



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training

June 13, 2011

One of the duties of the Utah Council on Peace Officer Standards and Training 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. 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Please note that the actions taken by the POST Council are not binding precedent.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 June 13, 2011, POST Council convened and considered 10 cases of officer discipline.

Case #1

Officer A, an officer with city police department, was dispatched to a home to take a report for a runaway juvenile. While taking the report, officer A asked the mother of the juvenile if there was any pain medication in the house. The mother stated there was prescription pain medication (Hydrocodone) and showed the officer where it was located in the master bathroom. While the mother was completing paperwork for the report, officer A asked her if he could tour the house. The mother gave her consent and the officer toured the house by himself. He went into the master bathroom and took an undetermined amount of the Hydrocodone pills from the prescription bottle.

Within a week Officer A returned to the home two additional times asking to search the house for his flashlight. On the third visit the mother, who had become suspicious set up a video camera and recorded officer A stealing Hydrocodone. Officer A did not respond to the Notice of Agency Action from POST Investigations. An Order of Default was issued with POST recommending revocation of Officer A's peace officer certification. The POST Council voted to adopt the recommendation of POST investigations and revoked A's peace officer certification.

Case #2

Deputy B, a corrections officer with a county sheriff's office, began a sexual relationship with a parolee. The relationship was discovered after the parolee was arrested for DUI. While the parolee was being booked into jail, he asked the booking officers to check his cell phone for a message from deputy B. Booking officers found a picture of the deputy and text messages from her to the parolee that seemed personal in nature. The parolee also mentioned to arresting officers that he and deputy B were dating.

During an IA investigation deputy B admitted she had a sexual relationship with the parolee. Deputy B stated she knew the parolee was a convicted felon and was under the supervision of Adult Probation and Parole (AP&P) during their relationship.

Deputy B signed a consent agreement for revocation of her peace officer certification. The POST Council voted to accept the consent agreement for revocation of Deputy B's peace officer certification.

Case #3

Officer C, a law enforcement officer with a police department, was involved in a two vehicle accident in a parking lot of a convenience store. Officer C failed to notify his supervisor about the accident. A complainant contacted the department and reported the accident.

During a *Garrity* interview officer C gave a very detailed description of the accident. Officer C also prepared an official police report regarding the accident. Witness statements differed significantly from the information provided by officer C. Video surveillance from the local business and subsequent investigation revealed officer C had not been truthful during his *Garrity* interview and had provided false in his official police report.

Officer C signed a consent agreement for a four year suspension of his peace officer certification. The POST Council voted to accept the consent agreement for a four year suspension of officer C's peace officer certification.

Case #4

Officer D, a corrections officer, became the subject of an Internal Affairs (IA) investigation. The department received information that officer D was involved in collecting a commissary debt from an inmate on behalf of another inmate and accessing the internet when requested to do so by inmates.

A *Garrity* interview with officer D was conducted by department investigators. In the interview officer D admitted to violating policy by collecting commissary from one inmate and giving it to another inmate. Officer D denied accessing the internet on behalf of any inmates.

A follow-up interview with officer D was conducted by department investigators. Contrary to her statements made in the first interview, officer D admitted that on more than one occasion, she printed information from the internet for inmates. The investigation concluded officer D lied after having been given a *Garrity* warning.

Officer D did not respond to the Notice of Agency Action from POST Investigations. An Order of Default was issued with POST recommending a three year suspension of Officer D's peace officer certification. The POST Council voted to adopt the recommendation of POST investigations for a three year suspension of officer D's peace officer certification.

Case #5

Deputy E, a corrections officer with a county sheriff's office, was involved in a domestic dispute with his wife. Officer E and his wife were having a verbal argument about cleaning the house. The argument became physical when Officer E struck his wife in the back of the head with the palm/heel of his hand. The couple's one and a half year old child was present during the domestic dispute. Officer E was arrested and charged with assault and domestic violence in the presence of a child.

Deputy E signed a consent agreement for a two year suspension of his peace officer certification. The POST Council voted to accept the consent agreement for a two year suspension of Deputy E's peace officer certification.

Case #6

Officer F, a law enforcement officer with a city police department, was driving a personal vehicle when she was involved in a single vehicle crash. After an investigation, officer F was arrested for driving under the influence of alcohol. Results of the toxicology test showed officer F's BAC to be 0.12. A few months later officer F was cited for operating a vehicle with a suspended driver's license.

Officer F signed a consent agreement for a two year suspension of her peace officer certification. The POST Council voted to accept the consent agreement for a two year suspension of Officer F's peace officer certification.

Case #7

Officer G, a certified special functions officer, became the subject of a POST investigation. POST was notified that Officer G did not disclose his usage of methamphetamine on his POST application for admittance into the basic training program. The methamphetamine usage was discovered during a pre-employment background investigation conducted by a city agency. During a *Garrity* interview officer G admitted to using methamphetamine six years ago. Officer G willfully falsified information to obtain certification by not disclosing the use of methamphetamine on his POST application.

Officer G signed a consent agreement for a two year suspension of his peace officer certification. The POST Council voted to accept the consent agreement for a two year suspension of Officer G's peace officer certification.

Case #8

Officer H, a law enforcement officer for a city police department was involved in a single car crash involving injuries. Officer H was requested to submit to a blood draw, to which he consented. The toxicology report indicated officer H's blood alcohol level was .05 and his blood also tested positive for Zolpidem (generic form of Ambien). According to an analysis conducted by the investigating officer, based upon the time of the accident and the lapse time of the blood draw, officer H's blood alcohol level was estimated to be .08 when the accident occurred. Officer H entered a plea of guilty to reckless driving under Utah Code Ann. § 41-6a-528, a class B misdemeanor.

Officer H signed a consent agreement for a one year suspension of his peace officer certification. The POST Council voted to accept the consent agreement for a one year suspension of Officer H's peace officer certification.

Case #9

Deputy I, a law enforcement officer with a county sheriff's office, shot a deer and tagged it with another person's tag. Deputy I's brother was transporting the deer from camp and was stopped by a police officer. The officer notified Utah Division of Wildlife Resources (DWR) because the deer was not tagged. Deputy I admitted to shooting the deer and tagging it with another person's tag. Deputy I entered a guilty plea to be held in abeyance to the charge of using or attempting to use a license, certificate of registration, permit, or tag of another person, under Utah Code Ann. § 23-19-1, a class B misdemeanor.

Deputy I signed a consent agreement for a one year suspension of his peace officer certification. The POST Council voted to accept the consent agreement for a one year suspension of Deputy I's peace officer certification.

For reference we have included below Utah Code 53-6-211. 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