



Sheriff Michael L. Prozzo, Jr.  
Chairman

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

Approved Minutes  
November 19, 2013

(Council members met with their attorney, SAAG Nancy Smith from 1:51 to 2:34 pm prior to the start of the meeting for a consultation, the consultation was not audiotaped).

The 436th meeting of the New Hampshire Police Standards and Training Council was called to order at 2:35 pm by Chairman Michael L. Prozzo, Jr., in classroom one of the Arthur D. Kehas Law Enforcement Training Facility and Campus in Concord, New Hampshire.

Members Present: Chairman Michael L. Prozzo, Jr., Sheriff of Sullivan County; Vice Chairman, Commissioner William L. Wrenn, New Hampshire Department of Corrections; Attorney General Joseph Foster, Major Russell Conte, New Hampshire State Police; Chief David Cahill, Sunapee Police Department; Judge Sawako Gardner, 10th Circuit District Division, Portsmouth; Chief Anthony Colarusso, Dover Police Department and Vice Chancellor Ronald Rioux, Community College System of New Hampshire arriving at 1:58 p.m.

Members Absent: Chief James Sullivan, Hampton Police Department, Chief Peter Morency, Berlin Police Department; Judge James Carroll, 4th Circuit District Division, Laconia and Sheriff David Dubois, Strafford County;

Staff Present: Director Donald L. Vittum, Chief Tim Merrill, Captain Mark Bodanza, Captain Benjamin Jean.

Guests Present: SAAG Nancy Smith, CO Scott Marshall with his attorney, Robert Hemeon and his wife, Linda Marshall.

Commissioner Wrenn **moved** for the Council to approve the minutes of the October 22, 2013 Council meeting. The motion was seconded by Judge Gardiner with unanimous approval by Council members 7-0.

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### **Previous/Unfinished Business**

Pol 301.05, Drug Policy – Committee, Chief Sullivan tabled from October 22, 2013 meeting, (this item was continued to the December 17, 2013 meeting).

### **New Business**

#### **Tobacco use at PSTC**

Chief Merrill asked Council members to approve a “tobacco free” policy for the Police Standards and Training facility. He stated that currently there is a smoking area near the antique car. It is unprofessional to have officers congregating and smoking. Discussion ensued amongst Council members regarding a designated area being required. Vice Chancellor Rioux noted that there was a specific area at his agency for those who smoked. Chairman Prozzo was in support of the policy and felt that it must be both communicated to all who are on the campus and must be enforced. Chief Cahill and Commissioner Wrenn were also in support, and both remarked about signage and written notice in handbooks to recruits and visitors.

**Motion** by Chief Cahill, seconded by Commissioner Wrenn to make all tobacco use prohibited on the campus of Police Standards and Training Council’s beginning January 1, 2014. The council vote was unanimous in favor of the motion 7-0.

#### **Victor Malavet submitted a written request to reinstate his part time officer certification from a suspension relative to three year fitness testing and a medical extension for fitness testing.**

Mr. Malavet was not present, he had emailed that morning to advise he could not attend the meeting but would await Council’s decision. Captain Bodanza proceeded and was sworn in by Chairman Prozzo. Captain Bodanza presented a timeline to Council members that detailed Mr. Malavet’s employment history and his three year fitness testing history, including his suspension in July 2013. Mr. Malavet was due for ongoing fitness testing in 2011, he had a medical issue which prevented him from participating in three year fitness testing. Mr. Malavet had filed for, and had been granted, three individual six-month medical extensions for fitness testing. He had been reminded by letter in May 2013 that the third extension would expire after June 30, 2013. Mr. Malavet failed to file for another extension or provide the staff at PSTC with a fitness test by that date. On July 2, 2013 Mr. Malavet’s certification was suspended. Consequently, he was terminated from his employment at the Richmond Police Department on July 1, 2013.

Captain Bodanza explained the situation as twofold, Mr. Malavet had been suspended, and then he had been terminated from employment due to that suspension. He is not employed, but he is under suspension. The question to the Council, can the suspension be lifted and can he be granted an extension in order to be hired?

Council members discussed the matter in detail. Chief Cahill, Commissioner Wrenn and Chief Colarusso asked staff general questions about hiring status, suspension status and also remarked about a lapse in certification due to the termination of employment. Chief Merrill made the point that PSTC could not accept a hiring Form A if an individual was under suspension. Director Vittum went on to state that Mr. Malavet, by not providing staff with requested documents by June 30, 2013, had broken a rule “he did nothing” The remedy for “doing nothing” was to come

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before the Council to explain.

**Motion** by Commissioner Wrenn, to deny Mr. Malavet's request for a medical extension for fitness testing and to oppose the removal of his suspension status. The motion was seconded by Judge Gardner, the Council vote was unanimous 7-0 in favor of the motion.

**Chief David Wentworth to address council re: sponsoring recruits to the Academy**  
(This item was continued to the December 17, 2013 meeting).

#### **Updated Cooper Normatives**

Captain Bodanza summarized changes to the Cooper fitness training; the only changes were in the one and a half mile run times, which apply to academy recruit testing as well as three year fitness testing, the times have decreased. Captain Bodanza stated that the Cooper standards were last updated in 2009, and at this point, the direction from Council requested was whether to remain with Cooper fitness standards, and if so, when should the new standards be implemented?

**Motion** by Commissioner Wrenn to approve the update with Cooper, to continue with Cooper normative, beginning January 1, 2014. The motion was seconded by Judge Gardner the Council vote was unanimous 7-0 in favor of the motion.

Following the motion, and as requested, Chief Merrill distributed a handout regarding another method of fitness testing, (attached) and Chief Cahill summarized. One of the tasks he described in this test was dragging a firehouse dummy and barbells.

Commissioner Wrenn stated that his agency was having difficulty filling positions due to candidates failing fitness testing. He would be interested in a job task analysis for corrections employees, fitness testing more relative to their jobs.

Further discussion ensued, reference to fitness testing for Fish and Game officers which was geared more toward their job functions. Major Conte noted that the State Police use the same fitness test as the Academy. Commissioner Wrenn noted that a mile and a half run did not truly apply in his agency, however climbing numerous flights of stairs would. Commissioner Wrenn will complete his research on this matter and come back before the Council.

#### **CONSENT CALENDAR**

##### **Officer Clayton G. Couitt, Jr., Newport Police Department**

Staff recommends granting the extension through the date of the entrance fitness test and, if testing is successful, through the end of the 163rd Full Time Academy with the stipulation that Officer Couitt must remain actively enrolled in the 163rd academy and may continue working only in the direct presence of a certified officer.

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Officer Griffin T. Farley, Somersworth Police Department

Was granted the extension through the date of the entrance fitness test and, if testing is successful, through the end of the 163rd Full Time Academy with the stipulation that Officer Farley must remain actively enrolled in the 163rd academy and may continue working only in the direct presence of a certified officer.

Officer James Richard, Jaffrey Police Department

Was granted the extension through the date of the entrance fitness test and, if testing is successful, through the end of the 163rd Full Time Academy with the stipulation that Officer Richard must remain actively enrolled in the 163rd academy and may continue working only in the direct presence of a certified officer.

Officer Travis S. Bennett, Deering Police Department

Was granted the extension through the date of the entrance fitness test and, if testing is successful, through the end of the 163rd Full Time Academy with the stipulation that Officer Bennett must remain actively enrolled in the 163rd academy and may continue working only in the direct presence of a certified officer.

Officer Charles C. Lockhart, Dalton Police Department

Was granted an extension through the date of the entrance fitness test and, if testing is successful, through the end of the 266<sup>th</sup> Part Time Academy with the stipulation that Officer Lockhart must remain actively enrolled in the 266<sup>th</sup> Part Time Academy and may continue working only in the direct presence of a certified officer unless he successfully completes the departments FTO program.

Officer Wayne Kassotis, Hinsdale Police Department

Was granted an extension through the date of the entrance fitness test on January 25, 2014.

Officer Joel M. Lloyd, Antrim Police Department

Was granted an extension through the date of the entrance fitness test and, if testing is successful, through the end of the 266<sup>th</sup> Part Time Academy with the stipulation that Officer Lloyd must remain actively enrolled in the 266<sup>th</sup> Part Time Academy and may continue working only in the direct presence of a certified officer.

Officer Mark Ciarfella, Effingham Police Department

Was granted an extension through the date of the entrance fitness test and, if testing is successful, through the end of the 266th Part Time Academy with the stipulation that Officer Ciarfella must remain actively enrolled in the 266th Part Time Academy and may continue working only in the direct presence of a certified officer.

PPO Frank Swirko, New Hampshire Department of Corrections

Was granted the extension with the stipulation that PPO Swirko must remain actively enrolled in the 163<sup>rd</sup> Academy and may only work under direct supervision of a certified PPO.

Requests for Specialized Training Grant Funds

Kensington Police Department was granted funds for Chief Michael Sielicki to attend the NE LEEDS Training sponsored by the FBI at Foxwoods Resort Casino in Connecticut, from February 10<sup>th</sup> to 14<sup>th</sup>, 2014.

**Ongoing Physical Fitness Testing**

Nine officers with fitness dates of 2013 were granted medical extensions for three year fitness testing, some of the medical extensions had been added on as addendum number three.

(END OF APPROVED CONSENT CALENDAR)

Other New Business

**Sgt. Scott Marshall, New Hampshire Department of Corrections hearing for violation of Pol 402.02 (a)(4)(b)**

Scott Marshall was present with his wife Linda Marshall, and his attorney, Robert Hemeon. When asked, Mr. Marshall chose a public session for the hearing.

Commissioner Wrenn explained that he would abstain from the vote but remain in the room during the hearing.

Captain Bodanza was sworn in by Chairman Prozzo and presented a timeline of Scott Marshall's employment history as well as the documents relating to his arrest by New Hampshire State Police for simple assault. The exhibits A through Q as detailed in timeline, were submitted without objection.

Staff at Police Standards and Training received a Form G, report of arrest of Scott Marshall, employed by New Hampshire Department of Corrections, submitted by the New Hampshire State Police, the incident occurred on May 7, 2013. Mr. Marshall was charged with two criminal offenses of criminal assault in that he caused unprivileged physical contact with his daughter at the time by placing his arms around her neck and another offense of shoving her with his hands.

On August 16, 2013 Police Standards and Training received the disposition in the matter. Mr. Marshall entered an agreement with State Police to the charges. The complaints were placed on file without a finding for twelve months based on good behavior by Mr. Marshall and also the completion of the Merrimack County diversion program DATA phases one and two to include a LADAC alcohol drug evaluation and a follow up with anger management evaluations.

Captain Bodanza summarized, based upon the evidence, an officer who has entered into a diversion program in lieu of trial, whether or not Mr. Marshall's certification as a Correction's Officer should be suspended under Pol 402.02 (a) (12)

Scott Marshall's attorney, Robert Hemeon, explained that the agreement his client had made for finding placed on file and to participate in the DATA program had been with the consultation of his daughter, the alleged victim in the case. Attorney Hemeon presented copies of an Assented to Motion for Return of Firearms, an Assented to Motion to amend the agreement from twelve months to six months and documentation that Mr. Marshall had successfully completed the Merrimack County DATA program as exhibits for Council consideration. Attorney Hemeon represented that his client did not enter a pleas and retains that he is innocent.

Chairman Prozzo asked if there were questions from Council members for Attorney Hemeon.

Attorney General Foster asked, did Attorney Hemeon think that quoted rule did not apply? Discussion ensued as to the meaning of the rules and the facts as applied in this situation.

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Attorney General Foster then asked why they (Attorney Hemeon for Scott Marshall) did not pursue a trial in the case.

Attorney Hemeon's response was by two points, the first being that Scott Marshall has had a long career with the State, that he also is a lieutenant in the National Guard. Attorney Hemeon expanded, he was not willing to jeopardize either career, by going to a trial and believing he knew what was going to happen at that trial. The second aspect was the credibility of the alleged victim which would be embarrassment in the courtroom. Attorney Hemeon expanded further.

Captain Bodanza asked if this was relevant to the rule violation and was told it was a credibility issue of the alleged victim. Chairman Prozzo ruled to limit the testimony.

Scott Marshall responded to a question by Chief Cahill to explain the DATA program in Merrimack County. For his situation (Marshall), the phase one section did an evaluation of him for alcohol and drug abuse, in which they found nothing for him, and for this reason there was no need for him to complete phase two.

Scott Marshall asked to explain some things and was sworn in by Chairman Prozzo. Mr. Marshall explained what had happened the evening of the arrest, and went further to detail the credibility issue that would be posed with his daughter.

Captain Bodanza objected and asked about the relevance of the summary by Mr. Marshall. He stated that the current subject was the rule violation, and not something that happened in the past.

Chairman Prozzo concurred and asked to keep testimony to the matter at hand.

Captain Bodanza and Attorney Hemeon summarized at this point; and Chairman Prozzo asked for Council decision.

**Motion** by Judge Gardner to suspend certification based upon Pol 402.02 (a) (12) and additional finding there is not just cause that the suspension would promote legitimate public interest, the first part, and a suspension of ninety days which was seconded by Chief Colarusso. The vote was 6-0 in favor of the motion with Commissioner Wrenn abstaining from the vote.

**David Carpenter, Madbury Police Department, Pol 301.05 (g) Results of Informal Conference**

**Motion** for a nonpublic session was made by Commissioner Wrenn and seconded by Chief Cahill, with a roll call vote stating yes from all members including Chairman Prozzo, the council began a non public session at 4:12 p.m.

Motion to seal the nonpublic minutes by Commissioner Wrenn, seconded by Chief Cahill unanimous vote of 7-0 in favor of the motion

**Motion** to come out of a nonpublic session was made by Commissioner Wrenn and seconded by Judge Gardner, with a roll call vote stating yes from all members including Chairman Prozzo, the council was back in public session.

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4:32 p.m. Public session

Chairman Prozzo requested that staff at PSTC confirm with Officer Carpenter that a hearing will be held on December 17, 2013.

### **Brynn Lovejoy Motion for Reconsider and Rehearing**

**Motion** by Commissioner Wrenn, in the matter of Trooper Brynn Lovejoy, regarding the motions that have been brought before the Council, I would move that we uphold the suspension ordered on September 26, 2013 and deny the motion to rehear/reconsider this in case in part, we grant the motion to reopen for finding of fact and conclusions of law by drafting a letter that parallels the argument that was submitted in their motion to be submitted to the Chairman for his signature. Second by Chief Cahill.

Judge Gardner asked Commissioner Wrenn about the term “re-open” in his motion, to which he responded, “re-open in part to address the findings of fact and conclusions of law”.

Chairman Prozzo asked for further discussion and if everyone understood the motion? With no questions the Council vote was 6-0 in favor of the motion.

**Motion** by Commissioner Wrenn that staff prepare an order to Trooper Brynn Lovejoy that states these specific findings of fact and conclusions of law that parallel the arguments put forth and staff’s motion to object, that we object to the motion for reconsideration and that that is prepared and final order is to be signed by the Chair. Second by Chief Colarusso.

Chairman Prozzo asked if there was any discussion on this motion, there was none.

The vote was unanimous in favor of the motion 6-0.

Major Conte announced that he had abstained from both votes on these motions.

Nancy Smith stated, on the prior motion with the correctional officer the motion was fine but Council should direct staff to do a detailed order of findings that the order was based on. When asked by Judge Gardner, Nancy Smith stated that these instructions should have been in the motion.

Commissioner Wrenn asked about a suspension taking effect immediately? Nancy Smith replied that it would take effect on the date that the order goes out.

**Motion** by Judge Gardner that the order that the staff puts together contains all of the findings of fact and conclusions of law, motion seconded by Chief Colarusso, 6-0 in favor of this motion with Commissioner Wrenn abstaining from the vote.

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Next Meeting Date/Adjournment

The next meeting of the New Hampshire Police Standards and Training Council (#438) will be held on December 17, 2013, at nine o'clock in the morning.

Chairman Prozzo thanked the staff at PSTC and the Director for the great job they did for the planning session held. This was one of the top planning sessions, with many people, many officers in attendance. It was well received. He wished everyone a safe happy holiday.

Upon a motion by Chief Cahill, seconded by Commissioner Wrenn, the Council voted unanimously to adjourn the meeting at 4:45 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "M. L. Prozzo, Jr.", is written over a horizontal line.

Chairman Michael L. Prozzo, Jr.