



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training

March 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 peace officers 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.

Please note that the actions taken by the POST Council are not binding precedent.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 March 16, 2015, POST Council convened and considered 13 cases of officer discipline.

Case #1

Officer A, a certified peace officer with a county agency, was involved in a single vehicle crash in his unmarked police vehicle, and was subsequently arrested for driving under the influence (DUI). Officer A had four of his children, all under the age of 16, inside the vehicle and all sustained minor injuries. Officer A performed the standardized field sobriety tests which indicated impairment. A subsequent blood draw determined Officer A's blood alcohol content was .24 grams per milliliter of blood; three times the legal limit. During a *Garrity* interview with his agency and POST, Officer A admitted to drinking alcohol prior to driving, admitted he should not have been driving, and admitted to having an alcohol problem. Officer A entered a guilty plea to a Class A misdemeanor DUI charge. A Notice of Agency Action filed by POST was mailed to Officer A. Officer A waived his right to a hearing before an administrative law judge. POST recommended a four year suspension of Officer A's certification. After hearing POST's findings, and hearing from Officer A and his attorney, the Council rejected POST's recommendation and voted to suspend Officer A's certification for three years.

Case #2

Officer B, a certified peace officer with a county agency, was investigated by a local law enforcement agency for damage/interruption of a communications device and domestic violence in the presence of a child. Officer B and his wife were involved in an argument and the wife told her son to contact police. While Officer B's step-son was attempting to call police, Officer B pulled the phone cord from the wall and prevented his step-son from calling 911. During the argument, Officer B's infant son was in a car seat in an adjacent room. When police arrived, Officer B admitted to breaking several items as well as pulling the phone cord from the wall. Officer B was later charged with criminal mischief and interruption of a

communication device, both class B misdemeanors. Officer B entered a guilty plea, which was held in abeyance, to the amended charge of disorderly conduct, a class C misdemeanor. The charge for interrupting a communication device was dismissed. During *Garrity* interviews with Officer B's agency and POST, Officer B admitted he intentionally pulled the phone cord from the wall when his step-son was attempting to call 911. Officer B also admitted he broke several items within his home during the argument. A Notice of Agency Action filed by POST was mailed to Officer B. Officer B waived his right to a hearing before an administrative law judge. POST recommended a one year suspension of Officer B's certification. After hearing POST's findings, and hearing from Officer B, the Council voted to ratify POST's recommendation and suspended Officer B's certification for one year.

Case #3

Officer C, an unemployed certified peace officer attending a satellite academy, submitted an application for employment to a local agency. In the application Officer C disclosed that while living in another state, she and her ex-husband had been in possession of a marijuana plant. Officer C also disclosed she had harvested psilocybin mushrooms for her friends to sell. These disclosures were not included in Officer C's original POST application to attend the academy. At the beginning of her academy session, Officer C received training, during which she was made aware of what background information was required on a POST application. Officer C was also given the opportunity to verify the information on her POST application and add any information that should have been included. Officer C submitted her verification of information and did not submit an addendum. A few weeks after the academy started, Officer C submitted a letter disclosing that in the past she had witnessed friends conduct several drug transactions involving marijuana and methamphetamine. Then, just prior to graduating from the LEO portion of the academy, Officer C submitted a letter to the academy director admitting her involvement in cultivation of marijuana and harvesting of mushrooms for sale. By the time POST was made aware of the disclosure, Officer C had already graduated from the academy. POST attempted to contact Officer C for an interview without success. A Notice of Agency Action filed by POST was mailed to Officer C. Officer C failed to respond to the notice of agency action. An order of default was signed by the administrative law judge. POST recommended a two year suspension of Officer C's certification. After hearing POST's findings, the Council rejected POST's recommendation and voted to revoke Officer C's certification.

Case #4

Officer D, a certified peace officer with a county agency, was investigated for selling department ammunition to a local pawn shop. Investigation disclosed in 2007, while Officer D was attending a police academy qualification shoot, Officer D took a case of .40 caliber ammunition which was left over after the final shoot. In the summer of 2011, Officer D attended department sponsored firearms training. Officer D, who was a range master, was responsible for bringing ammunition to the range, then returning the unused ammunition to the department armory. During this time, a box of 1000 rounds of .223 rifle ammunition was left in the trunk of Officer D's patrol car. While cleaning his car, Officer D found the case of ammunition and placed it in his garage so he could later return it to the armory. In the fall of 2013, Officer D, being short on money, took both cases of ammunition to a local pawn shop and sold the ammunition. Some of the boxes had markings from the police academy and the pawn shop owner contacted the local police. Officer D cooperated with both the internal and criminal investigation. Officer D was subsequently charged with two counts of theft by deception. Officer D entered a plea of guilty to a single charge of theft by deception and the second was dismissed. During a POST *Garrity* interview, Officer D admitted to the theft of the ammunition in 2011, but claimed the ammunition he took in September 2007, was given to the cadets by staff. A Notice of Agency Action filed by POST was mailed to Officer D. Officer D waived his right to a hearing before an administrative law judge. POST recommended a one year suspension of Officer D's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer D's certification for one year.

Case #5

Officer E, a certified peace officer for a county agency, was investigated for theft of controlled substance from the medication cart in the jail. During an internal investigation, Officer E admitted to having an addiction to pain medications and to taking the controlled substance. Criminal charges were not filed in relation to this incident; however, Officer E resigned from his agency. A few weeks later, Officer E was arrested in a local department store for retail theft. At the time of his arrest, Officer E was wearing a cap and jacket with agency logos embroidered on them. Officer E told security personnel and the arresting officer that he was a law enforcement officer. The arresting officer confirmed with Officer E's former agency that Officer E was no longer an employee with their agency. Officer E was charged with retail theft. He was not charged with impersonating an officer. Officer E entered a guilty plea to retail theft. Officer E did not participate in the POST investigative process. A Notice of Agency Action filed by POST was 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 a three year suspension of Officer E's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer E's certification for three years.

Case #6

Dispatcher F, a certified dispatcher with a state agency, was investigated by a local agency for unlawful sexual activity with a minor. The incident occurred sometime previously while Dispatcher F was a teenager. The case was ultimately adjudicated in juvenile court. The sexual violation was not disclosed on Dispatcher F's POST application to attend training. During a POST *Garrity* interview Dispatcher F admitted he did not disclose the sexual misconduct on his POST application. A Notice of Agency Action filed by POST was mailed to Dispatcher F. Dispatcher F waived his right to a hearing before an administrative law judge. POST recommended a two year suspension of Dispatcher F's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Dispatcher F's certification for two years.

Case #7

Officer G, a certified peace officer with a state agency, was investigated for two counts of assault, domestic violence in the presence of a child, and interference with a communication device. Officer G was arrested, charged and subsequently entered into a diversion agreement with the court. During a *Garrity* interviews with his department and POST, Officer G admitted to assaulting (slapping) his wife and domestic violence in the presence of a child. A Notice of Agency Action filed by POST was mailed to Officer G. Officer G waived his right to a hearing before an administrative law judge. POST recommended a two and a half year suspension of Officer G's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer G's certification for two and a half years.

Case #8

Officer H, a certified peace officer with a city agency, was investigated by his agency for assaulting a handcuffed suspect. The suspect reported the assault to Officer H's on duty supervisor. Officer H told his supervisor he slapped the suspect because of an earlier encounter, where he had told the suspect to go home. In *Garrity* interviews with his agency and POST, Officer H denied slapping the suspect. Officer H explained when the suspect made a move toward Officer H's gun side, Officer H "checked" the suspect in the jaw line to gain the suspect's compliance and control. A Notice of Agency Action filed by POST was mailed to Officer H. Officer H elected to have a hearing before an administrative law judge (ALJ). The ALJ determined Officer H had lied during the department and POST investigative process. POST recommended revocation of Officer H's certification. After hearing POST's findings and hearing from

Officer H's attorney, the Council ratified POST's recommendation and voted to revoke Officer H's certification.

Case #9

Cadet I, a certified special functions officer, still attending a satellite academy, was target shooting with friends on private land in an area where walk-in access was allowed. Cadet I discharged his firearm near a cattle stockyard and did not collect his trash and spent shell casings when he left the area. Law enforcement officers made contact with Cadet I several days later and cited him for littering and discharging his firearm near a cattle stockyard. Cadet I made notification to his academy director and withdrew from the law enforcement block of the academy. Cadet I entered into a plea in abeyance to both charges. During a POST *Garrity* interview, Cadet I admitted to shooting near a cattle stockyard and to not collecting his trash or spent shell casings. A Notice of Agency Action filed by POST was mailed to Cadet I. Cadet I waived his right to a hearing before an administrative law judge. POST recommended a six month suspension of Cadet I's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Cadet I's certification for six months.

Case #10

Officer J, a certified correctional officer with a state agency, was investigated by his agency for theft of food items from the kitchen of the correctional facility where he was working. Officer J was interviewed by his supervisor and Officer J admitted to taking food items from the facility on multiple occasions over the previous months. POST conducted a *Garrity* interview with Officer J. During the interview, Officer J admitted to stealing food from the kitchen of the correctional facility on multiple occasions. Officer J waived his right to a hearing before an administrative law judge. POST recommended a one year suspension of Officer J's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer J's certification for one year.

Case #11

Officer K, a certified correctional officer with a state agency, was stopped by a local police agency for speeding. During the stop, the officer observed an open can of beer in the passenger area of Officer K's vehicle. The officer did not observe any evidence that would suggest Officer K was consuming alcohol. Officer K was issued a citation for driving with an open container of alcohol in the vehicle. Officer K's agency and POST conducted *Garrity* interviews with Officer K. Officer K admitted to having an open container of alcohol in his vehicle while driving. A Notice of Agency Action filed by POST was mailed to Officer K. Officer K waived his right to a hearing before an administrative law judge. POST recommended a letter of caution be issued to Officer K. After hearing POST's findings, the Council ratified POST's recommendation and voted to issue a letter of caution to Officer K.

Case #12

Officer L, a certified unemployed peace officer, made application for employment to a police agency and during a polygraph examination Officer L disclosed he used his wife's prescription drugs in 2013. A few days later Officer L sent a letter to POST where he disclosed the misuse of prescription drugs in 2013. This information was not on Officer L's original POST application. At the beginning of his academy session, Officer L received training, during which he was made aware of what background information was required on a POST application. Officer L was also given the opportunity to verify the information on his POST application and add any information that should have been included. Officer L stated when he remembered the misuse he did not inform POST because he thought he may be dismissed from the academy. During a POST *Garrity* interview, Officer L admitted he lied on his application to obtain certification. A Notice of

Agency Action filed by POST was mailed to Officer L. Officer L waived his right to a hearing before an administrative law judge. POST recommended a two year suspension of Officer L's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer L's certification for two years.

Case #13

Officer M, a certified peace officer with a city agency, was investigated by her agency for falsifying a police report. Officer M had picked up a dog at large and while transporting it to the animal shelter, she decided to let the dog go. Officer M then prepared a written report which indicated she was dispatched to a call and when she arrived the dog was no longer in the area. During a Garrity interview with Officer M's agency and POST, Officer M admitted she falsified the official police report. A Notice of Agency Action filed by POST was mailed to Officer M. Officer M waived her right to a hearing before an administrative law judge. POST recommended a one year suspension of Officer M's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer M's certification for one year.

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 dismissed from the armed forces of the United States under dishonorable conditions.
- (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.

Repealed and Re-enacted by Chapter 313, 2010 General Session

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.