question were regarding whether or not Officer Boelke had responded to certain calls for service from the public and the inconsistencies with the findings in the internal investigation involving witness statements, GPS data, and Officer Boelke's statements. It was decided that Mr. Boelke did not violate the Peace Officer Code of Conduct and no adverse action was taken against Mr. Boelke. Fargo Police Chief David Todd subsequently sent a letter addressed to Attorney General Wayne Stenehjem which was also cc'd to the POST Board. The letter relayed the fact that Chief Todd did not approve of how the situation was handled with the ND POST Board. Attorney General Stenehjem subsequently had a phone conversation with Chief Todd and all parties were moving forward.

Adverse License Action Update – Jeremiah Ferris

Minnesota court records showed that Jeremiah Ferris pled guilty in the State of Minnesota, Clay County District Court, to Disorderly Conduct, a Misdemeanor, in Case No. 14-CR-17-2064. Police officers were dispatched to a residence in south Moorhead to a report of a physical domestic between an adult male and female. The resulting investigation resulted in Mr. Ferris being arrested for 5th Degree Domestic Assault.

A signed order of suspension went out to Mr. Ferris January 11, 2018, effective December 14, 2017, with one year probation from January 13, 2018.

Adverse License Action Update – Scott Melbarzdis

North Dakota court records show that Scott Melbarzdis plead guilty in Ward County District Court to Reckless Driving, a Class B Misdemeanor, in Case No. 51-2017-CR-01957. Mr. Melbarzdis was stopped by a Minot Police officer in the early morning hours of August 10, 2017, for a traffic violation. After the investigation, Mr. Melbarzdis was subsequently arrested for Driving under the Influence. Mr. Melbarzdis was tested after his arrest and found to have an AC of .097.

A signed complaint went out December 19, 2017, and Mr. Melbardiz is now considered in default. An order of suspension and probation will be sent out.

Confidential Informant Guideline Subcommittee Report

There was discussion amongst Board members regarding the proposed Administrative Rules for the Confidential Informant law and what changes needed to be made. There was discussion regarding paragraph three to delete the second sentence. There was also discussion to add a deactivation form and add a family member's phone number section to the agreement form.

Motion

Chad Kaiser made a motion to approve the proposed Administrative Rules after the second sentence in paragraph three is deleted. Sara Warner seconded the motion. All in favor, motion carried.

Fillable Forms

Executive Secretary Duane Stanley gave the Board members an update that he and Monica Sebastian will be working on creating fillable forms for the POST Board website.

NEW BUSINESS

2018 IADLEST Conference

The 2018 IADLEST Conference will be held in Boston, Massachusetts, May 20-23, 2018. It was discussed if Board members could attend and which ones wanted to go.

Motion

Lyn James made a motion to approve attendance at the IADLEST Conference May 20-23, 2018, in Boston, Massachusetts, for any interested person on the Board. Dan Haugen seconded the motion. All in favor, motion carried.

Use of Force Test

A memo was sent to the Board regarding question #25 on the Use of Force test and how the question was worded. The memo went on to state the fact that the question was confusing as it only cited a portion of the actual definition as written in statute.

Motion

Sarah Warner made a motion to change the language on question #25 on the use of force test to the actual verbatim definition of the law. Chad Kaiser seconded the motion. All in favor, motion carried.

Limited License – Gregory Oster (Williston PD)

The ND POST Board received paperwork for Gregory Oster from the Williston PD wanting to obtain a limited license for Mr. Oster. On the criminal history background check, it stated that Mr. Oster was charged with actual physical control in McLean County on April 19, 2015, and plead guilty May 20, 2015. There was discussion about making Mr. Oster wait to issue his limited license until the three year period that is listed in the criminal history guidelines is up.

Motion

Paul Lies made a motion to deny Gregory Oster's limited license. Tom Falck seconded the motion. Jason Ziegler, Lyn James, Sarah Warner, Dan Haugen voted no. Tom Falck, Paul Lies, Chad Kaiser, and John Klug voted yes. The vote was a tie so the motion died.

Motion

Paul Lies made a motion to have Williston PD resubmit the paperwork on May 20, 2018, stipulating there is no additional criminal conduct and a new background check will be done. All other testing requirements will be accepted. Dan Haugen seconded the motion. All in favor, motion carried.

Psychological Tests

There was discussion amongst Board members and legal counsel as to how long a psychological test should be good for.

Motion

Chad Kaiser made a motion to accept psychological tests up to one year without having to retake one for new hires. Tom Falck seconded the motion. All in favor, motion carried.

There was discussion amongst the Board members about implementing more definitions into the current Administrative Rules.

Executive Secretary Duane Stanley brought up to the Board members that Attorney Chris Redmann would be willing to come in front of the Board and discuss Brady Giglio issues. The Board stated they would like Mr. Redmann to do that.

Motion

Chad Kaiser made a motion to adjourn. Dan Haugen seconded the motion. All in favor, motion carried.