

**MINUTES OF THE
PEACE OFFICER STANDARDS
AND TRAINING BOARD
RADISSON MOTEL
BISMARCK, NORTH DAKOTA
August 16, 2017**

Members Present

John Klug
Sarah Warner
Scott Thorsteinson
Paul Lies
Lyn James
Chad Kaiser
Jesse Jahner
Tom Falck

Guests

Robert Opp
Tyler Rintamaki
Rick Richard
John Chmiel
Steve Scheuer
Steve Engen
Trent Wangen
Pat Heinert
Ben Erickson
Ron McCloud
Rick Majerus
Luke Hendrickson
Bruce Burkett
Ray Dingeman
Monique Lopez
Sean Duisen
Tracy Meidinger
Tim Helmer
Derek Madsen
Matt Hegstad
Danielle Sigloh
Peter Welte

Administrative Staff

Duane Stanley
Monica Sebastian

Members Absent

Dan Haugen

Legal Counsel

Mike Mahoney

The meeting was called to order by Chairman John Klug at 1:05 p.m. with roll call. All members were present except Dan Haugen.

Secretary Report

Meeting Minutes

Minutes were reviewed from the May 17, 2017, regular POST Board meeting.

Motion

Paul Lies made a motion to approve the minutes from the May 17, 2017, regular POST Board meeting. Sarah Warner seconded the motion. All in favor, motion carried.

Financial Report

Duane Stanley provided documentation to Board members and gave a detailed financial report on POST Board activity from January 1, 2017, through August 15, 2017.

Motion

Chad Kaiser made a motion to approve the financial report from January 1, 2017, through August, 2017. Paul Lies seconded the motion. All in favor, motion carried.

Adverse License Action Update

Michael Schmitz

Duane Stanley relayed to board members that on June 5, 2017, the Order of Revocation had been signed by all parties involved and that the POST Board Office had taken physical custody of the license on April 20, 2017.

Jodi Kirkwood

Duane Stanley relayed to board members that Ms. Kirkwood had sent in proof of successful completion of a conflict management course which had been a condition of Ms. Kirkwood's probation which is scheduled to be over on September 29, 2017.

Michael Lee

Duane Stanley relayed to board members that Mr. Lee had sent in proof of having been seen by a counselor which had been a condition of Mr. Lee's probation which is scheduled to be over on September 29, 2017.

Old Business

Erica Nuwash

Duane Stanley informed board members of the Deferred Prosecution Agreement that had been drafted by the Dunn County States Attorney and sent back to the Bowman County States Attorney for Ms. Nuwash to sign by June 9, 2017. Lyn James relayed to the Board that Ms. Nuwash was no longer working for the city and had moved out of the community.

Forms Update

Duane Stanley stated that it has not yet been completed.

Confidential Informant Guidelines/Legislative Requirement

Duane Stanley once again brought up to board members the recent law change from the 2017 Legislative Session regarding the use of confidential informants and how this relates to the POST Board. The timeline for completion of the legislative requirement is August 1, 2018. After Board discussion, a subcommittee made up of board members Paul Lies, Chad Kaiser, and Jesse Jahner was created to research this issue.

Training Provider Certification

Duane Stanley provided Board members with a letter dated from 5-8-2014 along with supporting documentation from past POST Board Chair Les Witkowski that addressed training provider certification. Duane gave a brief overview and history of the documentation and the fact that a subcommittee had been formed years ago but there never had been a recommendation made in reference to this issue. What brought this back to the for front was the fact that there had been several recent inquiries to the POST Board Office in reference to what the requirements were to start a police academy in the state of North Dakota. After Board discussion, it was decided that Dan Haugen, John Klug and John Maritato would research this issue and feedback would be provided to Board members at the December meeting.

New Business

MOI Reinstatement Course

Duane Stanley relayed that Sgt. Derek Arndt would be putting together a 4 hour in house course to address the issue of instructors that fail to renew their instructor certification in the required timeframe. The purpose of this course was to provide an alternative option for renewal than to attend the entire MOI course over again.

Discussion /Clarification reference Psychological and Use of Force Testing

POST Board staff brought up for discussion the issue where a Lake Region graduate is license eligible, meaning they have successfully completed/graduated the program. They would have taken the psychological test and if hired by an agency during the next

three years they would not have to retake the psychological exam or Use of Force test with the hiring agency. Yet the POST Board Administrative rules state that whenever an agency hires someone who has never been licensed, the agency needs to do a psychological evaluation, physical etc. Examples have been given where an agency has given a psychological exam to their correctional officer two months prior and they are now transitioning that employee to a licensed peace officer position and they are required to take another psych test based on the language in the rules, yet a Lake Region graduate does not have to take the test again and it is valid for up to three years. The issue was noted through discussion but there was no clear cut resolution to the issue of how long should a psych test be considered valid.

Duane Stanley gave an overview of the 12 people within the last year that failed the Use of Force test and the questions they missed. This report was at the request of Board members due to the concerns a Chief of Police had brought to the Board in regards to a potential hire failing the test three times and in their opinion, it was due to difficult scenario based subjectively worded questions. After review, the common questions missed were those taken verbatim from the NDCC chapter addressing deadly force. After discussion from board members, they felt there wasn't an issue with the exam questions. POST Board staff would continue to monitor failed tests.

Academy Course Completion Date vs Test Date

POST Board staff relayed the issue to Board members that has recently come up regarding prospective hires from out of state who are "license eligible" and retake their states prospective POST exam to continue out their eligibility date. ND POST Administrative Rule 109-02-02-05 (3) specifically addresses the issue and states that the "course" completion date will be utilized in reference to determining the time frame for a waiver.

Training Contract/Sponsoring Agency Student Ratio

Duane Stanley reviewed the language in the current training contract that board members specifically wanted in those contracts in regards to how many slots a hosting agency could have in a training session that is being funded by the ND POST Board. The language states that no more than 25% of the seats can be filled by a host agency unless the class cannot be filled. The Board was provided another example of a host agency having 81% of the students from the host agency at the POST funded event. There was discussion on the various reasons why this may happen and that it could impact agencies who develop a history of this in reference to future funding requests they may put forward for review.

2015-2017 General Fund Training Appropriation Balance

Duane Stanley relayed to Board members that the balance in the training fund for the '15-17 biennium was \$5711.58. This was due to last minute cancellation/scheduling conflicts that were unavoidable which made expending all the allocated money by June 30, 2017 impossible.

POST Board Logo /Trademark issue

Duane Stanley relayed to Board members that the POST Board Office had been contacted and advised that the logo/letterhead that the office has been utilizing for years is trademarked and that if we want to continue using the logo we would need to add the word "legendary" under North Dakota and fill out the proper forms. After Board discussion, the board agreed that it was fine to add the word legendary.

Motion

Lyn James made a motion to keep the logo and add the word "Legendary". Scott Thorsteinson seconded the motion. All in favor, motion carried.

Firearms Instructor Course Waiver (Alternate Course)

Tyler Rintamaki- Newtown PD: Chief Tyler Rintamaki addressed the Board requesting a Firearms Instructor Waiver based on Mr. Rintamaki's completion of the FBI Regional Firearms Instructor School that was conducted in Rosemount , Minnesota on May 23-27, 2016. Board members had the opportunity to review the curriculum.

Motion

Chad Kaiser made a motion to grant the waiver. Tom Falck seconded the motion. All in favor, motion carried.

Trevor Schmidt- Bismarck PD: Lt. Steve Scheuer of the Bismarck PD addressed the Board providing a detailed explanation requesting a Firearms Instructor Waiver based on Mr. Schmidt attending the 40hour NRA Law Enforcement Patrol Rifle Instructor Course on July 10-14, 2017.

Motion

Chad Kaiser made a motion to grant the waiver. Sarah Warner seconded the motion. All in favor, motion carried.

Extension of Basic Training (Good Cause)

The POST Board Office received a letter from McKenzie County SO Interim Sheriff Matt Johansen requesting an extension of basic training for Andrew Schatz due to medical issues with his spouse.. POST staff explained that this would be the second waiver if granted for Mr. Schatz. There was discussion by the Board in reference to the new administration at the McKenzie County Sheriff's Office.

Motion

Tom Falck made a motion to grant the waiver as long as the POST Board Office receives a letter from the new sheriff's administration stating they were ok with the extension. Chad Kaiser seconded the motion. All in favor, motion carried.

Correctional Officer Basic Training Course Approval

The Burleigh County Sheriff's Office provided the Board with a Correctional Officer Basic Curriculum to review for approval. Duane Stanley also relayed to board members that the curriculum had also been provided to the ND Department of Corrections for their review and they in turn approved the curriculum.

Motion

Chad Kaiser made a motion to accept the curriculum. Jesse Jahner seconded the motion. All in favor, motion carried.

Chairman Klug called for a break at 11:58p.m.
The meeting was called back to order at 12:33p.m.

Limited License – John Chmiel

The McLean County Sheriff's Office had sent in a limited license application for John Chmiel. Duane Stanley provided a short overview of the paperwork provided to Board members and Lt. Rick Richard from the Mclean County Sheriff's Office addressed the Board with the circumstances surrounding Mr. Chmiel. Mr. Chmiel was arrested for Simple Assault-Domestic Violence in April of 2002 in Minot ND. The disposition was Simple Assault. Monica Sebastian emailed a lawyer through the FBI to see if Mr. Chmiel would be able to federally possess a weapon. The response from federal legal counsel was "North Dakota DOA 04/17/2002: The subject was convicted of SIMPLE ASSAULT, this offense meets for the use or attempted use of physical force or threatened use of a deadly weapon for 922(g)(9). The report reflects a qualifying relationship for 922(g)(9) as well (wife). North Dakota DOA 04/17/2002 would be disqualifying under 922(g)(9) Misdemeanor crime of domestic violence conviction."

Motion

Chad Kaiser made a motion to deny Mr. Chmiel's limited license. Scott Thorsteinson seconded the motion. All in favor, motion carried.

Funding Request

The Stutsman County Sheriff's Office is asking for \$6,375 to host Professional K9 Decoy Training. The training will be held September 25-28, 2017, in Jamestown, ND.

Motion

Scott Thorsteinson made a motion to approve \$6,375 for the Professional K9 Decoy Training. Lyn James seconded the motion. All in favor, motion carried.

Chairman Klug called for a short break at 12:54p.m.
The meeting was called to order once again at 1:05 for the start of POST Board hearings.

POST Board Hearing – Matthew Beland (17-006) 1:05p.m.

The University of North Dakota Police Department provided a packet of Information to the POST Board Office regarding Lt. Matthew Beland. Mr Beland currently works for the University of North Dakota (UND) Police Department. Mr. Beland was the subject of an internal investigation conducted by UND PD in May of 2017 for accessing CJIS for other than a legitimate work related purpose. Mr. Beland accessed CJIS on February 8, 2017, at 9:28:39 to check the driving status of his ex-wife. Mr. Beland was ultimately given a 10 hour suspension without pay from the UND PD.

It should be noted that Mr. Beland came in front of the Board in December 2015. Mr. Beland was arrested on January 28, 2015, in Polk County, MN, for a domestic violence charge. Mr. Beland ultimately pled guilty to a charge of misdemeanor disorderly conduct with a deferred imposition of sentence for one year from the date of the incident.

For the disorderly conduct conviction, the POST Board placed Mr. Beland on probation for a twelve month period beginning the day of the current POST Board meeting. As a condition of the probation there were to be no violations of law, administrative rule or code of conduct during this timeframe. Mr. Beland's probationary term had since expired.

UND PD Assistant Chief Tracy Meidinger was present and provided sworn testimony to the Board and answered questions from Board members and legal counsel in regards to this recent investigation.

Motion

Paul Lies made a motion that Matthew Beland violated 109-02-05-01(4g) and that his conduct adversely effects his ability to perform peace officer duties. Chad Kaiser voted no. All others voted yes, motion carried.

Lyn James made a motion to start adverse action in accordance with NDCC 12-63-12. Scott Thorsteinson seconded the motion. Chad Kaiser voted no. All others voted yes, motion carried.

There was lengthy discussion on what discipline action should be taken by the Board. There was initial discussion on a suspension of 3-5 days. There was also discussion about the fact Mr. Beland has already been on probation previously regarding the same issue and that it was likely Mr. Beland would not take a 3-5 day suspension seriously and a two week suspension was in order.

Scott Thorsteinson made a motion to suspend Mr. Beland's license for three days and that Mr. Beland be on probation for a year with no violation of the Peace Officer Code of

Conduct or criminal law. Paul Lies seconded the motion. Lyn James and Chad Kaiser voted no. All others voted yes, motion carried.

POST Board Hearing – Anthony Thiry (17-007) 1:35p.m.

The University of North Dakota Police Department provided a packet of Information to the POST Board Office regarding the internal investigation of Anthony Thiry. Documents in the packet stated Mr. Thiry was terminated from UND PD for his inability to adhere to UND's policies and procedures, lapses in judgment while on duty and in uniform, code of conduct un-becoming an officer, and failure to be truthful during an investigation.

On October 29, 2016, Mr. Thiry met with two subjects at an off campus party while on duty in a marked UND PD patrol vehicle. During the meeting, Mr. Thiry provided a preliminary breath test to each subject, one of which was a female subject under twenty-one years of age. It was learned during the investigation, that Mr. Thiry stated he would not give the subject a minor if she sent him a snap chat photo of her in her bunny costume. Mr. Thiry then gave the female subject a ride home.

UND PD Assistant Chief Tracy Meidinger was present and provided sworn testimony to the Board and answered questions from Board members and legal counsel in regards to this investigation.

Motion

Sarah Warner made a motion that Anthony Thiry violated the Peace Officer Code of Conduct, specifically Administrative Rule 109-02-05-01(4e&h). Paul Lies seconded the motion. All in favor, motion carried.

Jesse Jahner made a motion to start adverse action in accordance with NDCC 12-63-12. Scott Thorsteinson seconded the motion. All in favor, motion carried.

There was discussion on what sanction should be taken by the Board. Initially a six month probationary period was discussed and after more discussion on how this involved dishonesty, a consensus for a one year probationary timeframe was reached. Scott Thorsteinson made a motion for a one year period of probation with no further administrative rule or law violations. Tom Falck seconded the motion. All in favor, motion carried.

POST Board Hearing – Johnny Lawson (17-011) 1:49p.m.

Duane Stanley provided board members with court documentation that stated Johnny Lawson, former Wells County Sheriff had been charged with Conspiracy to Deliver a Controlled Substance – Methamphetamine (Class A Felony), Bribery – Unlawful Influence of Public Servants (Class C Felony), False Information to a Law Enforcement Officer (Class A Misdemeanor), Neglect of a Duty (Class A Misdemeanor), and Ingesting a Controlled Substance – Methamphetamine (Class A Misdemeanor). Mr. Lawson's legal counsel, Peter Welte was present at the meeting on behalf of Mr. Lawson.

ND BCI S/A Craig Zachmeier provided sworn testimony and answered questions from Board members and POST Board legal counsel. Mr. Welte provided the Board with a statement on behalf of his client Mr. Lawson.

Motion

Chad Kaiser made a motion that Johnny Lawson violated the Peace Officer Code of Conduct, specifically Administrative Rule 109-02-05-01(4b,c,d,e,&h). Jesse Jahner seconded the motion. All in favor, motion carried. Paul Lies abstained.

Chad Kaiser made a motion to start adverse action in accordance with NDCC 12-63-12. Tom Falck seconded the motion. All in favor, motion carried. Paul Lies abstained.

After discussion with Board members and Mr. Lawson's legal counsel, Tom Falck made a motion to temporarily suspend Mr. Lawson's peace officer license until criminal charges were completed and that the Board have the ability to revisit the matter at that time. Chad Kaiser seconded the motion. All in favor, motion carried. Paul Lies abstained.

POST Board Hearing – Monique Lopez (17-009) 2:51p.m.

The POST Board Office received a termination report regarding Monique 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.

ND BCI S/A Derek Madsen was sworn in and provided an overview of the case and also answered questions from Board members. It was learned that Chief Murphy had been in a relationship with Ms. Lopez at the time the form was filled out. Tioga Police Lt. Sean Duisen was also present and provided sworn testimony and answered questions from Board members and staff. Ms. Lopez testified to the Board and indicated she has no idea of how the \$5,300 got from the evidence account into her personal account.

Motion

Jesse Jahner made a motion that Monique Lopez violated the Peace Officer Code of Conduct, specifically Administrative Rule 109-02-05-01(4c). Paul Lies seconded the motion. All in favor, motion carried.

Scott Thorsteinson made a motion to start adverse action in accordance with NDCC 12-63-12. Chad Kaiser seconded the motion. All in favor, motion carried.

After discussion with Board members, Scott Thorsteinson made a motion 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. Chad Kaiser seconded the motion. All in favor, motion carried.

POST Board Hearing – Joshua Chadbourn (17-008) 3:26p.m.

The POST Board received a termination form from Dunn County stating that Joshua Chadbourn violated Dunn County department policy along with a violation of the Peace Officer Code of Conduct. There were also documents from the Dunn County internal investigation that was conducted that included a response from Mr. Chadbourn. There was also a video that had been made and posted for a brief time showing Mr. Chadbourn doing a burn out on a residential street in Dickinson, ND.

Sgt. Ben Erickson was sworn in and provided testimony to Board members surrounding the termination of Mr. Chadbourn. Sgt. Erickson answered questions from POST Board legal counsel and board members. Based on testimony at the hearing and review of the reports, it appeared Mr. Chadbourn originally denied using alcohol prior to the burn out and then later stated that he did indeed use alcohol the night in question when he did the burn out.

Motion

Lyn James made a motion that Joshua Chadbourn violated the Peace Officer Code of Conduct, specifically Administrative Rule 109-02-05-01(4e). Chad Kaiser seconded the motion. All in favor, motion carried.

Scott Thorsteinson made a motion to start adverse action in accordance with NDCC 12-63-12. Sarah Warner seconded the motion. All in favor, motion carried.

After Board discussion, Scott Thorsteinson made a motion for a recommended sanction of probation for one year with no further peace officer code of conduct or criminal law violations during that time. Lyn James seconded the motion. All in favor, motion carried.

POST Board Hearing – James Watson (17-010) 3:43p.m.

Duane Stanley had provided the Board members with court documents stating that James Watson had been charged in Stark County Court with Continuous Sexual Abuse of a Child, a Class AA Felony; two counts of Gross Sexual Imposition, a Class AA Felony, and one count of Gross Sexual Imposition a Class A Felony in Hettinger County; one count of Continuous Sexual Abuse of a Child a Class AA Felony in Golden Valley County; two counts of Gross Sexual Imposition a Class AA Felony, and one count of Gross Sexual Imposition Class A Felony in Billings County.

ND BCI S/A Tim Helmer was sworn in and provided testimony relating to the investigation regarding Mr. Watson.

Motion

Chad Kaiser made a motion that James Watson violated the Peace Officer Code of Conduct, specifically Administrative Rule 109-02-05-01(4c). Jesse Jahner seconded the motion. All in favor, motion carried.

Chad Kaiser made a motion to start adverse action in accordance with NDCC 12-63-12. Scott Thorsteinson seconded the motion. All in favor, motion carried. Sarah Warner abstained.

Paul Lies made a motion for revocation of Mr. Watson's license. Scott Thorsteinson seconded the motion. All in favor, motion carried. Sara Warner abstained.

Chairman Klug went around to members and POST Board staff in a round table format asking if they had any issues they wanted to discuss. The topic of course approvals came up with an initial comment/recommendation that all out of state courses be automatically approved. This brought up an intense discussion from many about the process and how disorganized this has been over the years and the fact the Board did not want to go backwards spending the majority of the meeting approving or disapproving courses. Members brought up instances where individuals in years past had approached the board for continuing education credit for courses that had been taken two years prior that they had no documentation for. This led to further discussion about the issue of MOI recertification and how far the Board has come in regards to the word getting out that ultimately this issue is about personal responsibility of the individual instructor in getting their instructor certification renewed in a timely fashion. The consensus was that the Board has a process that works and we will continue to use it.

Another topic of discussion that was brought up was the use of late fees that have been collected by the office and how that money should be utilized. This has been discussed at previous meetings with a consensus never being reached. After more discussion, the Board seemed in agreement that it could be used to offset the cost for professional development for board members.

Another point of discussion brought up was researching what it would take to have the job and training announcements posted on the ND POST Board website.

At 4:21 p.m., Sarah Warner made a motion to adjourn. Paul Lies seconded the motion. All in favor, motion carried.