

PEACE OFFICER STANDARDS & TRAINING COMMISSION

May 3, 2022

8:30 AM

**Peace Officer Standards and Training Commission
Remote Participation**

PUBLIC MEETING MINUTES

Documents Distributed in Advance of Meeting:

- Draft Meeting Minutes of April 4, 2022
- Proposed Regulations at 555 CMR 1.00, *et seq.*
- Proposed Regulations at 555 CMR 2.00, *et seq.*
- Plan for Processing Applications for Recertification
- POST Operating Budget

In Attendance:

- Chair Margaret R. Hinkle
- Commissioner Hanya Bluestone
- Commissioner Lawrence Calderone
- Commissioner Clementina M. Chéry
- Commissioner Larry Ellison
- Commissioner Marsha Kazarosian
- Commissioner Charlene D. Luma
- Commissioner Kimberly P. West
- Commissioner Michael Wynn

1. Call to Order

- The Chair recognized a quorum.

2. Approval of Minutes

a. April 4, 2022

- Commissioner Kazarosian moved to approve the minutes from the April 4, 2022 meeting. Commissioner Bluestone seconded the motion. Commissioners Bluestone, Calderone, Chéry, Kazarosian, Luma, West, Wynn and the Chair voted to approve the minutes from the April 4, 2022 meeting.

3. Executive Director Report – Enrique Zuniga

a. Administrative Update

- Executive Director Zuniga welcomed Cynthia Campbell, the Commission's Director of Communications, and other staff.
- The Commission has received many questions regarding re-certification of law enforcement officers. The Commission continues to meet with and engage in communication efforts with stakeholders and other interested parties, and expects these efforts to continue and increase as the recertification process continues.

- b. Frequently Asked Questions – Recertification
 - The Commission recently posted a “Frequently Asked Questions” page on its website to address recertification. The Commission will continue to update that page as it issues new answers to clarify the recertification process.
 - The questionnaire as a required part of the recertification process. An officer’s responses to the questionnaire will become part of an officer’s personnel file, but will not be submitted to the Commission unless the officer’s employing agency fails to attest to an officer’s character and fitness.
 - The questionnaire must be administered by a sworn officer of a higher rank than the officer answering the questionnaire; administrative staff are not able to administer the questionnaire.
 - The questionnaire may be completed remotely.
 - The questionnaire is not limited to yes or no answers. Where a yes or no answer is insufficient, officers should explain their answers and as appropriate, provide documentation so they are able to provide a truthful answer.
 - Executive Director Zuniga provided clarification (and noted State Police guidance) on two questions relative to membership in organizations and eligibility and fitness for recertification.
 - Executive Director Zuniga reiterated that the Commission is receiving all submissions through its website, and is no longer receiving submissions through a general mailbox. The Commission has provided trainings on how to use the website. To date, 208 individuals and 45 agencies have participated in those trainings. The Commission will continue to offer such trainings.
 - The deadline for applying for recertification is June 15, 2022. Executive Director Zuniga thanked the five agencies that have already submitted their applications for recertification.
- c. Disciplinary Records Update
 - To date, the Commission has received records pertaining to 461 active officers and 371 transferred officers. Of those records, records pertaining to 214 active officers and 127 transferred officers required manual cleaning and reformatting.
 - The Commission anticipates the last seven agencies to provide disciplinary records will submit those records this week.
 - The Commission anticipates it will make 57,000 records public in the coming weeks and hopes to do so by May 20, 2022.
- 4. Phase 1 Regulations 555 CMR 1.00 *et seq.* – Attorney Povich
 - Mr. Povich reviewed changes to Phase 1 regulations following the March 23, 2022 public hearing. The majority of changes updated the language, but did not modify the purpose or intent of the prior draft regulations.
 - Commissioner West moved to approve the revised Phase 1 regulations. Commissioner Chéry seconded the motion. Commissioners Bluestone, Chéry, Ellison Kazarosian, Luma, West, Wynn and the Chair voted to approve the

revised Phase 1 regulations. Commissioner Calderone voted against approving the revised Phase 1 regulations.

5. Exceptions to re-certifications – General Counsel Ravitz

- General Counsel Ravitz reviewed the need for contingencies and exceptions to recertification and a proposal to toll the statutory three-year certification period or issue a conditional recertification if an officer meets certain criteria. General Counsel Ravitz reviewed proposed circumstances for conditional recertification and proposed ways an officer could meet the conditions of such a conditional recertification. General Counsel Ravitz reviewed circumstances where an officer may not be allowed to cure a failure to meet a certification requirement. He emphasized that expiration of an officer's certification is different from decertification.
- Commissioner West asked General Counsel Ravitz and Executive Director Zuniga to explain the different deadlines for recertification. General Counsel Ravitz clarified that an officer would only be eligible for tolling or a conditional recertification if they have met the application deadline. Executive Director Zuniga clarified that the June 15 deadline is for the agency to submit recertification information to the Commission.
- Commissioner Bluestone raised concerns about the predictive validity of psychological fitness evaluations when an officer has already been on the job for some time, commenting that officers at the outset of their employment come from a different set of experiences and circumstances than officers who are already in the midst of their career. Commissioner Bluestone asked the Commission to consider whether it is interested in having officers retroactively undergo a psychological fitness evaluation or whether with respect to officers already employed, the Commission should shift its focus to wellness.
- Commissioner Calderone asked General Counsel Ravitz to clarify that it is the responsibility of the agency to submit an officer's application for recertification. General Counsel Ravitz confirmed that it is. Commissioner Calderone then raised concerns based on Commissioner Bluestone's comments, and raised concerns that instituting a mid-term, mid-level, or mid-career evaluation would be inappropriate.
- Commissioners Calderone and Bluestone engaged in a dialogue about the need to focus on wellness and ability to perform, rather than a retroactive psychological fitness evaluation.
- Commissioner Luma asked Commissioner Bluestone to clarify her concerns about fitness to continue with certification. Commissioner Bluestone responded, and stated that while there was likely no perfect solution, it would be a penalty to ask an officer in the midst of their career to do an initial psychological evaluation when a mid-career observation would have greater predictive value of an officer's fitness to perform their duties. Commissioner Luma expressed her agreement, but raised concerns as to who would be tasked with that observation or evaluation.
- Mr. Povich relayed questions from members of the public about physical and psychological fitness standards, whether the Commission is contemplating using polygraphs for officers who have been accused of misconduct, and whether PTSD would be considered a mitigating circumstance for retirement or injured on duty

status. General Counsel Ravitz stated that a physical or psychological examination completed as part of an officer's work in law enforcement prior to July 1, 2022 will be accepted as satisfaction of those requirements at this time. The Commission will continue to work with others and solicit input about what physical and psychological evaluations should look like going forward. General Counsel Ravitz did not provide an answer on the use of polygraphs because the Commission has not taken it up yet. Executive Director Zuniga clarified that where the Commission has not approved a standard for physical and psychological evaluation at this time, the officer will not be faulted for their inability to meet that requirement.

6. Budget Update – 3rd Quarter FY22 – CFAO Rebello-Pradas
 - Mr. Rebello-Pradas reviewed the Commission's operating budget to date, and forecasted expenditures for the remainder of FY22.
 - Mr. Povich relayed questions from members of the public about a Commissioner's hourly rate and whether they are eligible for pension. Mr. Rebello-Pradas provided that as set by statute, Commissioners are compensated at the rate of \$65/hour and that Commissioners are eligible for a pension as active employees of the Commonwealth.
7. Public Comment
 - A member of the public asked where the requirement for good moral character originates from. Mr. Povich clarified that that requirement originates in statute.
8. Matters not anticipated by the Chair at the time of posting
 - There was no new business.
9. Executive Session to discuss strategy with respect to litigation, specifically *Scott Hovsepian, et al. v. Massachusetts Peace Officer Standards and Training Commission*, No. 2284CV00906, Suffolk Superior Court.
 - The Chair stated that the Commission would next take a vote to enter into executive session to discuss litigation strategy in the *Hovsepian* litigation, and that the Commission would not reconvene in an open session after executive session.
 - Commissioner Kazarosian made a motion to enter into executive session to discuss the *Hovsepian* litigation. Commissioner Luma seconded the motion. Commissioners Bluestone, Chéry, Ellison, Kazarosian, Luma, West, Wynn and the Chair voted to enter into executive session to discuss the *Hovsepian* litigation. Commissioner Calderone abstained.