



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



September 2016

One of the duties of the Peace Officer Standards and Training (POST) Council is to establish and enforce rules of conduct for certified peace officers and certified dispatchers throughout the state. During each POST Council Meeting, the Council reviews cases investigated by the POST Investigations Bureau and rules on the suspension or revocation of these individuals in accordance with Utah Code 53-6-211 and 53-6-309. The decisions the council makes help to define acceptable and unacceptable conduct for Utah peace officers and certified dispatchers.

Please note that the actions taken by the POST Council are not binding precedent. The POST Council makes every effort to be consistent in its decisions, but each case is considered on its own individual facts and circumstances. The *POST Investigations Bulletin* is a sample of the cases heard by the POST Council and is published to provide insight into the Council's position on various types of officer misconduct.

On September 21, 2016, POST Council convened and considered 28 cases of officer discipline.

Case 1

Officer A was investigated by his agency for sexual solicitation. The investigation disclosed Officer A's phone number was identified on a massage parlor client list that a local agency was investigating for prostitution. Investigation further disclosed that on two occasions, Officer A patronized the massage parlor. At the conclusion of each massage, the masseuse masturbated Officer A to the point of ejaculation. Officer A paid \$40 and \$50 respectively and tipped the masseuse an additional \$20 on both occasions. Criminal charges were not filed with the county attorney. Officer A resigned from his agency.

A Notice of Agency Action was filed by POST and mailed to Officer A. Officer A waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer A's certification be suspended for 18 months. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer A's certification for 18 months.

Case 2

Officer B used an agency fuel card to obtain over 92 gallons of fuel for his personal vehicle, while he was off-duty and for personal use. Officer B admitted to using the agency fuel card to obtain fuel for his personal vehicle to pull a horse trailer to a rodeo in a distant part of the state. Officer B justified the use of the fuel card by dropping off department files for incineration on his way to the rodeo. The POST investigation determined Officer B's conduct constituted two criminal offenses, misusing public money and unlawful use of a financial transaction card both 3rd degree felonies.

A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B failed to respond to the notice of agency action and an order of default was signed by the administrative law judge and mailed to

Officer B. POST recommended Officer B's certification be revoked. After hearing POST's findings the Council ratified POST's recommendation and voted to revoke Officer B's peace officer certification.

Case 3

Officer C submitted an application to POST to attend a satellite police academy. Officer C made no mention of misusing prescription drugs on the application. Shortly after starting the academy, Officer C submitted an addendum to his POST application; again Officer C failed to disclose misusing prescription drugs. Approximately eight months later, Officer C completed the academy and was certifiable as a law enforcement officer. During a pre-employment evaluation with a local agency, Officer C disclosed his misuse of prescription drugs to a psychologist.

POST conducted a Garrity interview with Officer C. During the interview, Officer C said he did not disclose the prescription drug usage on his application because he did not remember it. Officer C then said he did not include the prescription drug use on his application because a statement made by satellite academy personnel caused him to believe the question about misusing a prescription drug did not apply to him. Officer C said that during the ethics class given at the beginning of the academy training, he stopped listening to the instructor when the issue of prescription drug misuse was discussed.

A Notice of Agency Action was filed by POST and mailed to Officer C. Officer C waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer C's certification be suspended for two years. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer C's certification for two years.

Case 4

Officer D submitted an application to attend a basic training program. Officer D's application was forwarded to POST for review. Officer D did not disclose any criminal involvement, arrests, or convictions on her application. At the beginning of the academy Officer D signed a Verification of Application Information form indicating her application was complete. During the background review POST received an electronic notification from the Federal Bureau of Investigation indicating Officer D had a criminal history. POST was also made aware Officer D was arrested for assault domestic violence and failed to disclose it on her POST application.

POST conducted an investigation and determined there were at least 11 separate incidents of criminal conduct which Officer D failed to disclose on her POST application, including traffic citations, arrests for domestic violence, and violation of a protective order. POST conducted a *Garrity* interview with Officer D. During the interview, Officer D admitted to being involved, arrested, and convicted of multiple criminal offenses and not disclosing the information on her POST application.

A Notice of Agency Action filed by POST was mailed to Officer D. Officer D elected to have a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of fact and conclusions of law stating Officer D violated UCA 53-6-211 as outlined in the notice of agency action. POST recommended Officer D's certification be suspended for two years. After hearing POST's findings, the Council rejected POST's recommendation and voted to revoke Officer D's certification.

Case 5

Officer E accessed a personal friend's criminal history through BCI, while off-duty, and without a legitimate law enforcement purpose. Officer E said he did this because his friend requested a copy to include in a job application. Officer E subsequently provided the friend with a copy of the record. Charges were screened with a local County Attorney's Office; the Deputy County Attorney declined to file charges.

A Notice of Agency Action filed by POST was mailed to Officer E. Officer E elected to have a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of fact and conclusions of law stating Officer E violated UCA 53-6-211(1) as outlined in the notice of agency action. POST recommended Officer E's certification be suspended for six months. Officer E and his attorney appeared at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer E and his attorney, the Council rejected POST's recommendation and voted to issue Officer E a letter of caution.

Case 6

Officer F got into an argument with his friend, when the friend accused Officer F of being inappropriate with the friend's wife. Officer F's wife and his two-year-old son were present during the argument. Officer F's wife got between the two men who were arguing and pushed them apart to prevent an altercation. Officer F pushed his wife out of the way, causing her to fall to the ground. The friend hit Officer F in the head, more than one time, with a closed fist and then walked away. Officer F got up and started following the friend, yelling at him to come back. Officer F's wife followed Officer F, trying to get him to go back home. A neighbor came out of his house and told Officer F to be quiet or he would call police. Officer F became confrontational with the neighbor. Officer F's wife pulled Officer F away from the neighbor and yelled for the friend to come back to help her. Officer F shoved his wife out of the way again and she fell to the ground once more. Several neighbors heard all of the yelling and called 911. The friend came back and held Officer F on the ground until police arrived. The local prosecutor declined to file charges on Officer F because Officer F was the "victim" of an assault by his friend. The prosecutor declined to file any domestic violence charges on Officer F because Officer F's wife was uncooperative with the prosecution.

During the POST investigation, it was discovered Officer F had also been involved in a false reporting incident that occurred several months later. The investigation disclosed Officer F's wife was out with her friends at a local bar and Officer F wanted her to come home. When Officer F's wife did not answer her phone, Officer F called police and made a false report of a fight between three women at that bar. Police responded and determined there was no fight in progress. Police listened to the recorded 911 call and immediately recognized Officer F's voice as the caller. The local prosecutor filed a class B misdemeanor charge of False Emergency Reporting on Officer F. Officer F entered a plea of not guilty and the adjudication is pending.

A Notice of Agency Action was filed by POST and mailed to Officer F. Officer F failed to respond to the notice of agency action and an order of default was signed by the administrative law judge and mailed to Officer F. POST recommended Officer F's certification be suspended for three and one-half years. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer F's certification for three and one-half years.

Case 7

Officer G was attempting to access BLM land to retrieve a trail camera he had placed there. Officer G was unable to drive on the main road due to snow pack. Officer G went to an alternate road, walked across private property, and found the gate leading from the private property to the BLM land was locked. Officer G went to a local store and purchased glue, he then returned to the private gate and placed glue in the lock.

Officer G was investigated by his agency and admitted putting glue in the lock because he wanted the lock owner to cut the lock, which would temporarily allow access through the gate. Officer G said he did not know the gate was on private property. Officer G apologized to the property owner, purchased the property owner a new lock, and was suspended by his agency for 36 hours without pay. The case was screened with the county attorney who declined to prosecute.

A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer G be issued a letter of caution. After hearing POST's findings the Council ratified POST's recommendation and voted to issue Officer G a letter of caution.

Case 8

Officer H, a correctional officer, engaged in sexual conduct while on duty inside the correctional facility, multiple times with two co-workers. Officer H's agency did not conduct an internal investigation into this allegation because Officer H had been terminated for other policy violations prior to the discovery of the sexual conduct on duty. During an unrelated investigation, after Officer H was terminated, a co-worker admitted to having inappropriate sexual activity with Officer H at work. During a *Garrity* interview with POST, Officer H admitted to engaging in sexual conduct multiple times, while on duty, with two co-workers.

A Notice of Agency Action was filed by POST and mailed to Officer H. Officer H waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer H's certification be suspended for four years. Officer H appeared at POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer H, the Council ratified POST's recommendation and voted to suspend Officer H's certification for four years.

Case 9

Officer I paid an adult male approximately \$60 to engage in oral and manual sex with him. The adult male's wife witnessed the sexual acts and the exchange of money. Later that evening, Officer I asked the adult male and a 17-year-old male if either wanted Officer I to perform oral sex on them, both males declined the offer. Officer I then exposed his penis to both males and said he would send a picture of his penis to the adult male.

During the subsequent criminal investigation, corroborating text messages from Officer I's phone to the adult male's phone were found. Officer I was terminated from his agency and criminal charges were filed for sexual solicitation, lewdness, contributing to the delinquency of a minor, and intoxication. Officer I entered a plea of no contest to contributing to the delinquency of a minor, a class B misdemeanor, and attempted sexual solicitation, a class C misdemeanor. The lewdness and intoxication charges were dismissed with prejudice. POST contacted Officer I several times attempting to arrange an interview. Officer I stated he wished to participate in the POST process, however, after that he stopped communicating with POST.

A Notice of Agency Action was filed by POST and mailed to Officer I. Officer I failed to respond to the notice of agency action and an order of default was signed by the administrative law judge and mailed to Officer I. POST recommended Officer I's certification be suspended for two and one-half years. After

hearing POST's findings the Council rejected POST's recommendation and voted to revoke Officer I's certification.

Case 10

Officer J was investigated by an outside police agency for an allegation Officer J sold ammunition belonging to his agency at a local pawn shop. The investigation disclosed that Officer J went to a local pawn shop and sold 26 boxes of .40 caliber ammunition and 13 boxes of .223 caliber ammunition. Officer J was paid \$320 in cash for the transaction. Officer J's employment was terminated. Officer J pled guilty to wrongful appropriation, a class B misdemeanor. During a *Garrity* interview with POST, Officer J admitted selling ammunition, which belonged to his employing agency, to the pawn shop on at least two occasions.

A Notice of Agency Action was filed by POST and mailed to Officer J. Officer J failed to respond to the notice of agency action and an order of default was signed by the administrative law judge and mailed to Officer J. POST recommended Officer J's certification be suspended for three years. After hearing POST's findings the Council rejected POST's recommendation and voted to revoke Officer J's certification.

Case 11

Officer K was involved in a domestic dispute with his ex-wife and her boyfriend. Officer K's ex-wife and her boyfriend went to Officer K's apartment for a custody exchange of Officer K's children. During the exchange, there was a confrontation between Officer K's wife and Officer K's ex-wife which became heated and physical. The boyfriend stepped toward the two females to separate them. Officer K stepped in front of the boyfriend and hit him in the face with a closed fist, knocking the boyfriend to the ground. Officer K then stood over the boyfriend, while he laid on the ground in the fetal position, and continued to hit the boyfriend with closed fists. According to witnesses, the boyfriend never made any aggressive or threatening moves toward anyone and never tried to fight back after Officer K attacked him. The boyfriend suffered a broken nose, a laceration to his nose, and scrapes and bruises to his head and face. Charges were filed on Officer K for assault, a class A misdemeanor. Officer K pled guilty to assault, a class A misdemeanor.

A Notice of Agency Action was filed by POST and mailed to Officer K. Officer K failed to respond to the notice of agency action and an order of default was signed by the administrative law judge and mailed to Officer K. POST recommended Officer K's certification be revoked. After hearing POST's findings the Council ratified POST's recommendation and voted to revoke Officer K's certification.

Case 12

Officer L was at home with his wife, where they each consumed some alcohol. Officer L's wife went to lie down and Officer L entered the master bedroom to speak with her. An argument ensued which turned physical. According to Officer L's wife Officer L pushed her. Officer L's wife struck him with her hand and with his laptop computer. Officer L's wife also struck him several times with a flat iron. Officer L told investigators he felt he was going to lose consciousness if he was struck again and he punched his wife in the right side of her face with his left fist. According to Officer L, his wife fell to the floor and struck her head on the door frame. Officer L's wife was treated at a local hospital. Hospital personnel reported the incident to local police. Officer L's wife sustained a broken nose, fractured right orbital socket, several lacerations to her right ear requiring stitches, a chipped front tooth, and a concussion. Officer L pled guilty to assault, a Class A misdemeanor.

A Notice of Agency Action was filed by POST and mailed to Officer L. Officer L waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer L's certification be revoked. Officer L's attorney appeared at the POST Council meeting and addressed the Council on behalf of Officer L. After hearing POST's findings and hearing from officer L's attorney, the Council ratified POST's recommendation and voted to revoke Officer L's certification.

Special Note: The disciplinary proceedings of the POST council are administrative and are independent from any criminal prosecution. POST Investigations is charged with investigating misconduct to determine if there is clear and convincing evidence that a peace officer or certified dispatcher has violated Utah Code 53-6-211 or 53-6-309. The fact that a peace officer or certified dispatcher has been convicted of a criminal violation, or has plead guilty to a criminal violation, is in and of itself clear and convincing evidence that the peace officer or certified dispatcher has violated Utah Code 53-6-211(1)(d) or 53-6-309(1)(d). Where there is clear and convincing evidence to show a violation has taken place POST is obliged to bring that matter to the Council. The POST Council has the statutory authority to determine what the appropriate sanction should be.

For reference we have included below Utah Code 53-6-211 and a portion of Administrative Rule R728-409. The POST Council Disciplinary Guidelines can be found online at <http://publicsafety.utah.gov/post/>. Please direct any questions regarding the statute or the POST investigation process to support@utahpost.org

53-6-211. Suspension or revocation of certification -- Right to a hearing -- Grounds -- Notice to employer -- Reporting.

- (1) The council has authority to suspend or revoke the certification of a peace officer, if the peace officer:
 - (a) willfully falsifies any information to obtain certification;
 - (b) has any physical or mental disability affecting the peace officer's ability to perform duties;
 - (c) is addicted to alcohol or any controlled substance, unless the peace officer reports the addiction to the employer and to the director as part of a departmental early intervention process;
 - (d) engages in conduct which is a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;
 - (e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning issued based on *Garrity v. New Jersey*, 385 U.S. 493 (1967);
 - (f) engages in sexual conduct while on duty; or
 - (g) is certified as a law enforcement officer, as defined in Section 53-13-103 and is unable to possess a firearm under state or federal law.
- (2) The council may not suspend or revoke the certification of a peace officer for a violation of a law enforcement agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).
- (3)
 - (a) The division is responsible for investigating officers who are alleged to have engaged in conduct in violation of Subsection (1).
 - (b) The division shall initiate all adjudicative proceedings under this section by providing to the peace officer involved notice and an opportunity for a hearing before an administrative law judge.
 - (c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.
 - (d)
 - (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.

- (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of proof to establish the affirmative defense by a preponderance of the evidence.
 - (e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the officer engaged in conduct that is in violation of Subsection (1), the division shall present the finding and conclusions issued by the administrative law judge to the council.
 - (f) The division shall notify the chief, sheriff, or administrative officer of the police agency which employs the involved peace officer of the investigation and shall provide any information or comments concerning the peace officer received from that agency regarding the peace officer to the council before a peace officer's certification may be suspended or revoked.
 - (g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.
- (4) (a) The council shall review the findings of fact and conclusions of law and the information concerning the peace officer provided by the officer's employing agency and determine whether to suspend or revoke the officer's certification.
- (b) A member of the council shall recuse him or herself from consideration of an issue that is before the council if the council member:
- (i) has a personal bias for or against the officer;
 - (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or
 - (iii) employs, supervises, or works for the same law enforcement agency as the officer whose case is before the council.
- (5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (b) Employment by another agency, or reinstatement of a peace officer by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).
- (6) A chief, sheriff, or administrative officer of a law enforcement agency who is made aware of an allegation against a peace officer employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

R728-409-3. Definitions.

- A. Terms used in this rule are defined in Section 53-6-102.
 - B. B. In addition:
3. "on duty" means that a peace officer is:
- a. actively engaged in any of the duties of his employment as a peace officer;
 - b. receiving compensation for activities related to his employment as a peace officer;
 - c. on the property of a law enforcement facility;
 - d. in a law enforcement vehicle which is located in a public place; or
 - e. in a public place and is wearing a badge or uniform, authorized by a law enforcement agency, which readily identifies the wearer as a peace officer;
6. "sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.