



Pete Ricketts
Governor

STATE OF NEBRASKA
NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE
Darrell Fisher
Executive Director

**REGULAR MEETING OF THE
POLICE STANDARDS ADVISORY COUNCIL
May 18, 2016**

I. CALL TO ORDER

Chairman Matthew McCarthy called the monthly meeting of the Police Standards Advisory Council to order at 9:00 AM. A current copy of the Nebraska Open Meetings Act was on hand and available for reference. Notice of the meeting was published in the Lincoln Journal Star on Thursday, May 12, 2016. Roll call of members present; Mr. Matthew McCarthy, Sheriff Larry Koranda, Captain Genelle Moore, Sheriff Jerry Watson, Lieutenant Colonel Thomas Schwarten, and Chief Tracy Wolf. Chief Timothy Larby was not present.

II. APPROVAL OF APRIL 20, 2016 P.S.A.C. MINUTES

MOTION

Captain Moore motioned to approve the minutes as presented. Sheriff Watson seconded the motion. Voting in favor; Mr. McCarthy, Sheriff Koranda, Captain Moore, Lieutenant Colonel Schwarten, Sheriff Watson, and Chief Wolf.

III. ACADEMY REPORTS

A. Director – N.L.E.T.C.

Mr. Muldoon reviewed the POST Agency Certification Practices Report passed out prior to the meeting stating Dr. Matthew Hickman from Seattle University conducted a study in 2015 and published the report in April 2016 regarding the National Decertification Index and the practices of the states. POST agencies in 49 states have the authority to certify law enforcement officers with 44 POST agencies having the authority to revoke officer certifications during 2015 and nearly 1,850 officers were decertified by state POSTS during 2015.

Agencies in 22 of the 44 states having revocation authority are obligated to report awareness of disqualifying conduct to POST. 35 POST agencies publish revocation actions. 38 POST agencies reported they contribute actions to the NDI, an increase of 8 POSTs since 2011. Strong majority of POST directors believe decertification is an effective deterrent to misconduct, and an effective mechanism for removing individuals unsuited for law enforcement in their state.

POST directors opposed a strong federal role in regulating decertification, but were more open to attaching decertification to eligibility for federal grant funding.

Mr. Muldoon stated he was in Columbus, Ohio last week regarding our grant to infuse Blue Courage in all four of the academies. We have done the training and we are working on getting it into the police academies. Each of us have our own difference challenges in implementing it, but the final part, is the evaluation.

For me, it is the most problematic, trying to come up and measure a new person coming into the profession with a short-term evaluation that is completed this year versus long-term conduct, citizen complaints, use of force incidents, what it is we want to measure and attribute directly to the two day Blue Courage curriculum.

The evaluation committee decided from the evaluation side of it, that the evaluators would rather evaluate in-service officers, the people that have been cops working the streets by giving them a pretest before they receive the two-day course and a post test following the presentation. That way they would all have similar demographics such as being a working police officer as opposed to being a new recruit and just having finished military training, or college, or just finished high school.

Another task will be identifying an agency willing to have this analysis on the front end (pretest and post test for two day class) and then establish a relationship for more long-range data collection such as sharing early warning systems information, sick leave use, promotions, and discipline, where the evaluators could gather this data from records. I will work with Lincoln, Omaha, and NSP to see where they are at with the two-day Blue Courage infusion to in-service officers which was never a part of the original basic class plan—it is a new development that has come along.

B. Deputy Director of Training – N.L.E.T.C.

Ms. Urbanek stated the 193rd Basic was in week of 9 training with 56 students. We are conducting the first of three consecutive weeks of skills training. The class is divided into three different squads; defensive tactics, driving and firearms they will rotate for the next two weeks so each squad has completed each area. We are only two days in but the upside is it is a lot more one-on-one because of the small groups. The driving group qualified on the second day.

We are working on filling our instructional vacancy; we are waiting for DAS at this time.

C. Nebraska State Patrol

Lieutenant Jeff Roby presented the report for the Patrol stating Camp 57 was in week 12 of 23 with 21 recruits. They completed Defensive Tactics training and had a week off to burn compensatory time and upon coming back they had a full week of EVOC Driving and Scenarios. They completed that then had a full week of Motor Vehicle Law followed by a week of DUI and DUID then a full week of instructions with wet labs.

IV. CRIME COMMISSION REPORT

Mr. Fisher stated LB 1000 requires the Commission to draft 2 model policies; one on body worn cameras and the other on conducting eye witness identification of suspects. Both model policies are drafted, have undergone some revision, and are currently undergoing legal review. The target date for both policies is at the July 22nd quarterly meeting of the Commission, and then we need to disseminate those to all law enforcement agencies in Nebraska.

The difference is that LB 1000 requires all agencies to have an eyewitness ID policy but 1000 only requires those agencies that are currently using cameras to send us their policy on body worn cameras if they currently have cameras. If they implement cameras in the future, they have 90 days to develop a policy and submit it that policy to us.

Revocations – We are currently looking at 6 cases. The investigative review is complete on one and the AG's Office has filed a formal revocation notice. That is currently not moving quickly because it is on appeal before the Nebraska Court of Appeals. The revocation hearing has been scheduled for November 14-16, 2016 in Lincoln.

Respondent was charged in Cheyenne County with a class one misdemeanor of obstructing governmental operations and was found guilty and sentenced on July 17, 2015 to a term of 30 days in jail but the Respondent appealed and requested an extension which we granted until October 12th, we subsequently learned that the sentence was upheld by the District Court in Cheyenne County and he resigned his position and the board accepted that. He did file another appeal with the Court of Appeals, the Supreme Court took that Case and oral arguments were heard on March 31st. We should hear early fall on that.

A couple cases will be recommended for dismissal at the July Commission meeting. One will be heard during the meeting later today and one is being investigated at the Training Center.

Governor's Initiatives - Most of the initiatives for Director's have everything to do with process improvement. One of the goals he wanted to see for us is 0 founded complaints for revocation for a one-year period. We are on our 22nd year of law enforcement revocation cases. The first 10 years we averaged about 3½ revocations every year. In the next 11 years it went up to 8½ founded complaints a year, but I went ahead and dove in head long knowing the odds were stacked against us for no founded revocation complaints in a year and went ahead and declared no founded complaints for revocation in a one-year period and to-date we have no founded complaints in 2016, so that record is still holding.

IV. OLD BUSINESS

A. Title 79, Chapter 11; Firearms Certification Standards

What to shoot to get into the class

Written passing score

Qualification score and course

Joe Hayes, Lead Training Center Firearms Instructor joined the meeting.

Mr. Stolz stated we were in the drafting stages in trying to get the Council's consensus on the regulation and once the Council makes its changes and approves the final document it will be sent to PRO for their review. Realistically we would be looking at the October, 2016 Crime Commission meeting and from there it will go to a public hearing, then back to the Governor's Office, the Attorney General and Secretary of State.

A few changes I seen need to be made in the draft;

Page 63- §005.01A (1A) "or similar target" was added however that is contrary to the statute 81-1412.01 which sets up the handgun qualification course. I don't believe you can add similar target to the section. Members agreed not to add "or similar target".

Page 66 - §005.01D (4) The proposal is to remove the Nebraska Law Enforcement Training Center from being the repository from being the repository of the annual handgun qualification report, why is that because the Acting Director has to report to this body those people who have qualified and those who haven't. The Council agreed to leave this in.

Page 67- 006.01 U. If they come through the Training Center for the firearms instructor course, they will come through the apprenticeships here right, and if they go through the other academies course, they will attend their apprenticeships. Mr. Hayes stated Instructors have attended the course at the Training Center and have attended the apprenticeship at their agency (Lincoln, Omaha, NSP) with their Supervisor reporting back to Mr. Hayes that they have completed the 12-hour apprenticeship program and then we would issue the certification. If they attend training but do not have an academy, they would have to attend our apprenticeship program, since it is the Training Center putting its name on the certification, our instructional staff should be seeing how they perform, instruct and work with students.

Pages 69 §006.04; In order to get into the course you need a ninety percent on the state handgun course and to get out of the class you shoot a 90 percent. The last sentence should state scoring an 80 percent on the written examination and 90 percent on, changing language to "the Council approved instructor qualification course or handgun course.

Chief Wolf questioned on the same page section 006.03C, an outside agency meets or exceeds the Council's approved course," we just approved Omaha for 90% on a full target, not a reduced, if you

approve this, you are going to have to change Omaha is how I look at it, because then they are below this.

Mr. Stolz stated it would take 6-8 months or longer before this rule would be accepted and become effective.

Chief Wolf stated page 70 letter M included the council approved Annual Handgun Qualification Course and questioned if that was something that would have to be shot during the Rifle School?

Ms. Urbanek stated that was something that would be addressed with the lead instructor and brought back to the Council.

Chief Wolf questioned if the first paragraph on Page 73 shouldn't read, "Handgun and Patrol Rifle", members agreed.

Discussion on qualification of the Patrol Rifle during Basic Training was held. Mr. Hayes stated he was not aware of anyone being unable to pass but stated this was an optional tool at the agency and you only had to qualify if your agency used patrol rifles.

Ms. Urbanek stated this could be listed on the Firearms Pass/Fail Patrol Rifle Pass/Fail Student's transcript, so when the agency gets a copy, they will see that their officer did/didn't qualify and they will need to work with them and qualify before he/she is able to carry a rifle and their person is qualified for a year.

Mr. Hayes stated another thing to consider when we are talking about familiarization and the stuff that we do with these students with patrol rifle, it is extremely basic stuff; it is not any running and gunning, it very basic stuff. I do not ever see anybody having an issue getting through it.

Chief Wolf stated the Rule and Regulation is an Annual Handgun qualification course for Handgun and Patrol Rifle Handgun is mandatory Patrol Rifle is for those who use a Patrol Rifle and you do have that written ion here.

Mrs. Urbanek stated and from a basic standpoint we will establish a standard and if you don't meet it, it's not grounds for separation or removing someone from training.

Mr. Stolz stated on Page 75, 009.01C - Delete the proposed new paragraph.

Chief Wolf stated on Page 64 § 005.01A(3)(~~5~~) employed ~~as~~by should be "by".

Questioned why 007.01B was being removed.

008.01B; add the word "to" between required and demonstrate

Mr. McCarthy stated anywhere in the Regulation where Handgun is needs to be replaced with Firearm.

Members agreed to have the Rule and Regulation on the June agenda.

B. PRET Testing Administration

Ms. Urbanek referred to the memorandum dated 4/12/2016 that was discussed at the April meeting, stating we would like to begin the physical readiness entrance test (PRET) utilized by the Nebraska Law Enforcement. Recommendation of staff was to maintain using an overall 30% based on age/gender norms. This standard would have the least impact on the client base while still ensuring a minimum level in each category.

MOTION

Sheriff Koranda motioned to accept the recommendations of the PRET testing provided it's conducted in advanced to attendance of Basic Training. Captain Moore seconded the motion. Voting in Favor; Sheriff Koranda, Captain Moore, Sheriff Watson, Lieutenant Colonel Schwarten, Chief Wolf, and Mr. McCarthy.

The meeting broke at 10:45 am and resumed at 10:52 AM.

VI. NEW BUSINESS

1 **Appeal - Dismissal from Training Center**

2 Michael Holman

3 Chair: The matter now before the Police Standards Advisory Council is Michael Holman v. the
4 Nebraska Law Enforcement Training Center, Case Number 16 PSAC 71.

5 I will now call this hearing to order and note the following Council members are
6 present:

7 Matthew McCarthy – Northeast Community College

8 Sheriff Larry Koranda – Cedar County Sheriff’s Office

9 Captain Genelle Moore - Lincoln Police Department

10 Myself, Lieutenant Colonel Thomas Schwarten - Nebraska State Patrol

11 Sheriff Jerry Watson – Hall County Sheriff’s Office

12 Chief Tracy Wolf – Lexington Police Department

13 Chief Timothy Larby – Atkinson Police Department is not present.

14 Chair: The Council has been asked by the Petitioner, Michael Holman to consider allowing
15 or otherwise reverse Director Muldoon’s decision denying Mr. Holman admission to
16 the Nebraska Law Enforcement Training Center for law enforcement certification
17 training. Director Muldoon’s decision to deny admission was based upon a review
18 of the file and finding no cause to grant relief.

19 The Council is here pursuant to its authority as stated in Nebraska Revised Statute
20 §81-1403 and its related statutes.

21 Mr. William Muldoon is presiding on behalf of the N.L.E.T.C. pursuant to his
22 statutory duties as stated in Nebraska Revised Statute §81-1404 and related statutes

1 and will present the reason he found no cause to grant relief to Mr. Holman in his
2 admission into basic training.

3 Chair: Does either party contest the Council's authority to hear this type of case?

4 Muldoon: No

5 Chair: Do you agree with the Council's authority to hear this case?

6 Holman: Yes

7 Chair: Okay, there were no objections to the Council's authority to hear this type of case. I
8 will further note that the petitioner is present and is not represented by counsel.
9 Pursuant to Title 79, Chapter 8, section 009.02, the burden during the appeal hearing
10 is on the applicant to demonstrate by clear and convincing evidence that he should be
11 allowed entrance into the Training Center.
12 Per Title 79, Chapter 13, section 004.02G, the issues of this appeal will be limited to
13 those raised in the request for review and reconsideration as provided in section
14 004.02C and the director's written decision in response.
15 The decision of the Council is final.

16 Chair: Mr. Holman, I want to go over your rights in this Administrative Hearing.
17 You have a right to be heard, either in person or by counsel who you have hired at
18 your own expense.
19 You also have a right to notice; that is to receive a statement from the State, the
20 Nebraska Law Enforcement Training Center, detailing or justifying its actions in this
21 matter.

22 Chair: Do you understand these rights?

23 Holman: Yes sir

1 Chair: Did you receive such notice via the letter from Mr. Muldoon stating his reason for
2 your denial to basic training?

3 Holman: Yes sir

4 Chair: Did you notice any defects in your letter that prejudiced you from presenting your
5 case?

6 Holman: No sir.

7 Chair: Additionally, you have a right to present written evidence at this hearing, a right to
8 the Council's findings and the right to seek judicial review thereafter.

9 Chair: Do you understand these rights?

10 Holman: Yes sir

11 Chair: The Police Standards Advisory Council shall act as the Hearing Board for this
12 appeal. Neither I, nor any other Council member, will be a witness for either side
13 and I am not aware of any matter which I believe may be grounds for challenge by
14 either side against me or the other members.

15 I have not had any personal information conveyed to me nor do I have any personal
16 knowledge of the case. Does any Council member have any personal knowledge of
17 the case?

18 Members: No (All were negative responses)

19 Chair: Let the record show that all members answered no.
20 Does either side have any further questions or challenge for cause against any
21 member of the Council?
22 What that means Mr. Holman is, do you believe that any member of this Council has
23 any knowledge of this case before him?

1 Holman: No sir.

2 Chair: Mr. Muldoon, do you have any procedural documents for this case and if so, please
3 present them to the Council.

4 Muldoon: Yes I do. I have Mr. Holman's certification file that I would like to admit as an
5 Exhibit, but I am holding out of it the separation notice, a timeline, his appeal to the
6 Deputy Director Urbanek, his appeal to me and a Character Affidavit that I will put
7 back into the file as soon as I am done presenting from them.

8 Chair: Let the record reflect Exhibit 1 has been received and are entered into the record.
9 Does either side wish to address any further preliminary matters?

10 Chair: Mr. Holman?

11 Holman: No sir.

12 Chair: Mr. Muldoon?

13 Muldoon: No

14 Chair: Mr. Holman, as the petitioner, now you may make an opening statement at this time.

15 Holman: Well good morning Council I have prepared a written statement and I would like to
16 read it with your permission.

17 My name is Michael Holman. For approximately 16 and a half weeks I had been
18 enrolled and successfully on my way to completing the police academy. I was 2 and
19 a half days away from graduation, I only missed one full day at the academy while I
20 went with my Grandfather, who was to have a quadruple heart bypass surgery.

21 You all understand the demands and sacrifices required to achieve this goal, with two
22 and a half days remaining at the academy and only one day absent I was denied to
23 continuing. I am asking you today to revisit the decision and allow me to graduate

1 the academy and serve Clay County and the City of Harvard. On the last Thursday
2 of the academy a few of the individuals from the academy and I went to work out as
3 we did most nights staying on-site. All this for us to be graduating the next week and
4 decided to go out and shoot some pool and during which I had a few drinks at a local
5 bar. The drinks that were ordered were Long Islands, I drink infrequently, as such,
6 my tolerance is low, I understand the BAC levels were, however what I felt affected
7 me was not alcohol but contained in each of these drinks I had, I drank 3 of these.
8 Friday morning I was scheduled to be on the range and I still felt like there was
9 alcohol in my system. The handbook that I had abided by for 16 and a-half weeks is
10 clear that you are not allowed to be on the range on duty if there is alcohol in your
11 system. As a result, I went to speak with Mr. Hayes, who is the firearms instructor, I
12 did not take any firearms, wear my duty belt, when I went to speak with him, I
13 informed Mr. Hayes that I was not feeling well and wasn't allowed to return to my
14 dorm. I was told that any requirements that were missed could be made up if
15 necessary, not to worry. The handbook also states; do not lie, do not omit, do not do
16 either of these. I informed Mr. Hayes that I was not feeling well, not at the time.
17 Nothing in the handbook states the type of sickness to be discussed. The only rule
18 that I found in the handbook relating to alcohol in regards to my situation was that I
19 could not be on duty with alcohol in my system. As such I removed myself from the
20 situation to avoid breaking that rule that I considered off duty at the academy when I
21 am not involved in the activity.
22 During the academy we are allowed up to 40 hours of absence which I had missed a
23 total of 10 which solely to be with my Grandfather during surgery. With the thought

1 in mind I thought I had made the right decision concerning the circumstances. Do
2 not lie, do not omit details, this could have been handled differently I suppose in
3 hindsight 20/20. Based on the surrounding circumstances I abided by the handbook
4 and did not go on duty that day and therefore I did not break the rules regarding
5 having alcohol in my system while on duty. I had 30 hours of time accumulated that
6 I could have missed which is more absence of time available than there were hours of
7 time left in the program with 2 and a half days of class remaining. I did not believe
8 asking for the day off was going to amount to this, regardless of the reason, I hadn't,
9 had I known this would have resulted, I would have undoubtedly said I would have
10 denied it. I went out the night before, taken responsibility for my decisions. I
11 apologize for the actions that were taken, I made a mistake and I did not intend for
12 this to happen. Every person has a reaching point in their life when you have wanted
13 something very badly, but he's discouraged and ready to quit, we've all had these
14 things strongly desired but we've failed in reaching some of these goals. I've been
15 discouraged by the events leading here today but I'm not ready to quit and I'm taking
16 responsibility for my actions. I want to be an officer of the law and scheduled to
17 complete the academy. I passed all the rigorous tests and abided by the rules. I
18 believe I am a good candidate to become an officer of the law and I am excited to be
19 a part of the community that has believed in me throughout the academy both with
20 encouragement and financial support. I want to serve the community that has
21 supported me and I am very respectfully requesting the decision to deny my
22 graduation to be revisited in the light of my quality and allow me to finish what I
23 started. That is all I have. Thank you.

1 Chair: Mr. Muldoon, do you wish to make an opening statement?

2 Muldoon: Yes I do.

3 Chair: Okay.

4 Muldoon: From the separation notice, just a point of clarification, he was admitted to the
5 academy and this is an appeal of discipline. He was separated February 16, 2016.

6 The first was a violation of the Safety Commitment form signed by Mr. Holman on
7 October 27, 2015 which states alcohol, drugs and firearms do not mix. Persons
8 under the influence of alcohol or drugs will not be allowed to participate in any
9 shooting exercises. Mr. Holman had reported to the lead instructor that he was ill but
10 did not report to him that within the last hour that he had been tested with another
11 student on a PBT and was testing over the legal limit a preliminary test of breath
12 alcohol.

13 #2 Student Handbook, states staff member has reason to believe that a student is
14 impaired or under the influence of alcoholic beverages or controlled substances while
15 attending the training center the student may be testing and removed from training
16 activities until the test is negative. Being on duty, during class hours and in an
17 impaired condition will result in a disciplinary action up to and including termination
18 of training. Staff conducted a preliminary breath test at 822 on the 12th of February
19 and at that time he tested a .09.

20 #3 Student Handbook, Section B; Student Conduct: Lying to an instructor will be
21 grounds for disciplinary action. Not providing all information to a staff member will
22 result in disciplinary action. Violations of the code may include, but are not limited
23 to : drunken behavior. Mr. Holman did not disclose the reason of his illness or

1 inform the instructor he was under the influence of alcohol but simply attempted to
2 call in sick. Then lastly student handbook, conduct unbecoming an officer shall
3 include prohibitive conduct as outlined in Operating Instruction 50-41: any conduct
4 which brings the Center into disrepute or reflects discredit upon the student as a
5 member of the Center class, or which disrupts the training environment and impairs
6 the efficiency of the Center will not be tolerated. Types of offenses subject to this
7 section include, but are not limited to; insubordination, any illegal or immoral act,
8 disorderly conduct, and use of vulgar, humiliating, obscene or profane language.
9 I would rest my opening.

10 Chair: Now is the time any further evidence can be presented to the Council.
11 This may include written evidence, witness testimony and/or any unsworn statements
12 by yourself.

13 Mr. Holman, do you have any written evidence for us to consider. Would you like
14 your letter entered into evidence?

15 Holman: I don't have anything else. (Did not present the letter)

16 Chair: Okay
17 Do you have any witnesses to testify on your behalf?

18 Holman: Yes sir.

19 Chair: Please step up and introduce yourself and spell your name for us please.

20 Thompson: Gregory Thompson – T-h-o-m-p-s-o-n, Michael worked with me for a year prior to
21 attending the academy. During that time he has never had any discipline issues,
22 alcohol related involvement, no public discipline issues. He's always dealt with the
23 people during that year's time. I found that he's been a good employee, I know that

1 he's been an EMT, he's participated in search and rescue even in Pilger for disasters
2 he's really a good person that made a bad judgment and did not explain it well
3 enough I guess.

4 Chair: Could I have you list your agency please sir?

5 Thompson: Harvard Police Department

6 Chair: Any questions from the Council members for the witness?

7 (No questions)

8 Stolz: Chief, is he still employed at Harvard?

9 Thompson: He is employed as a Civilian employee but not at the police department.

10 Chair: Any other questions?

11 (No other questions)

12 Chair: Okay, thank you chief.

13 Mr. Holman, do you have any other statements at this time?

14 Holman: I do not.

15 Chair: Any other witnesses?

16 Boyd: If I may sir. Michael Boyd, B-O-Y-D. Mayor, Harvard, Nebraska. I apologize for
17 my appearance today; I had my Chief just pick me up right from work so here I am.
18 Thank you for allowing me to speak to you today. I have known Mike now for oh, a
19 couple years, I guess, going on. Mike is a very good young man. I am here to speak
20 to you today as a voice in the people from Harvard that hired this young man. I've
21 been Mayor now, this is my second term I've been on the council for a couple years
22 before that so I'm going on ten years now and it's about time for me to be done, I
23 guess this is the part that upsets me as a representative of the town. I understand that

1 there was a mistake made by Mr. Holman at the Academy, no one denies that, what
2 the people from the City of Harvard really feel and this is not just my opinion, I've
3 had much talk with my constituents in town, does the punishment fit the crime? We
4 are going to ruin a young man's career, a very good young man. He made a mistake,
5 clearly. A mistake that I believe he would take back (snap his finger), if he could
6 like that.

7 So I am here as a boss, but I am also here as a friend, I know him well. I've never
8 had an issue with Michael never had any disciplinary problems with him. I would let
9 Michael watch my two young daughters and I cannot say that even about the people
10 running for president right now. The bottom line is I think it would be a disservice to
11 the citizens of the Harvard to allow this man to leave here today without being able
12 to start a very stellar career that I believe he can have in law enforcement.

13 Thank you very much.

14 Chair: Thank you sir. Questions?

15 (No questions)

16 Chair: Mr. Holman, do you have any other witnesses?

17 Franklin: Sheriff Jeff Franklin with the Clay County Sheriff's Department, Clay Center
18 Nebraska. I have gotten to know Mike a lot in the last 2 years and I have worked
19 with him both in the last two years as an EMT and as an officer for Harvard. I
20 started my career in 1982 with the Harvard PD and Mike's a great kid, really have
21 gotten a lot of enjoyable time with him. Did he make an error in judgment? Yes.
22 Do I believe he on purposely told anybody a mistruth? No. I believe that he thought
23 he was doing the right thing at the time. He knew he did not want to go to the range,

1 which would have been catastrophic and a mistake on his part. Did he make a
2 mistake by going out and drinking the night before? Yes, and this is something that
3 we've talked to him in great detail about. But did he intentionally lie to an
4 instructor? No he didn't. I do not believe he did and I would please ask you to
5 consider that thought. Thank you. I have two deputies, could they come up too?

6 Chair: Absolutely. Step forward gentlemen. State your name and agency as well please.

7 Fujan: Deputy Paul Fujan, also Clay County Sheriff's Office. I have known Michael now
8 since he was hired by Harvard Police Department. Approximately a year; I've
9 worked with him in that time. In that time I've never known him to be anything but
10 a diligent officer and a very honest man. Again, as my Sheriff said, was there a
11 mistake made. Yes, even Michael has admitted that. It's my opinion that that
12 mistake is extremely minor. I don't feel that there is grounds for his removal based
13 on simply omitting the reason that he did not feel well. I feel that any employee that
14 removes himself from a potentially damaging situation which is what it would have
15 been if he had gone to the range with alcohol in his system is showing an amount of
16 good judgment. I think the only thing that was a mistake was his failure to disclose
17 the full information and again I don't feel that that was really absolutely necessary
18 under the circumstances because he did tell the instructor that he wasn't feeling well
19 and I don't see where it is necessarily any of the academies concern particularly why
20 he wasn't feeling well and that is the intent of my statement. Thank you.

21 Chair: Questions for the witness?

22 (No response)

23 Chair: Thank you sir

1 Juilch: Shawn Juilch, Clay County Sheriff's Office, last name is J-u-i-l-c-h. About more of
2 the same pretty much, a little bit of difference. Known Mike for about, since
3 January, February of 15, we got hired by Harvard. He's done a lot a part his FTO,
4 basically so he could go to the academy, around me never known him to be
5 dishonest, talked with him in a lot of detail since he's been separated from the
6 academy, he knows he's made a big mistake I mean he said more of the same.
7 Talked to him why he didn't think he, why he didn't tell the instructor that he had the
8 alcohol in the system he said he didn't think it was it was that big of a deal. In
9 hindsight, like we've talked about I guess, me and Mike have, yeah, apparently it
10 was a big deal and that's what the Training Center's decision is what it sounds like
11 so.

12 I think he would make a great officer, I've known a lot of guys over the years, I've
13 seen a lot of them that have gotten into law enforcement that aren't' going to lead
14 and that aren't going to make it very long. Mike does a good job, pays attention,
15 tries to do what's right so, that's about all I have. Thank you.

16 Chair: Any questions?

17 (No response)

18 Chair: Okay, any other witnesses Mr. Holman?

19 Holman: I have a couple left.

20 Chair: Okay, name and ...

21 King: Travis King, Pastor of the First United Methodist Church, I also have about 12 years
22 prior law enforcement experience myself. I'm like everybody else. Everybody
23 makes mistakes. I think Michael made a mistake that he regrets, Michael and I had

1 talked quite a bit, I believe he would make an excellent Law Enforcement Officer,
2 like I say everybody makes mistakes, and I think Michael regrets this one and I
3 would think it would be a travesty if he didn't get to continue his career as a fine
4 young law enforcement officer. That's all I have.

5 Chair: Questions for this witness?

6 (No questions)

7 Chair: Any other witnesses?

8 Holman: No sir.

9 Chair: Do you have any further statements at this time?

10 Holman: No sir

11 Chair: Dave do you have questions?

12 Stolz: Yes sir

13 Chair: Okay

14 Stolz: Mr. Holman.

15 Holman: Yes sir.

16 Stolz: You stated in your opening that you are an infrequent drinker is that correct?

17 Holman: Yes sir.

18 Stolz: Have you had any other incidents involving alcohol that have lead to disciplinary
19 action or arrest, conviction, charges anything like that?

20 Holman: Yes sir.

21 Stolz: When was that?

22 Holman: Six years ago.

23 Stolz: What was it for?

1 Holman: I got a DUI.

2 Stolz: In Nebraska?

3 Holman: No, the State of Arkansas.

4 Stolz: As a result of that conviction were you incarcerated or placed on probation?

5 Holman: At the time I was incarcerated.

6 Stolz: So there was no probationary sentence?

7 Holman: Not that I recall.

8 Stolz: So there was no counseling, treatment anything like that?

9 Holman: Well they had meetings, like Mothers Against Drinking and Driving; I don't recall
10 exactly what I went through.

11 Stolz: But you wouldn't necessarily go through any type of alcohol evaluation and
12 treatment?

13 Holman: It's just; I think it's just a counsel.

14 Stolz: Other than that have you ever underwent an evaluation for alcohol use or abuse?

15 Holman: Ah, besides the DUI, I don't....

16 Stolz: Did you go through an alcohol evaluation after this incident that caused your removal
17 from the Training Center?

18 Holman: Yes I did.

19 Stolz: And was any type of treatment recommended?

20 Holman: Hmm, yes.

21 Stolz: Do you recall whether it was inpatient or outpatient?

22 Holman: I don't recall which one it is for sure.

23 Stolz: Have you followed any of the recommendations on the alcohol evaluation?

1 Holman: The evaluation as I later on went through the evaluation a lot of information was
2 uncorrect and I actually have a rebuttal on there along with the evaluation itself.

3 Stolz: Well my question was, have you followed any of the evaluations recommendations?

4 Holman: No I did not.

5 Stolz: Thank you. That's all.

6 Chair: Mr. Muldoon, do you have any written evidence at this time for us to consider?

7 Muldoon: I have a statement. I would like to first of all put a little perspective on, go over the
8 timeline. We have heard a lot of reference that he's been working for a year, over a
9 year and just for your recollection, he first started with Harvard on January 15, 2015
10 as a police officer and a Change in Status was submitted at that time. Application
11 packet arrived and was stamped in on May 12, 2015. He supplied us with
12 background information included acknowledgment of the prior DUI. He also had a
13 public intoxication from June 21, 2009, Carroll County that was dismissed. It was a
14 lake party where he explained in his words that he was with the wrong people at the
15 wrong time.

16 In June 7, 2015, he started the 191st Basic. On June 30, 2015 he failed the Unit 2
17 legal test with a 67% score. July 8, 2015 he failed the retake and was separated from
18 the academy at that time for academics. Two days later on the 10th the City of
19 Harvard requested a one-year waiver to resend Mr. Holman to the next basic on
20 August 19, 2015 the Council did grant a waiver that would cover from January 15,
21 2016 until the 192nd graduated or February 12, 2016. After that the graduation date
22 was changed to February 19, 2016. October 25th he started the 192nd Basic and then

1 that takes us up to February 16th where he was separated for the rules violations and
2 separation notice was sent out to everybody.

3
4 I would just mention that we have taken a look at an alcohol eval that he freely
5 submitted himself to and sent to as a part of one of his appeals and there was a
6 finding in the alcohol eval, again we didn't request it, we didn't order him to do it, it
7 was submitted as a part of the appeal, but he immediately in his appeal to me is
8 refuting the findings of the alcohol eval so I will just make mention that that
9 happened. It was not the reason for his dismissal and it is not the reason for the
10 denial but it is just another part of the packet that I think is worth considering. In my
11 review of the Deputy Director's appeal and the total totality of the situation I wrote a
12 letter on April 19th and denied the appeal and he went to great lengths to rebut the
13 findings of the alcohol and drug eval that he freely submitted in hopes that it would
14 contribute to his case but the report did not contribute to the dismissal or denial. But
15 our view has been that he did not provide a complete or accurate report of what had
16 transpired namely that he was intoxicated, not ill, and that his offense was lying by
17 omission, not telling the whole story which in our view is still lying. The implication
18 except for removing himself, from the training that morning was a major security
19 violation could have occurred being intoxicated and on the gun range. That was the
20 item that he knew was coming up the next day was the final firearms qualification
21 first thing in the morning yet that did not change his behavior the evening before and
22 I mentioned to Mr. Holman at the time, in this letter, our profession is built on trust
23 and an officer's word weren't beyond reproach – no using technicalities between

1 what is on duty and off duty removing themselves, in a way I see no differences in
2 showing up for roll call in an assembly and having a coworker confronting a person
3 that he is still intoxicated and then deciding to tell the Sergeant that he is still sick,
4 but he is there. It is something that can't help in the real world and so I find no new
5 information in this appeal to change our original assessment.

6 That concludes my remarks.

7 Thompson: Can I add something?

8 Chair: Just a moment, certainly.

9 Mr. Holman, do you have anything additional to offer in light of the Training
10 Center's Evidence?

11 Holman: No sir.

12 Chair: Chief

13 Thompson: On that evaluation, there were problems with it. The Director of the facility where
14 he took it, fired the person who gave him the evaluation because of incompetency so
15 I don't think you can, I don't think you can take into account whatsoever. She was
16 discharged for being, not being able to do her job. They did ask him to retake it and
17 said that they would do it again free but as of now and our unhappiness with the
18 thing I don't think I would want him to go back to that place to be evaluated.

19 Schwarten: Chief, have you identified another location for another evaluation?

20 Thompson: No we haven't but we would do that if he was reinstated, but if he is not reinstated,
21 there is no purpose in it.

22 Chair: Any other questions?

23 (No response)

1 Chair: There are no other questions, thank you Chief.

2 Mr. Muldoon, do you have other written items you wanted introduced into evidence?

3 Muldoon: These go into the folder (Exhibit #1)

4 Chair: Mr. Holman, you may make any closing statement or argument you wish to at this

5 time?

6 Boyd: Excuse me sir, is it possible to speak again, I do want to reiterate and bring to your

7 attention I did fail to mention this earlier, as the Mayor of Harvard, I am very

8 conscious of the fact that while I do believe that this officer, this young inspiring

9 officer is a good young man, I also do realize that there are some things in the past

10 that seem to point to something. I don't feel at this time that I would have any

11 problem hiring him back as an officer but I do want to let you know that if that does

12 happened that I want to let him know that I want him to work directly with Mike to

13 address any issues that may be. Sir, you had asked earlier if we had sought out any

14 other, that is definitely going to be part of it, I don't think that there is an issue or

15 problem, but as the manager of the City, it is also my responsibility to make sure that

16 the employee I have is fit for service. At this time I do believe he is but I also would

17 like to follow up with that. The City of Harvard would like to make sure that we

18 have all of our t's crossed and i's dotted with this young man. If that helps. Thank

19 you sir.

20 Chair: Mr. Holman, any closing statements?

21 Holman: I would just like to say that, I made a mistake, I understand and I just hope you all

22 revisit the situation and understand the situation I was in and that is it. Thank you.

23 Chair: Thank you sir.

1 Mr. Muldoon.

2 Muldoon: I waive closing

3 Chair: Any questions from the Council?

4 Moore: Did you have any kind of instruction from the staff, from the Nebraska Law
5 Enforcement Training Center about going out and drinking and stuff like that on
6 what the best behavior would be and expectations here?

7 Holman: Yes madam.

8 Moore: Talk to me about that

9 Holman: It was described, if you go out and you drink and you have a drunken behavior, it
10 can, come back sign in and we have a curfew at 11 o'clock, if you wake up and you
11 feel like, don't attend class with alcohol in your system, that is just the, that was the
12 hindsight 20/20. What I was told by others that, I felt I did the right thing but
13 basically, it turned out to be; don't act like a fool and don't, you are representing that
14 badge, you don't want to go (tape 2, side 2) for the public to be like there is an
15 officer and he is wasted and he is tripping around and that is not a good public view
16 and my whole intentions of going out wasn't for any of that.

17 Chair: Any other questions from the Council.

18 (No response)

19 Okay, we'll show both sides have rested.

20 Is there a motion to go into Executive Session?

21 Schwarten: Mr. Chair, I would like to go into Executive Session based upon the needless injury
22 to the reputation of Mr. Holman and for the purposes of Executive Session we will
23 allow the following to remain in the room, all council members that are here, the

1 Executive Director and Council Secretary and Legal Advisor. All others please be
2 removed.

3 Watson: Second

4 Fielding: Captain Genelle Moore

5 Moore: Yes

6 Fielding: Lieutenant Colonel Schwarten

7 Schwarten: Yes

8 Fielding: Chief Tracy Wolf

9 Wolf: Yes

10 Fielding: Mr. Matthew McCarthy

11 McCarthy: Yes

12 Fielding: Sheriff Jerry Watson

13 Watson: Yes

14 Fielding: Sheriff Larry Koranda

15 Koranda Yes

16 The meeting went into Executive Session at 11:33 AM.

17 Chair: The meeting of the Police Standards Advisory Council will come to order. Is there a
18 motion to come out of Executive Session?

19 Moore: So moved.

20 Koranda: Second

21 Chair: It's been moved and seconded, call the roll call.

22 Fielding: Mr. Matthew McCarthy

23 McCarthy: Yes

1 Fielding: Sheriff Larry Koranda
2 Koranda Yes
3 Fielding: Captain Genelle Moore
4 Moore: Yes
5 Fielding: Lieutenant Colonel Schwarten
6 Schwarten: Yes
7 Fielding: Sheriff Jerry Watson
8 Watson: Yes
9 Fielding: Chief Tracy Wolf
10 Wolf: Yes
11 Fielding: Motion Carried
12 Chair: All parties present when the Council went into Executive Session are here again
13 present. The time is 11:59 AM. Do we have a motion?
14 Moore: Yes, I move, I do have a motion, Mr. Holman after review of all of the evidence and
15 reports that have been presented to us we have decided, on consensus, to uphold the
16 dismissal that the Nebraska Law Enforcement Training Center and Director have
17 submitted to us so we are not going to grant you a waiver, we are going to uphold the
18 dismissal. Any questions?
19 Koranda: Second
20 Fielding: Sheriff Larry Koranda
21 Koranda Yes
22 Fielding: Captain Genelle Moore
23 Moore: Yes

1 Fielding: Lieutenant Colonel Thomas Schwarten
2 Schwarten: Yes
3 Fielding: Sheriff Jerry Watson
4 Watson: Yes
5 Fielding: Chief Tracy Wolf
6 Wolf: Yes
7 Fielding: Mr. Matthew McCarthy
8 McCarthy: Yes
9 Fielding: Motion Carried
10 Chair: Mr. Holman, as you have heard, the Council has upheld the Director's decision and
11 denied your request for admission to basic training this hearing is concluded. The
12 time is 12:00 PM.

B. Waiver of Title 79, Chapter 8, §005.02A6b 2-Year Standard
Sandra Waller – Polk County Sheriff's Office

Sheriff Dwaine Ladwig, Polk County Sheriff, Osceola, Nebraska introduced himself to the Council stating he had hired a female deputy that had worked for Pierce County as a dispatcher. She is a very honest person. While applying to get her into the academy she disclosed that she used marijuana on August 22, 2014 and the academy we applied to enroll her in was August 29, 2016, it has since been changed to July 31, 2016, so I am requesting a waiver to enroll her in the July 31, 2016 academy.

Mr. Muldoon stated this was a unique situation, the Sheriff is right. Her hire date is February 15, 2016, making her one year February 15, 2017. She was approved to attend the upcoming class and would have made the one-year requirement and two-year requirement until the date of the class was changed; now she will miss both the one-year and two-year requirements.

Mr. Stolz stated the Rule and Regulation dealing with the issue we are referring to is Title 79, Chapter 8, 005.02A6b has not used marijuana for any purpose in the last two years. Since this is a good character criterion, you do have this rule and regulation, 005.03 mitigating and extenuating circumstances relevant to good character. In making a determination for good character the following factors, although not exhaustive, should be considered. If you do consider granting the waiver of the 2 year thing, please condition your motion on the fact that it is due to the very unique circumstance of this academy class being moved up.

Lieutenant Schwarten asked Sheriff Ladwig if the waiver was not granted and he was unable to get her into the July 2016 class, if he would still keep her and attempt to get her into the December 2016 class and request a waiver of the one-year requirement, knowing that she would not be able to do law enforcement once her year was up until graduation and swearing in.

Sheriff Ladwig stated that was his plan.

Mr. McCarthy stated he would abstain from voting on this item as this was one of his student's at the college.

MOTION

Sheriff Koranda motioned to grant the waiver of Title 79, Chapter 8, 005.02A6b the 2-Year Standard for Sandra Waller of Polk County Sheriff's Office due to her good Character shown by Ms. Waller and the hardship placed on her and her agency by the Council's past decision and the upcoming basic being moved to a period of time that put her within the 2-year window when previously it wasn't. Captain Moore seconded the motion. Voting in favor: Captain Moore, Chief Wolf, Mr. McCarthy – Abstain, Sheriff Koranda, Lieutenant Colonel Schwarten, and Sheriff Watson. Motion passed.

Mr. McCarthy stated she was good to go for the July basic.

C. Randy Brown Revocation LR-118-15

Mr. Stolz marked the Consent to Revocation of Law Enforcement Certificate and Waiver of Notice and Hearing by Randy Brown as Exhibit 1 gave a summary of the revocation process for LR-118-15, Randy Brown and asked the Council to accept his relinquishment and surrenderment and make a recommendation to the Council that the respondent's law enforcement certification be revoked.

Mr. McCarthy accepted Exhibit 1 into the record.

MOTION

Captain Moore motioned: Based upon the fact that Randy Brown has signed a consent to revocation of law enforcement of certificate and waiver of Notice and Hearing and has voluntarily surrendered his certificate, I make a motion that the Council accept the surrender of Mr. Randy Brown's Nebraska Law Enforcement Certificate as neglect of duty. Said revocation to be effective upon review and acceptance of the surrender by the Nebraska Commission on Law Enforcement and Criminal Justice. Sheriff Watson seconded the motion. **Voting in favor:** Sheriff Watson, Lieutenant Colonel Schwarten, Chief Wolf, Mr. McCarthy, Sheriff Koranda, and Captain Moore. Chief Timothy Larby was not present. Motion carried 6 – 1.

**D. Waiver – One Year Reactivation Course
Todd Yost, Garden County Sheriff's Office**

MOTION

Sheriff Watson motioned to grant the waiver request for the one-year time frame in question providing that Mr. Yost does not conduct any type of law enforcement or take any type of official law enforcement action from the anniversary date to the time he completes Reactivation. Successfully completes Reactivation. Lieutenant Schwarten seconded the motion as amended by Sheriff Watson. Voting in favor: Sheriff Watson, Lieutenant Colonel Schwarten, Chief Wolf, Mr. McCarthy, Sheriff Koranda, and Captain Moore.

**E. Professional Instructor Certification/Recertification
Professional Recertification**

Ken Kanger – Omaha Police Department
Sherry King – Omaha Police Department
Amy Oetter – Omaha Police Department
Nicholas Prescott – Omaha Police Department
Angela Richards – Omaha Police Department
Rudolph Vlcek – Omaha Police Department

MOTION

Sheriff Koranda motioned to grant the professional instructor certifications/recertifications as presented. Professional certifications of Ken Kanger, Sherry King, Amy Oetter, Nicholas Prescott, Angela Richards, Rudolph Vlcek all of the Omaha Police Department as presented by Deputy Director. Seconded by Chief Wolf. Voting in Favor: Chief Wolf, Mr. McCarthy, Sheriff Koranda, Captain Moore, Sheriff Watson, and Lieutenant Colonel Schwarten.

F. Reciprocity – Reactivation Agreement Form

Ms. Urbanek stated typically when a person doesn't complete Reciprocity or Reactivation Course they will appeal the termination or separation from training and it is hard for me to review an appeal when they didn't submit an assignment. I will gladly review anything they have submitted and have some disagreement that it is or isn't complete but when a student doesn't even complete the coursework, and ask me to review it. The form would be signed by the applicant prior to the start of the class, with the requirements up front. The Council suggested adding an area for the agency head and/or city clerk. The form did not need the Council's approval.

VII. OTHER BUSINESS

A. Date, Time & Location of Next Meeting

June 15, 2016, 9:00; Library, Nebraska Law Enforcement Training Center,
3600 North Academy Road, Grand Island, Nebraska 68801

Hearing no other business, the meeting ended at 12:38 PM.

Respectfully submitted,



Kay Fielding,
Secretary to the Council