

KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS AND TRAINING
1999 N. AMIDON, SUITE 350
WICHITA, KANSAS 67203
316-832-9906

IN THE MATTER OF:)
)
)
JAMES PHLIEGER,)
 Respondent.)

Case No. 2020-0134
Certification No. 21909

**CONSENT AGREEMENT
AND
ORDER OF REVOCATION**

Now on this 20th day of August, 2020, the above-referenced matter comes on for consideration by the Kansas Commission on Peace Officers' Standards and Training. Pursuant to the Kansas Administrative Procedures Act, the Commission has delegated its authority to hear and decide the above-referenced matter to the following members of the Commission Investigative Committee - Commissioners Jeff Herrig, Chair, B. Cole Presley, and Timothy Bauer. The Commission Investigative Committee is represented by Michelle R. Meier, Special Assistant Attorney General, Commission Counsel, 1999 N. Amidon, Suite 350, Wichita, Kansas 67203. JAMES PHLIEGER (Respondent) is not represented by counsel.

1. Respondent fully understands and agrees to the following:
 - A. The Kansas Commission on Peace Officers' Standards and Training (Commission) is the Kansas agency vested with the authority to carry out and enforce the provisions of the Kansas Law Enforcement Training Act (KLETA), K.S.A. 74-5601 *et seq.*, including conducting hearings and proceedings to suspend, revoke, reprimand, censure or deny the certification of a police officer or law enforcement officer.
 - B. The Commission issued a full-time law enforcement certification to Respondent, certification number 21909. At all times relevant hereto, Respondent held a current certification as a law enforcement officer in the State of Kansas. The Commission has jurisdiction over Respondent and the subject matter of this action.
 - C. Respondent acknowledges he has the right to be represented by counsel of his own choosing and expense. Respondent waives this right and chooses to proceed pro se. Respondent voluntarily enters into this Consent Agreement and Order of Revocation after having been given the opportunity to consult with counsel.
 - D. By surrendering his certification and voluntarily entering into this Consent Agreement and Order of Revocation, Respondent acknowledges and agrees that he waives all rights to a hearing and an adjudication by the Hearing Panel regarding the applicable facts, law,

and penalty, as well as reconsideration of such adjudication, under the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501 *et seq.* Respondent acknowledges and agrees he also waives all rights for review under the Kansas Judicial Review Act (KJRA), K.S.A. 77-601 *et seq.* Respondent understands that his waivers will result in the waiver of the following rights under the KAPA and the KJRA: the right to contest any alleged violation of the KLETA or regulations adopted thereunder; the right to have a public hearing on the issues in this matter; the right to confront and cross-examine all witnesses testifying against Respondent; the right to present evidence; the right to have the Commission issue subpoenas to bring all witnesses and evidence favorable to Respondent to a hearing; the right to testify on his behalf; and the right to receive written findings of fact and conclusions of law to support the decision on the merits of the issues in this matter.

E. Respondent also waives his right to seek reconsideration by the Commission or to otherwise contest this Consent Agreement and Order of Revocation.

F. Respondent further waives his right to seek judicial review in accordance with the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

G. The Commission has received certain information, has investigated, and has determined that there are reasonable grounds to believe that Respondent has committed an act or acts in violation of the Kansas Law Enforcement Training Act.

2. Respondent acknowledges and agrees that if this matter were to proceed to hearing, the following information or statements would be presented by clear and convincing evidence to the hearing panel.

- A. The Commission issued a full-time law enforcement certification to Respondent, certification number 21909.
- B. Respondent was employed as a full-time law enforcement officer with the Plainville Police Department (PPD) from November 1, 2005 to February 6, 2020.
- C. On January 31, 2020, Respondent was on-duty with the PPD and began inadvertently recording with his bodycam. On the bodycam video, Respondent can be observed smoking what appears to be marijuana with a metal pipe in his shed. Respondent then left his shed, entered his patrol vehicle, and resumed his shift.
- D. After viewing the bodycam footage, PPD administration questioned Respondent about what was observed in the video. Respondent admitted that he was smoking marijuana and stated that he did so to help with pain that his current prescription medication was not fully addressing. Respondent surrendered the metal pipe with burnt marijuana residue to PPD administration.
- E. Respondent's unlawful use of marijuana was not related to a legitimate law enforcement purpose.

- F. The stipulated facts set forth above are true and correct and provide legally sufficient grounds to determine whether Respondent violated the KLETA or regulations adopted thereunder.

Respondent does not contest or dispute these facts.

3. Respondent acknowledges and agrees that if this matter were to proceed to a hearing, the facts stated in paragraph 2 above would constitute the following violations under the Kansas Law Enforcement Training Act and/or the regulations promulgated thereunder:

- A. Pursuant to K.S.A. 74-5616(b)(1), the Commission may revoke the certification of a police or law enforcement officer who fails to meet and maintain the requirements of K.S.A. 74-5605 or 74-5607a, and amendments thereto.
- B. K.S.A. 74-5605 sets forth the minimum requirements for an applicant for certification under the jurisdiction of the Kansas Law Enforcement Training Act.
- C. K.S.A. 74-5605(b)(5) states that each applicant for certification shall be of good moral character sufficient to warrant the public trust in the applicant as a police officer or law enforcement officer.
- D. K.A.R. 106-2-4 defines good moral character as including the personal traits or qualities of integrity, honesty, upholding the laws of the state and nation, conduct that warrants the public trust, and upholding the oath required for certification as specified in K.A.R. 106-3-6.
- E. K.A.R. 106-2-4(b) states that any single incident or event may suffice to show that a licensee lacks or has failed to maintain good moral character.
- F. Pursuant to K.S.A. 74-5616(b)(5), the Commission may revoke the certification of a police or law enforcement officer who engaged in conduct which, if charged as a crime, would constitute a misdemeanor crime that the Commission determines reflects on the honesty, trustworthiness, integrity or competence of the officer as defined by rules and regulations of the Commission.
- G. K.A.R. 106-2-2a(a)(18) states that an officer shall not engage in conduct, whether or not charged as a crime or resulting in a conviction, that would constitute unlawful possession of controlled substances, as defined in K.S.A. 2011 21-5706, and amendments thereto.
- H. Pursuant to K.S.A. 74-5616(b)(7), the Commission may revoke the certification of a police or law enforcement officer who engages in unprofessional conduct as defined by rules and regulations of the Commission.

I. K.A.R. 106-2-3(j)(5) defines unprofessional conduct as, except for a legitimate law enforcement purpose, using any controlled substance that is unlawful to possess, as defined by K.S.A. 21-5706, and amendments thereto.

4. Respondent acknowledges and agrees that the facts enumerated in paragraph 2 above and the violations enumerated in paragraph 3 above constitute grounds for the Commission to revoke Respondent's certification as a law enforcement officer. Respondent hereby waives any further proof in this or any other proceeding before or initiated by the Commission.

5. In lieu of an adjudicatory hearing, Respondent hereby voluntarily surrenders his certification as a law enforcement officer in the State of Kansas, certification number 21909. Respondent knowingly and voluntarily acknowledges and stipulates to the facts, legal conclusions, conditions, and orders as stated herein.

6. Respondent states he is of sound mind and not under the influence of or impaired by alcohol, any medication, or any drug. By signing this Consent Agreement and Order of Revocation, Respondent knowingly and voluntarily submits to the jurisdiction of the Commission in this matter.

7. Respondent and the Commission mutually desire to enter into this Consent Agreement and Order of Revocation in lieu of any proceeding or hearing on the issue or issues of whether Respondent violated any provision in the KLETA or any regulation adopted pursuant to the KLETA, and if so, whether his certification should be conditioned, suspended, or revoked.

8. Respondent acknowledges he has read this Consent Agreement and Order of Revocation in its entirety, he understands its legal consequences, and he agrees that none of its provisions or terms are unconscionable, arbitrary, or capricious.

9. The parties agree this Consent Agreement and Order of Revocation is intended to resolve only violations arising out of the facts set forth above. The Commission reserves jurisdiction regarding any other potential complaints arising from circumstances or incidents other than those concerning the facts set forth above.

10. Respondent understands the Commission is free to accept or reject this Consent Agreement and Order of Revocation, and if rejected, the Commission will begin proceedings authorized under the KAPA. If either party should reject this Consent Agreement and Order of Revocation, it shall be regarded as null and void and will not be regarded as evidence against either party at a subsequent proceeding or hearing in this matter. Respondent will be free to present a defense and no inferences will be made from his willingness to consider this Consent Agreement and Order of Revocation. It is further agreed that neither the presentation of this Consent Agreement and Order of Revocation nor the Commission's consideration of the same will be deemed to have unfairly or illegally prejudiced the Commission or its individual members and thereby Respondent agrees to waive any rights he may have to challenge the impartiality of the Commission or its members to conduct any proceedings or hearing regarding the incident or incidents in this matter if either party rejects this Consent Agreement and Order of Revocation.

11. The parties agree this Consent Agreement and Order of Revocation consists of a total of nine (9) pages, including the signature and certificate of service pages, and constitutes the entire agreement between Respondent and the Commission. This Consent Agreement and Order of Revocation may only be changed, modified, or amended by a written agreement signed by the parties and a member of the Investigative Committee and filed with the Commission.

12. By signing this Consent Agreement and Order of Revocation, Respondent consents to the submission of this Consent Agreement and Order of Revocation to the Investigative Committee, and understands that upon approval by the Investigative Committee, this Consent Agreement and Order of Revocation becomes a final order of the Commission. Respondent understands that the Consent Agreement and Order of Revocation shall become effective on the day it is approved, accepted, signed and entered as an order of the Commission.

13. By accepting this agreement and surrendering his certification, Respondent agrees and acknowledges that the Commission will revoke his certification as a law enforcement officer and that this disposition is just and appropriate under the above stated facts, conclusions, stipulations, and acknowledgments.

A. Respondent agrees not to seek or request reinstatement or certification in Kansas for a period of five years (5) years from the effective date of this Consent Agreement and Order of Revocation.

B. Respondent agrees that should he violate the terms of this agreement and apply for reinstatement or certification, the Commission will deny his request or application for reinstatement, licensure, or certification by a Summary Proceeding Order, and such denial shall be based solely on the terms of this agreement and shall be final and conclusive.

C. Respondent agrees that if Respondent should ever again apply for certification or reinstatement as a law enforcement officer in the State of Kansas pursuant to paragraph 13.A., Respondent shall have the burden to prove, by clear and convincing evidence, that he is rehabilitated and competent to be certified as a law enforcement officer in the State of Kansas.

D. Respondent further agrees that in considering whether Respondent has met his burden of proof for certification or reinstatement under paragraph 13.C., the Commission may, pursuant to K.S.A. 74-5622(b), consider any relevant evidence, and may, but shall not be required to, consider the following factors:

- i. the present moral fitness of the Respondent for performance of duties as a police officer or law enforcement officer;
- ii. the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought upon the law enforcement profession and the administration of justice;
- iii. the extent of Respondent's rehabilitation;
- iv. the nature and seriousness of Respondent's original misconduct;
- v. the conduct subsequent to discipline;
- vi. the time elapsed since the original discipline; and

- vii. Respondent's character, maturity, and experience at the time of the original revocation.

E. As part of any future application for reinstatement or certification, the Commission shall have the right to require Respondent to submit to any physical and/or mental tests or examinations with providers of the Commission's choice and totally at Respondent's expense. If the Commission elects to have such tests or evaluations performed, Respondent shall authorize the release of all information related to such tests or examinations to the Commission or its representative. Should the Commission determine to recertify Respondent, the Commission may place any conditions or limitations to act or serve as a certified police officer or law enforcement officer, as the Commission may in its discretion deem necessary. The Respondent must also provide evidence to show he meets the qualifications for certification as a law enforcement officer as set forth in the KLETA.

14. The Respondent acknowledges that the approval of this Consent Agreement and Order of Revocation by the Commission's disciplinary counsel shall not constitute the approval of the Commission or bind the Commission to approve this Consent Agreement and Order of Revocation. Respondent acknowledges and understands that the agreements and orders contained herein shall not become binding until this Consent Agreement and Order of Revocation is approved by the Commission.

15. Respondent agrees that all information in the possession of the Commission's Investigation Committee, its staff, its investigators, and its disciplinary counsel regarding the complaint leading to this disciplinary action; the investigation of the complaint; and all information discovered during the pendency of the disciplinary action may be disclosed to and considered by any Commissioner as part of the presentation and consideration of this Consent Agreement and Order of Revocation, with or without the presence of Respondent and/or his attorney.

16. In the event a hearing is necessary concerning the terms of this Consent Agreement and Order of Revocation or a Request for Reinstatement of Certification, Respondent further waives any objection to the Commissioners who considered this Consent Agreement and Order of Revocation or the documents and information mentioned in paragraph 15 above from participating in such hearing. Respondent further agrees to waive any claim of due process violation or the right to seek the disqualification of any Commissioner who considered said documents and information.

17. Respondent acknowledges and agrees that this Consent Agreement and Order of Revocation is in conformance with Kansas and federal law and that the Commission has jurisdiction to enter this agreement and order the revocation of his certification. Respondent further agrees that the Kansas Law Enforcement Training Act is constitutional on its face and as applied in this case. Additionally, this Consent Agreement and Order of Revocation shall be interpreted under Kansas law and construed as if jointly prepared and written by the parties, and any uncertainty or ambiguity shall not be interpreted against either party.

18. In the event a Kansas court of competent jurisdiction deems any provision of this Consent Agreement and Order of Revocation invalid or unenforceable, it shall be severed and the remaining provisions of this Consent Agreement and Order of Revocation shall be given full force and effect.

19. Upon execution by all parties and entry as an order by the Commission, this Consent Agreement and Order of Revocation shall be a public record in the custody of the Commission and subject to disclosure pursuant to the Kansas Open Records Act.

20. Respondent acknowledges and agrees that this Consent Agreement and Order of Revocation shall remain a part of his permanent certification record. Respondent further understands that, for purposes of reporting to the National Decertification Index, this matter shall be categorized as Adverse Action Classification: Order of Revocation.

21. Respondent does hereby fully, completely, and finally release the Commission and its agents, staff, or employees from any and all claims, charges, demands, damages, costs, expenses, actions and causes of action of every kind and whatsoever related to this Consent Agreement and Order of Revocation. The Commission admits to no liability in any way related to this Consent Agreement and Order of Revocation.


ORDER

22. Based upon the above agreements, the Commission hereby accepts Respondent's surrender of his certification as a law enforcement officer and revokes his certification.

23. It is the further decision and Order of the Commission that Respondent must return to the Commission all evidence of his certification as a law enforcement officer within thirty (30) days from the date entered on the certificate of service below.

IT IS SO ORDERED.

KANSAS COMMISSION ON PEACE
OFFICERS' STANDARDS AND TRAINING

By 
Jeff Herrig, Commissioner and
Chair of Investigative Committee

PREPARED AND APPROVED BY:

Michelle R. Meier, #20933
Commission Counsel
Kansas Commission on Peace Officers'
Standards and Training (KS-CPOST)
1999 N. Amidon, Suite 350
Wichita, KS 67203

AGREED AND APPROVED BY:

JAMES PHLIEGER, Respondent

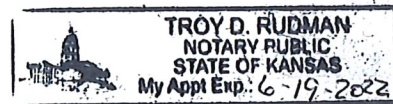
STATE OF Kansas
COUNTY OF ROCKS

JAMES PHLIEGER personally appeared before me, a notary public, in and for the county and state aforesaid, who being duly sworn, did in my presence execute the foregoing Consent Agreement and Order of Revocation by affixing his signature thereto.

IN WITNESS THEREOF, I have affixed by seal and signature this 17 day of August, 2020.

Notary Public

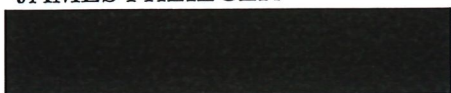
Seal



CERTIFICATE OF SERVICE

This is to certify that on the 21st of August, 2020, a true and correct copy of the above and foregoing Consent Agreement and Order of Revocation was deposited in the U.S. mail, first-class postage prepaid, and addressed to:

JAMES PHLIEGER



And the Original filed with the Kansas Commission on Peace Officers' Standards and Training.

A handwritten signature in blue ink that reads "Rose Ann Ohmart".

Rose Ann Ohmart
Senior Administrative Assistant
Kansas Commission on Peace Officers' Standards
and Training