



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training

September 7, 2010

---

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. 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Please note that the actions taken by the POST Council are not binding precedent.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 published to provide insight into the Council's position on various types of officer misconduct.

On September 7, 2010, POST Council convened and considered 11 cases of officer discipline. This was the first time the Council considered disciplinary cases since Utah code 53-6-211 was amended by the Utah legislature during the 2010 session. On June 7, 2010 the Council approved revised administrative rules based on the new statute and adopted a set of disciplinary guidelines. These new guidelines were applied to the cases of officer discipline heard by the Council on September 7, 2010.

### Case #1

Officer A, a law enforcement officer with a city police department, was stopped by an on-duty police officer from a neighboring city for speeding and for an unsafe driving pattern. The officer reported smelling the odor of alcohol coming from the interior of officer A's vehicle. When asked if he had been drinking, Officer A replied, "yes". Officer A submitted to four field sobriety tests and failed each test. Officer A submitted to a breath alcohol test with a result of .122. Officer A was cited for driving under the influence and released. Subsequently Officer A entered a plea of guilty to a charge of impaired driving, under Utah Code Ann. § 41-6a-502.5, a class B misdemeanor. Officer A signed a consent agreement for a one year suspension of his Peace Officer Certification. The POST Council ratified the conditions of the consent agreement.

### Case #2

Officer B's employing agency received a complaint from a friend of Officer B's wife, alleging an incident of domestic violence between Officer B and his wife. Officer B's wife was interviewed by the agency investigators and stated she had been struck in the arm and face by Officer B. In a subsequent interview Officer B admitted to losing control of his temper and punching his wife in the face and on her arm with a closed fist. Domestic assault charges were filed in a justice court and Officer B entered a plea of guilty to be held in abeyance, to Assault, under Utah Code Ann. § 76-5-102, a class B misdemeanor. Officer B signed a consent agreement for a two year suspension of his Peace Officer Certification. The POST Council ratified the conditions of the consent agreement.

### **Case #3**

An agency administrator discovered a large sum of money missing from a locked file cabinet in his office. The missing money was intended for use as “buy” money for the local drug task force. An Internal Affairs (IA) investigation as well as a criminal investigation was initiated. Investigators identified Officer C as a possible suspect in the theft. The agency later received an envelope containing the amount of money that was missing and an unsigned note with “SORRY” written on it. Officer C submitted to a polygraph examination. The results of the examination showed Officer C to be deceptive while answering specific questions regarding the theft. Following the polygraph examination, IA investigators conducted a *Garrity* interview with Officer C. The investigators informed Officer C that he had not been truthful during the polygraph examination. Initially, Officer C continued to deny he had taken the money. After continued questioning, Officer C admitted to taking the money. Officer C also admitted to sending the money back to the police department after the theft was discovered. Officer C pled guilty in court to theft, a class A misdemeanor. Officer C signed a consent agreement for a three year suspension of his Peace Officer Certification. The POST Council ratified the conditions of the consent agreement.

### **Case #4**

Deputy D searched an internet social networking site and found a female who offered exotic massages in exchange for money. Deputy D called the female and set up an appointment for later the same day. The female was an undercover police officer for a county task force working a sting operation. Prior to the appointment, the female contacted Deputy D and they negotiated a price for a half-hour session. When Deputy D arrived for the appointment, the female asked him what services he wanted. Deputy D told her he wanted sex. Deputy D was immediately arrested by members of a county task force sting operation for sexual solicitation. Criminal charges of patronizing a prostitute were filed against Deputy D. The employing agency initiated an IA investigation and Deputy D admitted to the sexual solicitation. Deputy D entered a plea in abeyance to a class B misdemeanor, Sexual Solicitation. Deputy D signed a consent agreement for a one year suspension of his Peace Officer Certification. The POST Council ratified the conditions of the consent agreement.

### **Case #5**

Officer E was a certified special function officer working in animal control. Officer E was called out from home to respond to an animal problem. When Officer E arrived on scene, several officers smelled an odor of alcohol on Officer E’s breath. The officers contacted their supervisor and were instructed to have Officer E submit to a Portable Breath Test (PBT). Officer E submitted to the test which confirmed alcohol was present in her system. Officer E admitted to drinking several Rum and Pepsi drinks earlier in the evening. Officer E submitted to the standardized field sobriety tests and failed each test. Officer E subsequently submitted to a breath alcohol test with a result of .130 and was cited for driving under the influence. Officer E entered a plea of guilty to a charge of driving under the influence of alcohol, under Utah Code Ann. § 41-6a-502, a class B misdemeanor. Officer E signed a consent agreement for a one year suspension of her Peace Officer Certification. The POST Council rejected the conditions of the consent agreement and instead issued a suspension for two years citing Officer E’s on-duty status and high breath alcohol concentration as aggravating factors.

### **Case #6**

Officer F was working at an administrative roadblock. The purpose of this roadblock was to seize illegal liquor and illegal fireworks being transported into the State of Utah. Officer F was assigned the role of evidence custodian for this operation. Among the items seized was a bottle of Crown Royal Whiskey. This bottle was given to Officer F to be placed into evidence. Officer F took the Crown Royal bottle from evidence and took it to his home. After other officers disposed of the evidence, one of the officers mentioned to a sergeant the bottle of Crown Royal was missing. The sergeant reported the missing bottle of Crown Royal to Officer F’s supervisor. Officer F was interviewed by his supervisor and admitted he took the bottle of Crown Royal. Officer F stated he did not intend to drink the contents, but only to display the bottle with his collection of liquor bottles. Officer F retrieved the unopened bottle from his home and

returned it to his agency. The agency conducted an internal affairs and criminal investigation, both of which concluded Officer F had taken a bottle of Crown Royal whiskey from evidence and transported it to his home thus violating state statute regarding unlawful transportation and unlawful possession of alcohol. A polygraph examination determined Officer F did not intend to consume the alcohol. Officer F was charged with theft and unlawful transportation of alcohol. Officer F pled guilty to illegal transportation of alcohol, a class B misdemeanor. Officer F signed a consent agreement for a one year suspension of his Peace Officer Certification. The POST Council rejected the conditions of the consent agreement and instead issued a suspension for two years citing Officer F's on-duty status and a theft of evidence as aggravating factors.

#### **Case #7**

While attending a satellite police academy officer G submitted an application to work as a correctional officer for a county sheriff's office. During Officer G's background investigation, the prospective employer discovered Officer G had not disclosed a hit and run citation he had received in 2004 on his application. An agency investigator interviewed Officer G and asked him why he had not disclosed the citation on his application. Officer G stated he had forgotten about the incident. The investigator asked Officer G if he had disclosed the hit and run citation on his POST application, Officer G stated he had not. Officer G later informed the satellite academy director about his interview with the investigator from the prospective employer. Officer G told the director the same account he had given to the investigator. The details of the accident Officer G described to the director were inconsistent with the investigating deputy's report; prepared in 2004. POST conducted a *Garrity* interview with Officer G. Officer G admitted he was not being honest. Officer G stated he did not give the correct details of the accident because he felt it might keep him from attending the academy. Officer G signed a consent agreement for a two year suspension of his Special Function Officer Certification. The POST Council ratified the conditions of the consent agreement.

#### **Case #8**

Officer H, found his teenage daughter missing from her bedroom. Officer H believed his daughter may have been kidnapped after observing her bedroom window open with the screen cut. Officer H left his home in his patrol vehicle and began searching for his daughter. He notified dispatch and other officers of the situation. Officer H discovered his daughter was with a fifteen year old boy with whom she had been in trouble in the past. Officer H discovered they were at a local park and responded there with two other officers. Officer H arrived at the park and located his daughter and the boy. Officer H grabbed the boy by the left arm and placed his hand on the boy's chest, just below the neck. Officer H then pulled the boy down to the ground. While Officer H held the boy down he told the boy to stay away from his (Officer H's) daughter or he would kill him. Officer H was pulled off the male by other officers and was told to leave. The boy stated to the officers he hit his head after being thrown to the ground and choked by Officer H. The case was screened by the County Attorney's Office. The county attorney declined to charge Officer H with any criminal offence. Officer H, in a *Garrity* interview at POST, admitted to the material facts of the case. Officer H stated his intentions were to provoke fear in the boy in order to discourage future contact with his daughter; but, he admitted to threatening and assaulting the boy. Officer H's actions constituted conduct which is a state or federal criminal offense, to wit: he committed an assault as provided in Utah Code Ann. § 76-5-102, a class B misdemeanor which involves an act of violence. Officer H signed a consent agreement for a two year suspension of his Peace Officer Certification. The POST Council rejected the conditions of the consent agreement and instead issued a suspension for nine months citing mitigating factors.

#### **Case #9**

Officer I, a correctional officer, was on-duty in a correctional facility control room. While in the control room, Officer I was observed kissing a female officer. After the incident, Officer I was confronted by his supervisor and was subsequently issued a letter of caution for his behavior. Sometime later the supervisor heard rumors of an inappropriate relationship between Officer I and the female officer. The supervisor spoke with them and inquired if there were any truth to the rumors. Both denied the rumors, only saying

they were good friends and they were each going through divorces. Several weeks later Officer I, who was on-duty, was again observed hugging and kissing the same female officer. Officer I was interviewed, he was not provided a written *Garrity* warning; however, he was reminded by his supervisor that, per departmental policy, employees are required to answer all questions truthfully. This policy warning conforms to the requirements of *Garrity*. Officer I was then asked by his supervisor about his relationship with the female officer. Officer I stated they were living together and planned on getting married. Officer I was asked if he was divorced from his spouse. Officer I stated both he and the female were divorced. He was asked if they were sexually involved. Officer I stated they were not. Officer I was asked if he was hugging and kissing the female while he was on-duty. Officer I stated he had not. Officer I was asked a second time to clarify his answers to the previous questions. Officer I denied he had any physical contact with the female while he was on-duty and they were not sexually active. The female officer was then interviewed and given a *Garrity* warning. The female stated she had moved in with Officer I sometime previous. She stated neither she nor Officer I's divorces were final and they had been sexually active for the last two months. She was asked if she and Officer I had been hugging and kissing while he was on-duty. The female stated they had. The supervisor immediately re-interviewed Officer I. Officer I was again asked the same questions he had been asked earlier in the day. Officer I denied all of the allegations. Officer I was then told of the information the female officer had provided the supervisor. Officer I then admitted to lying to the supervisor during the initial interview. Officer I signed a consent agreement for a three year suspension of his Peace Officer Certification. The POST Council ratified the conditions of the consent agreement.

#### **Case #10**

Several years ago Officer J completed an application to attend a POST satellite academy. The POST application asks the applicant to "List and Explain in detail ANY and all drugs you have used illegally throughout your life." Officer J left the answer line to the question blank. Officer J attended the academy and earned his certification to become a law enforcement officer. Officer J did not obtain employment as a law enforcement officer after he graduated and his certification lapsed four years later. Recently Officer J completed an application to again attend a POST satellite academy. In regards to the aforementioned question, Officer J stated he used marijuana a few times when he was 16; no other drug use was listed. Officer J attended the academy and once again earned his certification to become a law enforcement officer. Officer J began the application process to become a law enforcement officer with a city police department. Officer J included on his city application that he used marijuana a few times when he was younger, but made no mention of any other drug usage. During the background investigation by an investigator, it was discovered Officer J had used LSD on at least four occasions when he was younger. The investigator discovered Officer J had not disclosed the LSD use on his POST applications. The investigator referred the case to POST for investigation. POST conducted an interview with Officer J. POST reviewed both of Officer J' POST applications. POST asked Officer J why he had not listed any past drug use on his first application. Officer J could not give an explanation. He suggested that he either did not think of his past drug use when he read the question or he did not read the question correctly. POST asked Officer J why he revealed, on his recent application, he used marijuana when he was younger, but he never mentioned he used LSD. Officer J again could not give an explanation. He suggested he may have forgotten about the LSD use, therefore, did not include it on his application. POST asked Officer J if he would be willing to submit to a polygraph examination to determine if he intentionally omitted his past drug usage. Officer J submitted to a polygraph examination. The polygrapher analyzed the charts that were recorded during the testing phase of the examination. The polygrapher found Officer J to have physiological reactions, which were consistent with a person who is deceptive to the relevant issues. The polygrapher's opinion is that Officer J purposely failed to mention his entire past drug history on his 2009 POST application. Officer I signed a consent agreement for a two year suspension of his Peace Officer Certification. The POST Council ratified the conditions of the consent agreement.

### **Case #11**

Officer K was a cadet at the POST academy, after a routine fingerprint check at the Department of Public Safety, Bureau of Criminal Investigation, POST was notified that Officer K had a criminal history. The criminal history report indicated Officer K was charged nine years ago with Identification Fraud, a class B misdemeanor. The criminal history indicated Officer K entered a plea of guilty as a plea in abeyance. The identification fraud incident was not indicated on Officer K's POST application. The POST application has a question stating, "Have you ever been involved, arrested and/or convicted of a crime of dishonesty?" Officer K checked "no." The application further indicates if involved, list and explain the circumstances including the outcome of the case. There was nothing indicated on the application. In an interview with POST investigators, Officer K recalled the circumstances of the incident. Officer K said she used a friend's ID to gain access into a club where alcohol was served. Officer K stated, she was never arrested, but indicated she was issued a citation for identity fraud and released. Officer K believed after entering into the plea in abeyance, and if she exhibited good conduct for a year, the charge would just go away. Officer K stated she had not thought about that day since it happened, it hadn't even crossed her mind when completing the POST application. Officer K's action constitutes willfully falsifying information to obtain certification. Officer K signed a consent agreement for a two year suspension of her Peace Officer Certification. The POST Council rejected the conditions of the consent agreement and instead issued a suspension for one year citing mitigating factors.