



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



December 2015

One of the duties of the Peace Officer Standards and Training 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Please note that the actions taken by the POST Council are not binding precedent.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 January 4, 2016, POST Council convened and considered 10 cases of officer discipline.

Case 1

Officer A, a certified law enforcement officer, was investigated by his agency for signing his supervisor's name on an official report which Officer A had prepared. During *Garrity* interviews with his agency and POST, Officer A admitted he looked at his supervisor's signature on another report in order to replicate it. Officer A admitted to signing his supervisor's name without the supervisor's knowledge or consent. Officer A said he signed his supervisor's signature because the supervisor was out of town and he did not want to find another supervisor to sign the document. 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 a six month suspension of Officer A's certification. After hearing POST's findings the Council ratified POST's recommendation and voted to suspended Officer A's peace officer certification for six months.

Case 2

Officer B, a certified law enforcement officer, began a sexual relationship with a woman he assisted during a police call for service. Officer B had at least one sexual encounter with the woman while he was on duty. Officer B's relationship with the woman later became public via social media. An administrative investigation was conducted by a neighboring agency. During a *Garrity* interview, Officer B admitted going to the woman's home and having sex while he was on duty. Officer B also admitted to using his BCI access to view an outstanding warrant on the woman and then contacting the court to pay the warrant. An interview with the woman confirmed Officer B's admission regarding having sex while on duty. Officer B subsequently resigned from his agency. Officer B declined to participate in the POST investigative process. A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B 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 a three year suspension of Officer B's certification. After hearing POST's

findings the Council ratified POST's recommendation and suspended Officer B's peace officer certification for three years.

Case 3

Officer C, a certified law enforcement officer, was involved in a disturbance in his neighborhood. Officer C's neighbors were having a party as Officer C and his family was attempting to sleep. Officer C confronted his neighbors and asked them to keep the noise down. They agreed, but the noise continued and about an hour later, Officer C again confronted the neighbors about the noise. A female swore at Officer C and told him to go home. Officer C approached her and knocked a cup from her hand, splashing the contents on nearby people. The neighbors called the local police, who responded and conducted an investigation. At the conclusion of the investigation, the case was screened with the county attorney. Officer C was charged and pled guilty to disorderly conduct, a class C misdemeanor. During the agency and POST *Garrity* interviews, Officer C admitted he became angry at comments the female made and knocked the cup she was holding out of her hand. 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 be issued a letter of caution. Officer C appeared before the Council. After hearing POST's findings and hearing from Officer C, the Council ratified POST's recommendations and voted to issue Officer C a letter of caution.

Case 4

Officer D, a certified correctional officer, was stopped by a law enforcement officer for not wearing his seatbelt and failing to maintain his lane of travel. The investigating officer detected the odor of alcohol coming from Officer D and asked Officer D to perform standardized field sobriety tests (SFST's). The investigating officer determined Officer D was impaired and arrested him for DUI; Officer D's BrAC was .16. The investigating officer cited and released Officer D to a responsible party. Officer D did not notify his supervisor about his arrest. When his agency became aware of the arrest, Officer D was placed on administrative leave and later resigned. Officer D entered a guilty plea to the amended charge of impaired driving. A Notice of Agency Action was filed by POST and mailed to Officer D. Officer D 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 an eighteen month suspension of Officer D's certification. Officer D appeared before the Council. After hearing POST's findings and hearing from Officer D, the Council ratified POST's recommendation and voted to suspend Officer D's peace officer certification for eighteen months.

Case 5

Officer E, a certified law enforcement officer, wrote three checks to three retail stores totaling over two thousand dollars. Officer E's bank closed his checking account with a negative balance of over one thousand dollars. None of the three checks Officer E wrote cleared the bank. After his account was closed, Officer E went to another business and wrote a check on his closed account. This check was also returned to the business. Officer E was investigated by a local police agency for issuing a bad check. During the investigation, Officer E told the investigating officer the checks were fraudulent and a family member wrote them. Officer E told the investigator he did not use checks. Officer E was charged in District Court for issuing a bad check, but the case was dismissed after Officer E paid the retail stores the money he owed. Officer E submitted to a *Garrity* interview with his employing agency. In the interview, Officer E said he did not know how much money was in his account when he wrote the checks. Officer E also told investigators that he had deposited money in his account, at the time he wrote the checks. Approximately

one week after the *Garrity* interview, Officer E called his agency and said he had not deposited any money into his account, but had used the money to live on. Officer E did not participate in the POST investigative process. A Notice of Agency Action was filed by POST and mailed to Officer E. Officer E failed to respond to the notice of agency action. An order of default was signed by the administrative law judge and mailed to Officer E. POST recommended revocation of Officer E's certification based on his refusing to respond, or failing to respond truthfully, to questions after having been issued a warning based on *Garrity v. New Jersey*. After hearing POST's findings, the Council ratified POST's recommendation and voted to revoke Officer E's peace officer certification.

Case 6

Officer F, a certified law enforcement officer, became sick and used three doses of his wife's left over prescription cough medicine. The cough medicine was a schedule II controlled substance. Sometime after misusing this prescription medication Officer F submitted an application for correctional officer training. POST reviewed Officer F's application and became aware of Officer F's unlawful use of the prescription drug, which he disclosed in his application. Officer F also disclosed in the application that he had taken another prescription drug, not prescribed to him, before he started the SFO academy two years previously. He also disclosed taking a prescription medication prescribed to his mother, while he was attending the LEO academy the previous year. Officer F had not disclosed the prescription drug use on his SFO application and did not notify POST of the prescription drug use while he was attending the LEO academy. During a *Garrity* interview with POST, Officer F admitted using the prescription drug before he started SFO training and admitted omitting the information from his SFO application. Officer F also admitted to using another prescription drug while he was attending the LEO academy and admitted not notifying POST. Officer F also admitted to using his wife's prescription cough medicine. Officer F said he was aware he could not use another person's prescription, but didn't really think it was "that big of a deal" and he wanted to save a trip to the doctor. A Notice of Agency Action was filed by POST and mailed to Officer F. Officer F 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 a three year suspension of Officer F's certification. Officer F appeared before the Council. After hearing POST's findings and hearing from Officer F, the Council rejected POST's recommendation and voted to suspend Officer F's peace officer certification for eighteen months.

Case 7

Officer G, a certified correctional officer, was arrested for driving under the influence (DUI) by a local agency. Prior to her arrest, Officer G had consumed two shots of vodka at her residence and then left when she and her daughter began to argue. Officer G was observed by police driving toward her home. As she approached her house, Officer G turned off her headlights and failed to signal before turning into her driveway. Officer G was contacted by police after she pulled into her driveway and asked to perform standardized field sobriety tests (SFST's). During the tests, Officer G showed signs of impairment and was arrested. Officer G's BrAC was .091. Officer G pled guilty to the amended charge of impaired driving. A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended a one year suspension of Officer G's certification. Officer G appeared before the Council. After hearing POST's findings and hearing from Officer G, the Council ratified POST's recommendation and voted to suspend Officer G's peace officer certification for one year.

Case 8

Officer H, a certified correctional officer, was involved in an altercation with a disruptive prisoner in a court holding cell. After telling the prisoner to be quiet, Officer H began to close the cell door. The prisoner, who was significantly smaller than Officer H, and was restrained with handcuffs and leg restraints, started to move toward the cell door. Officer H allegedly perceived a threat and stepped inside the cell, hitting the prisoner in the chest with open hands and sending the prisoner back into a corner. Officer H went into the cell, placed his hands around the prisoner's neck and threw him to the other side of the cell. According to Officer H, the prisoner struck Officer H in the groin several times with his knee during the incident. Officer H reported he was attempting to use the pressure points under the prisoner's jaw to get him to stop. During a *Garrity* interview with his agency, Officer H admitted to entering the cell and pushing the prisoner because he perceived the prisoner as a threat. Officer H also stated he threw the prisoner across the cell to create distance because the prisoner had been striking Officer H in the groin with his knee. The internal investigation determined Officer H's use of force was excessive and unnecessary under the circumstances. Officer H resigned from his agency. A local agency conducted a criminal investigation into the matter. At the conclusion of the criminal investigation, the case was screened with the city attorney and assault charges were filed on Officer H in an adjacent county. The court later dismissed the assault charge, without prejudice, because the city prosecutor had failed to appear for court on two separate occasions. 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 a three year suspension of Officer H's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer H's peace officer certification for three years.

Case 9

Officer I, a certified law enforcement officer, was investigated by his agency after they learned he was obtaining prescription narcotics (Oxycodone) from a friend and had been doing so for more than a year. An internal investigation was conducted by the agency and another local agency was asked to conduct a criminal investigation into the accusation. The employing agency conducted a *Garrity* interview with Officer I where he admitted to obtaining the Oxycodone from a friend in order to supplement his own prescription. Officer I had a prescription for Oxycodone to alleviate pain from an on the job injury sustained a couple of years earlier. Officer I stated he would not take his Oxycodone as prescribed and took as many as he felt he needed when he was not working. Officer I said he would only obtain Oxycodone from his friend when he ran out of his own prescription. Officer I's friend declined to participate in the internal investigation. Officer I subsequently submitted his resignation to his agency. The criminal case on Officer I was closed due to lack of information. Both Officer I and his friend refused to cooperate with criminal investigators. POST conducted a *Garrity* interview with Officer I. During the interview, Officer I admitted to obtaining additional Oxycodone pills from his friend when he ran out of his own. Officer I said he hesitated to go back to his doctor for fear the doctor would think Officer I was addicted to the Oxycodone. Officer I said it was easier to get extra Oxycodone from his friend and he took advantage of their friendship. A Notice of Agency Action was filed by POST and mailed to Officer I. Officer I 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 a three year suspension of Officer I's certification. Officer I appeared before the Council. After hearing POST's findings and hearing from Officer I, the Council ratified POST's recommendation and voted to suspend Officer I's peace officer certification for three years.

Case 10

Officer J, a certified law enforcement officer, was at his home consuming alcohol with his girlfriend. Officer J's girlfriend got upset because Officer J had too much to drink and was ignoring her. Officer J's girlfriend left the residence and drove to her home. Approximately 30 minutes later, Officer J drove to his

girlfriend's residence to try and talk to her. Officer J's girlfriend told him she did not want to talk to him and told him to leave several times. According to Officer J's girlfriend, he knocked on the door and window while yelling at her to open the door. After approximately 45 minutes of Officer J knocking on the door and windows, his girlfriend called the police. When a deputy arrived and began to exit his vehicle, he could hear Officer J pounding on the door and yelling, "Open the fucking door." Officer J was issued a citation and given a verbal trespass warning and a phone harassment warning. Officer J's supervisor drove him home. The following morning, Officer J drove back to his girlfriend's house. Officer J was contacted by his supervisor at the girlfriend's house, and taken home again. The supervisor said Officer J appeared to have been up all night and still seemed intoxicated. Officer J pled no contest to intoxication, the other charges were dismissed. A Notice of Agency Action was filed by POST and mailed to Officer J. Officer J 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 a nine month suspension of Officer J's certification. Officer J appeared before the Council. After hearing POST's findings and hearing from Officer J, the Council ratified POST's recommendation and voted to suspend Officer J's peace officer certification for nine months.

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. 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.