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**BEFORE THE CRIMINAL JUSTICE TRAINING COMMISSION
IN AND FOR THE STATE OF WASHINGTON**

In re the Certification of
John Kivlin
Respondent.

NO. 18-708
**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER REVOKING PEACE
OFFICER CERTIFICATION**

ORDER

An administrative hearing in the above-captioned matter was held before the Washington State Criminal Justice Training Commission Hearing Panel (Hearing Panel) on December 17 and 18, 2019, to determine whether the Hearing Panel should revoke the peace officer certification of the Respondent, John Kivlin. The hearing was held at the Washington State Criminal Justice Training Commission facility in Burien, Washington, and was open to the public. The Hearing Panel consisted of the Presiding Member, Staff Sergeant Sean Madison of the Sequim Police Department, Chief Nestor Bautista of the Ruston Police Department, Sherriff Wade Magers of the Lincoln County Sherriff’s Office, Sergeant Jeff Salstrom of the Hoquiam Police Department, and Professor Linda Forst of Shoreline Community College. When requested, the Presiding Member received legal advice from Assistant Attorney General Justin Kato. RCW 34.05.455(1)(b). The Petitioner was represented by Assistant Attorney General Joshua Orf-Rodriguez. Mr. Kivlin was represented by attorney Patricia Rose.

1 **I. PROCEDURAL HISTORY**

2 1.1 John Kivlin resigned in lieu of termination from the Bellevue Police Department
3 (BPD) on or about August 2, 2018. Prior to his resignation, Mr. Kivlin had been employed as a
4 police officer with that agency.

5 1.2 On June 24, 2018, the Criminal Justice Training Commission filed a Statement
6 of Charges seeking to revoke Mr. Kivlin's peace officer certification on the basis that he was
7 discharged from BPD for engaging in three counts of disqualifying misconduct as defined by
8 RCW 43.101.010(8)(b) and (9).

9 1.3 Count I of the Statement of Charges alleged that from October 2017 through
10 February 2018, Mr. Kivlin engaged in behavior constituting the crime of Official Misconduct
11 under RCW 9A.80.010 when, for his own personal benefit, he used his position as a certified
12 peace officer to access a confidential government database run by Washington State Patrol
13 (WSP) and known as "A Central Computerized Enforcement Service System" (ACCESS) to run
14 nine separate inquiries pertaining to an intimate partner.

15 1.4 Count II of the Statement of Charges alleged that on or about November 22, 2017,
16 Mr. Kivlin engaged in conduct constituting Making a False or Misleading Statement to a Public
17 Servant under RCW 9A.76.175 when he requested sick leave from his supervisor in order to
18 meet with an intimate partner.

19 1.5. Count III of the Statement of Charges alleged that on or about February 19, 2018,
20 that Mr. Kivlin engaged in conduct constituting Making a False or Misleading Statement to a
21 Public Servant under RCW 9A.76.175 when he misrepresented to his supervisor that he was
22 unavailable to respond to a fatality accident because he was in Olympia, when he was actually
23 unavailable because he planned to meet his intimate partner that day.

24 1.6 Mr. Kivlin timely requested a hearing.

25 **II. HEARING**

26 2.1 A hearing was held on December 17 and 18, 2019 at the Commission facility in

1 Burien, Washington, before the Hearing Panel.

2 2.2 The Petitioner presented the testimony of Detective Thein Do of the King County
3 Sherriff's Office, Investigator Katherine Weber of Inslee Best, Assistant Chief¹ Carl Kleinknecht
4 of BPD, Captain David Sanabria of BPD, and Assistant Chief Patrick Arpin of BPD.

5 2.3 Mr. Kivlin presented the testimony of Officer Robert Welty of BPD and Sergeant
6 Michael Shovlin of BPD. Mr. Kivlin also testified on his own behalf.

7 2.4 The Petitioner offered the following exhibits, which were admitted by the
8 Presiding Member following the Second Telephonic Prehearing Conference on October 4, 2019,
9 or admitted at the Hearing on December 17 or 18, 2019, and were considered by the Hearing
10 Panel in deciding this case. Any exhibit withdrawn by a party or excluded by the Presiding
11 Member at either the Prehearing Conference or Hearing is so indicated below.

- 12 1. Statement of Charges, *In re the Certification of John M. Kivlin* dated
13 June 18, 2019 (3 pages);
- 14 2. Request for Hearing, dated August 5, 2019 (1 page);
- 15 3. Peace Officer Certification Form for John Kivlin, dated March 22, 2002 (1 page);
- 16 4. Notice of Peace Officer Separation for John Kivlin, dated August 2, 2018 (1
17 page);
- 18 5. BPD Report of Sergeant J. Burgos, dated April 28, 2018 (2 pages);
- 19 6. BPD Reports of Sergeant Hiam, dated April 28 and May 2, 2018 (6 pages);
- 20 7. BPD Report of Captain Nault, dated April 27, 2018 (5 pages);
- 21 8. BPD Reports of Investigator K. Masseth, dated May 14 and 21, 2018
22 (6 pages);
- 23 9. BPD Reports of Captain Carl Kleinknecht, dated April 30, May 3, and
24 July 7, 2018 (8 pages);
- 25 10. Report of Investigation from Investigator Katherine Weber, dated July 23, 2018,
26 *with* Attachments A – G (115 pages);
11. Mr. Kivlin's Leave Usage, various dates (14 pages);
12. BPD Memo from Assistant Chief Patrick Arpin to Mr. Kivlin, dated July 9, 2018
(5 pages);
13. Notice of Intent to Terminate from Assistant Chief Arpin, dated July 24, 2018
(10 pages);

¹ At the time of the events related to the Statement of Charges, Carl Kleinknecht held the rank of Major.

- 1 14. King County Prosecutor Information and Probable Cause Statement, dated
2 July 11, 2018 (13 pages);
- 3 15. King County Sherriff's Office Domestic Violence Supplemental Form with
4 Statements of Witnesses, dated April 27, 2018 (14 pages); **(WITHDRAWN)**
- 5 16. Statement of Captain Dave Sanabria, dated June 5, 2018 (25 pages);
- 6 17. Email Resignation of Mr. Kivlin, dated July 6, 2018 (1 page);
- 7 18. BPD Memo accepting resignation to Mr. Kivlin, dated July 31, 2018 (1 page);
- 8 19. Text Message Excerpts between Idunn Schneider and John Kivlin, dated between
9 November 21, 2017 and April 19, 2018 (41 pages).

10 2.5 Mr. Kivlin offered the following exhibits, which were previously admitted by the
11 Presiding Member following the Second Prehearing Conference on December 4, 2019. Any
12 exhibit withdrawn by a party or excluded by the Presiding Member at either the Prehearing
13 Conference or Hearing is so indicated below.

- 14 1. Acceptance of Kivlin Resignation **(EXCLUDED)**
- 15 2. Schneider Report History **(EXCLUDED)**
- 16 3. Mylett Investigation Press
- 17 4. Gig Harbor Police Report **(EXCLUDED)**
- 18 5. Dismissal of Kivlin Charges
- 19 6. Emails with Access Certification/WSP Staff **(EXCLUDED)**
- 20 7. Kivlin Medical Records.

21 2.6 The parties made their respective arguments, which were considered by the
22 Hearing Panel.

23 Based on the evidence presented at the hearing, the Hearing Panel enters the following
24 Findings of Fact and Conclusions of Law.

25 **III. FINDINGS OF FACT**

- 26 3.1 On March 29, 2002, John Kivlin was hired as a police officer by BPD.
- 3.2 At all times relevant to the events described herein, Mr. Kivlin was employed as
a police officer by BPD.
- 3.3 In approximately the middle of September 2017, Mr. Kivlin began a consensual
sexual relationship with a woman who he met via a post on Craigslist.

1 3.4 That individual, who is now known to be Idunn Schneider, made material
2 misrepresentations to Mr. Kivlin as to her age and name. For a portion of their relationship, Mr.
3 Kivlin believed her first name to be “Hannah”.

4 3.5 On October 24, 2017, Mr. Kivlin ran three queries involving Ms. Schneider in
5 ACCESS. He conducted the searches using the first name “Hannah” and variations on what he
6 believed to be Ms. Schneider’s birthdate. He also ran a search using what he thought might be
7 her driver’s license number.

8 3.6 On October 25, 2017, Mr. Kivlin ran three additional ACCESS queries that were
9 similar to the ones on October 24, as well as an additional search of Ms. Schneider’s license
10 plate number matching the car she drove.

11 3.7 On January 31, 2018, Mr. Kivlin again ran an ACCESS query for Ms. Schneider’s
12 license plate number.

13 3.8 On February 8, 2018, Mr. Kivlin ran a final ACCESS query using Ms.
14 Schneider’s true name and date of birth. Because it was an accurate name and birthdate, this final
15 search produced results.

16 3.9 Mr. Kivlin had been ACCESS certified and was re-certified multiple times since
17 2004. Mr. Kivlin understood at the time that he conducted each ACCESS query that misuse of
18 ACCESS for personal reasons was inappropriate and could have significant professional
19 repercussions. Each of Mr. Kivlin’s nine ACCESS queries involving Ms. Schneider violated
20 WSP ACCESS Procedure No. 01.05.000, as well as Policy No. 27.00.020, Misuse of Records
21 or Information.

22 3.10 On November 22, 2017, Mr. Kivlin used six hours of sick leave during the later
23 portion of a shift. He spent at least part of this time at an apartment in Redmond that was rented
24 by Ms. Schneider for the purpose of meeting Mr. Kivlin.

25 3.11 During the act of inputting his sick leave on November 22, Mr. Kivlin did not
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1 make a false or misleading statement.

2 3.12 On February 19, 2018, while Mr. Kivlin was assigned to BPD's collision
3 investigation unit, Bellevue experienced a traffic fatality. Captain Sanabria, who was the
4 collision supervisor at the time, issued a call-out to Mr. Kivlin who was off duty at the time via
5 a phone call.

6 3.13 In response to the call-out on February 19, 2018, Mr. Kivlin informed Captain
7 Sanabria that he was unavailable to respond because he was in Olympia and was with his family.

8 3.14 Text messages between Mr. Kivlin and Ms. Schneider, dated February 19, 2018,
9 and time-stamped around the time of the phone conversation with Captain Sanabria, showed that
10 Mr. Kivlin was in the vicinity of Tacoma at the time of that conversation and that planned to
11 meet with Ms. Schneider that day.

12 3.15 As part of his job duties as a police officer assigned to the collision investigation
13 unit, Mr. Kivlin was expected to respond to call-outs such as the one that occurred on February
14 19, 2018, if reasonably able to do so.

15 3.16 During the phone conversation described in paragraph 3.12, Mr. Kivlin made a
16 false and misleading statement to Captain Sanabria concerning his present location and his
17 ability to respond to the call-out. Mr. Kivlin knew that the statement was false and/or misleading.

18 3.17 On or about April 27, 2018, Ms. Schneider made a phone call to BPD to report
19 that Mr. Kivlin had illegally accessed her information by checking her name and car license
20 plate. She stated that Mr. Kivlin had also admitted to doing it and apologized to her. After the
21 phone call, Ms. Schneider drove down to the BPD station for an interview. During that interview,
22 Ms. Schneider reported that she met Mr. Kivlin on an online dating website in September 2017
23 and they began an affair. During the course of their affair, Ms. Schneider reported that Mr. Kivlin
24 texted her that he had run her license plate to find out where she lived.

25 3.18 Because of the nature of Ms. Schneider's allegations, the information was
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1 reported to Major Carl Kleinknecht. Mr. Kivlin was then placed on administrative leave. Major
2 Kleinknecht subsequently met and notified Mr. Kivlin of his administrative leave status.

3 3.19 BPD opened an internal affairs investigation into Mr. Kivlin's actions. Starting
4 in May 2018, BPD conducted a joint investigation with Katherine Weber of Inslee, Best, Doezie
5 & Ryder, P.S. to conduct fact-finding into Mr. Kivlin's suspected misconduct. Ms. Weber was
6 assisted by BPD Major Kleinknecht during the fact-finding process, which included the
7 interviewing of witnesses.

8 3.20 Prior to his resignation from BPD, Mr. Kivlin was scheduled to participate in an
9 interview as part of the internal affairs investigation. However, Mr. Kivlin called the day of the
10 interview and stated that he indefinitely could not participate due to stress-related reasons. The
11 interview was never conducted.

12 3.21 On July 6, 2018, Mr. Kivlin notified BPD that he was resigning effective August
13 2, 2018.

14 3.22 On July 24, 2018, based on the evidence, Assistant Chief Arpin served a Notice
15 of Intent to Terminate on Mr. Kivlin. He sustained numerous factual findings, including that Mr.
16 Kivlin improperly used ACCESS nine times to search for information on his intimate partner
17 and that Mr. Kivlin misrepresented his ability to respond to a fatality accident on February 19,
18 2018.

19 3.23 On July 31, 2018, Assistant Chief Arpin accepted Mr. Kivlin's resignation and
20 notified him accordingly.

21 3.24 Assistant Chief Arpin was the final hiring authority for this case as the Chief of
22 BPD, Steve Mylett, was conflicted out of this case.

23 3.25 If Mr. Kivlin had not resigned, Assistant Chief Arpin would have discharged Mr.
24 Kivlin for improperly using the ACCESS system to run the nine unauthorized queries and for
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1 misrepresenting his unavailability to Captain Sanabria on February 19, 2018. Assistant Chief
2 Arpin would have discharged Mr. Kivlin for each reason independently, and in the collective.

3 3.26 Any Conclusion of Law deemed to be properly considered a Finding of Fact is
4 hereby adopted as such.

5 Based on the foregoing Findings of Fact, the Hearing Panel makes the following:

6 IV. CONCLUSIONS OF LAW

7 4.1 Revocation of Mr. Kivlin John Kivlin's peace officer certification is governed by
8 RCW 43.101 and WAC 139-06.

9 4.2 The Washington State Criminal Justice Training Commission and this Hearing
10 Panel have jurisdiction over Mr. Kivlin and these proceedings. RCW 43.101.085; RCW
11 43.101.105; RCW 43.101.380.

12 4.3 The Commission may revoke a peace officer's certification when "[t]he peace
13 officer has been discharged for disqualifying misconduct, the discharge is final, and some or all
14 of the acts or omissions forming the basis of the discharge proceedings occurred on or after
15 January 1, 2002." RCW 43.101.105(1)(d).

16 4.4 The Commission bears the burden of proving "discharge for disqualifying
17 misconduct" by "clear, cogent, and convincing evidence." RCW 43.101.010(8); RCW
18 43.101.380(1).

19 4.5 A discharge for "disqualifying misconduct" includes discharge resulting from
20 conduct that would constitute a crime committed under color of authority as a peace officer.
21 RCW 43.101.010(8)(a)(i), (b).

22 4.6 The crime of Official Misconduct is a crime committed under color of authority
23 as a peace officer, and engaging in conduct that would constitute those crimes constitutes
24 "disqualifying misconduct" pursuant to RCW 43.101.010(8)(a)(i), (b).

25 4.7 A public servant is guilty of Official Misconduct if, with intent to obtain a benefit
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1 or to deprive another person of a lawful right or privilege (a) he or she intentionally commits an
2 unauthorized act under color of law; or (b) he or she intentionally refrains from performing a
3 duty imposed upon him or her by law. RCW 9A.80.010.

4 4.8 A discharge for “disqualifying misconduct” includes discharge resulting from
5 conduct that would constitute a crime “involving dishonesty or false statement within the
6 meaning of Evidence Rule (ER) 609(a).” RCW 43.101.010(8)(a)(ii), (b).

7 4.9 The crime of Making a False or Misleading Statement to a Public Servant is a
8 crime involving dishonesty or false statement within the meaning of ER 609(a) and engaging in
9 conduct that would constitute that crime constitutes “disqualifying misconduct” pursuant to
10 RCW 43.101.010(8)(a)(ii), (b).

11 4.10 A person is guilty of the crime of Making a False or Misleading Statement to a
12 Public Servant, if a person “knowingly makes a false or misleading material statement to a public
13 servant.” RCW 9A.76.175.

14 4.11 “Material statement” means “a written or oral statement reasonably likely to be
15 relied upon by a public servant in the discharge of his or her official duties.” RCW 9A.76.175.

16 4.12 “Public servant” includes any employee of government. RCW 9A.04.110(23).

17 4.13 Police officers are public servants. *State v. Graham*, 130 Wn.2d 711, 927 P.2d
18 227 (1996).

19 4.14 A peace officer is "discharged for disqualifying misconduct" within the meaning
20 of RCW 43.101.010(8) "under the ordinary meaning of the term and when the totality of the
21 circumstances support a finding that the officer resigned in anticipation of discipline ...and when
22 such discipline, if carried forward, would more likely than not have led to discharge for
23 disqualifying misconduct within the meaning of subsection (8) of this section." RCW
24 43.101.010(9).

25 4.15 A majority of the Hearing Panel concludes by clear, cogent, and convincing
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1 evidence that Mr. Kivlin was discharged for disqualifying misconduct within the meaning of
2 RCW 43.101.010(8) and (9).

3 4.16 A majority of the Hearing Panel concludes by clear, cogent, and convincing
4 evidence that Mr. Kivlin's discharge is final as that term is defined in RCW 43.101.010(10).

5 4.17 A majority of the Hearing Panel concludes by clear, cogent, and convincing
6 evidence that Mr. Kivlin used his authority as a police officer to enter into the ACCESS system
7 to run the nine queries concerning Ms. Schneider.

8 4.18 A majority of the Hearing Panel concludes by clear, cogent, and convincing
9 evidence when Mr. Kivlin entered into the ACCESS system to run the nine queries concerning
10 Ms. Schneider, that he was seeking to obtain a benefit.

11 4.19 A majority of the Hearing Panel concludes by clear, cogent, and convincing
12 evidence that when Mr. Kivlin entered into the ACCESS system to run the nine queries
13 concerning Ms. Schneider, that he intentionally committed an unauthorized act.

14 4.20 Accordingly, a majority of the Hearing Panel concludes by clear, cogent, and
15 convincing evidence that, when Mr. Kivlin used his authority as a police officer to enter into the
16 ACCESS system to run the nine queries concerning Ms. Schneider, as described in paragraphs
17 3.5 to 3.9 and as alleged in Count I of the Statement of Charges, he engaged in conduct that
18 would constitute the crime of Official Misconduct. RCW 9A.80.010. Mr. Kivlin admitted to this
19 conduct. This conduct is disqualifying misconduct under RCW 43.101.010(8)(b).

20 4.21 The Hearing Panel concludes that the Commission failed to establish by clear,
21 cogent, and convincing evidence that Mr. Kivlin engaged in conduct that would constitute
22 Making a False or Misleading Statement to a Public Servant when he took sick leave on
23 November 22, 2017, as alleged in Count II of the Statement of Charges. RCW 9A.76.175.

24 4.22 A majority of the Hearing Panel concludes by clear, cogent, and convincing
25 evidence that Captain David Sanabria, a public servant, was misled into believing that Mr. Kivlin
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1 was with his family in Olympia when Mr. Kivlin was actually in the vicinity of Tacoma and was
2 not with his family. Mr. Kivlin knew that these statements were false and/or misleading at the
3 time that he made them.

4 4.23 A majority of the Hearing Panel concludes by clear, cogent, and convincing
5 evidence that when Mr. Kivlin represented that he could not respond to a fatality accident on
6 February 19, 2018, because he was with his family in Olympia, as described in paragraphs 3.12
7 to 3.16, and as alleged in Count III of the Statement of Charges, he engaged in conduct that
8 would constitute the crime of Making a False or Misleading Statement to a Public Servant.
9 RCW 9A.76.175. This conduct is disqualifying misconduct under RCW 43.101.010(8)(b).

10 4.24 The Hearing Panel concludes that the Petitioner established by clear, cogent, and
11 convincing evidence that the totality of the circumstances show that Mr. Kivlin resigned in
12 anticipation of discipline, and if such discipline were carried forward, Assistant Chief Patrick
13 Arpin would have been more likely than not to discharge Mr. Kivlin for either one of the
14 instances of disqualifying misconduct that are described in paragraphs 4.20 and 4.23.

15 4.25 Based upon the foregoing findings and conclusions, a majority of the Hearing
16 Panel concludes that Mr. Kivlin's disqualifying misconduct warrants revocation of his peace
17 officer certification. A majority of the Hearing Panel further concludes that Mr. Kivlin's
18 disqualifying misconduct as summarized in paragraph 4.20 above, and as alleged in Count I of
19 the Statement of Charges, would alone warrant revocation of Mr. Kivlin's peace officer
20 certification.

21 4.26 Any Finding of Fact deemed to be properly considered a Conclusion of Law is
22 hereby adopted as such.

23 V. ORDER

24 Based on the forgoing Findings of Fact and Conclusions of Law, the Hearing Panel now
25 therefore issues the following ORDER:
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1 That John Kivlin's peace officer certification is hereby REVOKED.

2 Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a
3 petition for reconsideration stating the specific grounds on which relief is requested. No matter will
4 be reconsidered unless it clearly appears from the petition for reconsideration that: (a) there is a
5 material clerical error in the Order, or (b) there is specific material error of fact or law. A petition
6 for reconsideration, together with any argument in support thereof, should be filed by mailing or
7 delivering directly to the Washington State Criminal Justice Training Commission, 19010 1st
8 Avenue South, Burien, Washington, 98148, with a copy to all other parties of record and their
9 representatives. Filing means actual receipt at the Commission's office. RCW 34.05.010(6).

10 A timely Petition for Reconsideration is deemed denied if, within twenty days from the date
11 the petition is filed, the Commission does not (a) dispose of the petition or (b) serve the parties with
12 a written notice specifying the date by which it will act on a petition. An order denying
13 reconsideration is not a prerequisite for filing a petition for review.

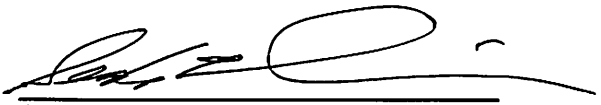
14 The filing of a petition for reconsideration does not stay the effectiveness of this Order. Any
15 such requests should be made in connection with a Petition for Judicial Review made under chapter
16 RCW 34.05.

17 Proceedings for judicial review may be instituted by filing a petition in superior court
18 according to the procedures specified in chapter RCW 34.05. The petition for judicial review of this
19 Order shall be filed with the appropriate court and served on the Commission, the Office of the
20 Attorney General, and all parties within thirty (30) days after service of this Order, as provided in
21 RCW 34.05.542(2).

22 For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review,
23 service is effective upon deposit of this order in the U.S. mail. RCW 34.05.010(19).

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25 DATED this 13TH day of JANUARY, 2020.
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STAFF SERGEANT SEAN MADISON
Sequim Police Department
Presiding Panel Member