

**MINUTES OF THE
PEACE OFFICER STANDARDS
AND TRAINING BOARD
COMFORT INN SUITES
BISMARCK, NORTH DAKOTA
DECEMBER 6, 2018**

MEMBERS PRESENT

Jesse Jahner
Dan Haugen
Jason Ziegler
Tom Falck
Lyn James
Sarah Warner
John Klug
Erik Dietrich

MEMBERS ABSENT

Paul Lies

GUESTS

Christine Lawson
Brandon Lawson
Johnny Lawson
Brad Nygaard
Stephanie Nygaard
Zachary Schroeder
Shauna Schroeder
Kelly Leben
Stacey Leben
Mike Geierman
Brad Lee Banker
Dean Mata (sp?)
Chad Engen
Chris Hulm
Pat Heinert
Jaime Thomson
Brant Thomson
Jessica Holdman
Dani Hurtado

LEGAL COUNSEL

Mike Mahoney

ADMINISTRATIVE STAFF

Duane Stanley
Monica Sebastian

The meeting was called to order by Chairman John Klug at 1:04 p.m. Duane Stanley took the roll. All members except Paul Lies were present.

It should be noted that Jesse Jahner participated through conference call.

POST Board Hearing – Kelly Leben (18-009) 1:06 p.m.

On June 5, 2018, the POST Board Office received an anonymous letter along with supporting documentation stating that Kelly Leben had been involved in a domestic assault involving his nephew in 2014 and that there was never an internal investigation. During the August 15, 2018, regular POST Board meeting, in Executive Session, the Board made a decision to hear the complaint at the December 6, 2018, regular POST Board meeting.

Chairman John Klug provided opening remarks regarding the hearing. Mike Geierman, legal counsel for Kelly Leben was present and addressed the Board. Brant Thomson was sworn in and came in front of the Board and provided testimony telling his side of the story. Mr. Thomson stated that on April 12, 2014, family members got together to celebrate his grandpa's birthday. Mr. Thomson stated that he was at wrestling practice before he got to the birthday party. He stated when he entered the building Kelly Leben started jabbing Mr. Thomson and Mr. Leben would not listen when Mr. Thomson told him to stop. Mr. Thomson stated he shoved Mr. Leben and Mr. Leben then put him in a chokehold. Mr. Thomson stated he was choking and could not breathe. Mr. Thomson stated he then received medical attention and he stated to Board members that he had a broken back. Board members asked Mr. Thomson about having a broken back due to the fact all of the documentation that the Board had received referred to a cervical strain. Through Board questioning, Mr. Thomson admitted to having assistance in preparing the letter that was sent to the POST Board Office prior to the December 6th meeting.

Jamie Thomson, Brant Thomson's dad, was sworn in and spoke in front of the Board stating that B. Thomson "had things wrong". J. Thomson stated that B. Thomson did not have wrestling practice that morning. J. Thomson stated earlier that morning Mr. Leben started picking on B. Thomson and when B. Thomson got to the birthday party, Mr. Leben still kept picking on B. Thomson and put B. Thomson in a choke hold and started choking B. Thomson. J. Thomson stated that other people at the birthday party started saying to Mr. Leben to let B. Thomson go because he was choking him. J. Thomson stated that when Mr. Leben let B. Thomson go, B. Thomson crawled under the table and could not breathe and was under the table for approximately 45 minutes. J. Thomson stated they then took B. Thomson to the hospital. Board members questioned J. Thomson regarding the statements that were just made. It was clear that there was a conflicting fact pattern between both individuals.

Mr. Geireman once again addressed the Board and stated his client Kelly Leben would testify before the Board. Mr. Leben was sworn in and provided testimony as to the family history and the friction between Mr. Leben's wife and B. Thompson's mother, who are sisters. Mr. Leben stated that he and B. Thomson have an uncle/nephew relationship where they always goofed and wrestled around. Mr. Leben stated that at the birthday party, B. Thomson and he started wrestling around and they were laughing and joking. Mr. Leben stated that during the wrestling, people at the party started saying B. Thomson couldn't breathe so he let B. Thomson go. B. Thomson then crawled under the table. Mr. Leben tried talking to B. Thomson to find out what was going on and B. Thomson would not speak to Mr. Leben. Mr. Leben did state to family members that if they took him to the hospital he would pay the medical bills.

There were no charges filed and B. Thomson's mother had stated in an email to the Nelson County Deputy that this was a family matter and did not want any charges filed.

There were numerous documents that the Board reviewed regarding this matter.

Motion

Dan Haugen made a motion that Kelly Leben did not violate the Peace Officer Code of Conduct and his actions did not have a direct bearing on his peace officer license. Jason Zeigler seconded the motion.

There was Board discussion during which Dan Haugen made the comment that he thought this was horseplay that got out of hand. Tom Falck brought up the letter from D. Quam and the fact that it matched B. Thomson's story. Mr. Leben stated at that time that the incident occurred, D. Quam was intoxicated and later stated he wrote the letter to keep the family at peace.

Dan Haugen, Jesse Jahner, Chad Kaiser, Lyn James, Sarah Warner, John Klug, Jason Zeiger and Erik Dietrich voted yes to the motion. Tom Falck voted no. Motion was carried.

Old Business

At the August 16, 2017, POST Board meeting, a hearing was held regarding former Wells County Sheriff Johnny Lawson being charged with Conspiracy to Deliver a Controlled Substance, Methamphetamine a (Class A Felony), Bribery, Unlawful Influence of Public Servants a (Class C Felony), False Information to a Law Enforcement Officer a (Class A Misdemeanor), Neglect of a Duty a (Class A Misdemeanor), and Ingesting a Controlled Substance, Methamphetamine a (Class A Misdemeanor). At that hearing, a motion was made that Johnny Lawson violated 109-02-05-01(4b) (4e) and (4h). A motion was also made to start adverse action in accordance with NDCC 12-63-12 and that his peace officer license be suspended until the criminal proceedings were complete and the Board revisit the matter.

At the August 15, 2018, regular meeting, at the request of Mr. Lawson's legal counsel, the matter to review Mr. Lawson's criminal conviction in regards to the adverse license action process would be postponed until the December 6, 2018, regularly scheduled meeting.

Mr. Lawson was ultimately convicted of False Report to Law Enforcement and Ingesting a Controlled Substance both Class A Misdemeanors. Because of a Plea Agreement, all other charges were dismissed.

Kathleen Murray, Wells County State's Attorney addressed the Board and requested that Mr. Lawson's peace officer license not be reinstated.

Mr. Lawson addressed the Board and in fact requested that his license be reinstated.

Motion

Dan Haugen made a motion to revoke Mr. Lawson's peace officer license. Jason Zeigler seconded the motion. All in favor, motion carried.

POST Board Hearing – Christopher Hulm (18-009) 3:20 p.m.

During the week of March 20, 2018, Executive Secretary Duane Stanley received a call from Christopher Hulm stating he had been arrested for DUI March 18, 2018. There was ultimately a plea agreement that was reached resulting in the charge being reduced to reckless driving in

which Mr. Hulm pled guilty to. Mr. Hulm was sworn in addressing the Board taking full responsibility for his actions.

Motion

Dan Haugen made a motion that Christopher Hulm did violate the Peace Officer Code of Conduct section 109-02-05-01(4c) and that Mr. Hulm's conduct has a direct bearing on his ability to perform peace officer duties. Sarah Warner seconded the motion. All in favor, motion carried.

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

There was discussion amongst the Board members on what sanction should be taken against Mr. Hulm's peace officer license.

Dan Haugen made a motion that Mr. Hulm be put on probation concurrent with the court's probation and that he commit no other criminal violations or code of conduct violations. Tom Falck seconded the motion. All in favor motion carried.

Funding Requests

The Billings County Sheriff's Office is asking for \$17,250 for Wicklander-Zulaswki Opioid Overdose Death Investigation Training to be held December 17-18, 2018.

Motion

Dan Haugen made a motion to approve funding of \$17,250 for the Wicklander-Zulaswki Opioid Overdose Death Investigation Training. Lyn James seconded the motion. All in favor, motion carried.

Funding Requests

The Devils Lake Police Department is asking for \$14,800 for a SWAT Team Leader Development Training. The course is scheduled February 4-8, 2019.

Motion

Dan Haugen made a motion to approve funding of \$14,800 for the SWAT Team Leader Development Training. Tom Falck seconded the motion. Dan Haugen, Jesse Jahner, Chad Kaiser, Lyn James, Sarah Warner, John Klug, Tom Falck and Erik Dietrich voted yes to the motion. Jason Zeigler voted no. Motion was carried.

POST Board Hearing – Zackary Schroeder (18-011) 3:51 p.m.

The POST Board Office received a packet of information from Divide County State's Attorney, Seymour Jordan, regarding Zachary Schroeder being untruthful therefore being Brady/Giglio impaired. The hearing in question focused on an incident where Mr. Schroeder signed an Affidavit in Support of a Search Warrant with incorrect information. Mr. Schroeder signed the Affidavit in Support of a Search Warrant stating that the suspect had ingested marijuana inside

her residence within the past week. In a recording that was supplied to the Board, the suspect told Mr. Schroeder that it was two weeks since the subject ingested marijuana at her residence.

Mr. Schroeder was questioned intensely by board members regarding the language in the search warrant, the process to obtain the warrant along with Mr. Schroeders process to write department reports. After much discussion, it was apparent to board members that there was no malicious intent or willfulness by Mr. Schroeder to mislead the court. Mr. Schroeder acknowledged the need for further training in this area and board members provided several resources for Mr. Schroeder to contact.

Motion

Tom Falck made a motion that the matter be dismissed because there was no intention to misinform the court. Jason Zeigler seconded the motion. All in favor, motion carried.

Meeting Minutes

Minutes were reviewed from the August 15, 2018, regular POST Board meeting. Sarah Warner stated her name was not listed under members present.

Motion

Sarah Warner made a motion to approve the minutes from the August 15, 2018, regular POST Board meeting with the correction mentioned. Lyn James 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, 2018, through December 5, 2018.

Motion

Lyn James made a motion to approve the financial report from January 1, 2018, through December 5, 2018. Tom Falck seconded the motion. All in favor, motion carried.

2019 Proposed Budget

Duane Stanley provided the Board with the proposed 2019 budget and went over each line item in detail.

Motion

Lyn James made a motion to approve the 2019 budget. Erik Dietrich seconded the motion. All in favor, motion carried.

Meeting Dates for 2019

Duane Stanley suggested the following dates for the 2019 regular POST Board meetings: February 13, May 8, August 21, and December 11.

Motion

Sarah Warner made a motion to accept the 2019 regular scheduled meeting dates. Jason Zeigler seconded the motion. All in favor, motion carried.

Special Meeting Dates for 2019

Duane Stanley recommended dates for the 2019 special meetings if needed. After board discussion, April 3, June 19, and October 2 were agreed upon.

Motion

Sarah Warner made a motion to accept the 2019 special meeting dates. Jason Zeigler seconded the motion. All in favor, motion carried.

Old Business

Adverse License Action Updates – Ian Mattice

Mr. Mattice's peace officer license was suspended for 30 days from August 15th 2018 and he was put on probation for 11 months.

Adverse License Action Updates – Bryton Dahl

Mr. Dahl was found guilty by jury and a motion was filed to retry the case. Mr. Dahl's license is currently suspended until the criminal process is complete.

Adverse License Action Updates – Christopher Bailey

Mr. Baily's peace officer license was suspended for six months and he will be on probation until May of 2020.

Adverse License Action Updates – Richard Anderson

Mr. Anderson's peace officer license has been suspended since August 15, 2018 and will continue to be suspended until the criminal process is complete at which time the Board will revisit the matter. Mr. Anderson's case is set for jury trial January 19, 2019.

Adverse License Action Updates – Brian Sorum

Mr. Sorum was sent a letter of reprimand August 24, 2018.

Professional Licensing Board meeting

Executive Secretary Duane Stanley brought up information regarding the Professional Licensing Board meeting he attended. He brought up material that was shared in the training session regarding when a board member should recuse themselves and when they should not.

Proposed Legislation Related to DOCR

There was a proposed bill stating that the POST Board would start keeping track of correctional officer licensing, correctional officer training along with the monitoring of correctional facilities.

The NDCCAA Group moved and voted to oppose the bill and the legislation was pulled.

New Business

Virtual Learning

Dan Haugen brought up that the Highway Patrol and the LETA have been and would like to continue working more with virtual training. Mr. Haugen explained that virtual training is different than online training in the fact that there is an instructor via webcam and there is interaction with the students. Mr. Haugen asked that the virtual training not be applied to the 20 hours of online training that an officer can have for license renewal.

The Board agreed to this.

Tom Falck left the meeting at 5:04 p.m.

Military Police Training

Dan Haugen brought up having military police training being approved through the state to be recognized for basic peace officer training and the ability to receive a waiver from the POST Board in order for a student to attend just the criminal and traffic portions of the academy. There was discussion regarding the differences in use of force training within the military and the ND use of force training. Mr. Haugen and Mr. Stanley will go over the curriculums and make sure it covers the same categories as the ND Basic Training. Board discussion was in agreement with this as long as the curriculums were similar.

Funding Request

The ND Highway Patrol is asking for \$25,000 for the IACP Leadership in Police Organization (LPO) Training that is to be held in February, March and April of 2019.

Based on the recent funding request approvals during the meeting, there is \$16,341.85 remaining in the training account for the current biennium. It was discussed amongst Board members that \$16,341.85 would come out of the appropriated training fund and the remaining \$8658.15 to fund the course would come out of the POST Board checking account.

Motion

Lyn James made a motion to approve \$16,341.85, what is left for the biennium for funding, and the remaining to come out of the POST Board's checking account. Jason Zeigler seconded the motion. All in favor, motion carried.

Lyn James and Jesse Jahner left the meeting at 5:32 p.m.

Funding Requests

Watford City PD requested \$10,500 for an OST Evidence Class, West Fargo PD requested \$1,900 for High in Plain Site training, and Renville County requested \$2,773.85 for STOP Domestic Violence Training.

Motion

Dan Haugen made a motion to deny all of the funding because the POST Board is out of funds for the biennium. Jason Ziegler seconded the motion. All in favor, motion carried.

Instructor Certification

There was discussion regarding the use of out of state/non ND certified instructors doing the annual sidearm qualifications. It was decided when the Board does the next administrative rules re-write that the wording will be changed from certified instructor to ND certified instructor.

Training Committee

It was brought up if the Board should keep a training committee to look over funding requests and give input to the Board regarding the requests. It was determined to keep a training committee.

Motion

At 5:51 p.m., Dan Haugen made a motion to adjourn. Sarah Warner seconded the motion. All in favor, meeting adjourned.