



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



March 2016

One of the duties of the Peace Officer Standards and Training (POST) 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 individuals 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 and certified dispatchers.

Please note that the actions taken by the POST Council are not binding precedent.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 24, 2016, POST Council convened and considered 8 cases of officer discipline.

Case 1

Officer A conducted a license plate search through BCI in an attempt to help a friend identify a subject who had assaulted the friend. The friend said he made a report to the local police agency, but felt the investigating officer was not going to actively pursue the case. Officer A conducted a records search with the partial plate information provided by the friend and found some possible license plate matches. Officer A provided the plate numbers to the friend to give to the investigating agency. When the friend gave the license plate information to the investigating officer, he was told Officer A should not have conducted the records search.

Officer A was investigated by his agency and, during a *Garrity* interview, admitted accessing vehicle registration records through BCI to assist a friend in identifying a suspect for another agency's police investigation. Officer A was suspended by his agency for one day without pay and lost BCI access for 10 months. A local law enforcement agency conducted a criminal investigation on Officer A for a BCI violation. The case was screened with the county attorney who declined to file charges.

A Notice of Agency Action was filed by POST and mailed to Officer A. Officer A waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended a letter of caution be issued to Officer A. After hearing POST's findings the Council rejected POST's recommendation and voted to suspend Officer A's peace officer certification for three months.

Case 2

Officer B was involved in a two vehicle traffic crash in which Officer B drifted out of her lane to the left and sideswiped another vehicle. During the crash investigation, officers detected the odor of alcohol coming from Officer B. When asked to perform field sobriety tests, Officer B said, "I have been drinking, I will fail the tests." While receiving the instructions for the nine step walk and turn, Officer B said she was too intoxicated to do the test. When the investigating officer asked Officer B if she was impaired, Officer B replied, "I'm drunk, let's call it quits."

Officer B was subsequently arrested for driving under the influence. Officer B submitted to an Intoxilyzer test which indicated she had a breath alcohol content of .181. Charges of driving under the influence and failing to operate within a single lane were subsequently filed on Officer B. Officer B entered a plea of guilty to the amended charge of impaired driving.

A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B failed to respond to the notice of agency action. An order of default was signed by the administrative law judge and mailed to Officer B. POST recommended a two year suspension of Officer B's certification. After hearing POST's findings the Council ratified POST's recommendation and voted to suspended Officer B's peace officer certification for two years.

Case 3

Officer C, who was attending a basic training academy, three other cadets, and two teenage children of one of the cadets, went to a local restaurant for dinner. Officer C sat on the inside of the booth with two other cadets to his right. While at dinner, Officer C and one of the other cadets engaged in what began as playful banter. Officer C thought the banter went too far and got upset. Officer C stated he needed to go to the restroom and the cadet with whom he had been bantering made a comment, joking about Officer C having a small bladder. Officer C got upset at the comment, and was also upset that the other two cadets had not moved to let him out of the booth. Officer C removed his handgun, a Sig 1911, from its holster on his right hip, lightly pressed the muzzle of the gun into the side of the cadet he had been bantering with and told him to move. Officer C then re-holstered his weapon. The other cadets let Officer C out of the booth.

An argument ensued and continued in the restroom and into the parking lot of the restaurant. The incident was investigated by the academy staff as well as by the local police. Officer C was dismissed from the academy and terminated from his sponsoring agency. Charges were filed on Officer C for threatening with or using a dangerous weapon in a fight or quarrel, a class A misdemeanor.

Officer C did not responded to multiple attempts by POST investigators to contact him. A Notice of Agency Action was filed by POST and 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 and mailed to Officer C. At the time this case came before the POST Council the criminal case was still pending. POST recommended the revocation of Officer C's certification. After hearing POST's findings the Council ratified POST's recommendation and voted to revoke Officer C's certification.

Case 4

Officer D was on duty in a county jail facility. Officer D observed several jail intake processing folders lying on one of the counters. Officer D found one of the folders had an evidence bag containing three prescription tablets. Officer D verified the tablets to be Oxycodone by checking the internet site, drugs.com. Officer D removed the evidence bag and placed it in his pocket. Officer D then replaced the

bag with a new evidence bag containing three Tylenol tablets. Officer D left work at the end of his shift and took the Oxycodone tablets with him. The next morning Officer D called his sergeant and reported he had taken the Oxycodone tablets from the intake folder. During a *Garrity* interview Officer D admitted to taking the Oxycodone tablets from the intake folder, however, he denied using any of them. Officer D stated while driving home, he realized what he had done, and threw the tablets out his car window. A criminal investigation was conducted by the local drug task force, but no criminal charges were filed. Officer D was terminated by his agency.

A Notice of Agency Action was filed by POST and mailed to Officer D. Officer D failed to respond to the notice of agency action. An order of default was signed by the administrative law judge and mailed to Officer D. POST recommended the revocation of Officer D's certification. After hearing POST's findings the Council ratified POST's recommendation and voted to revoke Officer D's certification.

Case 5

Dispatcher E, a POST certified dispatcher, was investigated by an out of state agency for speeding and driving under the influence (DUI). Dispatcher E was driving on a highway in Wyoming, when she was pulled over for exceeding the speed limit. During the stop, the officer smelled the odor of alcohol coming from inside the vehicle and asked Dispatcher E how much she had to drink. Dispatcher E said she had consumed two beers. Dispatcher E was asked to submit to field sobriety tests. The officer determined Dispatcher E was impaired and arrested her. Dispatcher E submitted to a breath test which indicated her breath alcohol content was .121.

During an internal administrative investigation Dispatcher E admitted to driving her vehicle after consuming alcohol, a violation of Wyoming State Statute. Dispatcher E pled guilty to the charge of driving under the influence, to be held in abeyance, and was sentenced to three years probation.

A Notice of Agency Action was filed by POST and mailed to Dispatcher E. Dispatcher E waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended a one year suspension of Dispatcher E's certification. After hearing POST's findings the Council ratified POST's recommendation and voted to suspended Dispatcher E's certification for one year.

Case 6

Dispatcher F, a POST certified dispatcher, was investigated for driving under the influence (DUI) and operating a vehicle without headlights. Dispatcher F consumed two alcoholic beverages while at a local night club. Shortly after leaving the club, Dispatcher F was observed by police leaving a parking area without her headlights on; local police made a traffic stop. When the officer made contact with Dispatcher F, the officer detected the odor of alcohol coming from her person. Dispatcher F was asked to submit to standardized field sobriety tests (SFST's). Police determined Dispatcher F was impaired and had Dispatcher F submit to a portable Intoxilyzer -- Dispatcher F's breath alcohol was determined to be .139. Dispatcher F was issued a citation for DUI and operating a vehicle without headlights then released to a responsible party.

Dispatcher F later entered a guilty plea to the amended charge of impaired driving, a class B misdemeanor. The charge of operating a vehicle without headlights was dismissed. In a *Garrity* interview Dispatcher F admitted to consuming alcohol while at a night club, driving her vehicle without its headlights on and driving after consuming alcohol. Dispatcher F admitted consuming alcohol, but said she did not feel drunk. Dispatcher F said, "Yes, I made the decision to drive."

A Notice of Agency Action was filed by POST and mailed to Dispatcher F. Dispatcher F waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended a one 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 one year.

Case 7

Officer G was hunting elk with a spike only elk permit when he accidentally shot a cow elk. Officer G was trying to shoot a spike elk in a herd of cow elk. After killing the cow elk, Officer G immediately contacted law enforcement and reported his actions. Officer G also notified his supervisor. Officer G took the dead elk to the trailhead where he met a law enforcement officer who conducted an investigation. The officer took the elk, but allowed Officer G to keep his hunting license and permit. The case was discussed with the county attorney and Officer G was issued a written warning. Administrative investigations were conducted by Officer G's agency and POST. Officer G's agency determined he did violate the law but allowed him to retain his employment and did not discipline him. During a *Garrity* interview with POST, Officer G admitted accidentally shooting the cow elk while only having a spike elk permit. Officer G explained he was aiming at a spike elk and he did not intentionally shoot the cow.

A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer G be issued a letter of caution. After hearing POST's findings the Council rejected POST's recommendation and voted to take no action against Officer G's peace officer certification.

Case 8

Officer H was investigated by her agency for a Utah Bureau of Criminal Identification (BCI) violation. The internal investigation determined Officer H accessed the BCI databases unlawfully to obtain information for eight driver license records. Based on an audit of Officer H's BCI activity, the departmental investigation also determined, Officer H accessed warrant and protective order records for two individuals and a protective order record for one additional individual. During a *Garrity* interview, Officer F admitted accessing the BCI databases for driver license records on the eight individuals but denied accessing any warrant or protective order records. Charges were filed on Officer F for three BCI violations related to the access of the protective order and warrant records. The criminal case was ultimately dismissed for lack of evidence.

During a *Garrity* interview with POST, Officer H explained five of the records she accessed were not for a lawful and legitimate police purpose. Two of the records belonged to her adult son and daughter and were accessed to acquire driver license numbers for insurance policies. One was on a family member to obtain an address for a utility service installation. One was on another family member to obtain personal information to assist in resolving an outstanding bill. The fifth record was accessed to obtain the address of a former officer with Officer H's department. Officer H said the other three records were accessed as part of her official duties as a peace officer. Officer H denied accessing any warrant or protective order records unlawfully.

The POST investigation was able to show, the records system Officer H used made multiple record queries for each search conducted, the search fields included driver licenses, protective orders, and warrants. After

reviewing the BCI audit of Officer H's activities, POST concluded the evidence showed Officer H accessed specific driver license records only and not protective orders or warrants.

A Notice of Agency Action was filed by POST and mailed to Officer H. Officer H waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended a nine month suspension of Officer H's certification. Officer H and her attorney appeared before the POST Council. After hearing POST's findings, and hearing from Officer H and her attorney, the Council rejected POST's recommendation and voted to suspend Officer H's peace officer certification for six months.

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 certified as a law enforcement officer, as defined in Section 53-13-103 and is unable to possess a firearm under state or federal law.

- (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.

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.