BEFORE THE WASHINGTON STATE
CRIMINAL JUSTICE TRAINING COMMISSION

In re the Certification of ADAM LEONARD, Respondent.	NO. 11-394 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

An administrative hearing in this matter was held on June 24, 25 and 26, 2013, 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 Adam Leonard's peace officer certification should be revoked.

The Hearing Panel was advised by Assistant Attorney General Scott Marlow, and consisted of Presiding Member Chief Robert Torgerson of the Aberdeen Police Department, Sheriff Garry Lucas of the Clark County Sheriff's Office, Sergeant Susanna Monroe of the Seattle Police Department, Detective Sergeant Jason Viada of the Port Angeles Police Department, and Professor Tadd Belden of Centralia College. Petitioner was represented by Assistant Attorney General Lisa K. Elley. Respondent was present and represented by Attorney Thomas Marrese.

I. PROCEDURAL HISTORY

1.1 On January 2, 2013, the Respondent was mailed the Statement of Charges and a request for hearing form and made a timely request for a hearing.

1.2 The Statement of Charges seeks to revoke Adam Leonard's peace officer certification on the basis that he was discharged for disqualifying misconduct; specifically, conduct that would constitute a crime involving 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.I75, RCW 43.101.01 0(8)(b).

II. HEARING

2.1 A hearing was held on June 24, 25 and 26, 2013, at the Commission facility in Burien, Washington, before the Hearing Panel.

2.2 The Petitioner presented the testimony of Assistant Chief Michael Zaro of the Lakewood Police Department, Officer Michael Wiley of the Lakewood Police Department, Sergeant Andrew Gildehaus of the Lakewood Police Department, Detective Christopher Bowl of the Lakewood Police Department, Officer Scott Novasky of the Lakewood Police Department, Detective Michael Bassett of the Washington State Patrol, Detective Sergeant Gerald Cooper of the Washington State Patrol, and Michael McVey.

2.3 The Respondent testified on his own behalf, and presented the testimony of David J. Perry, Ph.D.

2.4 The following exhibits were offered by the Petitioner and were admitted at the hearing:

P-1: Statement of Charges, *In re the Certification of Adam Leonard,* dated November 27, 2012; (2 pages)

P-2: Peace Officer Certification Form for Adam Leonard, signed March 28, 2002; (1 page)

P-3: Peace Officer Employment Report, dated August 11, 2004; (1 page)

P-4: Police Traffic Collision Report; (2 pages)

P-5: WSP Field Diagram, dated March 8, 2011; (2 pages)

P-6: Aerial Photo of Pursuit Path; (1 page)

P-7: Aerial photos; (7 pages)

P-8: Lakewood Police Department CAD Log, March 8-9, 2011; (8 pages)

P-9: WSP CAD log, March 8-9, 2011; (6 pages)

P-10: Home Security Camera Footage (video);

P-11: Camera v. CAD Analysis; (1 page)

P-12: Daylight Video of Pursuit Path (video);

P-13: WSP Investigation Log Report, dated March 8 - July 13, 2011; (7 pages)

P-14: WSP Automobile Analysis, dated March 9, 2011; (1 page)

P-15: Crash Data Retrieval Reports; (28 pages)

P-16: Evasive Steering Maneuver Formula and Analysis; (31 pages)

P-17: Math Calculations; (1 page)

P-18: Math Formulas; (3 pages)

P-19: WSP Collision Report Slides; (21 pages)

P-20: WSP Collision Analysis, dated July 5, 2011; (16 pages)

P-21: Notice of Internal Investigation Interview, dated July 6, 2011; (2 pages)

P-22: Administrative Leave/Relief of Duty Notice, dated July 7, 2011; (2 pages)

P-23: Emails re Leonard Resignation, dated July 7-8, 2011; (2 pages)

P-24: Leonard Resignation Letter, dated July 8, 2011; (1 page)

P-25: Notice of Officer Hire/Separation for Adam Leonard, dated July 12, 2011; (1 page)

P-26: Assistant Chief Zaro email, dated July 18, 2011; (2 pages)

P-27: Administrative Investigation Summary and Report, dated September 2, 2011; (5 pages)

2.5: The following exhibits were offered by the Respondent and were admitted at the hearing:

R-4: Medical/Psychiatric records of David J. Perry, Ph.D.

R-7: Washington Dept. of Labor and Industries Initial Evaluation by David J. Perry, Ph.D. dated April 27, 2011;

R-10: David J. Perry, Ph.D. treatment notes from June 30, 2011 through July 21, 2011.

R-19: December 20, 2010 letter from Assistant Chief Zaro to Dr. Ekema requesting fitness for duty examination for Respondent.

R-20: January 3, 2011 fitness for duty report concerning examination of Respondent on December 21, 2010.

2.6 The parties made their respective arguments, which were considered by the Hearing Panel. Based on the evidence presented at the hearing, the Hearing Panel enters the following Findings of Fact, Conclusions of Law and Order.

III. FINDINGS OF FACT

3.1 From August 11, 2004 to July 8, 2011, Respondent Adam Leonard was employed as a peace officer with the City of Lakewood Police Department (LPD). The Respondent resigned from the City of Lakewood Police Department on July 8, 2011.

3.2 On July 7, 2011 Respondent had been served with an Administrative Leave/Relief of Duty Notice pending an internal investigation of his on duty vehicle collision of March 8, 2011.

3.3 Prior to the accident of March 8, 2011, Respondent was involved in a series of events that resulted in Respondent experiencing symptoms associated with Post Traumatic Stress Disorder. The most significant event occurred on November 29, 2009, when four LPD officers were killed in the line of duty. The fallen officers were on Respondent's squad and Respondent felt a deep sense of loss and personal turmoil as a result of the tragedy.

3.4 Respondent took approximately 1½ months off work following the loss of the officers to cope with the emotional trauma, and returned to Colorado where Respondent was raised and where many of his friends and relatives resided.

3.5 After returning to work in January of 2010, Respondent was still experiencing psychological symptoms, which prompted him to see a psychologist, Dr. David Perry, on March 16, 2010. At the time of his visit with Dr. Perry, Respondent was experiencing grief, increased vigilance, tight muscles, impaired sleep, nightmares, survivor's guilt, and a feeling of something bothering him.

3.6 Dr. Perry testified at the hearing that he believed that Respondent had PTSD at the time of the March 16, 2010 appointment. Respondent began treatment with Dr. Perry but only went to three therapy sessions before discontinuing treatment due to his concerns that a psychiatric diagnosis might have a negative effect on his law enforcement career.

3.7 Over the course of 2010, on-duty incidents involving the Respondent as well as other, unrelated incidents involving the deaths of two Washington law enforcement officers aggravated Respondent's PTSD condition. When the anniversary of the deaths of the LPD officers arrived in late November of 2010, Respondent began experiencing stress-related symptoms serious enough that he took approximately 1½ months off of work. During this time, Respondent again traveled to Colorado to be around family and friends.

3.8 Upon returning to Washington to report for work, Respondent was directed to take a fitness for duty examination by Assistant Chief Zaro. The exam was conducted by Dr. Bill Ekema on December 21, 2010. Dr. Ekema found that Respondent was experiencing symptoms associated with PTSD. Dr. Ekema advised Respondent that officers may experience delayed onset of PTSD symptoms. Dr. Ekema concluded

that Respondent could resume his normal activities with some periodic symptoms. Dr. Ekema's report was dated January 3, 2011, and was provided to Assistant Chief Zaro. Respondent returned to work shortly thereafter.

3.9 On March 8, 2011 at approximately 11:48 p.m., a night that was raining heavily, Respondent was working as a patrol officer for LPD, covering the area of Woodbrook. Respondent called out a traffic stop and indicated that he was in pursuit of a vehicle that was taking off on him. He was able to radio a partial license plate number, "ABT", and reported initial speeds approaching 80 miles per hour. Additional units responded and found Respondent's patrol car off of the roadway after striking an embankment and coming to rest in an area with a moderate growth of mature trees.

3.10 The Respondent was found in his patrol car, lying with his head in the area of the passenger floorboard and his feet by the steering wheel. He was initially unconscious or semi-conscious. Respondent was able to articulate only minimal information to investigators at the scene of the accident and at the hospital shortly afterwards. He told officers that the vehicle he was pursuing stopped suddenly in the road and a passenger pointed a shotgun at him. Respondent repeatedly muttered a partial license plate number in the ambulance on the way to the hospital.

3.11 On the early morning of March 9, 2011, Respondent was admitted to the hospital and was given medication, including morphine, for his pain. During his hospitalization, Respondent was unable to add details to the information he provided to investigators. Respondent was released from the hospital later on March 9, 2011, with a diagnosis of having sustained a herniated disc at L1-L2, a concussion and cervical

and lumbar sprain in the accident. Respondent was released with additional pain medication for his injuries. Respondent ultimately was forced to undergo surgery on his back in May of 2011 to treat the disc herniation.

3.12 On March 10, 2011, Respondent contacted Det. Chris Bowl to provide more details that had emerged from his memory concerning the accident. Respondent advised Detective Bowl that the vehicle he was pursuing slowed as if the occupants were going to abandon the car and flee on foot. Respondent told Detective Bowl that he was in the process of slowing and unbuckling his seat belt to prepare for a foot pursuit when the vehicle swerved and stopped in the road. Respondent reported that a passenger pointed a shotgun at him forcing Respondent to swerve off of the road. Respondent described the passenger as having a wide, flat nose, a vacant stare and a "doo rag." Respondent remembered some voices near him as he lay twisted in his patrol car, and the sound of a vehicle driving away from the scene.

3.13 On March 12, 2011, Respondent was informed of some video showing the area of the accident. Respondent returned to the area during the day to see if any further memories of the accident were awakened. After leaving the area, Respondent began having severe stress-related symptoms and was again hospitalized.

3.14 Shortly after the investigation into the reported assault on Respondent began, LPD had questions concerning Respondent's version of the facts surrounding the accident. The investigation was turned over to the Washington State Patrol (WSP). WSP was asked to perform a collision analysis of the accident to determine if the evidence matched up to Respondent's version of events.

3.15 WSP did perform a collision analysis which ultimately concluded that Respondent's version of the facts surrounding the accident was not possible due to a number of reasons.

3.16 The collision analysis was based on assumptions as to critical elements including vehicle speeds and coefficients of friction on wet grass. The collision analysis was hampered by the loss of Bosch vehicle data and heavy rain on the night of the accident which could affect tire marks on the roadway. The analysis did not explain certain observed facts such as white paint transfer noted on the Respondent's patrol car push bars, or the displacement of those bars.

3.17 On July 6, 2011, upon receipt of the WSP Collision Analysis, Lieutenant Heidi Hoffman of the Lakewood Police Department opened an internal investigation on the Respondent. Ex. P-2l. On July 7, 2011, Lt. Hoffman sent the Respondent an Administrative Leave/Relief of Duty Notice via email. Ex. P-22 and P-23. On July 8, 2011, the Respondent emailed Lt. Hoffman that he was considering resignation. In the email, Respondent referenced that he no longer had the strength to attempt to get Chief Farrar to understand PTSD and its effects. Respondent also referenced his deteriorating health and family situation. Ex. P-23. Respondent later indicated that he wanted to meet Lt. Hoffman at Forza Coffee on Steele Street to hand over his letter of resignation, which was the location where the four Lakewood Police Officers were killed on November 29, 2009. Lt. Hoffman notified Assistant Chief Zaro who requested that surveillance check the location before the meeting due to the unusual circumstances. Once the situation was deemed safe for Assistant Chief Zaro,

he entered Forza and found the Respondent and his wife. Assistant Chief Zaro sat down, spoke briefly with the Respondent, and accepted his letter of resignation which was effective immediately. The letter of resignation prepared by Respondent was courteous and expressed gratitude to LPD for his career with the Department. Ex. P-24 and P-26. The internal investigation was completed on September 2, 2011, and resulted in sustained findings of misconduct for Truthfulness (J.1.2.C) and Conduct Unbecoming (I.1.2.B). Ex. P-27.

3.18 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's peace officer certification is governed by chapter 43.101 RCW and chapter 139-06 WAC.

4.2 The Washington State Criminal Justice Training Commission and this Hearing Panel have jurisdiction over the Respondent and these proceedings. RCW 43.10l.085; RCW 43.101.105; RCW 43.101.380.

4.3 The Petitioner bears the burden of proof by clear, cogent, and convincing evidence. RCW 43.101.380(1).

4.4 Prior to his resignation on July 8, 2011, Adam Leonard was employed as a certified peace officer in Washington State.

4.5 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."

4.6 RCW 43.101.010(8), which defines a discharge for "disqualifying misconduct," provides in part that a peace officer is discharged for disqualifying misconduct when he or she is "terminated from employment for: (a) Conviction of ... (ii) any crime involving dishonesty or false statement within the meaning of Evidence Rule 609(a) ... (b) conduct that would constitute any of the crimes addressed in (a) of this subsection..."

4.7 RCW 43.101.010(9) provides "[a] peace officer is 'discharged for disqualifying misconduct' within the meaning of subsection (8) of this section under the ordinary meaning of the term and when the totality of the circumstances support a finding that the officer resigned in anticipation of discipline, whether or not the misconduct was discovered at the time of resignation, and when such discipline, if carried forward, would more likely than not have led to discharge for disqualifying misconduct within the meaning of subsection (8) of this section."

4.8 The acts or omissions forming the basis for Respondent's discharge occurred after January 1, 2002.

4.9 Respondent's discharge is final as that term is defined in RCW 43.101.010(10).

4.10 Under Washington law, it is a crime to a make a false or misleading material statement to a public servant. RCW 9A.76.175. A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross

misdemeanor. 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.

4.11 A majority of the panel finds that the Respondent did resign in anticipation of discipline for conduct alleged to be disqualifying conduct under RCW 43.101.010(9).

4.12 In regard to Count I, Petitioner alleges that Respondent knowingly made false statements to Detective Bowl to the effect that, just prior to the accident; he had unbuckled his seat belt because he believed the suspects were going to flee on foot. Det. Bowl testified that while Respondent stated that he was in the process of unbuckling his seatbelt, it was unclear from Respondent's statement as to whether he had completed this act by the time of the accident. The imprecise nature of this testimony prevents this Hearing Panel from being able to conclude that Respondent intentionally made false statements to Det. Bowl concerning the status of the seatbelt as being either buckled or unbuckled at the time of the accident. Accordingly, Count I of the Petition has not been proved.

4.13 In Count II, Petitioner asserts that Respondent knowingly made false statements to Det. Bowl concerning the facts of the accident, namely that Respondent was involved in a pursuit of a reckless vehicle at the time of the accident. The Hearing Panel concludes that Petitioner has failed to demonstrate by clear, cogent and convincing evidence that Respondent intentionally made false statements to Det. Bowl during his investigation of the reported assault and/or of the accident.

4.14 The Hearing Panel notes that the collision analysis was done in a competent and professional manner, and was presented at the hearing through a series of credible witnesses. Accordingly, the Hearing Panel, for the purposes of setting forth its conclusions and findings, will assume that the collision analysis demonstrates that the accident could not have occurred in the manner described by Respondent.

4.15 In order for Respondent's statements to constitute the crime of giving false information to a peace officer, the false statements must be knowingly made, presumably for the purpose of obtaining some type of benefit for the maker of the statement. In this matter, Respondent presented the testimony of Dr. David Perry, an expert in the field of psychology and in the treatment of PTSD. Dr. Perry testified that Respondent was at a point of experiencing a psychological breakdown due to PTSD at the time of the accident. Dr. Perry testified, and his report of April 21, 2011 (R-20) reflects, that Respondent had been experiencing hallucinations several weeks prior to the accident of March 8, 2011. Dr. Perry testified that such hallucinations are consistent with PTSD and could result in the types of recollections that were related to Det. Bowl by Respondent in the hours and days after the accident. Dr. Perry testified that, in his expert opinion, Respondent was not attempting to be untruthful to anyone during the course of the investigation. This expert testimony was uncontroverted at the hearing of this matter.

4.16 The Hearing Panel notes that Respondent sustained significant physical injuries in this accident and was on pain medication while making the statements relied upon by Petitioner in this case. The Hearing Panel had the opportunity

to observe Respondent testify during the hearing and found his testimony to be sincere and credible. Accordingly, based on the totality of the circumstances, the Hearing Panel concludes that Petitioner failed to demonstrate that Respondent's statements to Det. Bowl concerning the facts of the accident, even if inaccurate, were knowingly made with the intent to mislead investigators. Without such intent to deceive, this Hearing Panel cannot conclude that Respondent's statements to Det. Bowl could constitute the crime of giving false information to a peace officer.

V. ORDER

Based on the foregoing Findings of Fact and Conclusion of Law, the Hearing Panel hereby issues the following ORDER:

The Petition to revoke Adam Leonard's Peace Officer Certification is hereby DENIED.

DATED this 30th day of July, 2013.

CRIMINAL JUSTICE TRAINING COMMISSION
CERTIFICATION HEARING PANEL

CHIEF ROBERT TORGERSON
Presiding Panel Member

NOTICE TO PARTIES

RECONSIDERATION: Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order 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 this Order. The Commission has determined not to consider a petition to stay the effectiveness of this 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 this 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 this Order, as provided in RCW 34.05.542.

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