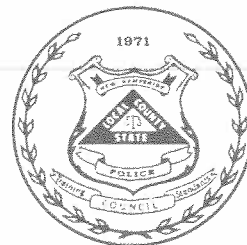




Sheriff Michael L. Prozzo, Jr.
Chairman

State of New Hampshire
POLICE STANDARDS & TRAINING COUNCIL
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Donald L. Vittum
Director

Minutes

July 22, 2008

The 374th meeting of the New Hampshire Police Standards and Training Council was called to order at 9:02 a.m. by Chairman Michael L. Prozzo Jr., Sheriff of Sullivan County, in the John D. Morton conference room at the Arthur D. Kehas Law Enforcement Training Facility and Campus in Concord, New Hampshire.

Members Present: Chief Peter Morency, Berlin Police Department; Colonel Frederick Booth, Director of New Hampshire State Police, Associate Justice Stephen H. Roberts, Dover District Court; Commissioner William L. Wrenn, Jr., New Hampshire Department of Corrections; Chief Timothy Russell, Henniker Police Department; Deputy Attorney General Bud Fitch, designee of Attorney General Kelly Ayotte; Associate Justice Norman Champagne, Manchester District Court; Chief Gregory Dodge, Epping Police Department; and, Chief Michael J. Magnant, Portsmouth Police Department.

Members Absent: Vice Chancellor Charles Annal

Staff Present: Assistant Director Robert B. Stafford, Jr., Mr. Keith H. Lohmann, Investigative Paralegal Anne Paquin, Captain Benjamin Jean, Chief Timothy Merrill, and Council Secretary Kathryn Day.

Others Present: Officer Joseph Marquay, Jr., Charlestown Police Department; Officer John Silva, Hampton Police Department; Officer Matthew Moyer, Laconia Police Department; Charlestown Chief of Police Edward Smith, Walpole Chief of Police David Hewes, and Lieutenant Joel Huntley of the Surry Police Department; Attorney Anne M. Rice, Rice Law Office PLLC, Laconia; Corrections Officer Dwane Sweatt, Corrections Officer Stacey Barnouski; and, Officer Jonathan Evans of the Hill Police Department; Deputy Chief Len Disesa and Officer Peter Sheldon of the Portsmouth Police Department.

Call to Order

Chairman Prozzo called the meeting to order at 9:02 a.m. Commissioner Wrenn and Chief Dodge arrived within moments thereafter.

Approval of Minutes

Chief Russell moved to accept the Minutes of June 24, 2008; the motion was seconded by Deputy Attorney General Fitch. The Council voted unanimously by a voice vote to approve the Minutes.

Director's Report

The Director's written report, mailed under separate cover, was accepted as submitted.

Previous/Unfinished Business

Mission Statement

Chairman Prozzo elected to delay this item until the next meeting when the Director will be present. Council members will discuss suggestions for revising the Mission Statement in anticipation of the publication of Police Standard and Training's Annual Report for the Fiscal Year ending June 30, 2008.

New Business

Rules Adoption

Mr. Lohmann met on June 20 with the Joint Legislative Committee on Administrative Rules (JLCAR). The proposed Rules were approved by JLCAR and then distributed to the Council Members for adoption. Justice Roberts moved that the Council adopt the Rules (Pol 100, Pol 200, and Pol 300-600) approved by JLCAR and the motion was seconded by Colonel Booth. A voice vote of the Council was unanimous in support of adopting the Rules.

CONSENT CALENDAR

The Council considered the following staff recommendations on requests for certification based upon prior training and experience (PT&E):

Full-Time

Officer Tyler A. Coady, Concord Police Department

(DOH: 07/27/08) Request for consideration for full-time certification based upon prior training and experience. Staff recommends granting certification upon successful completion of the NH Law Package of the Full-Time Academy, medical exam, entrance fitness test, and First Aid/CPR certification, if lapsed.

Officer Derek J. LaPointe, Concord Police Department

(DOH: 07/27/08) Request for consideration for full-time certification based upon prior training and experience. Staff recommends granting certification upon successful completion of the NH Law Package of the Full-Time Academy, medical exam, entrance fitness test, and First Aid/CPR certification, if lapsed.

Troy A. Cline, Hooksett Police Department

(DOH: 06/02/08) Request for consideration for full-time certification based upon prior training and experience. Staff recommends granting certification upon successful completion of the NH Law Package of the Full-Time Academy, medical exam, entrance fitness test, and First Aid/CPR certification, if lapsed.

Officer Candy L. Pena, Manchester Police Department

(DOH: 07/14/08) Request for consideration for full-time certification based upon prior training and experience. Staff recommends granting certification upon successful completion of the NH Law Package of the Full-Time Academy, medical exam, entrance fitness test, and First Aid/CPR certification, if lapsed.

Officer Ryan T. Rooney, Nashua Police Department

(DOH: 08/12/08) Request for consideration for full-time certification based upon prior training and experience. Staff recommends granting certification upon successful completion of the NH Law Package of the Full-Time Academy, medical exam, entrance fitness test, and First Aid/CPR certification, if lapsed.

Trooper Peter Gilbert, New Hampshire Division of State Police

(DOH: 08/01/08) Request for consideration for full-time certification based upon prior training and experience. Staff recommends granting certification upon successful completion of the NH Law Package of the Full-Time Academy, medical exam, entrance fitness test, and First Aid/CPR certification, if lapsed.

Officer Gregory R. Stankatis, Newport Police Department

(DOH: 06/18/08) Request for consideration for full-time certification based upon prior training and experience. Staff recommends granting certification upon successful completion of the NH Law Package of the Full-Time Academy, medical exam, entrance fitness test, and First Aid/CPR certification, if lapsed.

Officer Penny J. Frechette, Tamworth Police Department

(DOH: 06/16/08) Request for reinstatement of full-time certification based upon prior training and experience. Officer Frechette successfully completed the 132nd Full-Time Police Officer Academy in November 2003. Staff recommends reinstating lapsed full-time certification with no further action required.

Part-Time

Officer Thomas Chagnon, Stoddard Police Department

(DOH: 12/18/07) Request for part-time certification based upon prior training and experience. Prior to 12/18/07, Officer Chagnon was not employed as a law enforcement officer since 1988. Staff recommends granting certification upon successful completion of the Part-Time Police Officer Academy.

The following **Requests for Extensions** were submitted for consideration:

Full-Time Police Officer

Staff recommends that extensions for these full-time officers be granted until fitness testing for the requested Academy and, if testing is successful, through the end of the requested Academy.

Officer Zachary J. Howry, Gorham Police Department

(DOH: 03/10/08 **Not part-time certified**) requests extension through the end of the 147th Full-Time Academy. An extension is required because the completion date of the next Academy exceeds the six months following his date of hire. Staff recommends granting the extension with the stipulation that Officer Howry continue to work under the supervision of a full-time certified officer.

Officer Peter Fowler, Hampton Falls Police Department

(DOH: 06/18/08 **Part-time certified**) requests extension through the end of the 148th Full-Time Academy. An extension is required because the completion date of the 148th Academy exceeds the six months following his date of hire. Staff recommends granting the extension.

Officer Donald Broughton, Hooksett Police Department

(DOH: 01/21/08) requests extension through the end of the NH Law Package of the 147th Academy. Staff recommends granting the extension.

Officer Sean M. Powers, Hopkinton Police Department

(DOH: 04/21/08 **Not part-time certified**) requests extension through the end of the 147th Full-Time Academy. An extension is required because the completion date of the 147th Academy exceeds the six months following his date of hire. Staff recommends granting the extension with the stipulation that Officer Powers continue to work under the supervision of a full-time certified officer.

Officer Joseph J. Cespedes, Manchester Police Department

(DOH: 11/26/07) requests extension through the end of the NH Law Package of the 147th Academy. Staff recommends granting the extension.

Marine Patrol Officer Gregory A. Ruby, New Hampshire Marine Patrol

(DOH: 03/21/08 **Part-time certified**) requests extension through the end of the 147th Full-Time Academy. An extension is required because the completion date of the 147th Academy exceeds the six months following his date of hire. Staff recommends granting the extension.

Officer George S. Radford, Rindge Police Department

(DOH: 03/26/08 **Part-time certified**) requests extension through the end of the 147th Full-Time Academy. An extension is required because the completion date of the 147th Academy exceeds the six months following his date of hire. Staff recommends granting the extension.

The following requests for Training Grants for **Command Training Programs** were submitted:

Alton Police Department requests approval to send Captain Ryan Heath to the Executive Development course sponsored by the New England Chiefs of Police Association at Roger Williams University in Providence, Rhode Island, during October 7 through October 9 and November 18 through November 20, 2008. Staff recommends approving this request. **Amount: \$1,000.00**

Amherst Police Department requests approval to send Lieutenant James Brace and Lieutenant Mark Reams to the Command Training Series Mid-Management Course at Roger Williams University in Providence, Rhode Island, from October 20 through October 31, 2008. Staff recommends approving this request.
Amount for two officers: \$2,000

Bedford Police Department requests approval to send Lieutenant Michael R. Bernard to the Massachusetts Police Leadership Institute program at Lowell Police Department in Lowell, Massachusetts, from October 20 to October 31, 2008. Staff recommends approving this request. **Amount: \$1,000.00**

New Hampshire Bureau of Liquor Enforcement requests approval to send Deputy Chief Scott Dunn to the Executive Development course sponsored by the New England Chiefs of Police Association at Roger Williams University in Providence, Rhode Island, during October 7 through October 9 and November 18 through November 20, 2008. Staff recommends approving this request. **Amount: \$1,000.00**

Rockingham County Sheriff's Department requests approval to send Lieutenant Al Brackett to the Massachusetts Police Leadership Institute program at Lowell Police Department in Lowell, Massachusetts, from October 20 to October 31, 2008. Staff recommends approving this request. **Amount: \$1,000.00**

Salem Police Department requests approval to send Sergeant Eric Lamb and Sergeant Steven Malisos to the Massachusetts Police Leadership Institute program at Lowell Police Department in Lowell, Massachusetts, from October 20 to October 31, 2008. Staff recommends approving this request. **Amount for two officers: \$2,000.00**

The Council considered two requests for **Other Training**:

Milford Police Department requests approval to send Sergeant Kevin Furlong to the Institute of Police Technology and Management's Pedestrian/Bicycle Crash Investigation course in Jacksonville, Florida, from September 14 through September 19, 2008. Staff recommends approving this request. **Amount: \$964.00**

Seabrook Police Department requests approval to send Officers Mark Richardson, Daniel Lawrence, and David Buccheri to the Institute of Police Technology and Management's FTO Civil Liability Issues course in Orlando, Florida, from November 2 through November 6, 2008. Staff recommends sending one officer who can provide a class to other Seabrook officers on FTO Civil Liabilities. **Amount: \$1,008.67**

A motion was put forth by Justice Roberts and seconded by Chief Morency to approve the staff recommendations on the above items included in the Consent Calendar. A unanimous voice vote of the Council carried approved the motion.

Ongoing 3-Year Fitness Testing – Requests for Fitness Testing Extensions

Upon a motion by Chief Dodge, seconded by Chief Morency, the Council voted unanimously to approve requests for Fitness Testing Extension for medical reasons, with the exception of Commissioner Wrenn who recused himself.

The following individuals have been granted an additional six months to submit medical evidence of suitability for fitness testing:

CO Wayne Bugbee, NH Department of Corrections
Officer Tiffany Clement, Rumney Police Department
Detective Adam Dyer, Londonderry Police Department
Officer Wayne Ingersoll, Fremont Police Department
Officer Christopher Gustafson, Belmont Police Department
Officer Christopher Mudgett, Claremont Police Department

Show Cause Hearings (NONPUBLIC SESSIONS)

Deputy Attorney General Fitch moved to enter into a nonpublic session, pursuant to RSA 91-A:3, II, for the Show Cause Hearings on the July 24, 2008, agenda, with the exception of all Show Cause Hearings for Corrections Officers on the agenda and Officer Peter Sheldon of the Portsmouth Police Department. Judge Roberts seconded the motion and the Chairman called for a roll call vote of the Council. The vote was unanimous in the affirmative. The nonpublic session commenced at 11:30 a.m.

Deputy Attorney General Fitch moved to seal the minutes of the nonpublic session. The second on the motion was by Chief Dodge. The Council voiced their unanimous approval.

On a motion by Mr. Fitch, seconded by Commissioner Wrenn, to exit the nonpublic session, the roll call vote of the Council was in support of the motion, with no exception. The nonpublic session concluded at 11:54 a.m.

Regarding Officer John Silva of the Hampton Police Department, Deputy AG Fitch moved that the Council take no action on his certification, based on the evidence presented in that case. Chief Dodge seconded the motion. Hearing no discussion, the Chairman called for a voice vote and it was unanimous in the affirmative.

Commissioner Wrenn moved that the Council stay any action taken against Officer Jonathan Evans, who intends to file a request for a medical extension today. Chief Morency seconded the motion. Judge Roberts clarified that the intent of the motion would be to impose a suspension but stay it contingent upon Officer Evans filing a request for a medical waiver immediately; if he does not, he is suspended. Officer Evans acknowledged this understanding and Chairman Prozzo reminded him that he must assume all responsibility for meeting the fitness requirement within six months or, if he cannot, he must request an additional medical extension to avoid suspension.

The Chairman called for a voice vote and the Council supported the pending motion without exception.

Mr. Fitch moved that the certification of Officer Peter Crowell of the Goshen and Sunapee Police Departments be suspended until such time as he either completes the testing requirement or obtains a medical extension and to compel him to appear before the Council on August 24, 2008, to address his failure to appear on July 22, 2008. In a voice vote the Council concurred, without exception.

Pursuant to RSA 91-A:3, II, (a), Chief Dodge moved to enter into nonpublic session for the purpose of hearing the matter of Officer Peter Sheldon of the Portsmouth Police Department. The motion was seconded by Chief Russell. Chief Magnant recused himself from this hearing and the motion was put to a roll call vote. The vote of the Council was unanimous in favor, and the nonpublic session commenced at 12 p.m.

Chief Dodge moved to seal the minutes of the nonpublic session. After a second by Deputy Attorney General Fitch, a voice vote of the Council carried the motion. Upon a motion by Chief Dodge to exit the nonpublic session, and a second by Chief Morency, the roll call vote of the Council was unanimous in support. The nonpublic session concluded at 12:12 p.m.

Deputy AG Fitch moved that the Council take no action on the certification of Officer Peter Sheldon of the Portsmouth Police Department. The motion, seconded by Commissioner Wrenn, carried with a unanimous voice vote of the Council, with Chief Magnant recused.

Pursuant to RSA 91-A:3, II, (a), Deputy AG Fitch moved to enter into nonpublic session for the purpose of hearing all Corrections Officers who are on today's agenda. The motion, seconded by Chief Morency, was put to a roll call vote and carried unanimously, with the exception Commissioner Wrenn, who recused himself. The nonpublic session commenced at 12:15 p.m.

Chief Morency moved to seal the minutes of the nonpublic session. After a second by Chief Dodge, the Council approved the motion without exception.

Upon a motion by Chief Morency to exit the nonpublic session and a second by Chief Dodge, the roll call vote of the Council unanimously supported the motion. The nonpublic session concluded at 12:45 p.m.

Deputy Attorney General Fitch moved that the certification of Corrections Officer Eric Stone be suspended until such time that he successfully completes the fitness testing requirement and submits all of the documentation to the Director and then for an additional period of 30 days. Judge Champagne seconded the motion. The voice vote of the Council was unanimous in favor.

Mr. Fitch moved that the certification of Corrections Officer Dwane Sweatt and his certification to be a part-time police officer be suspended for 30 days, effective immediately. Upon a second by Colonel Booth, the motion carried on the unanimous voice vote of the Council.

Mr. Fitch moved that the certification of Corrections Officer Stacy Barnouski be suspended for 11 days and upon the conclusion of that suspension she will remain in probationary status until she has successfully completes the fitness testing requirements; if she fails to meet the fitness requirement by December 31, 2008, she will lose her certification. After a second by Chief Morency, the Council voiced their complete agreement.

Requests for Reconsideration

Corporal Scott J. Lewis, Boscawen Police Department

At their meeting on June 24, 2008, the Council suspended the certification of Corporal Scott J. Lewis under Pol 206.03, Failure to appear. A Show Cause Order compelling Corporal Lewis to appear for failure to meet the requirements of RSA 188-F:27, III-d and III-f, was issued on May 27 and he failed to respond.

Since the suspension was imposed, new facts have come to light that show good cause for his failure to appear on June 24, namely, Corporal Lewis was then and is currently on a military deployment in Afghanistan. These facts were presented to the Director in a letter dated July 7, 2008, from Corporal Lewis' attorney, David P. Slawsky, and Director Vittum has requested the Council to waive the time requirements set out in Pol 206.03 (b) . . . *Good cause shall include . . . or similar problem beyond the party's control* and to stay the suspension until such time as Corporal Lewis (or his representative) can appear at a future Council meeting.

Commissioner Wrenn moved that the Council reconsider their action taken regarding the certification of Corporal Scott Lewis of the Boscawen Department based on the information that he is on assignment in Afghanistan. Deputy AG Fitch seconded the motion, followed by the unanimous voice vote of the Council in the affirmative.

Commissioner Wrenn then moved that the Council stay any action on Corporal Scott Lewis in the matter of his compliance with ongoing fitness testing requirements until Corporal Lewis can appear or until his attorney can respond. Justice Roberts seconded this motion and the Council voiced their unanimous support.

Justice Roberts seconded the motion and the voice vote of the Council carried the motion without exception.

Officer Joseph Marquay, Jr., Charlestown Police Department, et al

For failure to meet the requirements of RSA 188-F:27, III-d and III-f, the Council, at their meeting on June 24, voted to suspend the certification of Officer Marquay, effective immediately, and when all proper documentation was received to show that he met the requirements of our ongoing fitness testing requirement, a six-month suspension period was to begin.

Charlestown Chief of Police Edward Smith, Walpole Chief of Police David Hewes, and Lieutenant Joel Huntley of the Surry Police Department appeared with Officer Marquay to request reconsideration of the Council's action on Officer Marquay's certification. Chief Smith presented a letter from Langdon Chief of Police Raymond L'Abbe that was distributed to the Council members. Chief Smith thanked the Council for the opportunity to comment on their decision.

Chief Smith argued that the sanction imposed on Officer Marquay appeared to be disproportionate to the infraction. Officer Marquay's violation was a first offense and an error of omission. Rather than a failure to comply with the requirements of the statute to complete ongoing fitness testing, there was a failure to comply with the reporting of such. Chief Smith advocated for a period of probation in lieu of a period of suspension; he argued that suspension has greater adverse effects for smaller agencies who cannot absorb the loss as easily as agencies in larger municipalities. Chief Smith asked that the Council reconsider their decision and that the Council set a standard that is fair, accurate, and proportionate to the infraction.

Commissioner Wrenn asked for clarification on when Officer Marquay completed the fitness requirement. Chief Smith stated that the fitness test was administered prior to June 24, but after December 31, 2007. Commissioner Wrenn stated that this constituted a violation of State law.

Chief Smith responded that in an April 29, 2008, letter from the Director, Officer Marquay was given the opportunity to take the fitness test before June 24 and understood that failing to do so would result in a recommendation for suspension. Chief Smith understood this to mean that if Officer Marquay took the fitness test before June 24 and submitted all the required paperwork, he would not be suspended.

Commissioner Wrenn underscored that the statute requires that testing be completed and documented by December 31, 2007. Officer Marquay failed to comply. Chief Smith asked if the Rules require that the officer be placed on probation until he complies, rather than receiving a suspension. Commissioner Wrenn corrected this impression, explaining that it is the Council's ability to suspend certification for failure to comply with State law and the law requires that fitness requirements must be met by December 31. Regarding fairness, Commissioner Wrenn stated that other individuals who were granted additional time to complete fitness testing had filed documents that cited medical reasons that prevented them from taking the test; these officers were granted extensions. Officer Marquay failed to file any documents.

Chief Smith thanked the Council for hearing his argument and declined further comment, other than to say Officer Marquay simply failed to follow through and takes responsibility for that failure, that Officer Marquay is deserving of some kind of sanction other than a six-month suspension. Chief Smith felt that other kinds of violations are deserving of suspension for six months – some, maybe more – but Officer Marquay's error does not warrant such a harsh penalty. Chief Smith stressed that, in the case of Surry and Langdon, Officer Marquay "is half the department."

Chief Russell took the opportunity to state that, in the Council's view, an officer's failure to comply with the ongoing fitness testing requirement is not a reflection on his department(s); the only person held responsible is the officer. Commissioner Wrenn added that the chiefs, though, especially in the smaller agencies, need to remind their officers about the deadlines and make sure they are in compliance; if not, the departments will be affected when their officer is suspended for the violation. Further, Commissioner Wrenn stated that if Officer Marquay had completed the fitness test in 2007 and simply had failed to file the documentation, he would not have suffered the suspension. The paperwork was not the issue; rather, the violation of the statute (failing to complete the testing in 2007) is what has prompted the Council's action. Both Commissioner Wrenn and Chairman Prozzo expressed their dismay at what seemed to be a "cavalier attitude" presented by Officer Marquay and others who appeared for Show Cause Hearings on June 24.

Chief Smith had no further comment and the Council moved to the next matter.

NONPUBLIC SESSION: Officer Jared Peters, Bethlehem Police Department

At their meeting on June 24, the Council voted to suspend the certification of Officer Jared Peters of the Bethlehem Police Department, effective immediately, for his ongoing violation of State law and Council Rules. The suspension is to remain in effect until 90 days after Officer Peters has met all requirements.

Attorney Anne M. Rice appeared on behalf of Officer Peters. Mr. Lohmann distributed to the Council a motion filed by Attorney Rice dated (and received on) July 21, 2008.

Pursuant to RSA 91-A:3, II (a), Commissioner Wrenn moved to enter into nonpublic session to reconsider the matter of Officer Jared Peters, including specific medical evidence. This motion was seconded by Chief Dodge. A roll call vote of the Council carried the motion without opposition. The nonpublic session commenced at 9:50 a.m.

Commissioner Wrenn moved to seal the minutes of the nonpublic session. After a second by Deputy AG Fitch, the motion carried on a voice vote of the Council without opposition.

Chief Russell moved to exit the nonpublic session. Commissioner Wrenn seconded this motion and a roll call vote of the Council was unanimous in favor. The nonpublic session concluded at 10:35 a.m.

Deputy Attorney General Fitch moved to table the matter of reconsideration of the Council's action concerning Officer Jared Peters, and that the Council ask the Attorney General's Office to render an opinion as to the applicability of 38 USCA § 4301 (USERRA) to the Council's actions, and that the Council invite the petitioner to submit further legal memorandum on that issue, and that the Council ask the staff to provide information about individuals they believe violated the law but cured it before May 27, 2008, i.e., the date Show Cause Orders were issued by the Council. Following a second by Judge Roberts, the voice vote of the Council was unanimous in favor.

Deputy AG Fitch moved that the Council stay the imposition of the balance of the suspension period until all legal issues have been addressed and determine at the Council meeting on August 26, 2008, if it is still appropriate to impose the balance of the suspension period. The motion was seconded by Colonel Booth. Deputy AG Fitch elaborated for Justice Roberts that the effect of the motion would allow Officer Peters to return to work, pending the decision reached by the Council after further legal analysis. If the Council finds that the decision to suspend was proper, the balance of the suspension period would be imposed; if, in fact, the Council can be defined as an "employer," under USERRA and the decision was not proper, the decision to suspend can be reversed.

Attorney Rice was informed that Officer Peters may return to work upon his return on Friday, July 25, from his duty assignment. Chairman Prozzo requested that the matter be resumed at the next Council meeting; Deputy Attorney General Fitch stated that the intervening period would be enough time for the Attorney General's Office to render their opinion. Attorney Rice will plan to attend, or, if she is not available on that date, the Council will be notified and receive her motion for continuance in a timely manner.

The Chairman called for a vote on the pending motion and the Council voiced their unanimous consent.

Other Council Action on Requests for Reconsideration

Neither Corrections Officer Daniel Leblanc, nor Officer Matthew Moyer were present; no new information was presented on behalf of either officer.

Chief Dodge put forth the following motion: That the Council deny requests for reconsideration regarding decisions rendered on Corrections Officer Daniel LeBlanc, Officer Joseph Marquay, and Officer Matthew Moyer. The motion was seconded by Chief Morency and the voice vote of the Council was in favor.

Ongoing 3-Year Fitness Testing – Discussion

Mr. Lohmann outlined the status of officers required to complete three-year ongoing fitness requirements by December 31, 2008.

- In October 2007 Police Standards and Training sent a letter to each officer who was nearing the December 31 deadline for them to complete their ongoing fitness testing requirement. These letters were addressed to the officer at the address of his/her agency.
- As of December 31, 2007, an estimated 100 officers had not met the requirements and had not contacted Police Standards and Training.
- As of April 29, 2008, ~53 of these had taken the test and met all requirements or a request for an extension based on medical reasons had been submitted to Police Standards and Training, and the number of officers who had done neither was 47. These 47 officers received a letter instructing them that a Show Cause Order would be issued if they remained out of compliance and/or failed to respond by May 27, 2008. These letters were addressed to the officer at the address of his/her agency.
- No action was taken on the certification of those who complied and/or responded by May 27, 2008. The officers who had not done so received a certified letter dated June 2, 2008, advising that they would be expected to appear for a Show Cause Hearing. These letters were addressed to the officer at the address of his/her agency.
- The procedural letter dated June 13, 2008, was sent by certified mail addressed to the officer at the address of his/her agency.
- Show Cause Hearings were held for 18 officers on June 24, 2008.
- Additional Show Cause Hearings were scheduled for July 22, 2008

Chairman Prozzo stated that all of these ~100 who were not in compliance by December 31, 2007, should receive equitable treatment. Just because approximately half of these officers complied by May 27, 2008, they were still in violation of the statute and yet received no sanction from the Council. Concerning the 47 officers who were delinquent, their suspension period should be for their noncompliance beginning May 27, 2008. Chairman Prozzo conceded that this was not the action that the Council had taken so far and apologized for not having come to this judgement sooner; however, since receiving additional information, a six-month suspension period does not appear to be reasonable or appropriate, given the leniency afforded the ~53 who were not sanctioned for noncompliance with the December 31, 2007, deadline.

Commissioner Wrenn said that he had the impression that all officers who had not complied with the fitness requirements were being compelled to appear and that suspension was considered if they had still not complied by the date of the Show Cause Hearing. If they did comply and we were satisfied that they had submitted all the documentation and had met the fitness requirements, then an additional suspension was given because they had not met the December 31, 2007, deadline. Considering the sequence of actions above, this impression was not accurate, and Commissioner Wrenn felt now that fairness dictates that suspension should be based on the May 27, 2008, deadline for all of these officers.

Deputy AG Fitch suggested that the Council consider that if the “trigger” for discipline is not reacting to the letter of notice, PST must be able to confirm if and when the officer receives the notice. The letters that were sent (October 2007, and April 29, June 2, and June 13, 2008) all were addressed to the officer at their department and some of these individuals did not receive the letter(s) promptly. Mr. Fitch questioned whether a three-month suspension period was a proportional consequence for misconduct of this nature, considering that in some cases it places the officer’s employment in jeopardy.

Mr. Lohmann stated that based upon the comments of the Council at their June 24, 2008, meeting and the letters that were sent to the officers, PST distributed a mass mailing at the end of June. The July edition of The Bulletin announced to all New Hampshire law enforcement agencies that all officers who are due to test in 2008 must complete the fitness requirement and submit all paperwork to the Police Standards and Training Council by December 31, 2008, whether they pass the test or not. We also advised that requests for extensions for medical reasons should be submitted by December 1, 2008, in time to be placed on the Council’s December agenda.

The Council agreed, then, to affirm that December 31 is the deadline for complying with ongoing fitness testing requirements; otherwise, the statute requires a suspension. The statute provides for no subsequent opportunities to “make up” the requirement; therefore, the Council has no authority to grant extensions except for medical reasons and this practice will be discontinued. Having reached this consensus, the Council agreed to reconsider all of the suspensions that were given June 24, 2008. The Council agreed that a consistent and fair approach to the current issues would be to uphold the suspensions of those officers who failed to respond by May 27, 2008, but to reconsider the sanctions imposed.

Commissioner Wrenn moved that the Council reconsider the action taken against Officer Joseph Marquay of the Charlestown Police Department, Officer Matthew Moyer of the Laconia Police Department, and Officer Jared Peters of the Bethlehem Police Department; the Commissioner intentionally excluded the matters concerning Corrections Officers from which he had recused himself. Judge Champagne seconded this motion, for the purposes of discussion.

Following a brief discussion, Commissioner Wrenn withdrew his motion, and Judge Champagne offered a motion for the Council to reconsider the sanctions imposed on May 27 and on June 24, including all of the individuals (including all Corrections Officers), whether or not they had sought reconsideration. Judge Roberts seconded the new motion. The Council agreed that an appropriate period of suspension should be stipulated for the future and proposed 30 days for a full-time officer and 60 days for a part-time officer effective January 1, as a more proportionate penalty.

Colonel Booth expressed concern that such action would create an undesirable precedent. He felt the urgent matter before the Council was specifically how to address Show Cause Hearings that may take place in August and September 2008. Deputy Attorney General Fitch recommended that the Council stipulate that only the current

round of officers whose requirement was due December 31, 2007, are included in the "30/60" proposal.

Mr. Lohmann, responding to a question from Judge Roberts, stated that he does not anticipate any further Show Cause Hearings beyond what is currently scheduled. After today, the remainder of the officers will have been granted medical extensions. Mr. Lohmann stated that some of the individuals scheduled for Show Cause Hearings today were required to test in 2007 and were granted medical extensions through June 30, 2008. Rather than issuing them a Show Cause Order, a notice letter was sent to them to compel them to appear on the basis of their expired medical extensions.

The motion pending, the Council agreed that the motion should state that this action is unique and is not a precedent. The Council, on a voice vote, was unanimous in support of the motion.

Deputy AG Fitch moved that sanctions imposed on all of the individuals, with the exception of Robert Elliott on Hinsdale Police Department, whose matters the Council addressed on June 24, 2008, for failure to meet the ongoing fitness testing requirements be reconsidered and be commuted as follows: a 30-day suspension for those who are certified full time and a 60-day suspension for those who are certified part time. The Chairman clarified that the suspension period is retroactive to their original date of suspension. The voice vote of the Council was unanimous in support, with Commissioner Wrenn recused.

The Council resolved that Police Standards and Training should communicate clearly to all of these affected officers that they will receive no further special consideration and make special note of the unique circumstances of the 2007 testing regimen and noticing from the Council.

Other New Business

Request for Declaratory Ruling on Pol 302.12 (a)

The Council deliberated on a request for a Declaratory Ruling on Pol 302.12 (a) Limitation of Hours, Part-Time Officers, submitted by Captain Benjamin Jean. The consensus of the Council was that the Rule stipulates that only an officer who successfully completes the Full-Time Academy is eligible for part-time certification with unlimited hours. The Council determined that officers who were "grandfathered" and who have not attended the Full-Time Academy are not exempted from the Rule.

Request of Bristol Police Department on behalf of Officer William R. Phinney

The Council considered the Bristol Police Department's request for Officer William R. Phinney to be granted part-time certification with unlimited hours. Captain Jean stated that Officer Phinney began his law enforcement career in 1969 and worked full time for Fish and Game, retiring from the Department after 26 years.

During his time with Fish and Game, Officer Phinney and other Fish and Game officers who were certified before August 23, 1985, were “grandfathered” pursuant to RSA 188:F, III, and Officer Phinney was not at any time required to successfully complete the Full-Time Academy.

Officer Phinney retired from Fish and Game as a full-time officer in 1995 and continued to work on a part-time basis for Fish and Game until very recently. In addition, he worked part time for Plymouth State University (1995-2007) and for the Belknap County Sheriff’s Department (1985-1995); he worked briefly as a part-time officer for the Holderness Police Department in 1995 and again in 2007. Currently, he is employed with the Bristol Police Department as a part-time police officer. Officer Phinney’s training record was not available for inspection at the meeting. Neither Bristol Police Chief John Clark nor Officer Phinney was present.

Considering that Officer Phinney is recognized as a certified full-time officer, Chief Russell moved that the Council approve Chief Clark’s request to grant part-time certification with unlimited hours to Officer William Phinney. The motion was seconded by Chief Dodge.

Deputy Attorney Fitch noted there are a limited number of officers in similar circumstances; however, since the Council has agreed that officers who have not completed the Full-Time Academy are not exempted, excepting Officer Phinney from the Rule would set an undesirable precedent. Furthermore, the appropriate avenue for the Bristol Police Department is to submit a request for a waiver that would allow Officer Phinney to exceed 1,300 hours.

Colonel Booth favored limiting the officer to 1,300 hours for the following reasons: Officer Phinney has not completed the Full-Time Academy, as the Rule requires. Although Officer Phinney has worked for many years as a part-time police officer, the major share of his law enforcement career was as a Fish and Game officer. And, finally, as a part-time police officer, Officer Phinney has not been requested to exceed 1,300 hours in the past and likely will not exceed 1,300 hours in the foreseeable future; and, if this status changes, the Bristol Police Department will have the option to petition the Council for a waiver of the Rule.

Chief Russell agreed to amend his motion, seconded by Chief Dodge, effectively limiting Officer Phinney to 1,300 hours and denying the request for part-time certification with unlimited hours. Commissioner Wrenn, who was not present for the deliberation on the request, abstained from the voice vote; the balance of the Council voiced their agreement with the amended motion.

Other Business

At their meeting in April the Council explored ways for Police Standards and Training to enhance their revenue stream. Colonel Booth raised the possibility of a licensing fee for law enforcement certification. Colonel Booth posited that a fair amount would be \$100 every three years and could be levied in conjunction with ongoing three-year fitness testing. Officers currently certified but exempted from the fitness testing requirement (grandfathered), would also be subject to the licensing fee.

Estimated revenue from the fee could generate as much as \$500,000 over a three-year period. The addition of a licensing fee would require a Rule change. This proposal seemed reasonable, considering that no tuition or other fees are charged to attend the Academy. Other licensed occupations, from nursing to hairdressing, commonly charge an initial licensing fee, as well as a periodic renewal fee; many of these fees are well in excess of \$100. Colonel Booth moved that Police Standards and Training explore the suggested practice of assessing a fee on law enforcement certification and report back to the Council at their meeting on September 23, 2008. Justice Roberts seconded the motion. The Council voiced their unanimous approval.

Next Meeting Date/Adjournment

A motion to adjourn was put forth by Colonel Booth and seconded by Chief Dodge. The Council voiced their unanimous agreement and the meeting was adjourned at 12:50 p.m.

The next meeting of the New Hampshire Police Standards and Training Council will be held on Tuesday, August 26, 2008, at nine o'clock in the morning, at the John D. Morton Conference Room at 17 Institute Drive, Concord, New Hampshire.

Respectfully submitted,



Chairman Michael L. Prozzo, Jr.