

DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

STATE OF OREGON

In the Matter of the Proposed
Revocation of the Basic Telecommunicator
and Emergency Medical Dispatcher
Certifications issued to:

MICHAEL DOWNING
DPSST #49155

**NOTICE OF INTENT TO REVOKE
CERTIFICATIONS AND PROPOSED/FINAL
ORDER ON DEFAULT**

No timely hearing requested. 4/23/20
Default Final Order effective:
By: [Signature]

TO: Michael Downing


NATURE OF PROPOSED ACTION

The Department of Public Safety Standards and Training ("DPSST" or "Department") proposes to revoke your Basic Telecommunicator and Emergency Medical Dispatcher Certifications ("Certifications") pursuant to its authority in Oregon Revised Statute ("ORS") 181A.410(1)(e) and ORS 181A.640(1)(c). The Department proposes revocation because you do not meet the minimum moral fitness standards required of an officer pursuant to OAR 259-008-0011(4)(b); OAR 259-008-0070(4)(a)(B); and OAR 259-008-0070(4)(f)(A)(i), (iii) and (iv).

The Department's proposed revocation is based on the following:

FINDINGS OF FACT

1. You currently hold Basic Telecommunicator and Emergency Medical Dispatcher Certifications.
2. On January 14, 2008, you signed your Telecommunicator Code of Ethics swearing that your conduct and the performance of your duties will be accomplished in an honest manner, contributory to your fellow workers, and observant of the laws of the city, state and country.
3. On August 8, 2018, you separated from employment with the Baker County Sheriff's Office (BCSO).

4. While employed as a public safety professional you engaged in the following conduct:
- a. You used your position as a public safety professional with BCSO in an attempt to avoid being cited for allowing underaged children to unlawfully operate water craft.
 - b. You were dishonest when you stated you were inquiring about marine deputy's location so you could make them a hamburger.
 - c. You attempted to involve another BCSO employee in your misconduct, by asking her to provide you the location of marine deputies.
 - d. On July 12, 2018, you were convicted of Allowing Person under 16 to Operate a Personal Water Craft, a Class B Violation.
5. The Department has determined that you lack moral fitness pursuant to OAR 259-008-0070(4)(f)(A)(i), (iii) and (iv) and proposes to revoke your certifications.

ULTIMATE FINDINGS OF FACT

1. All public safety professionals must be of good moral fitness pursuant to OAR 259-008-0011(4)(b). The Department may revoke an officer's certifications under OAR 259-008-0070(4)(a)(B) if it finds that the public safety professional has engaged in misconduct as defined in OAR 259-008-0070(4)(f)(A).
2. You have not met the moral fitness standards required of a public safety professional for the following reasons:
 - a. Pursuant to OAR 259-008-0070(4)(f)(A)(i), you have committed acts constituting dishonesty, which includes: conduct that is knowingly dishonest and includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth. You were dishonest when you stated you were inquiring about the marine deputy's location so you could make them a hamburger.
 - b. Pursuant to OAR 259-008-0070(4)(f)(A)(iii), you have committed acts constituting misuse of authority when you used your position with BCSO to obtain information about the location of marine deputies on duty because you

wanted your under age kids to ride your jet ski. You attempted to avoid a detriment by using your position to avoid being cited for a boating violation.

c. Pursuant to OAR 259-008-0070(4)(f)(A)(iv), you have committed acts constituting gross misconduct by threatening the efficient operations of the BCSO when you used your position to avoid a detriment and attempted to involve another employee in your misconduct.

3. Pursuant to OAR 259-008-0070(4)(f)(B), there are aggravating circumstances present in your case: your conduct occurred during your employment as a public safety professional. Additionally aggravating was the danger and threat of risk your behavior created for minor children, the inappropriate use of your position for personal gain and the poor judgment you engaged in based on your role as an elected official within your community.
4. Pursuant to OAR 259-008-0070(4)(f)(B), there are mitigating circumstances present in your case: your conduct did not occur multiple times. The differing statements between you and the other employee were considered as additional mitigation.
5. Pursuant to OAR 259-008-0070(4)(f)(B), the following circumstances were considered and found not to be aggravating or mitigating: your conduct did not occur while you were acting in an official capacity, your conduct has not been reviewed in the past by the Committee and Board, your conduct did not involve domestic violence or child abuse and your conduct did not result in a criminal disposition.
6. The facts underlying your separation from employment are substantially related to your fitness and ability to perform the duties of a public safety professional because your conduct has compromised your integrity and credibility. You have failed to take responsibility for your actions and have demonstrated no remorse for your actions. The multiple official roles you held within your community demonstrate you should have known your conduct was not acceptable and therefore renders you ineffective as a public safety professional.
7. After review of the facts and weighing the identified aggravating and mitigating circumstances unique to this case the Department proposes that your certifications be revoked.
8. The Department is not required to prove all of your moral fitness violations to revoke your certifications. Each is sufficient to support the revocation.

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CONCLUSION OF LAW

Based on your misconduct, you do not meet the requirement of good moral fitness required pursuant to OAR 259-008-0011(4)(b). You have committed acts of dishonesty, pursuant to OAR 259-08-0070(4)(f)(A)(i), when you lied about the reason you wanted to know the location of marine deputies on duty. You committed acts of misuse of authority, pursuant to OAR 259-008-0070(4)(f)(A)(iii), when you used your position with BCSO to avoid a detriment. You committed acts of gross misconduct, pursuant to OAR 259-008-0070(4)(f)(A)(iv), when you threatened the efficient operation of BCSO.

PROPOSED/FINAL ORDER

Michael Downing's Basic Telecommunicator and Emergency Medical Dispatcher Certifications are hereby REVOKED. Your ineligibility period during which you may not reapply for any of these certifications is a lifetime pursuant to OAR 259-008-0070(4)(f)(C)(ii)(I), (III) and (IV).

NOTICE OF RIGHT TO A HEARING

You are entitled to a contested case hearing as provided by the Administrative Procedures Act (ORS Chapter 183) and the administrative rules of the Department. Requests for hearings must be made in writing and must be filed with the Department no later than twenty (20) days of the date of mailing this notice to you. To be effective, your request must be mailed to:

Kristen Hibberds
Department of Public Safety Standards and Training
4190 Aumsville Hwy SE,
Salem, OR 97317

If you request a hearing, you will be notified of the time and place of the hearing and provided with a description of the hearing procedures, right of representation and other rights of parties related to the hearing in accordance with ORS 183.413(2), prior to the commencement of the hearing. At the hearing, you have the right to represent yourself or be

represented by legal counsel. Legal aid organizations may be able to assist a party with limited financial resources.

Notice to Active Duty Service members. Active duty service members are entitled to stay these proceedings under the federal Servicemembers Civil Relief Act, 50 U.S.C. App. 501. You may contact the Oregon State Bar toll-free at (800) 452-8260, the Oregon Military Department toll-free at (800) 511-6944, or the United States Armed Forces Legal Assistance Legal Services Locator via the web at: Armed Forces Legal Assistance (AFLA) or legalassistance.law.af.mil for assistance.

NOTICE OF FINAL ORDER AND APPEAL RIGHTS

If you fail to request a hearing within the time specified above, withdraw a hearing request, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, this Notice of Proposed Revocation of Certification and Proposed/Final Order automatically becomes a Final Order by Default effective upon Board affirmation. In the event of a default, the Department designates the file, including any materials you submitted that relate to this matter, as the record for purpose of proving a prima facie case.

You are entitled to judicial review of any final order issued in the matter of this Notice of Intent to Revoke Certification in accordance with ORS 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date of this order.

IT IS SO ORDERED THIS 13 day of March 2020.


Eriks Gabliks, Director
Department of Public Safety Standards and Training

**Department of Public Safety Standards and Training
Memo**

Date: April 23, 2020

To: Board on Public Safety Standards and Training

From: Kristen Hibberds
Lead CJ Professional Standards Coordinator

Discipline: Telecommunicator and Emergency Medical Dispatcher

Subject: Downing, Michael DPSST #49155
Basic Telecommunicator and Emergency Medical Dispatcher
Certifications
Baker County Sheriff's Office (BCSO)

OVERVIEW:

DPSST received an F4s Personnel Action from BCSO indicating that Michael Downing had separated from employment.

TELECOMMUNICATIONS POLICY COMMITTEE RECOMMENDATION:

Downing's conduct DID violate the Board's Moral Fitness Standard, specifically:

1. **Dishonesty:** Includes conduct that is knowingly dishonest and includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth. (Ineligibility period if actionable: 10 years to Lifetime)
 - a. Downing stated he was inquiring about the marine deputy's location so he could make them a hamburger. The Dispatcher on duty was told by Downing that he was inquiring about the location of the deputy because he wanted his under age kids to ride his jet ski. The investigation revealed an individual, who was at the lake with Downing, was not aware of a phone call made to the dispatcher and indicated she did not hear Downing make any reference or talk about wanting to cook a hamburger for the marine deputies. Downing was cited and pled guilty to a Class B Boating Violation for allowing underage juveniles to operate a jet ski.

2. **Misuse of Authority:** Includes the use or attempt to use one's position to obtain a benefit, avoid a detriment, or harm another while acting under the color of office.
(Ineligibility period if actionable: 3 years to 10 years)
 - a. Downing used his position as a Dispatcher to obtain information from a co-worker regarding the location of marine deputies because he wanted his under age kids to be able to ride his jet ski. Downing told the Dispatcher to text him if the deputies were coming out his way. Downing attempted to avoid a detriment by using his position with BCSO to avoid being cited for a boating violation.
3. **Gross Misconduct:** Includes behavior that deliberately or recklessly disregards the law, threatens persons or property or the efficient operations of any agency.
(Ineligibility period if actionable: 3 years to 10 years)
 - a. Downing used his position and attempted to involve another employee in his misconduct, threatening the efficient operations of the BCSO.

Mitigating and Aggravating Factors

1. Pursuant to OAR 259-008-0070(4)(f)(B) the following mitigating circumstances were identified:
 - The individual's conduct did not occur multiple times.Additionally mitigating was the differing statements between Downing and the other employee.
2. Pursuant to OAR 259-008-0070(4)(f)(B) the following aggravating circumstances were identified:
 - The conduct occurred during employment in public safety.Additionally aggravating was the danger and threat of risk Downing's behavior created for minor children (ages 12 and 6) by allowing them to ride on jet skis alone, the inappropriate use of his position for personal gain and the poor judgment he engaged in based on his role as an elected official within his community.

3. Pursuant to OAR 259-008-0070(4)(f)(B) the following circumstances have been considered **neutral**:

- The individual's conduct has not been reviewed in the past by the Committee and Board;
- The individual's conduct did not involve domestic violence or child abuse;
- The individual's conduct did not occur while they were acting in an official capacity;
- The individual's conduct did not result in a criminal disposition.

Finding:

On February 5, 2020, the Telecommunications Policy Committee (TPC) unanimously voted minus one recusal to recommend the Board **REVOKE** Downing's certifications after consideration of all of the facts and weighing the aggravating and mitigating circumstances unique to this case.

Downing's conduct renders him ineffective as a public safety professional because his conduct has compromised his integrity and credibility. Downing failed to take responsibility for his actions and has demonstrated no remorse for his actions. The multiple official roles Downing held within his community demonstrate he should have known his conduct was not acceptable and therefore renders him ineffective as a public safety professional.

Ineligibility Period:

The TPC unanimously voted minus one recusal to recommend Downing not be eligible to apply for certification for a lifetime. This recommendation is based on the egregious behavior Downing engaged in that demonstrates poor judgment and abuse of his position, which has compromised his integrity and credibility.

ACTION ITEM 1:

Review and affirm the recommendation of the TPC.

Attachments

Department of Public Safety Standards and Training
Memo

Date: February 5, 2020

To: Telecommunicator Policy Committee

From: Kristen Hibberds
Lead Criminal Justice Professional Standards Coordinator

Discipline: Telecommunicator/Emergency Medical Dispatcher

Subject: Downing, Michael DPSST# 49155
Basic Telecommunicator and Emergency Medical Dispatcher
Certifications
Baker County Sheriff's Office (BCSO)

OVERVIEW:

DPSST received an F4s Personnel Action from BCSO indicating that Michael Downing had separated from employment.

STAFF ANALYSIS:

After reviewing the investigative materials provided, staff has identified violations of the Board's minimum moral fitness standards for public safety professionals. Specifically:

1. **Misuse of Authority:** Includes the use or attempt to use one's position to obtain a benefit, avoid a detriment, or harm another while acting under the color of office.
(Ineligibility period if actionable: 3 years to 10 years)
 - a. Downing used his position as a Dispatcher to obtain information from a co-worker regarding the location of Marine Deputies because he wanted his underage kids to be able to ride his jet ski. Downing told the Dispatcher to text him if the Deputies were coming out his way. Downing attempted to avoid a detriment by using his position with BCSO to avoid being cited for a boating violation.
2. **Dishonesty:** Includes conduct that is knowingly dishonest and includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation,

falsification or reckless disregard for the truth. (Ineligibility period if actionable: 10 years to Lifetime)

- a. Downing engaged in dishonesty when he stated he was inquiring about the Marine Deputies location so he could make them a hamburger. The Dispatcher was told by Downing that he was inquiring about the location of the Deputies because he wanted his under age kids to ride his jet ski. Another individual who was at the lake with Downing was asked if Downing had made any reference or talked about wanting to cook a hamburger for the Marine Deputies and she said no. Downing was subsequently cited and pled guilty to a Class B Boating Violation for allowing underage juveniles to operate a jet ski.

3. **Gross Misconduct:** Includes behavior that deliberately or recklessly disregards the law, threatens persons or property or the efficient operations of any agency.

(Ineligibility period if actionable: 3 years to 10 years)

- a. Downing attempted to involve another BCSO employee in his misconduct which placed her in the difficult position of reporting his misconduct. Downing's use of his position and attempt to involve another employee in his misconduct threatened the efficient operations of the BCSO.

Staff did not identify violations of:

4. **Disregard for the Rights of Others:** Includes conduct that knowingly violates the constitutional or civil rights of others. (Ineligibility period if actionable: 3 years to 15 years)

POLICY COMMITTEE DELIBERATION:

#1 VOTE: Determine whether to adopt the staff report as the record upon which its recommendations are based.

#2 CONSENSUS: By discussion and consensus, affirm/edit the staff analysis and identify any additional violations of the Board's moral fitness standard supported by the record.

#3 VOTE: If no violations found, vote to recommend administrative closure of case.

The following is considered when violations of the moral fitness standard are identified

AGGRAVATING/MITIGATING CIRCUMSTANCES:

Pursuant to OAR 259-008-0070(4)(f)(B) staff has identified the following mitigating circumstances:

- The individual's conduct did not occur multiple times.

Pursuant to OAR 259-008-0070(4)(f)(B) staff has identified the following aggravating circumstances:

- The individual's conduct occurred during their employment as a public safety professional.

Pursuant to OAR 259-008-0070(4)(f)(B) the following circumstances have been considered neutral:

- The individual's conduct has not been reviewed in the past by the Committee and Board;
- The individual's conduct did not involve domestic violence or child abuse;
- The individual's conduct did not occur while they were acting in an official capacity;
- The individual's conduct did not result in a criminal disposition.

#4 CONSENSUS: By discussion and consensus, when considering only what is contained in the record, identify any additional aggravating or mitigating circumstances specific to this case.

#5 VOTE: After considering the identified violations of the Board's moral fitness standard and weighing the aggravating and mitigating circumstances unique to this case, should Board action be taken against the individual's certification/application?

Proceed if the Committee votes YES to #5

#6 VOTE: Determine the period for which this individual will be ineligible to hold public safety certification based on the identified behavior.