

DPSST

PERSONNEL ACTION REPORT

F-4

Forward To DPSST Within Ten Days Of These Actions

				1. DPSST Number 24234
A	2. Name: Last Fogarty		First Richard	Middle J
	5. Agency Jackson County		6. Division/Branch Sheriff	
	3. Date of Birth [REDACTED]		4. Date Employed 8/01/90	
7. Rank or Position Lieutenant		8a. Discipline (Mark all that apply) <input checked="" type="checkbox"/> Police <input type="checkbox"/> Parole & Probation <input type="checkbox"/> Emergency Medical Dispatch <input type="checkbox"/> Corrections <input type="checkbox"/> Telecommunications 8b. See page 2 for definitions of certifiable positions <input checked="" type="checkbox"/> Certifiable <input type="checkbox"/> Non-Certifiable		
8c. Are you currently in a certifiable position in more than one discipline? <input type="checkbox"/> Yes (If yes, check all that apply) <input type="checkbox"/> Police <input type="checkbox"/> Corrections <input type="checkbox"/> Parole & Probation <input type="checkbox"/> Telecommunications <input type="checkbox"/> Emergency Medical Dispatch				

SECTION B: NEW EMPLOYEE Complete Sections A, B, E

9. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	10. Race/Ethnic	11. Social Security Number	12. Background Completed Per OAR 269-008-0015 <input type="checkbox"/> Yes <input type="checkbox"/> No (For Police, Corrections and P & P disciplines)		
13. High School Education (List School, Location, State)				<input type="checkbox"/> Diploma <input type="checkbox"/> GED	
14. Basic Course(s) Previously Completed <input type="checkbox"/> None <input type="checkbox"/> Corrections <input type="checkbox"/> Telecommunications <input type="checkbox"/> Police <input type="checkbox"/> Parole & Probation <input type="checkbox"/> Emergency Medical Dispatch			15. Date Fingerprints submitted to Oregon State Police I.D. Services		
16. Prior Certifiable Experience (List only Full-Time) Full Time: Years Months		Certifiable Employment Dates			
Agency Address		From	To		
		Month Day Year Rank	Month Day Year Rank	Discipline	

SECTION C: SEPARATION FROM EMPLOYMENT Complete Sections A, C, E

17. Date of Separation 7/25/11	18. Type of Separation <input type="checkbox"/> Resignation <input type="checkbox"/> Probationary Discharge <input type="checkbox"/> Retirement <input type="checkbox"/> Resignation during investigation <input checked="" type="checkbox"/> Discharge for Cause <input type="checkbox"/> Retirement in lieu of termination <input type="checkbox"/> Resignation in lieu of termination <input type="checkbox"/> Lay-off <input type="checkbox"/> Retirement while under investigation <input type="checkbox"/> Resignation - Other <input type="checkbox"/> Deceased <input type="checkbox"/> Medical Retirement <input type="checkbox"/> Other	
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SECTION D: EMPLOYEE STATUS CHANGE Complete Sections A, D, E

19. Date of Status Change	20. Type of Status Change <input type="checkbox"/> Promotion <input type="checkbox"/> Demotion <input type="checkbox"/> Leave of Absence <input type="checkbox"/> Reclassification <input type="checkbox"/> Demotion-Voluntary <input type="checkbox"/> Return from Leave of Absence <input type="checkbox"/> Transfer <input type="checkbox"/> Name Change	
21. Previous Rank, Position, Branch or Name	22. Current Rank, Position, Branch or Name	See page 2 for definitions of certifiable positions <input type="checkbox"/> Certifiable <input type="checkbox"/> Non-Certifiable
NOTE: For employees new to a certifiable position, complete box #12, 13 and 15 in Section B		

SECTION E: REQUIRED FOR ALL ACTIONS

23. I certify that the information entered on this form has been verified and is substantiated by records maintained by this department. I understand that falsification of this document makes me subject to penalty under ORS 162.055, et al, and ORS 162.305.	
Signature: <u>Ken Cosgrove</u> Department Head or Authorized Representative	Title: <u>Tr. Coord.</u>
Printed Name: <u>Ken Cosgrove</u>	Date: <u>7/27/11</u>

FOR DPSST USE ONLY

Certified Position <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Police <input type="checkbox"/> Tele. <input type="checkbox"/> Corrections <input type="checkbox"/> EMD <input type="checkbox"/> P & P	Training Required <input type="checkbox"/> Yes <input type="checkbox"/> No	FTM Required <input type="checkbox"/> Yes <input type="checkbox"/> No	Processed By/Date <u>MC 7-28-11</u>
FP Check Number	Processed By/Date	OJIN Check: <u>RA</u>	Processed By/Date: <u>8/3/11</u>	NDD Check Processed By/Date

copy to PS



Oregon

John A. Kitzhaber, MD, Governor

Department of Public Safety Standards and Training

4190 Aumsville Hwy SE

Salem, OR 97317-8983

503-378-2100

<http://www.dpsst.state.or.us>

August 3, 2011

Sheriff Michael Winters
Jackson County Sheriff's Office
787 W. 8th Street
Medford, OR 97501

RE: Richard J. Fogarty, DPSST # 24234

Dear Sheriff Winters:

DPSST has received information that the above individual was discharged for cause from your agency. Based on this information DPSST has opened an investigation.

Under ORS 181.675, public safety agencies are required to provide DPSST information on an employee, or former employee, who is under investigation relating to certification. This statute provides immunity from civil liability from the disclosure or its consequences. DPSST agrees to protect the confidentiality of these records and to utilize them internally in connection with the performance of the duties of DPSST and the State of Oregon, to the extent allowed by Oregon law.

Under the direction of the Oregon Department of Justice, DPSST requests a copy of the termination letter and underlying investigation that led to the officer's discharge.

If you have any questions, please contact me by phone at (503) 378-6702, by fax at (503) 378-4600, or by email at kristen.turley@state.or.us

Sincerely,


Kristen Turley, Standards & Compliance Coordinator
Standards and Certification Division, Department of Public Safety Standards and Training
STATE OF OREGON

1
2 THE DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING
3 STATE OF OREGON
4

5 In the Matter of the Revocation
6 of the Basic, Intermediate, Advanced,
7 Supervisory, Management and Executive
8 Police Certifications Issued to:

9 **RICHARD J. FOGARTY**
10 DPSST No. 24234

**CONTESTED CASE NOTICE OF INTENT
TO REVOKE, OPPORTUNITY TO BE
HEARD, AND FINAL ORDER REVOKING
CERTIFICATIONS IF NO REQUEST FOR
HEARING IS RECEIVED**

No timely hearing requested.
Default Final Order effective: 10/31/11
By: 

11 **NATURE OF PROPOSED ACTION**

12 The Department of Public Safety Standards and Training (DPSST or Department)
13 proposes to revoke your Certification(s). This Notice is provided pursuant to Oregon Revised
14 Statute (ORS) 181.661, Oregon Administrative Rule (OAR) 259-008-0070(9) and OAR 137-
15 003-0505. This Notice contains an order revoking your Certification(s). This Order will become
16 effective, unless you request a hearing within twenty days of the mailing of this Notice as shown
17 on the attached Certificate of Service. OAR 137-003-0670(1)(a) and OAR 259-008-0070(9).

18 **STATEMENT OF RIGHT TO HEARING:**

19 **AUTHORITY AND JURISDICTION FOR HEARING**

20 You are entitled to a contested case hearing before the Department under the provisions
21 of the Administrative Procedures Act (ORS Chapter 183) and the administrative rules of the
22 Department. If you request a hearing, it will be conducted in accordance with the contested case
23 provisions of the Oregon Administrative Procedures Act (ORS Chapter 183), the Attorney

Page 1 - FOGARTY - CONTESTED CASE NOTICE OF INTENT TO REVOKE, OPPORTUNITY TO
BE HEARD, AND FINAL ORDER REVOKING CERTIFICATIONS IF NO REQUEST FOR
HEARING IS RECEIVED

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2 General's Model Rules of Procedure, and OAR 259-008-0070(9).

3
4 **STATEMENT REGARDING REPRESENTATION AND HEARING PROCEDURES**

5 If you request a hearing, a description of the hearing procedure will be provided to you in
6 accordance with ORS 183.413, prior to the commencement of the hearing. At the hearing, you
7 have the right to represent yourself or be represented by an attorney of your own choosing and at
8 your own expense. Judicial review of the decision by the Department is provided by ORS
9 181.664 and 183.480 at the request of any person adversely affected or aggrieved by the order.

10
11 **PARTICULAR RULES AND STATUTES INVOLVED**

12 1. ORS 181.662(4) and OAR 259-008-0070(3)(a)(A) *require* the Department to revoke
13 the certification of a public safety professional who has been "discharged for cause" from
14 employment as a public safety professional. "Discharge for cause" is defined as:

15 (i) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception,
misrepresentation, falsification.

16 (ii) Disregard for the Rights of Others: Includes violating the constitutional or civil rights
17 of others, conduct demonstrating a disregard for the principles of fairness, respect for the
rights of others, protecting vulnerable persons, and the fundamental duty to protect and
18 serve the public.

19 (iii) Gross Misconduct: means an act or failure to act that creates a danger or risk to
20 persons, property, or to the efficient operation of the agency, recognizable as a gross
deviation from the standard of care that a reasonable public safety professional or
instructor would observe in a similar circumstance.

21 (iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of
22 a public safety professional or instructor that remedial measures have been unable to
correct.

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1 (v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a
2 benefit, avoid a detriment, or harm another, and abuse under the color of office.

3
4 **STATEMENT OF MATTERS ASSERTED AND CHARGED**

- 5
6 1. On or about August 1, 1990, you were hired by the Jackson County Sheriff's Office as a
7 police officer.
8 2. On or about January 28, 1991, you were issued a Basic, Intermediate and Advanced
9 Police Certificate.
10 3. On or about September 25, 2007, you were issued a Supervisory and Management Police
11 Certificate.
12 4. On or about February 25, 2010, you were issued an Executive Police Certificate.
13 5. On or about July 25, 2011, you were discharged for cause from employment as a police
14 officer with the Jackson County Sheriff's Office. As such, you are in violation of ORS
15 181.662(4) and OAR 259-008-0070(3)(a)(A), thereby *requiring* the revocation of the
16 Certification(s) issued to you.
17 6. The conduct leading to your discharge was outlined in a letter from Sheriff Winters to
18 you dated July 25, 2011. That letter notified you of your termination of employment
19 from the Jackson County Sheriff's Office for the just cause described.
20 7. At the time you were employed your agency had the following policies which were
21 outlined in the letter to you dated July 25, 2011:
22 a. **SOP 1.3 – Criminal Justice Code of Ethics.**
23 b. **SOP 3.14 – Staff Meetings.**
c. **SOP 3.17.1 – Technology and Computer Resources.**
d. **SOP 4.1 – Conduct of Employees – Generally.**

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BE HEARD, AND FINAL ORDER REVOKING CERTIFICATIONS IF NO REQUEST FOR
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- 1
- 2 e. **SOP 4.4 – Department Decorum.**
- 3 f. **SOP 4.7.1 – Use of Department Cellular Telephone.**
- 4 g. **SOP 4.11 – Rules of Conduct – Department Vehicles.**
- 5 h. **Jackson County Policy # 1-01 – Fraud and Other Similar**
- 6 **Irregularities.**
- 7 i. **Jackson County Policy # 1-07 – Use of County Offices and Materials**
- 8 **for Personal Use.**
- 9 j. **Jackson County Policy # 5-47b – Conflict of Interest.**
- 10 k. **Jackson County Policy # 5-47d – Non Discrimination and Non-**
- 11 **Harassment.**
- 12 l. **Jackson County Policy # 5-47j – Violence in the Workplace.**
- 13 m. **Jackson County Policy # 8-02 – Driving on County Business/Vehicle**
- 14 **Operator Standards.**
- 15 n. **Jackson County Policy # 9-01 – Computer System Operating and**
- 16 **Security.**

17 8. By your conduct outlined in the letter to you dated July 25, 2011, you violated your

18 agency's policies and your Criminal Justice Code of Ethics. The outlined conduct

19 constitutes **Dishonesty, Disregard for the Rights of Others, Gross Misconduct and**

20 **Misuse of Authority**, as defined in OAR 259-008-070(3).

21 **NOTICE OF PROPOSED ACTION**

22 Based on the above, *the Department will revoke your Certification(s)* in the State of

23 Oregon *twenty (20) days* after this Notice is mailed to you, unless you notify the Department in

writing that you request a hearing. If you do not request a hearing, this Notice constitutes a Final

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BE HEARD, AND FINAL ORDER REVOKING CERTIFICATIONS IF NO REQUEST FOR
HEARING IS RECEIVED

1
2 Order revoking your Certification(s). This Order will become effective by default if you do not
3 request a hearing within twenty days of the date indicated on the Certificate of Service, which
4 accompanies this *Notice of Intent to Revoke and Order*, pursuant to OAR 137-003-0670 and
5 OAR 259-008-0070(9).

6 Pursuant to OAR 259-008-0070(a), if an individual who has been discharged for cause
7 from employment as a public safety professional or instructor is served with a Notice of Intent to
8 Deny or Revoke Certifications (NOI), and provides notice to the Department within the time
9 stated in the NOI that the discharge has not become final, the Department may stay further action
10 pending a final determination.

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12
13 **HOW TO REQUEST A HEARING:**

14 **CONSEQUENCE OF FAILURE TO REQUEST A HEARING**

15 **IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE DEPARTMENT IN**
16 **WRITING THAT YOU REQUEST A HEARING.** This request must be received by the
17 Department **within 20 days** of the date of **mailing** this notice to you. Upon timely receipt of
18 your request, the Department will notify you of the date, time and place of the hearing. To be
19 effective, your notice must be sent to:


20 Kristen Turley, Standards & Compliance Coordinator
21 Department of Public Safety Standards and Training
22 4190 Aumsville Hwy SE
Salem, Oregon 97317.

23 Page 5 - FOGARTY - CONTESTED CASE NOTICE OF INTENT TO REVOKE, OPPORTUNITY TO
BE HEARD, AND FINAL ORDER REVOKING CERTIFICATIONS IF NO REQUEST FOR
HEARING IS RECEIVED

1
2 If you fail to request a hearing within the required twenty (20) days, or if you fail to
3 appear at a scheduled hearing, this *Notice of Intent to Revoke and Order Revoking Certification*
4 will become final by default and no further order will be served on you. Your Certification(s)
5 will be revoked. Pursuant to OAR 137-003-0505(2)(a), the records of the proceedings in this
6 case to date, including the Department's files on the subject matter of the contested case,
7 automatically become part of the contested case record upon default for the purpose of proving a
8 *prima facie* case.

9
10 IT IS SO ORDERED THIS 27 day of SEPTEMBER, 2011.

11 Department of Public Safety Standards and Training

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Eriks Gabliks, Director

BEFORE THE DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING OF
THE STATE OF OREGON

In the Matter of the proposed Revocation
of the Basic, Intermediate, Advanced,
Supervisory, Management and Executive
Police Certifications issued to:

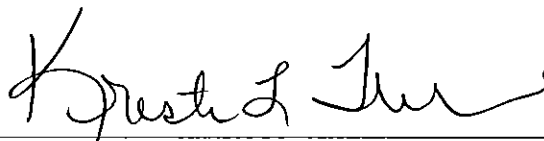
CERTIFICATE OF SERVICE

RICHARD FOGARTY
DPSST No. 24234

I certify that on the 29 day of September, 2011, I served the foregoing
Contested Case Notice of Intent to Revoke, Opportunity to be Heard, and Final Order
Revoking Certification(s) if No Request for Hearing is Received upon the party hereto by
mailing, by regular mail, postage prepaid and certified mail, return receipt requested, true, exact
and full copies thereof to:

Richard Fogarty
[Redacted]
Medford, OR 97504

Sheriff Michael Winters
Jackson County Sheriff's Office
787 W. 8th Street
Medford, OR 97501



Kristen L. Turley
Standards & Compliance Coordinator
Standards and Certification Program
Department of Publ
STATE OF OREGON

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Sent To	Richard Fogarty
Street, Apt. No., or PO Box No.	[Redacted]
City, State, ZIP+4	Medford, OR 97504
PS Form 3800, August 2006	
See Reverse for Instructions	

CERTIFICATE OF SERVICE