



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training

September 2012

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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Please note that the actions taken by the POST Council are not binding precedent.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 10, 2012, POST Council convened and considered 17 cases of officer discipline.

### Case #1

Officer A a law enforcement officer with a county police department accessed the State of Utah's Bureau of Criminal Identification and Utah Criminal Justice Information System (BCI/UCJIS) records for personal reasons. He utilized the database to obtain registered owner information for a vehicle parked near the home of his estranged wife. He believed the vehicle belonged to a man who was having an affair with his wife. During an administrative interview with POST investigators, in which Officer A was issued a *Garrity* warning, he admitted to accessing records on UCJIS for personal reasons. Officer A signed a consent agreement recommending a three month suspension of his peace officer certification. POST Council ratified Post's recommendation and suspended Officer A's peace officer certification for three months.

### Case #2

Officer B, a correctional officer, with a county agency, injured himself while engaged in a sporting activity. A relative gave Officer B a bottle of Lortab, prescribed to her, to help relieve his pain. Officer B took two Lortab before he went to bed and two the next morning before he went to work. Officer B reported to his supervisor he had injured himself and was taking a another person's prescription medication to relieve the pain. The supervisor told Officer B he could not take a prescription medication that had been prescribed to another person. The agency conducted an Internal Affairs (IA) investigation. Officer B resigned from his agency. During an administrative interview with POST investigators, in which Officer B was issued a *Garrity* warning, he admitted to using prescription drugs which were not prescribed to him. Officer B signed a consent agreement recommending a nine month suspension of his peace officer certification. POST Council ratified POST's recommendation and suspended Officer B's peace officer certification for nine months.

### **Case #3**

Officer C, a correctional officer, with a county agency was involved in an altercation with his wife at their home. Officer C's wife called the police claiming Officer C assaulted her. The police arrived and told Officer C to come out of his house so they could investigate the claim of assault. Officer C refused to leave his house and denied the police entrance into his house. The police entered Officer C's house by force and arrested Officer C for assault and domestic violence. Officer C entered into a plea in abeyance to interfering with a legal arrest. All other charges were dismissed. During an administrative interview with POST investigators, in which Officer C was issued a *Garrity* warning, he denied assaulting his wife or refusing to leave his home when officers requested he exit his home so they could conduct their investigation. Officer C stated he entered a plea of guilty to the charge of interfering with a legal arrest. Officer C, requested a hearing before an Administrative Law Judge (ALJ). The ALJ ruled, based on the evidence and testimony presented at the evidentiary hearing, POST met its burden of proof by clear and convincing evidence and Officer C's actions constitute a violation of *Utah Code Ann* § 53-6-211(1)(d). POST recommended a one year suspension of Officer C's peace officer certification. The POST Council ratified POST's recommendation and suspended Officer C's peace officer certification for one year.

### **Case #4**

Officer D, a law enforcement officer with a city police department, became aware of a citizen's complaint against him stemming from a traffic stop he conducted. The shift commander requested Officer D meet him to discuss the complaint. Prior to meeting with the shift commander, Officer D returned to the location where he had stopped the complainant, activated his E-ticket writer and created a false audio recording of the stop. Officer D met with the shift commander and presented the recording to him as if it was from the actual encounter with the violator. During the Internal Affairs (IA) investigation, Officer D admitted to staging the recording in order to deceive the shift commander. During an administrative interview with POST investigators, in which Officer D was issued a *Garrity* warning, he admitted to staging the recording in order to deceive the shift commander. Officer D signed a consent agreement recommending a one year suspension of his peace officer certification. POST Council ratified POST's recommendation and suspended Officer D's peace officer certification for one year.

### **Case #5**

Officer E, a correctional officer, with a county agency, was involved in a physical altercation with a juvenile male. The altercation occurred in Officer E's home after Officer E discovered his six year old daughter had been sexually assaulted by the juvenile. Officer E confronted the juvenile and the two engaged in a physical altercation. Officer E gained control of the young man and handcuffed him. Once cuffed, Officer E learned the young man had also sexually assaulted his three year old daughter. Officer E struck the young male in the side of the head with a closed fist while the young man was handcuffed and lying on the ground. Officer E was charged and entered a plea of *Nolo Contendere* (no contest) in criminal court to the charge of child abuse. During an administrative interview with POST investigators, in which Officer E was issued a *Garrity* warning, he admitted to striking the juvenile in the head with a closed fist while the young man lay on the ground, restrained in handcuffs. Officer E signed a consent agreement recommending a one year suspension of his peace officer certification. POST Council rejected POST's recommendation and voted to issue Officer E a letter of caution.

### **Case #6**

Officer F, a law enforcement officer with a county agency, was arrested for driving under the influence of alcohol. Officer F's BAC was .13. Officer F entered a plea of not guilty to a charge of driving

under the influence of alcohol and the charges were subsequently dismissed. During an administrative interview with POST investigators, in which Officer F was issued a *Garrity* warning, he admitted to consuming alcohol at his home and at a bar, then operating his vehicle. Officer F did not respond to the notice of agency action issued by post. He did not sign a consent agreement and did not request a hearing, subsequently an order of default was issued. POST recommended a one year suspension of Officer F's peace officer certification. The POST Council ratified POST's recommendation and suspended Officer F's peace officer certification for one year.

#### **Case #7**

Officer G, a correctional officer with a county agency, was arrested for driving under the influence of alcohol. Officer G's BrAC was .147. Officer G entered a plea of no contest to the charge of driving under the influence of alcohol. During an administrative interview with POST investigators, in which Officer G was issued a *Garrity* warning, he admitted to consuming alcohol at a friend's home and operating his vehicle, although he believed he was too intoxicated to drive. Officer G signed a consent agreement recommending a one year suspension of his peace officer certification. The POST Council ratified POST's recommendation and suspended Officer G's peace officer certification for one year.

#### **Case #8**

Officer H, a correctional officer, with a county agency, had his city water turned off due to delinquent payment. The city placed a notice's on Officer H's door informing him his water bill was delinquent and the water service would be shut off if he did not contact them. Officer H turned the water service back on at least twice, without making contact with the city. A lock was placed on the valve after the second incident. Officer H claimed he never received any mailed notices. Officer H was charged with three counts of theft of services. Officer H entered a plea in abeyance to two counts and the third was dismissed. During an administrative interview with POST investigators, in which Officer H was issued a *Garrity* warning, he admitted to knowing the utility bill was past due and to turning the water on two times after it had been shut off. Officer H also admitted he did not make any attempt to contact the city prior to turning the water on. Officer H signed a consent agreement recommending an eighteen month suspension of his peace officer certification. The POST Council ratified POST's recommendation and suspended Officer H's peace officer certification for eighteen months.

#### **Case #9**

Officer I, an unemployed law enforcement officer, and his wife were involved in an argument that turned physical. Officer I pushed his wife up against the wall by placing his forearm on her chest. Officer I's wife bit Officer I's arm causing him to pull away. As the altercation continued Officer I pushed his wife with his forearm again causing her to fall to the floor. Officer I then attempted to leave the residence, his wife grabbed the collar of his shirt and scratched his neck. Officer I turned around and struck his wife in the back/shoulder area two to three times with a closed fist. Officer I then left the residence. Officer I's wife contacted the local police department. Officer I was arrested and booked into jail for aggravated assault and Domestic Violence in the presence of a child. The criminal charges were dismissed against Officer I. During an administrative interview with POST investigators, in which Officer I was issued a *Garrity* warning, he admitted to assaulting his wife. Officer I signed a consent agreement recommending a two year suspension of his peace officer certification. POST Council ratified POST's recommendation and suspended Officer I's peace officer certification for two years.

#### **Case #10**

Officer J, a law enforcement officer with a police department, accessed the State of Utah's Bureau of Criminal Identification and Utah Criminal Justice Information System (BCI/UCJIS) records for personal reasons. Officer J utilized the BCI records to investigate men his ex-fiancé was dating and then confronted her with the information he discovered. BCI records confirmed Officer J had recently accessed BCI records to check friends and family of the ex-fiancé. A year prior to this incident, Officer J had been reprimanded by his agency for the unauthorized use of BCI records to investigate people who were associated with his ex-fiancé. During an administrative interview with POST investigators, in which Officer J was issued a *Garrity* warning, he admitted to accessing records on UCJIS for personal reasons and confirmed he had been reprimanded by his agency previously. Officer J signed a consent agreement recommending a two year suspension of his peace officer certification. POST Council ratified Post's recommendation and suspended Officer J's peace officer certification for two years.

#### **Case # 11**

Officer K, a law enforcement officer with a city police department, was involved in an argument with his wife. The argument progressed and Officer K struck his wife's head and face with his open hands. Officer K's three year old daughter was in the same room during a portion of the assault. Officer K's wife sustained two black eyes, a bloody nose, and bruising on her hips, ribs, and mouth. Officer K was arrested and charged with the assault and domestic violence in the presence of a child. Officer K entered a guilty plea to be held in abeyance to the charge of assault. During an administrative interview with POST investigators, in which Officer K was issued a *Garrity* warning, he admitted to the allegations. Officer K signed a consent agreement recommending a three year suspension of his peace officer certification. The POST Council ratified POST's recommendation and suspended Officer K's peace officer certification for three years.

#### **Case #12**

Officer L, a correctional officer, was involved in a physical altercation with his wife and son. The local police department conducted a criminal investigation and Officer L was charged with two counts of assault (domestic violence), domestic violence in the presence of a child, criminal mischief and intoxication. Officer L entered a plea in abeyance to the charge of intoxication. The charges of assault, domestic violence in the presence of a child and criminal mischief were dismissed. During an administrative interview with POST investigators, in which Officer L was issued a *Garrity* warning, he admitted to drinking heavily and being under the influence of his prescription medication. Officer L signed a consent agreement recommending a three year suspension of his peace officer certification. The POST Council ratified POST's recommendation and suspended Officer L's peace officer certification for three years.

#### **Case #13**

Officer M, an unemployed law enforcement officer, observed a nine year old girl walking along the sidewalk. Officer M pulled his vehicle over to the curb and exited the vehicle. Officer M pretended to be counting towels in the back seat of his vehicle while lowering his trousers to fully expose his genitals. As the girl approached, Officer M turned to face her and expose himself to the young girl. During an administrative interview with POST investigators, in which Officer M was issued a *Garrity* warning, he admitted to exposing himself to the young girl, it was intentional and for his own sexual gratification. Officer M signed a consent agreement recommending a four year suspension of his peace officer certification. POST Council rejected POST's recommendation and voted to revoke Officer M's peace officer certification.

#### **Case #14**

Officer N, a law enforcement officer with a county agency was investigated by her department for poor performance in her duties as a peace officer. As a result, Officer N's agency directed her to submit to a fitness for duty evaluation. A psychologist submitted his evaluation to Officer N's agency and documented Officer N was not fit for duty and it was unlikely she would become fit for duty in the foreseeable future. Officer N signed a consent agreement recommending an indefinite suspension of her peace officer certification. POST Council ratified POST's recommendation and suspended Officer N's peace officer certification indefinitely until such time as she receives a positive fitness for duty evaluation.

#### **Case #15**

Officer O, a correctional officer, submitted an application to POST to attend the law enforcement officer (LEO) block of training. POST conducted an interview with Officer O regarding inconsistencies in a POST application he submitted in 2008, and the application for LEO he submitted in 2011. Officer O admitted to using and distributing Lortab for illicit purposes as well as smoking marijuana after he was employed with his department. Officer O signed a consent agreement recommending revocation of his peace officer certification. POST Council ratified POST's recommendation and revoked Officer O's peace officer certification.

#### **Case #16**

Officer P, a law enforcement officer with a city police department, was observed on a store's security camera in his marked patrol vehicle engaged in activity that appeared to be consistent with ingesting illegal drugs. When confronted by police, Officer P admitted to smoking heroin. A search of Officer P's patrol vehicle resulted in the discovery of drugs and paraphernalia in Officer P's personal bag. Officer P, declined to participate in the POST investigation. Officer P requested a hearing before an Administrative Law Judge (ALJ). The ALJ ruled, based on the evidence and testimony presented at the evidentiary hearing, POST met its burden of proof by clear and convincing evidence and Officer P's actions constitute a violation of *Utah Code Ann § 53-6-211(1)(d)*. POST recommended revocation of Officer P's peace officer certification. The POST Council ratified POST's recommendation and revoked Officer P's peace officer certification.

#### **Case #17**

Officer Q, a law enforcement officer with a city police department, was involved in an accident on I-15. Officer Q left his lane of travel and struck the vehicle in the next lane. Officer Q failed to stop after the accident to give the other driver his personal information. A state agency conducted an investigation and found Officer Q at fault. During the POST investigation it was discovered Officer Q lied after having been given a *Garrity* during his department Internal Affairs (IA) investigation. During an administrative interview with POST investigators, in which Officer Q was issued a *Garrity* warning, he admitted to being involved in the accident and to lying to his department IA investigators. Officer Q signed a consent agreement recommending revocation of his peace officer certification. The POST Council ratified POST's recommendation and revoked Officer Q'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](mailto: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