BEFORE THE CRIMINAL JUSTICE TRAINING COMMISSION
IN AND FOR THE STATE OF WASHINGTON

In re the Peace Officer Certification of: JARRELL RHEA, Respondent.	No. 15-583 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER REVOKING PEACE OFFICER CERTIFICATION

An administrative hearing in this matter was held on October 24, 2016, at the Washington State Criminal Justice Training Commission facility in Burien, Washington, before the Washington State Criminal Justice Training Commission Hearing Panel ("Hearing Panel") to determine whether Respondent Jarrell Rhea's peace officer certification should be revoked. The Hearing Panel was advised by Assistant Attorney General John Hillman, and consisted of Presiding Member Chief Robert Torgerson of the Aberdeen Police Department, Sheriff Will Reichardt of the Skagit County Sheriff's Office, Sergeant Doug Kazensky of the Longview Police Department, Sergeant Michael Scanlon of the Bellingham Police Department, and Professor Trisha King-Stargel of Seattle University. Petitioner was represented by Assistant Attorney General Susie Giles-Klein. Respondent appeared *pro se*.

I. PROCEDURAL HISTORY

1.1 On May 2, 2016, the Criminal Justice Training Commission filed a Statement of Charges seeking to revoke Jarrell Rhea's peace officer certification on the basis that he was discharged from the Auburn Police Department for disqualifying misconduct. The Statement of Charges alleged that Jarrell Rhea committed conduct that would constitute a crime involving

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dishonesty or false statement within the meaning of Evidence Rule 609(a), to wit: Making a False or Misleading Statement to a Public Servant. RCW 9A.76.175, RCW 43.101.010(8)(b).

1.2 Mr. Rhea timely requested a hearing.

1.3 The parties entered into a signed agreement stipulating to all relevant facts at issue in this case. The agreement also stipulated to the admission of all Exhibits contained in the Petitioner's Exhibit List.

1.4 The joint stipulations were ratified by means of an Order signed by the Presiding Member on October 4, 2016.

II. HEARING

2.1 A hearing was held on October 24, 2016, at the Commission facility in Burien, Washington, before the Hearing Panel. The hearing was open to the public.

2.2 The Petitioner presented the testimony of Chief Bob Lee of the Auburn Police Department.

2.3 The Respondent testified on his own behalf.

2.4 The following exhibits were offered by the Petitioner and were admitted at the hearing, having been previously stipulated to by Respondent:

1. Statement of Charges, *In re the Certification of Jarrell L. Rhea* dated May 2, 2016
2. Request for Hearing, dated June 28, 2016
3. Peace Officer Certification Application for Jarrell Rhea, signed March 26, 2013
4. Notice of Officer Separation, dated May 27, 2015
5. Memorandum from Officer Rhea to Sergeant Betz, dated May 9, 2015
6. Notification of Administrative Leave from Assistant Chief Pierson to Officer Rhea, dated May 14, 2015
7. Internal Investigation Form, dated May 15, 2015

8. Notification of Internal Investigation from Commander Hirman to Officer Rhea, dated May 15, 2015

9. Emails between Commander Hirman and Officer Boldman, dated May 16-17, 2015

10. Emails between Commander Hirman and Officer Lind, dated May 16, 2015

11. Memo from Commander Caillier to Commander Hirman, dated May 18, 2015

12. Patrol Lineup and Car Assignments for May 5 – 10, 2015

13. Photographs from Internal Investigation

14. Video of Officer Rhea for May 9, 2015

15. Officer Rhea's Cad Output for May 9, 2015

16. Transcribed Interview of Officer Rhea, May 19, 2015

17. Separation and Release Agreement between Officer Rhea and the City of Auburn, dated May 21, 2015

18. Internal Investigation Disposition, signed by the Chief of Police on June 11, 2015

19. Supervisory Review Findings from Assistant Chief Pierson, dated June 9, 2015

2.5 The Respondent did not submit any exhibits at the hearing.

2.6 The parties made their respective arguments, which were considered by the Hearing Panel.

Based on the evidence presented at the hearing, including the stipulated facts, the Hearing Panel enters the following Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

3.1 The following Findings of Fact were stipulated to by the parties and/or derived from the evidence and stipulations presented at the hearing and the reasonable inferences therefrom.

3.2 Jarrell L. Rhea was hired as a police officer by the Auburn Police Department (Police Department) on or about February 19, 2013, and was employed in that capacity until June 2, 2015 when he resigned in lieu of termination in the midst of an internal investigation

3.3 At all times relevant to the allegations below, Jarrell L. Rhea was employed by the Auburn Police Department as a police officer.

3.4 Prior to May 9, 2015, Officer Rhea was involved in four on-duty vehicle collisions. Each collision was later deemed "preventable." After his fourth collision, Officer Rhea was suspended from duty for two days.

3.5 At approximately 2:47 a.m., while working the "graveyard" shift on May 9, 2015, Officer Rhea responded to a call at the Days Inn, located at 1521 D Street NE in Auburn, Washington.

3.6 Officer Rhea decided to park at the Iron Horse casino, which is located directly south of the Days Inn. Officer Rhea arrived at the Iron Horse Casino at approximately 2:55 a.m.

3.7 Officer Rhea was in Patrol Vehicle 30, which he signed out of the Police Department the evening of May 8, 2015 at the start of his shift.

3.8 As Officer Rhea backed Patrol Vehicle 30 into a parking space in the Iron Horse Casino parking lot, he accidentally struck a large red metal wheel. This wheel was mounted on the wall, and was located about 3-4 feet above the ground.

3.9 After striking the wheel, Officer Rhea got out of his vehicle and used his flashlight to check for damage before walking towards the Days Inn. The collision left a large dent on the trunk of Patrol Vehicle 30.

3.10 Officer Rhea had motive to lie about how his patrol car was damaged due to his four past incidents involving damage to his patrol car and the discipline that followed.

3.11 At some point during his shift on May 9, 2015, Officer Rhea met with Officer Chris Boldman.

3.12 At around 5:00 a.m., Officer Boldman noticed the large dent on the trunk of Patrol Vehicle 30. When Officer Boldman asked Officer Rhea about the dent, Officer Rhea told him that he was unaware that the trunk had been damaged.

3.13 Officer Rhea knew that the statement he made to Officer Boldman and described in paragraph 3.11 was false.

3.14 Officer Rhea knew that Officer Boldman would reasonably rely upon Officer Rhea's false statement in performing his official duties, to include answering questions about the incident from his superiors.

3.15 Later that day, Officer Rhea encountered Sgt. Samuel Betz at the police station. Officer Rhea told Sgt. Betz that Vehicle 30 had sustained damage, but that he did not know how it happened. Sgt. Betz told Officer Rhea to send him a memo about the damage, and take photographs. Officer Rhea did so, writing "I do not have any knowledge as to how the damage occurred."

3.16 Officer Rhea knew that his written statement to Sgt. Betz, "I do not have any knowledge as to how the damage occurred," was false.

3.17 Officer Rhea knew that Sgt. Betz would reasonably rely on Officer Rhea's false statement in performing his official duties, to include documenting and investigating the damage to Officer Rhea's patrol vehicle.

3.18 Commander Mark Caillier and Commander Jamie Sidell decided to retrace Officer Rhea's steps the night of May 9, 2015 to see if they could locate an object that might have caused the damage. They went to the Iron Horse Casino directly south of the Days Inn, and located the large red wheel. Some of the red paint on the wheel appeared to be scraped off in vertical lines. The damaged portion of the wheel corresponded to the damaged portion of Patrol Vehicle 30, which also had red paint residue and vertical scrapes.

3.19 Security staff at the Iron Horse Casino provided the Commanders with security footage of the relevant location. The video shows Officer Rhea arriving at the Iron Horse Casino at 2:55 a.m. on May 9, 2015. The video shows the back of Officer Rhea's patrol vehicle striking the wheel and then Officer Rhea getting out of his patrol car, observing the damage with a flashlight, and walking off.

3.20 Commander Caillier informed Assistant Chief Bill Pierson of his discovery. Assistant Chief Pierson put Officer Rhea on paid administrative leave. Commander Mike Hirman informed Officer Rhea that he was the subject of an internal investigation and provided him with written *Garrity* Warnings.

3.21 Officer Rhea was interviewed by Commander Hirman on May 19, 2015. At the outset of the interview, Commander Hirman told Officer Rhea that he had to be truthful, honest, and complete in his answers. Officer Rhea said that he understood.

3.22 Throughout the interview, Officer Rhea repeatedly denied that he knew how the damage to Patrol Vehicle 30 occurred, or that he was aware of the damage before it was pointed out to him by Officer Boldman.

3.23 Officer Rhea knew when he told Commander Hirman that he did not know how his patrol vehicle was damaged that his statement was false.

3.24 Officer Rhea knew when he made the false statements to Commander Hirman that Commander Hirman would reasonably rely on Officer Rhea's statements in the performance of his official duties, to include performing the internal affairs investigation.

3.25 Commander Hirman read Officer Rhea a copy of the memo he filed to Sergeant Betz and asked Officer Rhea if it was true. Officer Rhea said it was.

3.26 More than once, Commander Hirman asked Officer Rhea if he was being truthful in the interview. Officer Rhea said that he was.

3.27 Commander Hirman then showed Officer Rhea the security footage provided by the Iron Horse Casino. Officer Rhea admitted he was the officer in the video. However, Officer Rhea continued to deny that he recalled hitting the wheel or that he was aware of the damage.

3.28 Before the interview ended, Officer Rhea stepped out of the room with his guild representative. About 15 minutes later, Officer Rhea returned and resumed the interview.

3.29 Back on the record, Officer Rhea stated that he was concerned that if he was involved in any additional vehicle collisions, he would become "unemployable." He then

admitted to accidentally backing into the wheel with his patrol vehicle on May 9, 2015. He admitted to lying to Officer Boldman, Sergeant Betz, and Commander Hirman about the damage.

3.30 Commander Hirman informed Officer Rhea that he would be issuing an additional letter regarding his dishonesty during the internal investigation.

3.31 Before the Police Department could issue the letter, Officer Rhea entered into a separation and release agreement with the City of Auburn. Pursuant to the agreement, Officer Rhea voluntarily ended his employment with the Police Department on June 2, 2015.

3.32 Officer Rhea resigned his employment with the Police Department because he knew he would be fired for his dishonesty.

3.33 On June 9, 2015, Assistant Chief Pierson issued Supervisory Review Findings for Officer Rhea's internal investigation. The Board found that Officer Rhea was dishonest on multiple occasions stating:

> You failed to properly report the collision to your sergeant. Once you did report the collision, you wrote a knowingly false memorandum to your sergeant and told him verbally that you did not know how the damage occurred. Once your actions were called into question, you made the decision to be untruthful during the internal investigation by continuing to state you did not know how the damage to the patrol car occurred.

3.34 Had Officer Rhea not resigned, he would have been terminated for his repeated dishonesty to numerous Police Department personnel. The Supervisory Review Findings acknowledge that Officer Rhea resigned in lieu of termination.

3.34 Officer Rhea's termination by Auburn P.D. is final.

3.35 Any Conclusion of Law deemed to be properly considered a Finding of Fact is hereby adopted as such.

Based on the foregoing Findings of Fact, the Hearing Panel makes the following:

IV. CONCLUSIONS OF LAW

4.1 Revocation of Respondent Jarrell Rhea's peace officer certification is governed by RCW 43.101 and WAC 139-06.

4.2 The Washington State Criminal Justice Training Commission and this Hearing Panel have jurisdiction over the Respondent and these proceedings. RCW 43.101.085; RCW 43.101.105; RCW 43.101.380.

4.3 RCW 43.101.105(1)(d), provides that the Commission may revoke a peace officer's certification when "[t]he peace officer has been discharged for disqualifying misconduct, the discharge is final, and some or all of the acts or omissions forming the basis of the discharge proceedings occurred on or after January 1, 2002."

4.4 The Petitioner bears the burden of proving "discharge for disqualifying misconduct" by clear, cogent, and convincing evidence. RCW 43.101.380(1).

4.5 RCW 43.101.010(8) defines a discharge for "disqualifying misconduct" to include discharge resulting from conduct that would constitute a crime involving dishonesty or false statement within the meaning on Evidence Rule 609(a).

4.6 It is a crime to knowingly make a false or misleading material statement to a public servant. RCW 9A.76.175.

4.7 "Knowing" means being aware of facts, circumstances, or information that might lead a reasonable person in the same situation to be aware a certain fact exists. RCW 9A.08.010(b).

4.8 "Material statement" means "a written or oral statement likely to be relied upon by a public servant in the discharge of his or her official duties or powers." RCW 9A.76.175.

4.9 Police officers are public servants. *State v. Graham*, 130 Wn.2d 711, 714, 927 P.2d 227 (1996).

4.10 Making a false or misleading statement to a public servant is a crime of dishonesty within the meaning of Evidence Rule 609(a) and engaging in conduct that would constitute that crime constitutes "disqualifying misconduct" pursuant to RCW 43.101.010(8)(a)(ii) and (b). *See In re Peace Officer Certification of Martin,* 154 Wn. App. 252 (2009).

4.11 For Count I of the Statement of Charges, the Hearing Panel unanimously concludes by clear, cogent, and convincing evidence that on May 9, 2015, Respondent knowingly made a false or misleading material statement to a public servant, Officer Chris Boldman, when he verbally told Officer Boldman that he had no knowledge of how the damage to his patrol vehicle occurred.

4.12 For Count II of the Statement of Charges, the Hearing Panel unanimously concludes by clear, cogent, and convincing evidence that on May 9, 2015, Respondent knowingly made a false or misleading material statement to a public servant, Sgt. Samuel Betz, when he prepared and presented to Sgt. Betz a written memorandum wherein he denied knowing how the damage to his patrol vehicle occurred.

4.13 For County III of the Statement of Charges, the Hearing Panel unanimously concludes by clear, cogent, and convincing evidence that on May 19, 2015, Respondent knowingly made a false or misleading material statement to a public servant, Commander Mike Hirman, when he told Commander Hirman that he had no idea how the damage to his vehicle occurred.

4.14 A peace officer is "discharged for disqualifying misconduct" within the meaning of RCW 43.101.010(8) when the totality of the circumstances support a finding that the officer resigned in anticipation of discipline, when such discipline would more likely than not have led to discharge for disqualifying misconduct. RCW 43.101.010(9).

4.15 The Panel unanimously concludes that Respondent was discharged for disqualifying misconduct within the meaning of RCW 43.101.010(9).

4.16 The Panel unanimously concludes that the acts or omissions forming the basis for Respondent's discharge occurred after January 1, 2002.

4.17 The Panel unanimously concludes that Respondent's discharge is final as that term is defined in RCW 43.101.010(10).

4.13 The Panel unanimously concludes that Petitioner established by clear, cogent, and convincing evidence that Respondent engaged in conduct that would constitute a crime involving dishonesty or false statement within the meaning of Evidence Rule 609(a) by making false and/or misleading statements to Officer Chris Boldman, Sergeant Samuel Betz, and Commander Mike Hirman. This conduct is disqualifying misconduct under RCW 43.101.010(8)(b).

4.14 The Panel unanimously concludes that Respondent's disqualifying misconduct warrants revocation of his peace officer certification.

4.15 Any Finding of Fact deemed to be properly considered a Conclusion of Law is hereby adopted as such.

V. ORDER

Based on the forgoing Findings of Fact and Conclusions of Law, the Hearing Panel now therefore issues the following ORDER:

That Respondent's peace officer certification is hereby REVOKED.

DATED this 26th day of October, 2016.

CHIEF ROBERT TORGERSON
Aberdeen Police Department
Presiding Panel Member

NOTICE TO PARTIES

RECONSIDERATION: Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of the Final Order (the Findings of Fact, Conclusions of Law, and Order Denying Request to Revoke Peace Officer Certification) to file a petition for reconsideration stating the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that: (a) there is a material clerical error in the Order, or (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering directly to the Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Burien, Washington 98148, with a copy to all other parties of record and their representatives. Filing means actual receipt at the Commission's office. RCW 34.05.010(6).

A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition for reconsideration is filed, the Commission does not: (a) dispose of the petition, or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not a prerequisite for filing a petition for judicial review.

STAY OF EFFECTIVENESS: The filing of a petition for reconsideration does not stay the effectiveness of the Final Order. The Commission has determined not to consider a petition to stay the effectiveness of the Final Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW.

JUDICIAL REVIEW: Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement (RCW 34.05.510 through .598). The petition for judicial review of the Final Order shall be filed with the appropriate court and served on the Commission, the Office of the Attorney General, and all parties within thirty (30) days after service of the Final Order, as provided in RCW 34.05.542.

SERVICE: The Final Order in this matter was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).