

**NEW MEXICO LAW ENFORCEMENT ACADEMY  
REGULAR BOARD MEETING  
Thursday, November 9, 2006  
Socorro, New Mexico**

**ITEMS #1 AND #2: CALL TO ORDER AND ROLL CALL**

Mr. Swagerty: We are going to call this meeting to order. It's 9:05 on the 9<sup>th</sup> of November 2006. What we will do is call to order Suzanne if you will do that first please.

Suzanne Vigil: Attorney General Patricia Madrid (Absent)  
Acting Chairman Assistant Chris Coppin (Absent)  
District Attorney Donald Gallegos (Absent)  
Chief Raymond Schultz (Present)  
Sergeant Jeff Remington (Absent) (late appeared after roll call)  
State Police Chief Faron Segotta (Present)  
Craig Swagerty (Present)  
Matt Perez (Present)  
Chief Mike Toya (Absent)  
Sheriff John Paul Trujillo (Absent)

Mr. Swagerty: For the audience we do have four members so we do have a quorum out of eight. We have also Mr. Coppin who is going to be on speaker phone here later is in a meeting and he will be out of that meeting in say thirty minutes so if we do have any voting item's we won't do it until we have him on speaker phone just for everybody's information. That way we will have a full majority at that time. What we normally do in our meetings is also is we go around and we let you introduce yourself and tell us who you are and if you would if we could just start right here.

Gil Najar with the Department of Public Safety Training and Recruiting Division  
Christine Mermier, Ph.D. from the University of New Mexico  
Mark Shea with the DPS Training Division  
August Fons with the Academy in Hobbs, New Mexico  
Dustin O'Brien, Prosecutor with the Eleventh Judicial District Attorney's Office  
John Tate representing Carrizozo, New Mexico  
Steve Aickerman, Lea County Sheriff's Department  
Tommy Barnett Carlsbad Police Department  
Mathew Gonzales, Bernalillo County Sheriff's Department  
Mark Christopher DPS Training and Recruiting  
Scott Blackledge DPS Training and Recruiting  
Frank Flores Las Cruces Police  
Michelle Sandoval Motor Trans  
Gabriel Pacheco Motor Trans

Mr. Swagerty: Item # 3 Approval of the Agenda. So if you will look through the agenda. Board if there is anything that you need or have any questions over anything.

Ray Schultz: Chairman I move to accept the agenda.

Mr. Swagerty: I have a motion do I have a second?

Mr. Segotta: Second.

Mr. Swagerty: All in Favor?

Board: Aye

Mr. Swagerty: Okay motion carries. Ok, the approval of minutes for September 27, 2006 if you will look through that real quick. If you have any questions for Suzanne? Anybody got anything on that?

Mr. Perez: Motion to accept.

Mr. Schultz: Second.

Mr. Swagerty: I have a motion; I have a second, all in favor?

Board: Aye.

Mr. Swagerty: Ok, motion carries. Next is the Director's Report.

Major Valverde: As you will note in Tab 5 the Director's Report is there. I will obviously touch some of the highlights. We still have the Director of the NMLEA vacant. Cathy Trujillo did fill the position that Susan Patterson vacated. We also have our new Basic Instructor Bureau Chief Mark Shea who is with us today. That also left us a vacancy in the CIRT Bureau however we have our list and we will be doing interviews for that shortly for that position. We still have the vacant administrative support position. We tried to do an internal hire but that got lost in the shuffle so we are now going out to the normal process. So that should not be too much longer. We currently have the basic class going on with forty-nine cadets still left. They graduate December 15<sup>th</sup>. Instructors Ed Garcia and Joey Rodriguez still continue to help the Deputy Director's Office with the basic academy curriculum re-write. Cert by Waiver fifty-nine we graduated twenty-nine not thirty on October 16, 2006. We finished the Telecommunicator class 100 on October 6<sup>th</sup>. Very successful there everybody graduated no failures. Completed a Survival Spanish for PST's in Rio Rancho October 18<sup>th</sup> for thirty one students. Assisted the Records Bureau with two NCIC Full Access Courses. Completed two ICS 100 and 400 courses

and a FEMA Train the Trainer class. Next bullets are redundant. We are looking at filling Cathy and Marks position. We did attend several of the staff the state APCO conference in Las Cruces. We will conduct a FEMA ICS Train the Trainer November 14 – 17 in Santa Fe. Mark is still finishing the PST curriculum review. Advance Training coming up here in the future we are working with the New Mexico National Guard on a Firearms Range Revitalization project which starts probably the beginning of December correct.

Scott Blackledge: Yes sir. They actually have started a little bit of the dirt road now.

Major Valverde: Oh they have. Great. We are going to just kind of add some nice final finishing touches. Do some corrections, they are going to move a trailer around for us to add near our classroom and kind of tidy it up a little. We are also looking at; we are doing some future long term planning for looking for an additional range. As you may not be aware, our range lease expires in 2008 of July and we are currently working with the State Land Office on a piece of dirt for future growth for our range and possibly our driving track and anything else that may impact that there. It is going to be north of Santa Fe but we are in the preliminary stages on it. We have identified the land and we are currently working with them to draw up a lease which is going to be very cost effective if it actually works out for us. We are currently paying about eighteen thousand dollars a year at our current range. Our initial range estimates went to the State Land Office is \$500.00 for five years and then a long term ninety-nine year lease commercial will never exceed a thousand bucks a year. So any improvements that we have will be passed on through us but the lease will never change. Also, looking at the contingency plans of the rail runner because one of the proposals for it is going to be right behind the range currently. So if it were to go through there now were done. So again that has kind of prompted us to look down the road for a range. Conferences coming up Policing in the 21<sup>st</sup> Century the fourth annual governor's conference on the link between animal abuse and domestic violence, the 2<sup>nd</sup> Annual Child Adolescence Trauma and Community and Domestic Violence. Again you can review our calendar on our website and you can call us at anytime.

Mr. Swagerty: Any questions or comments? Public Comments. At this time what we do is we have Public Comment time for you if you have anything you want to address the board about or any questions on anything else. We will give you a minute or two to speak. Does anybody have anything? Everybody's doing a great job and all that good stuff. I like that. What I want to do at this time. Chris and Zach are in a, what were they in Suzanne.

Suzanne Vigil: Court Hearing.

Mr. Swagerty: They were in a court hearing so to give them a few more minutes if we could. If we could move number eight up to number seven and seven to eight. Discussion on the alternative fitness testing, Gil do you want to go over that please.

Gil Najar: Mr. Chairman and Board Members and Guests present. At the last board meeting, the City of Farmington came in with a request for us to look at alternatives to the 1.5 mile run. We had a brief discussion during that meeting as to the possibility of a rule change that would incorporate at exit standards the ability to use a treadmill stress test or the bicycle test. We had preliminary to this been making some phone calls we started with a referral that was made to us to the heart hospital in your tabs here you will see some of the background. We talked to Sherry Aragon with that program, they based on what we needed for the 1.5 mile run and the standard that we were using they then referred us to the University of New Mexico and that is where I was able to contact Dr. Roberg's and Christine was that we have been working with. And so they sent us some information and I faxed them basically the standards that this academy has plus the rules and regulations that have been incorporated into the fitness standards, two agility courses 300 meter and 1.5 mile run. So those are the four things we are talking about. The discussion with Dr. Robergs and Christine was that they were capable and they did have the equipment and the facility available that could give us comparable results for what we were looking for, for that standard for officer certification. From that point we made some decisions to go down and look at there testing facility and meet with them, talk with them about it and we were also fortunate enough for them to allow us to conduct two tests. One test on the bicycle and one on the treadmill. My bicycle volunteer could not make it. We had some problems there with his application for his personal history forms getting lost in the fax machine. Anyway, Major Valverde stepped forward and we showed up at University of New Mexico and he took both tests one after another. I think he is here and he can describe to you what those tests involved and what it entailed. We've got Christine here to answer any specific questions, technical questions on what the tests do and how they are run and how each one is tailored to each individual officer. I think that can give you kind of a good oversight and overview as to what that process will involve and I think you can ask the Major about the stress that he felt that morning and the actual conditions. The breathing and the equipment that they are hooked up to on the treadmill and on the bicycle is a little bit different. It is almost like wearing scuba gear so with that we felt very comfortable and confident that the test that the University of New Mexico can provide would be something that we could adopt as part of our rule. So in your packets you will see our recommended rule change. It is fairly brief. The rule that would be changed comes under title 10 chapter 29 part 9 10.29.9.8. Not to lose everybody but paragraph C and then you drop down to Item # 2 subparagraph C there where the rule change actually starts. We also sent out an e-mail request soliciting a response from all Chief and Sheriff's and all satellite academies and I got two responses. Dr. Fons and Mark Mier responded with input on what they thought about the change that was being considered for the 1.5 mile run. So you got that in

your binder as well. Aside from that this discussion at this point is strictly that. Based under the rules the actual adoption of this would take place at a subsequent meeting and a formal public hearing would need a formal public hearing where we do the public posting for that. So at this point if you have questions for myself or Christine or for the Major please ask us.

Lt. Gonzales: Bernalillo County Sheriff's Department. For the Major, what was your general overall take on this?

Major Valverde: I'm trying to not be too technical and I will let Christine address some of the issues but I think what the 1.5 mile run is it measures your VO2 max capabilities compared to a fight for two minutes which is what you are trying to simulate. I think based on the treadmill and the bike, I don't see how anybody who is not physically fit being able to pass either one of them. I run quite a bit. I run sixty-five to seventy-five miles a week. I run marathons. I did that test that day and I actually told the individual that would be taking this test that I thought the 1.5 mile run would be easier than the bike test as an alternative. So when you are looking at trying to replace the 1.5 mile run. I don't think that either of these tests are going to be very easy for any individual that has not had some cardio vascular capability to pass it.

Mr. Perez: Gil. The issue basically is to have an officer who is fit. Fit means I've seen this thing about being able to engage in a fight for two and a half minutes. Where did that come from?

Gil Najar: In the initial job task analysis a survey goes out that asks three or four hundred questions about what activities do you engage in daily as a police officer. Then there is a subsequent questionnaire that goes out that this information is solicited from supervisors of these positions of these officers to kind of verify that in fact this information kind of a check and balance process. They then based on the repetition of responses those that have the highest number of correlations where the vast have a sixty percent across the board response to this activity. Sixty percent or higher of the officers engage in picking up stuff or sixty percent of the officers. So there has to be a frequency that occurs along with a verification that in fact is a task that the majority of officers do in fact perform verified by the supervisors. So unless an activity scored at that level or higher then it was not counted as a legitimate part of that job task analysis. So fighting was a recurrent activity that officers continuously in these surveys identified as they engaged in on a frequent basis high enough frequency to say that is something that you as an officer will get involved in on a regular basis. That is why when they looked at the final listing of all the tasks they developed the two obstacle courses. These simulate the things you will do as an officer and the validity of that was felt to be very high and very reliable for that. So we have two job tasks analysis. Where they ran into a problem then was you had this item called a simulated confrontation/conflict fight, the two minute fight. The

questionnaire kind of flushed that out as to what that involved and so the idea was rather than try to test that by having two people fight each other for two minutes how could they get a comparable measure of fitness level that would say that you could sustain that type of physical activity and survive it. So based on that job task analysis and those questions, that's where the fight simulation came up and so the decision then was to identify some type of physical activity that gets your fitness level up to that standard where it could be measured and predicted that they could show that if you were at this fitness level your likely to survive such an encounter.

Mr. Perez: Alright and that's not been challenged that two minute fight?

Mr. Najjar: No.

Mr. Perez: So far.

Mr. Najjar: And there has been requests and issues raised about the testing process and the consultants credibility and those kinds of things but nothing at least from the legal stand point in courts has arisen to challenge the use of that standard to our knowledge.

Mr. Perez: Ok.

Ms. Mermier: You know that the 1.5 mile run is used throughout the country and that the testing that we would do at the University of New Mexico is actually what the standards for the 1.5 mile run are based on. It's the gold standard or the actual measurement that the 1.5 mile run is estimation of that actual measurement. So if somebody could not run for some reasons that this would if not be equal be in terms of how easy it is to do and how much it might cost. Of course it's a little bit higher level.

Mr. Najjar: For that if you read Dr. Roberg's letter in there it will kind of describe how the actual field test in using the 1.5 mile run is not really as reliable or predictable as the laboratory condition testing is. We are getting a more accurate fitness level for the 1.5 mile run than you would running outdoors.

Chief Segotta: Gil I did read that letter. Does that mean that there is a cadet or somebody going through the Cert by Waiver Program that could raise that issue then? Because we are not testing them in the laboratory environment and demand or a second test if they are willing to assume the cost to cover that error factor there?

Mr. Najjar: And I think that is probably why the issue was skirted and there were previously alternatives allowed. I think when we looked at the rule it was a situation where there wasn't a provision for that. I think logically it seems that there should

have been a provision all along for something like that to occur. It is a more predictable more reliable test. I don't think we have a problem with incorporating that into the rule change so when an issue like that surfaces whether it is Cert by Waiver or the basic academy we can accommodate such a request with more reliable predictable testing information. Absent a rule change I don't know where we would be putting ourselves other than in front of court to have a judge decide whether or not that was something that should be available to an applicant.

Chief Segotta: Would altitude play a role in this? The testing is done in Santa Fe at 64 6500 feet. The lab is in Albuquerque at 5200 feet.

Ms. Mermier: 5500 or so feet or so yes that is correct.

Chief Segotta: So a person theoretically that doesn't meet the standard running the track in Santa Fe on the day that they run it. The condition of the weather, the number of pollutants in the air as compared to the laboratory could be quite different.

Ms. Mermier: That amount of altitude in people who are residents of New Mexico outdoors vs. indoors there may be somewhat of a difference. I believe we are talking about just someone who is really on the border of the standard anyway and there might be some altitude correction anyway.

Mr. Najar: I think when we talked with Dr. Roberg's about it there we do have some altitude corrections for that and those can be incorporated into the laboratory testing as well. This is anecdotal more than anything else but I know in what I saw the Major go through my gut feeling of the testing was that if you were within forty-five seconds of the standards so you passed it you had forty-five seconds to spare. I don't think you could pass the test at UNM. I think that is how much more reliable that test is as opposed to run. I think it is easier to do the 1.5 mile run and meet the standard than it would be to meet the same standard under laboratory conditions. That is I don't have any proof of that but just from what I saw that seems like a possibility.

Chief Segotta: Thank you.

Mr. Swagerty: Any other discussion, questions?

Chief Schultz: I have one question for Gil. Looking at the proposed rule change it talks about 30 days. Would it be 30 days because it is an exit standard, graduation, prior to certification, how would the thirty days run specifically when a request is made?

Mr. Najjar: That question had been raised because we had sent the initial draft to Zach to take a look at it. The initial draft that we had changed several sentences based on his input. The idea was that if you request an alternative to the test how much time do you have to do that six months, nine months, a year so he felt that we should put some type of time frame in that so if you have gone through the process and gotten a medical referral. You sent that up to the Director, your request is and the director responds and says ok you are approved to go to UNM for this alternative test. Thirty days should give you sufficient time to be able to do that. There is no magic behind the thirty days, it could be forty-five days. Thirty days seemed to be an adequate amount of time for you to do it. If not then the consequence would be you would have to re-submit your referral after thirty days. The idea being that if there had been some improvement in your condition. Now if this is a permanent condition its not going to matter your still going to request that alternative although there is that issue then at entrance level how did you get past the entrance level. If you have a permanent condition you can't run the mile and a half. Now that raises the question at the front end of the process as well. How we are going to handle a medical referral potentially at the front end says I can't run either. It's not a consequence of a twenty or twenty-four or thirty week academy that some type of condition that.

Suzanne Vigil: Excuse me. I believe Zach Shandler is calling in. NMLEA Board is this Zach?

Zach Shandler: Yes.

Mr. Swagerty: Can we hold onto the discussion and go ahead since they are on speaker phone doing that and then we can come back to that. Is that alright with everybody? There's no action on this anyway it is all discussion. So if we could go ahead with Zach.

Suzanne Vigil: Can you hear us clearly Zach?

Mr. Shandler: Not clearly no. Can you move the phone closer to the Vice-Chair?

Suzanne Vigil: How about now?

Mr. Swagerty: And Suzanne for the record you might add that Sergeant Remington is here so we do have more for a quorum. Zach can you hear us now?

Suzanne Vigil: Can you hear us?

Mr. Shandler: I can hear you clearly but not the Vice Chair.

Suzanne Vigil: Hold on, they are going to change seats and while they do that I am going to do a tape change.

Mr. Swagerty: We were on our discussion of the alternative fitness testing. So we are going to hold off on that Zach and we will come back to that after we visit with you for a little bit. We will go to the old business then. If you are ready for that. What it is, is a request for Candice Montoya to attend the San Juan Criminal Justice Authority Academy and Dustin O'Brien he is here present and if you could right here sir. I appreciate it. Zach can you still hear me fine?

Mr. Shandler: Yes sir.

Mr. Swagerty: Ok. Dustin O'Brien is here also and I guess he is going to present the request for Candice Montoya, ok.

Mr. Shandler: Ok.

Mr. Swagerty: Go right a head sir.

Mr. O'Brien: Chairman, members of the board I appeared at the September 27<sup>th</sup> meeting with this request but I had not gotten myself on the agenda so the board could not vote. I made a brief presentation then. The presentation was a request for an investigator that we hired at the 11<sup>th</sup> Judicial District Attorney's Office to attend the San Juan Justice Training Authority rather than the state academy. The primary reasons for that or the two most important reasons rather are the fact that she has been an employee since August so we have utilized her as an investigator to some extent so far. She is going to be needed to testify in upcoming hearings in San Juan County. We can accomplish that because the travel time between the San Juan College, where the academy takes place and the local courts is pretty insignificant. Where as if she were attending the academy elsewhere she may have to miss those hearings which could result in us being unable to prosecute some cases or that she would have to miss a significant amount of time training. She also was employed immediately prior to our hiring her as a Adult Probation Officer in San Juan County and she still has outstanding probation violations where she is the primary witness. We will need her for those prosecutions for those probation violations as well. In addition to that she is also a deputy, a field deputy medical investigator. She completed her training on October 5<sup>th</sup> and she is being utilized in that capacity in the county as well. One of the other problems we have is one of our, we employee normally four investigators one of those was just elected magistrate judge and another two just left the office. We've hired her and we have one investigator who was previously employed by our office. So right now we are down to two investigators and having her close by will be certainly helpful until we get other investigators hired. She is also a lifetime resident of the county and maintains a residence there and travel to and from the state academy would be a greater burden

on her than to travel to and from the San Juan County Justice Authority. My understanding is that this academy encompasses more hours than the state academy that the most recent schedule that I got indicates that it's 969 hours at this point although I don't think that has been approved by the training authority up there yet but that is what is anticipated to be the curriculum length. Which will be a little bit more than twenty-four weeks long. For those reasons we are requesting that the state allow her to attend the local academy and at the last board meeting my understanding is that the state academy did not have an objection to that.

Mr. Swagerty: Ok. Zach did you hear all that?

Mr. Shandler: Yes sir.

Mr. Swagerty: I'm sorry, I was not present at the last board meeting but was there some discussion on that at the last board meeting?

Mr. Shandler: I would defer to Gil Najar if he is there.

Mr. Swagerty: Gil, do you?

Mr. Najar: Right. At the last board meeting because we hadn't been able to place him on the agenda they could not act on it. The policy has been for all state agencies they are required to attend the academy in Santa Fe however the board on occasion on a case by case basis has made exceptions to that for situations and conditions such as these. So based on the request and the conditions here stated, we do not have an objection to the attendance of the Farmington academy by this individual.

Mr. Swagerty: Ok. Zach did you get all that?

Mr. Shandler: I did. If the academy has no objections and if it is ok with the board, I have no objection.

Mr. Swagerty: Board members do you have any questions or anything for Mr. O'Brien on this request. Comments, if not I will take a motion then to approve the request.

Mr. Schultz: Mr. Chairman I would like to make the motion to allow the exception for Ms. Montoya to attend the San Juan Academy.

Mr. Swagerty: I have a motion do I have a second?

Mr. Segotta: Second.

Mr. Perez: Second.

Mr. Swagerty: All in favor.

Board: Aye

Mr. Swagerty: Motion carries then. Mr. O'Brien Thank you.

Mr. O'Brien: Thank you chairman and members of the board.

Mr. Swagerty: Okay. Zach that takes care of that and we are going back to our discussion on alternative fitness testing do we need to get back with you when we go into our disciplinary matters.

Mr. Shandler: I'm here for the duration so.

Mr. Swagerty: Okay. Fine Thank you. Gil you want to go a head and finish any comments that you had on the discussion on the alternative fitness testing.

Mr. Najjar: Just I would like to summarize that basically in the binder you have the background information as to how we brought this issue before the board for discussion today. You've got the supporting documentation a letter from Dr. Roberg from the University of New Mexico. You've got a couple of responses one from Dr. Fons and one from Marc Mier from State Police. The rule and its entirety is included under the tab and I'd like I guess for discussion purposes just to read the specific change that is being discussed today. Under title 10 chapter 29 part 9 and we drop down to 10.29.9.8 paragraph C block 3 Physical Fitness and Emotional Readiness. We drop down there to sub paragraph 2 C as in Charles- Academy Fitness Exit Standard Alternatives to the 1.5 mile run. A student requesting an alternative test to the 1.5 mile run 60<sup>th</sup> percentile exit standard will complete the following tasks: 1. The student must obtain a medical referral from a licensed New Mexico physician identifying the medical reason for the request for an alternative to the 1.5 mile run exit standard with the physician identifying the alternative test requested (treadmill or cycle ergometer). The student must obtain approval from the Department of Public Safety by submitting a written request along with a medical referral to the director of the Department of Public Safety Training and Recruiting Division. Upon receipt of the Director's written approval the student will contact the approved medical facility and schedule for the approved alternative test. The student will have thirty days from the Director's written approval to complete the approved test. Failure to complete the test within the 30 days will require the student to re-submit the request to the Director with a new medical referral. Payment for the test will be the responsibility of the student or sponsoring agency. Upon completion of the test, the student will submit the written results to the Director. Approved medical facility and alternative tests. The University of New Mexico Hospital Exercise Physiology

Laboratory is the only approved facility for alternative testing. The alternative tests are limited exclusively to VO2 max test using indirect calorimetric with either the treadmill or cycle ergometer. The changes below that are basically paragraph numbering sequencing changes below that in the rule. That's all I have.

Mr. Swagerty: Ok. Is there any other discussion?

Frank Flores: Las Cruces. Once the cadet informs us that he is going to test on the treadmill or the bicycle 30 days prior, are we now required to have the facility available for that person to train since we are not getting a doctor's notice saying they can not run more the 1.5 miles? Do we now become liable on providing the treadmill or bike within our facility or what if the cadet just says well I can't run two miles because they aren't prepared for the exit?

Mr. Najar: I think what you would rely on would be the medical restrictions. It would be no different than what you are doing now. Whatever the doctor's restrictions would be for that individual.

Mr. Flores: Right but if we are going to allow them to fully run the 1.5 on the treadmill or the bike. We prepare them and we run a lot farther to prepare them for the 1.5 so are we now going to be allowed is that now going to be allowed to only run on the treadmill or the bike since they are now to give notice that they have a doctor's note.

Mr. Najar: I think you look at it from two perspectives. On the one hand you've got a certification exit standard that we are talking about here. On the other you have a program requirement under the block of physical fitness which requires a minimum of seventy two hours of fitness training. The design of your program then will dictate whether or not that person is eligible to continue in your program. If running is a key component of your seventy-two hour and the person can't participate then that judgment of that ability of that person to meet that seventy-two hour requirement then it will be something you will have to assess at that point. The design of your fitness program then dictates how they can be successful in completing that block of instruction. If an accommodation whether or not that be a legal requirement that you make for that within your curriculum, I couldn't answer that. I don't know.

Mr. Swagerty: Gil, let me ask a question. This has strictly discussion today so there is nothing we can do on it but where are we going on this. Earlier you said you wanted to bring this up for a vote at the next meeting. Is that correct or what are we still in the process of doing. We've only discussed this for four years. We've got to get somewhere.

Mr. Najjar: Zach can advise us as to the correct process for an amendment to the rules.

Mr. Swagerty: Did you hear that Zach?

Mr. Shandler: Sure. I guess the next step would be to go to a public rule making hearing. I guess would be scheduled at your next meeting and at that point you can accept written and oral testimony and you close the record. Then you could move to accept, to amend or reject the proposed rule.

Mr. Swagerty: Ok. That's another thing board. I kind of got a little premature there. Are we ready to finally go and do this? Is there still more discussion that we need to do on this? That is what I am trying to get at is trying to find where we need to go.

Mr. Najjar: Mr. Swagerty and board members and those in the audience. I think Officer Flores' point is well taken in that while we are specifically talking about an exit standard alternative to the 1.5 mile run, the repercussions of that can be and probably will be felt throughout the basic academy curriculum. We are talking about now if a person sustains an injury or needs medical attention and comes back with a referral from a doctor that limits certain participation in the academy environment. What is that going to do to the training and how will we be able to ensure that individuals meet that 800 minimum requirement of training. Logically it seems that well if I can qualify and meet the certification standards at exit then as an entrance requirement why can't I just use the treadmill and bicycle at entrance as well. So we are opening the door for that discussion that wouldn't be and is not part of the amended rule here that we are discussing today but I think as the academies and satellites have time to digest this and discuss this and look at it there may be additional issues that surface if we do this rule change. It seems very simple on it's face but I think those repercussions would not really seem what kind of actions cadets or applicants might consider based on the adoption of such a rule but it kind of puts us in a position where it seems that legally that option ought to be there for them anyway. If it is as we've said, strictly a fitness level that we are discussing. A fitness level of that individual that we can get that same information from these tests as we get from the 1.5 mile run then we should be able to be willing to accommodate that testing but I don't know what it does to a curriculum from that standpoint if on week four or week seven an individual comes in and my doctor says I can no longer run. Obviously if your fitness people on your academy staff would have to design potentially an individual fitness curriculum for that person so that at the end of the academy when they report to the University of New Mexico for that final test they will be physically fit and capable of passing it and achieving certification. That does put a burden on an academy to be able to accommodate that.

Sgt. Remington: Mr. Chairman.

Mr. Swagerty: Yes.

Sgt. Remington: Mr. Najjar. On C 2 the student must obtain approval from the DPS by submitting a written request along with a medical referral to the director of the Department of Public Safety Training and Recruiting. So the director is going to be responsible for making the decision whether this person can in fact take the test and then that is going to be passed back down to the department. Is the department going to have the ability to go back and say that the director of the DPS said that it was ok. I'm trying to think of liability and/or are they going to be able to say look the director said it was ok and now they've clearly looked at my situation and they've made the decision that it is ok for me to do this. So that if the department say's well we really don't feel that you're capable of completing this. The injury you sustained or the reason why you can't do the mile and a half is not. Am I making.

Mr. Najjar: I think I understand what you are saying. Which again, the director would be imposing a judgment he's made upon a satellite academy or upon an agency who might have reasons for not wanting that person to continue in the training process. They have their own medical experts and their own policies and procedures which might not agree with the determination that the doctor made that this person should be afforded this alternative test. I don't know how to respond to that if that situation were to occur.

Sgt. Remington: Mr. Chairman, I guess what I am trying to say is that for all the years that I have been on this board we have tried to steer away from making exceptions or saying that or trying to apply a different standard to one situation and then not another. Is it going to be as simple as the doctor checking a box saying yes I approve of this person going on ahead with the mile and a half test and then the director having to make a call or is going to be the director looking at all of the report and having to decipher what a doctor has said about this persons condition.

Mr. Najjar: Quality of control is probably the major reason why the former director stopped the process because what initially was supposed to be a physician and what's the definition of a physician. Is it a medical doctor, we can get into the statutory definition of that but when we started seeing nurse practitioners, physician assistants, chiropractors, all of these making those medical referrals to the director we felt like we were losing control of the quality control of that and his ability to make a judgment as to whether or not this was valid of what we see and anyone who is involved within the academy environment. If you see a cadet or an applicant go on an injury to a medical facility and come back with certain restriction or no restrictions there is always an issue with quality control there as well. I've seen cases where a fractured rib was not sufficient to put that person on restriction because that person did not want to get dropped from that academy process. So

they convince the doctor that they were well enough to continue in the academy. It does become a quality control issue as to and how do we account for that.

Sgt. Remington: My next question is and Zach can you hear me?

Mr. Shandler: Yes sir.

Sgt. Remington: My question is the student or the applicant goes out and gets the alternate test and they get approved and they get back to the department and the department says you know what that is great but just were looking at the totality of the situation we just really don't feel like in your situation that it is appropriate for you to do the alternative test. Is there anything legally built within this rule that would say or give the department the ability to say to look at it on a case by case basis and say we just don't feel it is appropriate for this candidate to go from the mile a half to the treadmill or the cycle.

Mr. Shandler: Mr. Chair I don't see anything in this proposed rule with that type of expressed language. Perhaps that is something when it goes to a rule hearing could be added in.

Sgt. Remington: But legally would a department be able to defend that kind of action like I said, on a case by case basis applying one standard to one person and having the ability to look at different situations and apply it to another.

Mr. Shandler: Mr. Chairman I think the officer raises some good public policy points and also our points of concern if you are a lawyer but I'm not sure that there is a right answer but I think he is raising good questions.

Mr. Swagerty: Ok.

Mr. Perez: Mr. Chair, I think that the weakness in this is that weakness that we find not only here in New Mexico but throughout the country and it is the business of doctor shopping. As you mentioned Physician Assistants, and nurses. I think that in the future we might consider that we determine a certain number of doctors who have been educated to what we have been going through and the standards that we are trying to incorporate here rather than having someone go through his own family doctor who doesn't know what we are trying to do here and thinks that the whole notion of physical training is useless or senseless. That undoes our whole system where if we have doctors that are if you get into this situation where you are injured and you think that you have a valid medical problem that you go to certain doctors and not any doctor. But anytime we say from a licensed New Mexico physician I think that is much too broad. The medical business itself recognizes that the same doctor there are different opinions from different doctors and that causes the problem to our whole system here. If we have certain doctors and I think the

federal government does it. You can't go to any doctor. You have to go to certain doctors that are approved because they know what the system is of what we are trying to do.

Sgt. Remington: Mr. Chairman could I. We're you done.

Mr. Perez: Yes.

Mr. Swagerty: Go ahead.

Sgt. Remington: Mr. Chairman, let me be blunt. The reason why I am asking this and the way that I am asking it is if I don't know if everybody remembers there was a patrolman from a department in the southeast corner of the state. His department was ok with him, the fact that he could not run the mile and a half in the prescribed time but they needed people out in the streets. They were it was unacceptable manning levels. Their manning levels were unacceptable but that department was ok with these alternative standards but then you go to another agency within the state. One that feels that they want to be a little bit more selective and they want to stay with the mile and a half standard no matter what. Would a candidate from the larger department be able to go back to the state board or the state academy and say hey wait a minute, the larger department says that I have to run that mile and a half. That I can not apply for an alternative test but this person down in the smaller department in the corner of the state they were allowed to do it. I guess that is what I am trying to get at Zach.

Mr. Swagerty: Did you get that Zach?

Mr. Shandler: Not the last sentence.

Mr. Swagerty: Would you repeat that?

Sgt. Remington: Zach, I guess what I am trying to say is that would the candidate from the larger department be able to go to the academy and say hey wait a minute, the candidate from the smaller department was able to go and do this alternative test but my larger department has said no. In fact you need to but that's not fair because the rules are set in place for. I am being applied a different standard than the person from the smaller department.

Mr. Shandler: Right. I think you've isolated the exact policy debate. Once you create an exception and then create a case by case within that; opens up discretion and possibly disparate treatment. As policy makers you'll have to decide does that make you more uncomfortable or are the fact that you have a black and white rule and you have officers absent in injury that can't be certified is that the bigger evil?

Mr. Swagerty: Ok. Yes.

Ms. Mermier: Mr. Chairman. I just want to remind everyone that these tests are probably harder than the 1.5 mile run as Mike had put it. I don't think that once word would get around that anyone would ever think that well it would be easier to accomplish. These are maximal test and will push people to exhaustion. So just to make that clear that if anything it is a harder test than the 1.5 mile run.

Mr. Swagerty: Ok. Just a comment from a different perspective of what it is. It sounds like what we are doing is we are trying to do away with the exceptions on the law that we have right now so we are trying to implement one. Now we are sitting her talking about making exceptions on that. So why even do the whole thing if we are going to make exceptions. Just leave it the way it is and forget it. The thing is, why are we making exceptions if we are going to do this alternative testing then you have to get clear, cut and dried and say look this is what it is. You either have this choice or this choice and then we don't have exceptions to this choice and this choice. Does that make sense? I know it does. Right. I mean what else do we need to do? Will we have another exception to this? Are we going to make another rule eventually later where we do something else? We have to decide on these things. Like I said, we've been doing this for four years. The mile and a half, we have the walk, we have the run now we have this new thing that we're implementing and everything. We've already been told it's probably more exhausting or more strenuous that what the other one is. So why don't we go with it and then cut the exceptions.

Mr. Valverde: So what your proposing then Mr. Chairman if I here you correctly is that you just add that as a part of it. The bike, you can do the bike, the treadmill or the 1.5 at the percentage level at entry and exit.

Mr. Swagerty: Yes. But forget the exception.

Mr. Valverde: Right.

Mr. Swagerty: There is no more of that. We can't do anymore. What we are doing is we can except ourselves to death here with these things and all these different things is what we are doing. We have to simplify it pretty soon. We can discuss it again for another four years if you want but that is where we are at.

Sgt. Remington: Mr. Chairman, I don't want to discuss it for another four years just for the record.

Mr. Swagerty: Good. Go ahead ma'am.

Ms. Mermier: Thanks Mr. Chairman. I mean the only thing that needs to be clear is that the treadmill and cycle would cost there department more.

Mr. Swagerty: Right.

Ms. Mermier: It is more money.

Mr. Swagerty: I think that is what the gentlemen back there was saying. If you are down south and you are up in the north and the north has it but the south doesn't have it. What is going to happen? You are going to send somebody up there and then your sitting here telling me well we got to add that exception in there because we have the altitude. We got to do this and we got to do that. Nobody wants to go to Red River and do it I know because it is almost nine thousand feet. So that is what I am saying is there, can we not have a central area where we could do it which is at the academy, Albuquerque or whatever. We have already gone through this once where someone who ran the mile and a half. They didn't pass it in Santa Fe. They didn't pass it in Farmington. They did not pass it in Albuquerque. So this is where we are at. So we are still doing this.

Mr. Najar: I think from our perspective also as a quality control issue. Just from the investigation and research we did. The only facility we felt comfortable with would be the University of New Mexico based on the equipment that is required for such a test. Based on the staff that is trained and experienced in conducting the test. Based on the risk factors because Beverly used to do the cycle test and had we had someone have a heart attack on that bicycle because we did not monitor it properly then we definitely would have assumed some tremendous liability there. So the caution from my perspective would be that if we are going to allow those additional tests across the board that the facility that is authorized to perform those tests be identified and the conditions and the protocols be clearly identified. Otherwise if I have a buddy and he need's to pass the bike test. He is going to pass the bike test and we saw some of that occur.

Mr. Swagerty: Ok. Let me ask you this, do we have that in the rules here? Where you request one or the other.

Mr. Najar: Not today.

Mr. Swagerty: If you don't pass the mile and a half and he say's I didn't pass the mile and a half. I want to do the bike next.

Mr. Najar: Not in rule.

Mr. Swagerty: So what are we doing on that too? That is another question that we need to.

Mr. Valverde: I think Mr. Chairman, Christine if you would correct me if I am wrong here but I would. If we ever went to that situation. I would give them the 1.5 mile run or bike test. Not the treadmill test that is discussed. I believe that you could. It is based on a physical limitation which would be possibly a hip or knee that doesn't allow you to run. The impact that you are going to have is going to be the same on the treadmill that you would on a run type environment anyway. So what you would look at is something that would be not impactful which would be the bike. So I would lean that way if we are trying to make that type of argument which I think makes much more sense. 1.5 mile run or bike test which is based on the physical limitation.

Mr. Swagerty: Alright.

Mr. Fons: I got a lot of different feelings about all of this fitness thing but to the point the major was making. I'm not sure to tell you the truth just on my experience as I've gone many years doing this, it seems like if somebody is so injured that they can not run a mile and a half, the odds of them being able to do a bike test are fairly minimal too from my perspective from what I have seen before. It seems like my whole issue with this is that I've written a letter in there. I think that there are some points made by the doctor that wrote you this letter saying that there are problems with the field test in terms of accuracy. What are we looking for? There is a twenty/thirty percentile difference in what that mile and a half may be telling you. They may be at the 40<sup>th</sup> percentile or they may be at the 60<sup>th</sup> percentile because of the inaccuracy of the field test. I'm not saying that the mile and a half is not a valid indicator. I don't buy the idea that this is a valid indicator of your ability to fight for two minutes. I've never seen, I don't even know how you can measure that. I'm not sure that has ever been proven any way shape or form other than somebody coming out here and saying that this is indicative. Somebody would be able to fight for two minutes. I think, I've never seen anything to substantiate that or give that any credibility whatsoever but I also believe that the mile and a half if we are looking at ensuring officers of the level fitness that they can perform this job. My whole argument is let's not give them alternative tests that require some scientific analysis up there because we are going to have all kinds of issues with that. Somebody comes in and says I can't run the mile and a half then we are going to have to make arrangements for the agency to send them up to Albuquerque. It's going to cost money, it's going to cost time what do we do with the time that they are sent up to Albuquerque to do this test when they are supposed to be engaged in instruction in an academy environment. We got to take two days to send them up there to take a test etc. etc. Those are all issues that I think are irrelevant to what we are doing. My whole take on it is and I've probably said this many times before various boards here is that I just don't believe that the mile and a half is the only way to assess physical fitness levels. I think that there are other field tests that Cooper which we have bought into for many years has put together percentile standards that I think

are applicable. It is not a big deal we can take them out and run. We can take them to do a bike test but it is not in a scientific environment. They are going out and ride a bike three miles within a period of time and you have the ability to do it right there at the academy. We can have them go swim half a mile or mile within a certain period of time if that is a workable in the university environment to get that done. They all test VO2 max. The bottom line is I think my understanding is that is what we are trying to test anyway is the VO2 max not the ability to run but the ability to sustain yourself from a cardiovascular endurance perspective. That is VO2 max. I just don't know that the analysis of the laboratory is a viable alternative to what we are trying to do. I agree with the chairman's comments that if we start saying well if we do it with this if they do that and if somebody does this then somebody wants to do that. We are just going to open up a can of worms that we are never going to be able to close. I think anyway. That is my perspective.

Mr. Swagerty: Ok. Any other discussion.

Chief Segotta: Mr. Chairman. I recognize why people pursuing an alternative to the 1.5 mile run because there has been a lot of discussion over a lot of years regarding this topic and being the newest member on the board I think what the bottom line is in cutting right to the chase is certain individuals or certain people in certain positions within organizations want an exception completely because what they feel that what they do on a day to day basis is not going to put them in this situation. So I don't know that any change to this is going to address any of the future concerns from those people in those particular positions with those agencies across New Mexico. So personally going either way with this makes no difference. You're going to have people that want exceptions to the standards because they don't believe that on a day to day basis or even a scintilla of percentage that they are ever going to perform that particular function and that has been what we have been skirting for years. If we are going to have standards for police officers in New Mexico then it applies to everyone and I don't know that we really need to adjust anything that we are doing. Pick the standard. The standard is you meet that percentile on entry and exit and that is it. If the individuals can't they can't but this is not going to be a dead issue because people are going to say I don't perform that function. I don't need to be at that fitness level. I need to be at the fitness level to push the pen on the paper and that is the issue that has been skirted for years. Personally, personal opinion newest member of the board pick the standards move forward address the issues with the other people if they can't meet the standards they can't be certified. That is an administrative issue for that employing city, county or what have you. They need to make the decision. Do they want there Police Chief to be an administrative police chief or a certified police officer carrying out those duties that they are entitled to do by law. Thank you.

Mr. Swagerty: Good. Any other discussion.

Mr. Perez: Excuse me. One question. Is there any fighting in the curriculum now?

Mr. Najjar: Not in the defined 800 curriculum but each academy can go beyond that 800 hours and there are some that continue to do boxing as part of their curriculum. Ground fighting, defensive tactics, those things which are included I would say are comparable to a simulated fight.

Mr. Perez: Simulated fight is simulated of course but barring taking them over to the State Pen and throwing them in I think they have a lot of willing competence there that would love to take them on. Why can't we have a simulated fight because again the fight is different because in the FBI they found in the big shoot out in Miami. Some people got hit in the hand and they were knocked out with a bullet. Other people got their arm shot off and they stayed conscious. The notion is can you teach bravery. That is the whole question and the FBI has dealt with that issue on an academic level. They are trying to train people to plan on getting shot. Then what do you do and it is a whole different mind set and you are training people to save themselves to survive. Unless you train them and put that into it your liable. It's not just wearing the uniform and being respected. You have to think about saving your life and shooting somebody else because all this business of concealed carry now. Everybody wants to carry a gun. The issue is are you willing to shoot somebody and kill them. That is a whole different question and most people don't think about that and I think that the academy that is what you have to deal with. You are going to be on your back one day possibly. What are you going to do and how do you look for that in your training to find that element. Will this one get up and fight. Just a note.

Mr. Swagerty: Ok. What's next? Where do you want to go from here Gil?

Mr. Najjar: I think we went through like and everybody says your aware of how far back this issue goes and we have got certain constraints that are legislative and certain that are budgetary we are kind of restricted on what types of approaches we might be able to take to this. Absent moving forward with a new job task analysis which would be six figures to conduct state wide. We are kind of stuck with what we have in place right now. Do we sell stuff like they are doing back east like the leopard challenge. Different methods and simulations obstacle courses that are used for determining whether or not individuals should be certified as law enforcement officers. All those things are out there that people are taking different paths to get to. I don't know that we are in a position to toss ours out or not other than this seems to be a fix for some individuals. It definitely won't fix it for everybody. I think we can modify this additionally for the public hearing. I think we need to restrict it a little more or broaden it a little more but I think we've come this far adoption of it is not going to at least initially here create us a problem by allowing the alternative of the bicycle.

Mr. Schultz: If I remember the discussions accurately from last time. What we are talking about here and it is very clear in this change is this is an exit standard. I think if we go back to our original intent and discussion from last meeting and keep this as an exit standard. Everything else stays the same. It takes away the argument as to what is going to happen in the academy. You still have all the other requirements. You still have to have your 72 hours of physical performance training. You still have to do everything else. I think if we just add a couple of additional words and this goes back to my earlier question about when would this be applied. You would have to make application within thirty days of completion of the academy and complete this alternative testing within thirty days. We have achieved our objective. We have a lot of time and money invested in our applicants whether it is through a full academy or a cert by waiver academy. This is just an alternative to the exit standard. After we have invested our time and our training for some reason they can not go and meet this 60<sup>th</sup> percentile in the mile and a half run with a valid medical reason. We trust in the director. The medical exemption request goes to the director. He or she will make the decision that they will allow the exemption and it happens with a specific amount time. We achieve what the original directive is and we are not reading a whole lot into this. I think that would probably solve a lot of this discussion that we are having here today.

Mr. Valverde: I'm comfortable with that. I think there is some language that obviously needs to be added in here. I agree with some of the comments early on where we need to kind of limit the doctor's of our choice. We kind of have a select number that we can use. One in the south, one in the southwest, southeast, northeast, northwest that we have confidence in. Again, like you said it is an exit standard. In the beginning they still have to meet the initial standard going in without any physical limitations. So what we are and we see this everyday even at our academy. I've got people that are going to the doctor daily and I am praying to god that they are going to be able to graduate. We do make a modification because they still have to meet the current standard that is in place. We got them on a bike or we got them walking or we got them doing something because they still have to meet this 60<sup>th</sup> percentile standard exit right now. I think it is doable chief. I think you are correct. I think there is some things that we need to tweak and play with but I think again I would also going back to talking with Christine and Dr. Roberg, I don't think we have to necessarily add a myriad of tests. I would be comfortable having done both that I would just go with the bike test. Again, if it is an impact type injury that is preventing them from running the 1.5 mile then the bike test would be a good alternative and limit it at that.

Mr. Swagerty: Ok.

Mr. Najjar: I think when we look at the whole development of the medical forms, the 17 page medical form. Now, when the initial job task analysis and that job description surfaced from that study. That job description was given to a committee

made up of doctors and I think they were all from the University of New Mexico but based on the job that police officers do that medical examination form is what is completed at entrance. Which the doctor at the very last page of seventeen says this person has no restrictions and can perform the job as a police officer and I think that if something occurs subsequent to that then we focus on the exit standard and that is where we would try to make that accommodation for that.

Mr. Swagerty: Ok. Let me see if we can do something here. Like I said we have discussed this for four years and it is still going on in a discussion and it sounds like we probably still need to discuss it some more. If we put it on the agenda for the next meeting, even if we were to vote on it and the other ways that we do, you have to remember, even on a vote, if it is voted down and asked to go back, that is still done but at least were moving forward to do something that we need to do eventually which is to get somewhere. The only thing I am asking board is that we put this on the next meeting. If we put it on for discussion again, then we are going to keep discussing it and then we won't be able to vote on it or do anything. So, what I am asking is to put on the meeting for the next meeting not as a discussion item but as a business item and then when we go from there and the information that we have given you now and all the things we have talked about. You know the doctors, all these different things, we put all those things in there this time around and we have to tweak it again, we can still tweak it again. We can vote it down and we can go on to the next one. Eventually, we might get to where we vote on it and it might happen.

Mr. Perez: So moved.

Sgt. Remington: Second.

Mr. Swagerty: I have a motion and I have a second. All in favor?

Board: Aye.

Mr. Swagerty: Ok Good.

Mr. Najjar: Zach are you still there?

Mr. Shandler: Yes sir.

Mr. Najjar: For clarification then, does this comply with the requirements for the Public Hearing and notification.

Sgt. Remington: We schedule our next meeting.

Chief Schultz: That will be a Public Hearing.

Mr. Swagerty: It will be a Public Hearing, the next meeting.

Mr. Shandler: We will work together to get the notice proper and enough time to have a Public Hearing next time.

Mr. Najar: My question is since there is a discussion item that details the specific amendment do we need to clarify that or can we just do that at the Public Hearing.

Mr. Shandler: At some point, we need to publish something for the public to review and we can discuss that off line about what it will actually look like.

Mr. Najar: Ok.

Mr. Swagerty: The wording that will use.

Mr. Najar: Right.

Mr. Swagerty: The wording that we will use ok but it will still be alternative fitness testing so that everyone knows and has the opportunity to be there. Ok. Alright then, let's move on to new business then. The ratification and certification for law enforcement officers. Major do you have that.

Mr. Valverde: Yes we do. It is in tab 9.

Mr. Swagerty: It's certification number 06-0132-P to certification number 06-014-P.

Mr. Valverde: There is one more on the back page sir.

Mr. Swagerty: One more on the back page, I'm sorry. So change that last part to 06-0165-P.

Mr. Valverde: Correct.

Sgt. Remington: Move to accept the police officer certification as noted.

Mr. Perez: Second.

Mr. Swagerty: All in favor?

Board: Aye

Mr. Swagerty: Any oppose? None motion carries. Ok, at this time what we have is the disciplinary matters and Betsy is here.

Mr. Holmes: I was wondering if we could set up a table before we start on the disciplinary matters.

Mr. Swagerty: Do you have where you can take two or three minutes for a break?

Mr. Shandler: I am all yours for the rest of the day.

Mr. Swagerty: Ok. Don't go away then.

Mr. Shandler: I won't.

Mr. Swagerty: We will take a couple of minutes break and then we will go on then.

Board breaks while Betsy Salcedo prepares.

Mr. Swagerty: We will start with Disciplinary Matter # 10. Betsy if you want to go over that. It is the request to reconsider five year revocation.

Ms. Salcedo: That is a request made by the Mayor of Carrizozo so that basically was put on the agenda in accordance with the rules however, I object to that and.

Mr. Coppin: Can you speak into the mic?

Mr. Shandler: Betsy can you come closer?

Mr. Swagerty: Betsy, can you come closer to present these.

Ms. Salcedo: That was presented and asked to be requested on the agenda by Mayor Zamora of Carrizozo. I don't believe the Mayor Zamorra is here. I object to the reconsideration of Mr. Michael Howard on this matter. The board has already decided to revoke him at I think it was like three hearings ago so he is basically revoked at this time and we went to hearing and the facts were egregious if the board wants me to remind you of those facts I can. We oppose it and I don't see the Mayor here to present why the board should review the revocation.

Mr. Swagerty: Ok. Is there anyone here from Carrizozo? Yes sir.

Mr. Tate: May I approach the microphone.

Mr. Swagerty: Go right ahead and we will go from there.

Mr. Tate: My name is John Tate I am a resident of Lincoln County but I would like to say I live in the greater Carrizozo area. I am on there fire department and Mayor

Zamora. It is true, he is not here, he meant no disrespect to the board but he had a commitment based on some election work that was left over and he could not arrive. If I can at least speak as a citizen or speak for him I would like to.

Mr. Swagerty: That would be fine briefly.

Mr. Tate: Yes sir, very briefly.

Mr. Swagerty: Ok.

Mr. Tate: There are two points that I wanted to present. One I don't know the background of Mr. Howard. The board does. I don't. I only know him from the last year and a half. I worked with him when he was both a patrolman and a police officer as a chief in Carrizozo and for emergency services. I worked with him when I was and still am a part of the fire department there. The experience that the town has had and certainly the experience that I have had with Michael Howard has all been positive. We found him to be personable and conscientious and found him to be honest. I have not encountered any moral traits that we could see that I could see as being deleterious or unfit for a police officer. The second thing I would like you to consider is that he has moved into our community. He lives there. He is one of us and that flows to the other major perspective which I believe Mayor Zamora mentioned. Carrizozo needs good police officers. The pay in Carrizozo is bad, ten to twelve dollars an hour, there are no benefits and the workload is atrocious. I think all of you know if you want to have twenty-four hour coverage you have to have five people. Well we don't have usually two or three police officers in Carrizozo. It is usually two. So a person who is a police officer is called out constantly. Anybody that wants to, we don't get good officers and keep them. Mike Howard was a state police officer. He had excellent training. He has excellent standards, excellent background and for some reason he is willing to stay in Carrizozo. The town of Carrizozo would benefit by having him as a police officer and I want the board to consider that in addition to whatever castigation/punishment/remedial work is being done by his suspension as a police officer actually turns out that you are also penalizing Carrizozo and I wish you would consider that.

Mr. Swagerty: Ok.

Mr. Tate: Any questions.

Mr. Perez: Your name sir.

Mr. Tate: John Tate- TATE.

Mr. Swagerty: Thank you sir. We are going to move on to number 11 real quick Betsy.

Betsy Salcedo: Number 11 is the matter of Demetrious Anagnostakos. This is a settlement and if you look at your binder. The settlement that is contained in your binder is not the final agreement. Initially we had thought in this case to offer a retroactive suspension and a probationary period for one year. However.

Mr. Shandler: Betsy, can you speak into the phone.

Ms. Vigil: He can't hear you.

Mr. Swagerty: Betsy, could you.

Ms. Salcedo: Let me get all my stuff.

Mr. Swagerty: She is going to move up here Zach.

Ms. Salcedo: The settlement contained in the binder is basically the initial settlement that was contemplated. However, the final settlement is different and what we are proposing in this matter Demetrious Anagnostakos about four years ago was reviewed internally by his department for misconduct related to calling a minor at the time she was seventeen and basically he had called her with the pretext that it was in pursuance of his law enforcement duties. However, he never documented any of this and he did this all on his own. Pretty much her mother reported him because the daughter said she didn't want him calling her. The victim who was seventeen and essentially there was many conversations occurring between him and the girl that were sexual in nature. Essentially the reason why he agreed to settlement was because he did agree that he should have terminated any further contact with her once it got to that level. The main issue of concern was that like I stated, there was no indication in what respect this was performing his law enforcement duties. He didn't document it. He did it all on his own and essentially the discussions were not really focused on that but focused more on his personal interest and he admitted that there were personal interests was one of the reasons why he was calling her. So what we did we gave him a retroactive suspension and an ethics course and essentially since he hasn't committed any new incidents and nothing else has happened within the last four years. The incident occurred four years ago. We felt that an ethics course to be determined or reviewed by the director needed to be completed within six months of the boards signing off on the order. So that is what we are proposing and the probationary period we deleted that and instead we are going to go ahead and insert the ethics in that and we will present you with the order. Are there any questions?

Mr. Swagerty: No. ok. Is Demetrious here? No. Ok. Let's move on then.

Ms. Salcedo: The next item on the agenda is William Bryant. This is a misconduct that was presented by or was done by Anderson Clippert who is also an assigned

assistant to the Attorney General to the board. Mr. Clippert essentially worked this case and this went to informal hearing. A stipulated order of retroactive suspension is included in your binders for final approval. Essentially we are asking the board to go ahead and if you look at the NCA on page 5 of 7. He was with the Santa Fe Police Department. I'm not sure if he is still with them.

Mr. Holmes: No.

Chief Schultz: He resigned.

Ms. Salcedo: He is not but the allegations stemmed from using his gas card. There was a criminal investigation and essentially his argument was that he had meant to pay them back. Everyone was doing it that he did not mean any dishonesty or fraud. He did pay them back and that was essentially why we felt that this would be the most appropriate sanction by the board.

Mr. Swagerty: Ok.

Ms. Salcedo: Item # 13 Jeannine Chavez. This was also worked by Assistant Attorney General Anderson Clippert. It is being presented to you as a Default Order of Revocation. We went ahead and forwarded her the Notice of Contemplated Action indicating that we had a report of misconduct on her and she did not respond to our NCA or the Notice of Final Decision. Essentially we are requesting the board enter a Default Order in this matter. The allegations stem from Aggravated Driving while Intoxicated, Revoked License, Open Container, .17, we never heard from her and if she wants to come back and say that she didn't receive notice or ask the board to re-open then you always have that option but essentially she did not respond. So we need a final order so I can close this case.

Mr. Swagerty: Is Jeannine here present? No. Ok. Alright then.

Ms. Salcedo: Item # 14 is Michael Eiskant. Again, the attorney that worked this case was by Assistant Attorney General Anderson Clippert. I am presenting it to you today and essentially Mr. Eiskant. We met informally with him after issuing a Notice of Contemplated Action and he met with Acting Director Valverde about the misconduct. We felt that the imposition of this Stipulated Order would satisfy sanction and be appropriate. So essentially he has agreed to a month retroactive suspension of 20 days starting on. Which he actually did start on July 20, 2005 and ending on September 23, 2006. He agrees to complete an ethics course which must again also be approved by the director within six months of the board entry of this order. He also agrees to a one year probationary period. So we are asking the board here to go ahead and approve this stipulated order. The facts in this case related to actually his investigation or criminal sexual penetration, false imprisonment, the district attorney office commenced prosecution this case

ultimately did not go anywhere. I believe the victim was uncooperative. In this matter, we do not feel that we have the victim to present in this matter. The victim was an undercover, she was not an undercover officer, she was an informant for narcotics and essentially he agreed that he exposed himself to her. He should not have done that. That is why he agreed to the settlement because it indicates a lack of good moral character. That is why we were able to work this out with him. I'm not sure if he is working anywhere.

Mr. Valverde: He is still employed with Santa Fe Police Department and he has done his discipline there with them twenty-days and continues to work with them.

Mr. Swagerty: Is Michael present? No. Ok.

Ms. Salcedo: Next item on the agenda is item # 15. This is Pete Gallegos. This was also worked by Assistant Attorney General Anderson Clippert. We are asking the board to approve a default order of revocation based on the failure of the respondent to respond to the allegations contained in the NCA and essentially if you look at the end of that tab towards the back of the page this related to charges of larceny. The value of, this is also gasoline belonging to another which was New Mexico Tech it says. This essentially was charged criminally and he did enter a plea to the charge of. He pled guilty, he got six months probation. He pled to one count of larceny less than a hundred dollars, theft of five gallons of gasoline, petty misdemeanor. He never responded and you know we could have worked something out with him or talk to him about this incident but he never responded so we need to close this one with a default order.

Mr. Swagerty: Ok. Is Mr. Gallegos present? No. Ok.

Ms. Salcedo: Item # 16 being presented is Juan Griego. Mr. Griego was involved in an incident up in Red River, New Mexico in 2002 with several other SID agents. He is currently an agent with the SID Special Investigations Division. He is a Sergeant. He has been promoted since the incident. Essentially we offered him a pre NCA settlement agreement. Essentially he is agreeing to accept a reprimand from Cabinet Secretary Denko disciplining him for not reporting the incident. It was fully reviewed by myself. I met with Juan Griego about the incident and basically I believe this is appropriate. He also understands the fact that it should have been disclosed. The problem was that he would have been reporting the director of SID and another individual who was the son to the Chief at the time of the New Mexico State Police. So I think there was so many factors that put him in a bad predicament. He had only been with SID for about a month when this happened. He was not intoxicated as alleged that the others were. His involvement is minimal with think this is appropriate based on the facts that are specific to his case. We ask the board to approve this so we can close this on Mr. Griego. Are there any questions.

Mr. Swagerty: No. Is Mr. Griego present? No. ok.

Ms. Salcedo: Item # 17 is before you. Barton Hosteen. You all saw this matter the last time we met. Mr. Hosteen since we last met has met with the director in regards to the allegations which included obtaining two arrests and one conviction while driving under the influence in Arizona. He works for the tribal Navajo nation. However, he has an Arizona and a New Mexico certification. We met with him and discussed with him our concerns which is his use of alcohol. We essentially discussed or we told him we would propose some type of resolution. We offered him a Stipulated Order. Essentially what the terms are one year revocation of his New Mexico certification and he has essentially agreed to that. I just got the fax right now and then after that he will be on three years of probation during both the one year revocation and I believe the three year probationary period. He will be submitting to random urinalysis for detection of alcohol. He has reported to us that he has not been consuming alcohol but we told him that we needed some type of assurance and he agreed to the random urinalysis. I agree those are the terms and ongoing both individual and group counseling such as Alcohol Anonymous. Those are the terms. I just called that settlement. We will present you all the stipulated orders at the end. Are there any questions on this one Item # 17.

Mr. Swagerty: Is Mr. Hosteen present. Ok.

Ms. Salcedo: Item # 18 we should probably move this one. This was the one that went to hearing and I think you have to go into closed session on this one.

Mr. Swagerty: Ok.

Ms. Salcedo: So I will skip that one.

Mr. Swagerty: Ok.

Ms. Salcedo: Item # 19 is Paul Ulibarri. I did not work this case. The case was worked by Mr. Clipper. Mr. Clipper essentially issued the NCA alleging misconduct and in this particular matter, this officer had been employed with New Mexico Tech. His last date of employment was July 1, 2005. I am not sure how that happened it just says inactive. Default Order of Revocation. He did not respond to our Notice of Contemplated Action alleging misconduct at all. So essentially we ask the board for final approval. This also related to a larceny allegation. I think it was similar to the one I just presented and it also involved the use of gasoline stealing. There was about one, two, three, four, five counts that went before the magistrate court. I believe there was similar to the other case a judgment and sentence and a plea and disposition on the back of your tabs on that one. He plead to count one, two and five larceny under \$100.00. These are all acts of dishonesty or fraud and we have the authority to go ahead and issue a sanction or to enter a default order. Again, if

he wishes to contest the matter he can request the board reconsider the matter but at this point we want to close this case and essentially he was sentenced to Larceny, he was sentenced to 364 days unsupervised probation.

Mr. Swagerty: Ok. Mr. Ulibarri present? No. Ok.

Ms. Salcedo: Item # 20 is being presented to you. Jerry Haskins we started working this case and we felt that there was a chance we would have a settlement. However, although we have offered it, we haven't heard from him. So this one is going to have to be deleted from board action today.

Mr. Swagerty: Number 20?

Ms. Salcedo: Yeah. So we do not need any board action on that today.

Mr. Swagerty: So you want to delete it.

Ms. Salcedo: Yeah. That is it. Is there any questions on any of these cases before you go into closed session?

Mr. Swagerty: No. Ok. At this time then board what I would like to get is get a motion to go into Executive Session at 10:50.

Sgt. Remington: So moved.

Mr. Perez: Second.

Mr. Swagerty: All in favor?

Board: Aye

Mr. Swagerty: Any oppose? None. Motion carries.

Mr. Shandler: You need a roll call vote.

Mr. Swagerty: Ok, I am sorry. Roll call vote.

Suzanne Vigil: Attorney General Patricia Madrid (Absent)  
Acting Chairman Assistant Chris Coppin (Absent)  
District Attorney Donald Gallegos (Absent)  
Chief Raymond Schultz (Present)  
Sergeant Jeff Remington (Present)  
State Police Chief Faron Segotta (Present)  
Craig Swagerty (Present)

Matt Perez (Present)  
Chief Mike Toya (Absent)  
Sheriff John Paul Trujillo (Absent)

Mr. Swagerty: Ok. We will take a couple of minutes and then we will get started again.

Mr. Swagerty: We are ready. So you want to go ahead.

Sgt. Remington: I'll make a session to go back into session.

Mr. Perez: Second.

Mr. Swagerty: I have a motion and second and I will have a roll call vote please.

Suzanne Vigil: Attorney General Patricia Madrid (Absent)  
Acting Chairman Assistant Chris Coppin (Absent)  
District Attorney Donald Gallegos (Absent)  
Chief Raymond Schultz (Present)  
Sergeant Jeff Remington (Present)  
State Police Chief Faron Segotta (Present)  
Craig Swagerty (Present)  
Matt Perez (Present)  
Chief Mike Toya (Absent)  
Sheriff John Paul Trujillo (Absent)

Mr. Swagerty: And for the record so everyone knows. The discussion in executive session was only on the disciplinary matters that were brought for us today Items # 10 – 19 on your agendas. That was the only thing discussed. Ok. Zach you want to go ahead.

Mr. Shandler: Sure, the first item was a request for Reconsideration of the Revocation of Mr. Howard. You heard on the record that your prosecutor objects to that on grounds that the board has already made this decision and there is not substantial evidence in the record to justify re-opening the case. Therefore, the board has the option of making a motion to deny the request to reconsider.

Sgt. Remington: so moved

Mr. Perez: Second.

Mr. Swagerty: I have a motion, I have a second. All in favor.

Board: Aye.

Mr. Swagerty: Motion carries.

Mr. Shandler: On the next item your prosecutor has presented a Stipulated Order between the two parties. She explained in open session the agreements and it's been presented before you in your packet. Unless you have any further questions, you can make a motion to accept the stipulated order of agreement.

Chief Segotta: Mr. Chairman, before we do that I need to recuse myself this and Mr. Anagnostakos is currently an employee of the New Mexico State Police.

Mr. Swagerty: Ok.

Mr. Perez: I move that we accept this stipulate order of suspension.

Chief Schultz: Second.

Mr. Swagerty: I have a motion, I have a second. All in favor.

Board: Aye.

Mr. Swagerty: Any oppose? None. Motion carries. Number 12 Zach.

Mr. Shandler: And did you ask for any recusals on that one.

Mr. Swagerty: Oh I am sorry, no I didn't. Are there any recusals?

Chief Segotta: Yes.

Mr. Swagerty: Yes we got that for the record.

Mr. Shandler: The next item on the agenda is Mr. Bryant. Again your prosecutor has presented a Stipulated Order of Agreement and has explained that in open session and also provided the stipulated order of retroactive suspension in your packet. So it is now for you to accept or reject the stipulation.

Mr. Perez: I move that we accept the Stipulated Order of Suspension.

Chief Segotta: Second.

Mr. Swagerty: I have a motion. I have a second. All in favor?

Board: Aye.

Mr. Swagerty: Ok, motion carries. Alright number 13.

Mr. Shandler: Number 13 is a default order of revocation. The party just never responded to any of the requests. You can now make a motion to default by revocation or revocation by default.

Sgt. Remington: Mr. Chairman for the record I am going to recuse myself.

Mr. Swagerty: Ok.

Mr. Perez: I move that we accept the Default Order of Revocation.

Mr. Swagerty: I have a motion. I have a second.

Chief Segotta: Second.

Mr. Swagerty: All in favor?

Board: Aye.

Mr. Swagerty: Ok, motion carries. Alright number 14 the Disciplinary Matter of Michael Eiskant.

Mr. Shandler: You have in front of you a Stipulated Order of Agreement that you have heard in open session the facts and there is a proposed stipulated order although there is a question about the stipulated order. So is the prosecutor in the room.

Ms. Salcedo: Yes I am.

Mr. Shandler: So if she could step up to the phone and look at page 2 around 4b.

Ms. Salcedo: Hold on. Let me just look at it. Ok.

Mr. Shandler: I believe somewhere in the document is talks about a twenty day retroactive suspension right there but then it has the dates that don't seem to add up to twenty days. So was it twenty days or was it much longer?

Ms. Salcedo: No it was twenty.

Mr. Holmes: It was twenty days. Ten hour days.

Ms. Salcedo: It was twenty days. It just started on July 2 and it ended on September 23 but it wasn't consecutive meaning it occurred during this time period. I would have had to list every single day and I just said it began on this date and end on that but it occurred during that time period.

Mr. Shandler: Yes I get it. Thank you. The board has that option of accepting the settlement agreement or if they think they need some more information or if they think the sanction of twenty days retroactive isn't appropriate, the board could deny acceptance and send it back to the prosecutor for a re-negotiation. So you have several options on this one.

Mr. Perez: I move that we reject the Stipulated Order of Suspension and that it be returned to the prosecutor for reconsideration.

Chief Schultz: Second.

Mr. Swagerty: I have a motion. I have a second. All in favor?

Board: Aye.

Mr. Swagerty: Any oppose? None. Motion carries. Ok. Alright number 15 then the matter of Pete Gallegos.

Mr. Shandler: Number 15 is a default as your practice you can issue a Default Order of Revocation.

Sgt. Remington: So moved.

Mr. Perez: Second.

Mr. Swagerty: I have a motion. I have second. All in favor?

Board: Aye

Mr. Swagerty: Any Oppose? None. Motion carries. Ok. Number 16.

Mr. Shandler: Ok. Number 16 you prosecutor has presented a Stipulated Order of Agreement. In open session she has explained the stipulated agreement and provided it to you in your packet.

Ms. Salcedo: This is Juan Griego.

Mr. Swagerty: Yes.

Mr. Shandler: It talks about I believe a Letter of Reprimand which would be consistent with the Cabinet Secretary of the Department of Public Safety John Denko's action. So you have the option to accept or reject the Stipulated Order of Agreement.

Chief Segotta: Mr. Chairman.

Mr. Swagerty: Yes, one question.

Chief Segotta: I need to recuse myself.

Mr. Swagerty: Ok. I will also recuse myself. At the time I was the Mayor.

Mr. Shandler: For the record there will still be a quorum of people voting just to of them will be marked recuse.

Sgt. Remington: Mr. Chairman. I make a motion to approve this Stipulated Order of Agreement.

Mr. Swagerty: So I have a motion, I have a second.

Chief Schultz: Second.

Mr. Swagerty: Second Chief Schultz. Ok all in favor?

Board: Aye.

Mr. Swagerty: Any oppose? Ok motion carries. Thank you. Number 17.

Mr. Shandler: Number 17, Officer Hosteen, you have a settlement agreement in front of you. In open session you heard a presentation of that. In your packet you have the Stipulated Order of Revocation for a one year period. It was also in open session at the last meeting a discussion of Mr. Hosteen's conduct and he appeared. So your option is to accept this Stipulated Agreement or to reject it.

Mr. Perez: I move that the Settlement Agreement be accepted.

Mr. Swagerty: I have a motion do I have a second.

Chief Segotta: Second.

Mr. Swagerty: All in favor?

Board: Aye

Mr. Swagerty: Any oppose? None. Motion carries. Ok number 18.

Mr. Shandler: Number 18 you have in your packet the hearing officer's report regarding Miguel Rodriguez. The board has had an opportunity to review the

hearing officer's report. It is five pages which list the underlined facts. The finding of facts and the conclusion of law and the recommended decision. The finding of facts does point out and this is finding of facts twelve that respondent kissed a twelve year old minor and the board could take judicial notice that the person was twelve years old and there is certain sanctions that are more severe for someone in the minority and of that age. It has also been the boards practice to administer sanctions for crimes of a sexual nature. So the board can review the recommended decision of the hearing officer but if that recommendation is not consistent with your past practices of how you administer discipline, the board can based on your review vote for a more severe sanction.

Sgt. Remington: Mr. Chairman.

Mr. Swagerty: Yes.

Sgt. Remington: I would like to make a motion that we revoke Miguel Rodriguez's certification for a period of five years.

Mr. Perez: Second.

Mr. Swagerty: I have a motion and I have a second. All in favor?

Board: Aye.

Mr. Swagerty: Any oppose? None. Motion carries. Alright Zach number 19.

Mr. Shandler: Number 19 is Paul Ulibarri. Here is a default as he never responded. So you can default him.

Mr. Perez: I move that we accept the default order of revocation.

Sgt. Remington: Second.

Mr. Swagerty: I have a motion and I have a second. All in favor?

Board: Aye

Mr. Swagerty: Any oppose? None. Motion carries. Alright. On the agenda we will delete number 20 which is the matter of Jerry Haskins until further review with Betsy. Is that correct?

Ms. Salcedo: Yes that is correct.

Mr. Swagerty: Alright. So the next thing we have on the agenda is the schedule of the next meeting. Zach we have met our commitments for the year of all our meetings, is that correct?

Mr. Shandler: I believe this is your fourth quarterly meeting yes.

Mr. Swagerty: So our next meeting would be in the year 2007. Is that correct?

Mr. Shandler: Yes. The only thing that would hold you back would be if the prosecutor had a case that had to get to you before January 07.

Mr. Swagerty: Right. Is that.

Ms. Salcedo: I don't believe there is one that has to be reviewed before January 2007. We just finished a hearing. The report will be due December the 7<sup>th</sup> and then you have ninety days to issue your order on the report. So we are ok.

Mr. Swagerty: Ok. Did you hear that Zach?

Mr. Shandler: I did not.

Mr. Swagerty: Betsy says she has one going on right now and she has gone through it but it is not due until.

Ms. Salcedo: The report is not due until let me get the specific date.

Mr. Swagerty: The specific date so that it helps.

Ms. Salcedo: The Hearing Officers report is not due until December 7, 2006 because he has thirty days from November 7<sup>th</sup>. So then after that my understanding the board has ninety days to review the matter and then enter its order.

Mr. Shandler: The board has sixty days after it received the hearing officer's report. So under either calculation that would take you comfortably into January.

Mr. Swagerty: January ok.

Ms. Salcedo: Yeah.

Mr. Swagerty: Ok, so board is January a good time that we would want to have our next meeting for 2007.

Chief Segotta: Do it before the legislative session starts which is the 17th of January I believe.

Mr. Swagerty: That needs to come into consideration too Zach. So we will have everybody there.

Mr. Shandler: I will defer to the board at that point. I will have a new supervisor so I am hoping to keep the assignment but it may be someone else.

Mr. Swagerty: Ok. Any suggestions?

Mr. Valverde: That week is a Monday, January 9<sup>th</sup>, Tuesday, Wednesday, and Thursday of that week. The session starts on the 16<sup>th</sup>.

Chief Segotta: Sixteenth, that is correct.

Mr. Valverde: Sixteenth is a Tuesday so you would only have Monday of the next week.

Mr. Christopher: The fifteenth is a holiday.

Mr. Valverde: The fifteen is a holiday. So I think your best bet is the week of the 8<sup>th</sup> – 12<sup>th</sup>.

Sgt. Remington: The eleventh. To be consistent we have tried to have our meetings on Thursday.

Mr. Swagerty: Yeah.

Ms. Salcedo: Thursday the eleventh.

Mr. Valverde: Thursday the eleventh tentative.

Mr. Swagerty: Tentative yes.

Mr. Valverde: Tentative.

Mr. Swagerty: Yes.

Mr. Valverde: Ok and then does anyone have any idea on locations.

Ms. Salcedo: Albuquerque.

Chief Schultz: We are always available.

Ms. Salcedo: Santa Fe or Albuquerque.

Mr. Valverde: I think the Chief has just offered his facility for us.

Ms. Salcedo: Well it is going to be winter and that is the only thing that I am worried about and I have to drive. It's up to you that drive too but it is winter. Not in the mountains.

Mr. Swagerty: Ok.

Mr. Valverde: Albuquerque tentative.

Mr. Swagerty: Is that good Chief?

Chief Schultz: Yes sir.

Mr. Swagerty: Ok. Zach did you hear that? Tentatively, January 11<sup>th</sup> in Albuquerque.

Mr. Shandler: Ok. I will relay that to the new Attorney General elect.

Mr. Swagerty: Ok. Alright next thing on the agenda is adjournment. That is all.

Sgt. Remington: Motion to adjourn.

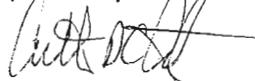
Mr. Perez: Second.

Mr. Swagerty: All in favor.

Board: Aye.

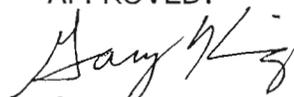
Mr. Swagerty: Good motion carries. Thank you.

Respectfully Submitted,



Arthur D. C. Ortiz  
Director

APPROVED:



Gary King,  
Attorney General