



**PEACE OFFICER STANDARDS & TRAINING
COMMISSION
(P.O.S.T.)**

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**P.O.S.T. COMMISSION MEETING MINUTES
Thursday, January 25, 2018**

I. Called to Order. The P.O.S.T. (“POST”) Commission meeting of January 25, 2018, was called to order at approximately 9:05 a.m. by Chief Joseph I. Cruz, Chairman, held in the Guam Community College Learning Resource Center (Library) Room 112 in Mangilao, Guam.

Roll Call by Agency/Department:

Member-agencies/other agencies: Please refer to the sign-in sheet.

Mr. Pete Mesa from the office of Senator Telena Nelson was also in attendance.
The Chief thanked everyone for attending today’s meeting.

Documents Received. Document(s)/Packet: January 25, 2018 Agenda; Minutes of November 30, 2017.

II. Review and Approval of Minutes from November 30, 2017. At this time the following motion was made.

MOTION

M/S/C: (Airport Police-Chief R. Camacho/Guam Police Department-Lt. M. Torre): Motion was made to approve the POST Commission Meeting Minutes of November 30, 2017, with corrections. Unanimously approved, motion adopted.

At this time, the Executive Director explained that the deadline of July 1, 2018 is a critical date for the POST Commission.

- A proposed physical fitness plan would have to be adopted by the Guam P.O.S.T. Commission for submission to the Guam Legislature.
- All law enforcement agencies should focus on its physical fitness programs to meet this deadline.
- That using the interim program could be a disservice to your agency and members were highly encouraged to develop another plan that would work best.
- That this is a prime opportunity for each agency to research and implement a program similar to each respective agency.
- Can adopt a program already in existence from a counterpart agency nationally and develop it as your own.

II. Chairman Remarks. Guam Police Department Chief J.I. Cruz asked each agency to provide an update of its overall physical fitness program to include the health & nutrition program and the PFQT. This is to determine the status in meeting the July 1, 2018 deadline

to the office of Senator Telena Nelson. That by the next P.O.S.T. Commission meeting the P.O.S.T. Commission should be provided with hard copies of each agency's status.

-The Chairman explained Lt. Mark Torre is the GPD Officer in Charge of Training in the Staff Development Section, and the Division Chief for Admin. Division, who has already provided documentation to the Chairman.

-That Mr. Quan from the Office of the Attorney General of Guam, is the attorney assigned to GPD and will also provide the members with information regarding interpretation with the public laws relevant to the P.O.S.T. Commission especially with the PFQT 2.1.

At this time the following updates were provided.

GPD's update:

Lt. Torre reported GPD is currently revising its existing General Order 15-001, the GPD physical fitness program.

-The Research & Development Subcommittee has developed a health and nutrition program, a guidebook developed by GPD by Officer Haynes and Sgt. Gamboa and other agencies involved with the subcommittee, which outlines all the nutritional facts and wellness material an agency member would need to develop to meet this requirement. This was also adopted by the U.S. Navy but have changed some of the language to make it local. This will be available online. This should satisfy the health & nutrition program requirement.

-GPD has also developed a police officer physical abilities test consisting of a series of twelve (12) different obstacles. Each obstacles are what officers might encounter at any time on the job which consists of jumping over a wall or fence, sprinting, etc., that simulates a foot pursuit. This was taken from materials provided by the Executive Director Santo Tomas and now in the process of making adjustments to "fine tune" it.

Results of last PFQT when mandated to take 2.1, and the Chairman reported as follows:

-GPD conducted its PFQT with a 92.8% passing rate of all its personnel tested.

-There are approximately over 300 sworn offices and approximately 270 police officers took the test. Some were on annual/medical leave, or were on a medical profile. Upon their return, they will be tested.

The Chairman mentioned that upon reviewing Public Law 34-49, there were questions as to what constitutes a failure and when does an employee actually fail a test because this would require counseling thereafter.

-That by the end of 2018, and should there be officers that have not passed Version 2.0, even though we are implementing an agency specific PFQT, then there could be repercussions for this and the employee could face decertification.

-Because of this, GPD contacted Attorney Quan from the Office of the Attorney General for an interpretation of the law, which is a document he signed as a "Policy Memorandum" for the Guam Police Department and also developed additional documents.

-The first document is as an advisement should someone not meet the standards, they are being informed, because the interpretation of the law states that the first one, technically speaking is not a failure. Then after that the second and subsequent failure should an employee fail, then there is an actual counseling form.

-That they had to come up with two (2) different documents and has approved them based on what he received from Attorney Quan.

Attorney Jonathan Quan from the AG's office explained as follows:

- He has extensively reviewed Public Law 34-49 with Lt. Ron Taitano. Saying the law is written the way it is and that there is a subsequent bill that changed it and there are some minor problems.
- That through his office, they try to analyze laws in a reasonable and functional manner in a common sense application and have attempted to do this with P.L. 34-49.

Lt. Taitano further explained P. L. 34-49, which interpretation was also confirmed by the Attorney General, as follows:

-There is a time frame to understand, a start and an end date. Overall this law comes as a 12 month period.

-Per Section 3105(a), “mandatory test administered annually before December 31 of each year,” and referring to when the law was passed, which was December 31, 2017, is the start date; and December 31, 2018 is the end date. This is the 12 month period.

-Per Section 3105(b), “No peace officer may have their certification revoked or placed on probation or other adverse action on the basis of their physical fitness until January 1, 2018. The PFQT will be administered and the results will be used by the Executive Director to determine whether a peace officer’s certification should be maintained, denied, suspended, or revoked in compliance with Section 3105(e)...”

-Section 3105(e), “Peace officers must retest within 90 (ninety) days...”

Attorney Quan further explained this Section, that there is a minimum forty-two (42) days for recovery, maximum ninety (90) days. An individual can waive to retest before 42 days but no more than 90 days, has to be before the 90 days. Would need director approval to retest under the 42 day period.

Lt. Taitano mentioned there are a lot of confusion and different opinions when defining failure under Section 3105(f).

-When referring to the four (4) unsatisfactory, and in order for the “failure” to happen, “A peace officer is deemed to have failed to comply with this policy when that officer’s performance in a PFQT test is below the standard adopted by the Guam Legislature, and as defined and/or reference herein after the officer has been previously tested.”

-Lt. Taitano then referred to testings conducted by GPD during December 2017. An individual taking a first test and takes a second test, constitutes a failure.

-The initial test, and a retesting, whether under the 42 or 90 days, and are both unsatisfactory becomes your first failure, and is also your first warning and given an advisement form.

-Advised you did not meet the standards and encouraged to build up your PT regimen to pass the next test.

Attorney Quan then explained the following to be clear on this issue:

-As an example, with GPD’s testing, you are first tested on Dec. 22-23 and did not meet the minimum standards, you have not failed and does not trigger adverse action warning issues.

-The first test is just diagnostics. It counts but is not punishable.

-You only fail pursuant to the statutes upon a subsequent second test. If the person does meet the standards within 42-90 days, then they have failed and the warnings trigger.

Lt. Taitano further explained the four (4) unsatisfactory:

-The first (1st) unsatisfactory is after the second (2nd) test administered and failed to meet the standards.

-The third (3rd) test starts the second warning.

-The fourth (4th) test is the third warning and then the fifth (5th) test.

-Five (5) tests are required if they are all unsatisfactory, will be the fourth warning, which starts the decertification process.

Attorney Quan explained that in order to get decertified a person would have to be administered five (5) tests within a twelve (12) month period and the person have failed all tests.

-To understand this, there would have to be five (5) tests conducted in one (1) year.

-Atty. Quan gave an example below:

- 12/22/2017, 90 days is 3/23/2018
- 3/23/2018, 90 days is 6/21/2018
- 6/21/2018, 90 days thereafter is 9/19/2018
- Last test is 12/18/2018.

-Also allowed to shorten the time periods with a waiver and letter to agency head to allow this.

There were several discussions/concerns:

- There was a question as to the timeframe and if an agency has not taken the test.
- If an agency has not taken the Dec. 2017 test then they have not complied with the law. If there is a failure rate, at least you could work from there.
- If test has not been conducted in Dec. 2017, the agency should begin conducting the tests.
- What happens if an individual passed the first test.
- Lt. Taitano explained that the first test is a diagnostic test and is not a pass or fail, it is to gauge of where everybody is at. You will still have to take the test again even after you passed the initial test.
- That you would have to be very careful with the verbiage.

There were further discussions and answers provided by GPD and Attorney Quan:

-If you pass the December testing, you are good for the year.

-If you did not meet the standard, it will be treated as a diagnostic.

-Non-attendance does not constitute a failure.

-GPD mandates its personnel to take the test and are issued a special order.

-If officer does not show, it will be considered insubordination.

-However, there was a question regarding a no show if circumstances is work related, what to do?

-With GPD, they are given a window of approximately 3-4 days in advance, which should give ample time to take the test.

-If unable to attend during the scheduled testing, for example, an airline ticket was purchased, special scheduling is made.

-What to do with those who are profiled and does not complete each year?

Atty. Quan mentioned that if a person does not meet the standards and fails tests 1, 2 and 3 and profiles the 4th test, and does not complete five (5) tests in a year, that person cannot be certified. By January 1st the following year, that person would have to complete five (5) tests to be certified. This could be a loophole that has to be addressed before the Guam Legislature. Being profiled each time and completing the required tests.

-Atty. Quan explained that by July 1, 2018, this is an opportunity to address any “loopholes” before the Guam Legislature, the Chairman agreed with this.

-If loopholes are not addressed, GFD is considering working on issues with DOA for solutions such as when an individual does not pass a PFQT and link it with their salary increment.

-With profiles, need to work with Human Resources and DOA.

-It's not a failure if an individual does not take the test but GPD was asked what is their procedure.

- GPD mentioned that they categorize personnel as follows: 1) those who have passed, 2) those who have not met the standards (are not considered failing yet until after the 2nd test), 3) no tests taken, which could mean on medical waiver, military leave or no show.
- That GPD have no shows.

There was a recommendation that in moving forward, the POST Commission should adopt a unified policy.

- For example, should an individual fails to show, make it a unified policy such as insubordination.
- Should not have different policies for each departments regarding this issue.
- Should an individual file a grievance with the Civil Service Commission, there will be inconsistencies and the agency will lose each time.
- With this recommendation, the Chairman suggested that Lt. Torre email all of the POST members a copy of the legal opinion/interpretation of the law, including the advisement form, and failure form.
- During the next meeting, if all POST members agree to these documents and its contents, a decision can be made to adopt this as a policy moving forward for all POST members.**

Assistant Fire Chief, Daniel C. Stone from the Aircraft Rescue and Fire Fighting Unit, asked for clarification, as follows:

- The PFQT Interim 2.1 has 3 separate components and has to take all 3 in order to be in compliant.
- If an individual present profile and can't do sit-ups, does it mean they don't take the rest of the test? Or can they do push-ups and the run? Will they meet the standards or fail?
- The Chairman explained that it is a pass or a fail. Have to test on all 3 components to meet the standards.
- D. Stone asked regarding the 42/90 days period, if a person reaches the 43rd day, does this allow the agency to schedule a person to take the test again? The Chairman answered this was correct.
- D. Stone asked what happens should a person have a major injury, or surgery, etc.? The Chairman answered that this will be a profile for up to 90 days.
- The Chairman explained that as the GPD Chief, he issues a special order mandating those that have yet to pass the test, will have until ninety (90) days to be tested. Should an individual decide to test earlier than the 90 days, the individual would have to submit a memo to the Chief and take the test after 42 days but before the 90 days.
- Lt. Taitano cautioned against testing earlier than 42 days and after the 90 days.
- A question was raised should the medical waiver be for a 6-month period.
- Lt. Taitano explained that you would have to check if the profile is for an injury and what is the recovery period or limitations per the employee's doctor; or if it's a waiver for a disability and in both cases does it require accommodations.
- There are concerns with agency personnel providing waivers, however, are still performing their duties.
- There was an agreement this is something that has to be addressed.
- The Chairman mentioned that GPD does address this with its employees.
- Another concern are individuals who continue to submit waivers and does not complete the test.
- These concerns could be another loophole and would have to be addressed by each agency's respective HR office and brought up with Senator Nelson's office.
- It was mentioned that this is something that eventually will link with the certification, respective agency HR and the Government of Guam Personnel Rules & Regulations in seeking clarification.

Atty. Quan mentioned this is a hypothetical issue and can be changed. That each agency can then submit an agency specific test to Senator Nelson's office to resolve this not from an HR perspective but through the law.

Atty. Basil O'Mallan mentioned that the whole basis of a PFQT is for employees to be able to perform their duties per their job specifications.

-Atty O'Mallan directed two (2) questions to the POST members: What does each agency do with employees in the meantime who presents a profile "allegedly" to avoid taking the test; and does the agency continue to have employee perform their regular job duties or accommodate them and assign to lighter duties such as placing that person on desk duty.

-Atty O'Mallan wants agencies to be aware that this is a problem and could be liability if this is not addressed when profiles are presented, meaning the employee is reporting he cannot do the job.

-If this employee continues on regular duty, what does this expose the agency to and the public?

-Mr. Lamorena mentioned this was a good point because of the liability.

-Mr. Lamorena also mentioned that when an employee cannot function per their job specs and after a certain period, the employee can be reclassified but would have to go through a process.

-Should the agency keep the employee in their law enforcement position, this could be an open argument for the employee because said employee can still function.

-That this is something that would need legal research regarding how to address this.

Guam Airport Police update:

-Chief Bob Camacho reported they conducted their testing and out of 40 had a 93% passing rate. - There are 10 who are on profile.

-Have completed their health & nutrition policy by adopting the Navy's, which is currently being reviewed by its legal counsel and the executive manager.

Aircraft Rescue and Fire Fighting Unit (ARFF) update:

-Asst. Fire Chief D. Stone reported ARFF has been conducting diagnostic testing and are still waiting for clarification from the Chairman.

-Have some questions and have been communicating with GFD regarding the July 1, 2018 deadline with agency specifics and will probably mirror what GFD already has.

Port Police update: *None available to report.*

AG's Office update:

AG's policy was submitted to Lt. Torre, however, there were recommendations from the sub-committee.

-There are several changes and still need to finalize.

-Testing was conducted in December 2017 with an 87% passing rate and will maintain the 2.1.

Customs update:

Customs has 114 officers and a majority have taken the test, some have failed due to a profile. Testing was conducted in December 2017 and the complete data was unavailable at this time. Still working on a policy specific for Customs & Quarantine, however, agree with some of the ideas presented during today's meeting, including documents that Lt. Torre will be issuing out.

DOC update:

-Testing was conducted on December 11-21, 2017, with two make-up days on December 26-27, 2017.

-DOC currently has 200 uniformed officers, and 92 officers passed all three events: 1 failed the walk, 6 failed the run, 38 failed the sit-ups, 5 failed push-ups, 33 on profile, 25 failed 2-3 events.

Agriculture update:

- Been trying to be in compliance since 2016 and have conducted two (2) diagnostic testing because not everyone was up to par and waited for the next one.
- Had a scheduled testing for the end of December 2017 but department was placed on a task force at the last minute and did not want to test employees because it would not be fair to them when they are not 100% ready.
- Tested in January 16, 2018: 66 passing rate; 2 officers failed with sit ups, which could easily be made up with some workouts; 1 medical waiver; and 1 on military leave.
- A full package was submitted to Lt. Torre with PFQT they want to adopt to include the policy.
- Officer Santos and Officer Flores were tasked to work with the POST Commission and are currently working closely with Lt. Torre.

Judiciary update:

- Reported 95% passing; 5 profiles, and 2 no shows.

GFD update:

- Asst. Fire Chief J. Manibusan reported 90% passing and some profiles.
- Some profiles were turned away for the reason that some of the doctor's notes were not specific. Would just say member is excused from doing physical fitness testing and had to go back to the doctor and state specifically what they are unable to do, for example, runs, push-ups or sit-ups, etc.
- J. Manibusan does have a strategy for those who get a doctor's excuse by placing them in an administrative job that does not match their aptitude.
- Profiler usually does not last long and choose to go back to the doctor to clear them to do their regular job.
- A concern was brought up by GFD that if an individual continues to present a profile, said individual will not be assigned to a fire truck. Doing so will put the individual in harm's way and the Government will be liable. Per the Chairman, this was a concern that was also brought up by the AG's office.

DYA update:

- There are 78% passing, 9 are on medical and 12 would have to take the test.

Parks & Recreation update:

- Took PFQT in December 2017 with DOC. 50% passing and have also submitted policy to Lt. Torre. Going with the 2.1 version but attaching a swim test.

At this time, the Chairman mentioned that the percentages are better and asked that all agencies should submit a draft of its physical fitness program and health & nutrition program. Want to track this and ensure everyone is moving forward. The Chairman further reiterated how important this is otherwise everyone would have to revert back to the AFI, which he mentioned he believes none of the agencies want to do.

The Chairman explained that there is a language in Public Law 32-232 that requires all persons who are peace officers to be POST Certified.

- Have to be in compliance and only knows that the GPD 6, 7 and 8 POT Cycles are in compliant and any Cycles prior to that are not technically POST Certified.
- The POST Commission Executive Director has certified the above Cycles.
- That as the POST Commission Chairman it is important that as a public safety community, all members should be in compliant of our own law.

-The Chairman also mentioned that he had all GPD sworn officer, including the Reservists to complete the POST Certification Application and will review for submittal to the POST Commission for approval.

-The Chairman then asked for all POST Commission members to do the same by downloading a copy of the POST Certification Application from the POST Commission website (<http://www.guamcc.edu/Runtime/postcommission.aspx>) for submission as well.

-The Chairman further mentioned that technically not all POST Commission members are POST Certified.

-That pushing the PFQT would still require POST Certification and said as the Chairman it is important to do so.

-Wants a status from each agency regarding this by the next meeting.

-There are steps to take to have this done such as coordinating with Guam Community College.

-It was mentioned by a representative from the Attorney General's Office that its Investigators are POST Certified and was noted by the Chairman.

There were discussions regarding concerns with the Aircraft Rescue and Firefighting Unit (ARFF). The Chairman will meet with ARFF and will also obtain legal advice as to the status of ARFF with the time frame involved as far as ARFF having ample time to be POST Certified regarding additional training/educational requirement.

There were discussions regarding succession planning.

-Mechanisms are needed to promote peace officers such as job specifics, education, etc., to empower employees to move up the ranks.

-Chief Robert Camacho mentioned this was addressed during one of the POST Commission meetings but unsure if it has been implemented by DOA. This includes criteria needed for promotions such as for a supervisory level, management level, leadership training, etc. Trainers from other agencies were also involved. Chief Camacho will send him a copy of this document.

-A suggestion was made to incorporate standards into the ranks for promotions which does not need public laws and then implement by DOA.

-Chief Manibusan explained that they have worked with DOA in implementing its standards when moving up the ranks and is doable without having to the Legislature and keep changing the law. That each agency have the ability to work with DOA to change the skills, knowledge and requirements, to include a job specific requirement. Although there might be issues along the way, it can be done without having to keep changing the law. Can look at what GFD has done with its promotional standards.

-It was also mentioned that DOA has a training calendar for workshops that agencies can avail of, however, would need to be checking the DOA website for workshop schedules. This calendar has trainings for leadership trainings, adverse actions, grievances, etc.

-The Chairman would like to move forward for further discussions on this matter and explained would like to discuss further on this and develop a template for professional development that would cover the succession planning portion for the POST Commission standards.

-The Chairman also mentioned that GPD has something called a "starter kit" for supervisory officers. This is a way for their employees to be more informed and trained for its first line supervisors in understanding their department's procedures such as grievances, leave policies, etc., especially when officers are out in the field. To give them an understanding of the proper procedures.

The Chairman then asked Lt. Torre to explain this process that are mandated for GPD supervisors to allow them to do their jobs.

-Lt. Torre explained the process GPD has with its training division for its first line supervisors.

- GPD has a Training Advisory Group comprised of all the lieutenants in the department because there are Lieutenants that represents every unit or division within the department.
- That Sgt. Major Randy Aguon and Sgt. Gamboa are training staff.
- This group identifies the needs and assess the needs within the department as part of the “starter kit.”
- GPD takes advantage of the DOA trainings as explained earlier with such as for time management, grievance procedures, leave policies, etc., relating to personnel including workman’s compensation procedures.
- Trainings are mainly for the Sergeants, Lieutenants and those above ranks. In the future will include POIIs and below.

At this time, it was mentioned of trainings that will be conducted at the AG’s office conference room and members were encouraged to call the AG’s office regarding this.

III. Executive Director’s Comments, as follows:

- a. The Executive Director congratulated the DOC and GPD graduating cycles and said although the numbers who graduated are not what was expected but still should continue to move forward and take advantage of the apprenticeship programs, including the VA benefits for tuition assistance in order to build up the number of officers in working smarter especially with the budget constraints.
- b. The Executive Director encourage all agencies to continue providing the P.O.S.T. Commission with the PFQT testing summary reports. Has been receiving some. Anticipate reports to be submitted on time to meet the July 1, 2018 deadline to the Guam Legislature.
- c. Criminal Justice Building on campus is scheduled to be completed in sometime next month in February or March 2018. This will become the future venue for the P.O.S.T. Commission meetings. This is located next to Building E. The Forensic Lab is also another construction project in support of law enforcement, however, there is a bid protest. Once this is resolved, construction will begin.
- d. GCC working with GFD on a new Fire Cycle Academy for 2018. The Executive Director is working on this with GFD.

V. Chief of Staff Pete Mesa. Mr. Mesa from the office of Senator Telena Nelson reported the following:

- The Senator recognizes the agencies who have been conducting trainings with different scenarios by GIAA, GPD and GFD and gave “kudos” to them. Heard of this through some officers who are in the Guard.
- Mr. Mesa also reported that there is a concern about the POST not meeting the deadline and reverting back to the AFI standards.
- Mr. Mesa explained that there was resistance in pushing the interim standards until agencies could develop an agency specific standards and POST adopting a revised standards acceptable for all the agencies.
- Mr. Mesa cautioned those agencies that are not developing its agency specific standards.

The Chairman reported that he is heard from the Research & Development Subcommittee that of the agencies are simply going to adopt the 2.1 version, the interim.

- The Chairman humbly asked the agencies to caution against this.
- That in not developing an agency specific standards, this will contradict the previous testimonies.
- Asked not to take the easy way out otherwise the Guam Legislature will see it as such.

Mr. Mesa further reported that the public hearing for Bill No. 206-34 (COR) regarding adding DYA and ARFF as P.O.S.T. members will be held on March 1, 2018 at 2:00 p.m., and encouraged members to support this by attending.

VI. Old Business

a. Battle of the Badges – KUAM Sponsored Fitness Challenge. Vice Chairman Chief Vincent Perez reported that since the last POST Commission meeting in November 2017, he contacted Ms. Sabrina Salas Mantanane, the Managing Director for the KUAM News Productions. Ms. Mantanane have yet to provide further details about the program. Chief Perez will follow up and report out to the POST Commission.

For the record, the Office of the Attorney General will provide a written opinion as reported out from the last meeting, which are the following:

- Not a procurement issue.
- Should not be mandated by the department or agency.
- Cannot use company/government time.
- Strictly voluntary and is up to the individual officer and liability falls on said individual who participates.
- Individual will not be paid to participate.
- Not considered as a form of gratuity.

VII. New Business. (none)

At this time the Chairman Cruz explained that for the next meeting he anticipates members to turn in hard copies of the results of the three (3) items as mentioned earlier which are the 1) Physical Fitness Program; 2) Health & Nutrition Program; and 3) the PFQT. This is to ensure there is a draft and results of the tests, something similar to what DOC has submitted. This will help in meeting the deadline of July 1, 2018.

The Chairman also mentioned he will discuss further with Mr. Dan Stone regarding the timeline for ARFF.

Lt. Mark Torre announced that the next Research & Development Subcommittee meeting is Thursday, February 8, 2018 at 9:00 a.m., in the LRC, Rm. 112. Lt. Torre will email members.

VIII. Next Meeting Scheduled. February 22, 2018 at 9:00 a.m., in the LRC, Room 112.

IX. Adjournment.

MOTION

M/S/C: (Attorney General's Office/Guam Police Department): A motion was made to adjourn the meeting of January 25, 2018. Unanimously approved.

There being no further discussions, the meeting adjourned at approximately 10:40 a.m.

/s/

Dated this 29th day of March 2018.

Bertha M. Guerrero
Recording Secretary