



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training

September 12, 2011

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. 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Please note that the actions taken by the POST Council are not binding precedent.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 September 12, 2011, POST Council convened and considered 8 cases of officer discipline.

Case #1

Officer A, a law enforcement officer with city police department, was investigated for using his city issued gas card to purchase fuel for his personal vehicles. Officer A admitted using his gas card to purchase gas for his personal vehicles. Officer A entered a guilty plea to be held in abeyance for two counts of attempted misuse public money, both class A misdemeanors. Original charge was a 3rd degree felony for misusing public money. Officer A cooperated with the POST investigation and signed a consent agreement recommending a four year suspension of his peace officer certification. The POST Council voted to adopt the recommendation of POST investigations and suspended Officer A's peace officer certification for four years.

Case #2

Deputy B, a law enforcement officer with a county sheriff's office, returned home and discovered his son-in-law at his home. Deputy B had previously told his son-in-law he was not welcome in his home. The son-in-law quickly went to his vehicle and left the area to avoid a confrontation. As the son-in-law drove by Deputy B's house, Deputy B pointed a handgun in the direction of his son-in-law. Deputy B lied to criminal investigators as well as internal affairs investigators about pointing his weapon at the victim. During a subsequent polygraph examination, it was determined Deputy B was not being truthful. After additional questioning, Deputy B admitted he pointed his weapon in the low ready position as his son-in-law drove away from his home. Deputy B entered a plea of guilty to the charge of assault, a class B misdemeanor. Deputy B signed a consent agreement recommending revocation of his peace officer certification. The POST Council voted to adopt the recommendation of POST investigations and revoked Deputy B's peace officer certification.

Case #3

Officer C, a correctional officer, was investigated by a federal agency for fraudulently obtaining prescriptions drugs, simultaneously, from two different doctors. Officer C never informed either doctor he was being treated by another doctor. During the investigation, Officer C admitted to the allegations. Officer C was charged with four counts of Falsely Obtaining Prescription Medication, all third degree felonies. The charges had not been adjudicated at the time of the POST Council meeting. Officer C could not be located despite several attempts to contact **him** and he did not participate in the POST administrative investigation. An order of default was issued by the Administrative Law Judge. POST Council voted to adopt the recommendation of POST investigations and revoked Officer C's certification.

Case #4

Officer D, a law enforcement officer with a city police department, was directed to submit to a random drug test. After providing a urine sample, Officer D admitted to his administration he had used cocaine several days prior to the drug test. He also admitted to having an alcohol addiction. Officer D was notified of the POST investigation, but did not respond to letters or phone calls and did not participate in the POST administrative investigation. An order of default was issued by the Administrative Law Judge. POST Council voted to adopt the recommendation of POST investigations and revoked Officer D's certification.

Case #5

Deputy E, a corrections officer, was investigated by a local agency for lewdness involving a child and attempted obstruction of justice. Officer E admitted to viewing pornographic images on a computer and masturbating in the presence of his daughter. Officer E entered a guilty plea to be held in abeyance for attempted obstruction of justice and the lewdness charge was dismissed. Officer E did not respond to a notice of agency action from POST within the allotted time. An order of default was issued by the Administrative Law Judge. POST Council voted to adopt the recommendation of POST investigations and suspended Officer E's peace officer certification for three years.

Case #6

Officer F, a law enforcement officer with a city police department, was driving a personal vehicle when he was stopped for several moving violations. As a result of the traffic stop, Officer F was arrested for driving under the influence of alcohol. Results of the toxicology test showed officer F's BrAC to be 0.14. Officer F entered a guilty plea to the charge of DUI, a class B misdemeanor. Officer F did not respond to multiple attempts to contact him. An order of default was issued by the Administrative Law Judge. POST Council voted to adopt the recommendation of POST investigations and suspended Officer F's peace officer certification for one year.

Case #7

Officer G, a law enforcement officer in a position of leadership with a city police department, was investigated by a local agency for disorderly conduct and threatening an employee of a local business. Officer G admitted to being disorderly, however, denied threatening anyone. Officer G entered a guilty plea to be held in abeyance for disorderly conduct, which was amended to an infraction. Deputy G signed a consent agreement recommending a six month suspension of his peace officer certification. The POST Council rejected the recommendation of POST investigations and, citing the increased expectations for an officer in a leadership position, voted to suspend Officer G's peace officer certification for one year.

Case #8

Officer H, a corrections officer was investigated by a local agency for communications harassment. Officer H admitted to sending insulting text messages to his ex-wife due to custody issues with their children. Officer H entered a guilty plea to a class B misdemeanor which was later amended to a class C misdemeanor. Officer H signed a consent agreement recommending a letter of caution. The POST Council voted to accept the consent agreement for a letter of caution.

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.
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- (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).
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- (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