



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



December 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Please note that the actions taken by the POST Council are not binding precedent.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 December 5, 2016, POST Council convened and considered 17 cases of officer discipline.

Case 1

Officer A drove out of state, to gamble and consume alcoholic beverages. Officer A left the gambling establishment at approximately midnight to drive home. Officer A drove for a short distance then stopped his vehicle at a pull-off area to take a nap. After approximately five hours of rest, Officer A continued driving. Officer A drove for approximately 50 miles and was pulled over for a speeding violation in Utah, just prior to arriving home. The investigating officer had Officer A perform field sobriety tests and determined Officer A was under the influence of alcohol. Officer A was arrested and submitted to a breath test. His breath alcohol content was .105. Officer A was booked into the county jail and charged with driving under the influence of alcohol. Officer A pled guilty to the charge of speeding and all other charges were dismissed without prejudice.

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 Officer A's certification be suspended for one year. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer A's certification for one year.

Case 2

Officer B was investigated for sexual conduct on duty. During a *Garrity* interview with POST, Officer B admitted to engaging in sexual conduct two times while on duty. Officer B said he picked his girlfriend up from her job, unplugged his printer and GPS unit to create space for her to sit in the front seat, and drove her

to her residence. Officer B's girlfriend's residence was approximately eight miles outside his jurisdiction and he was the only police officer on duty for his jurisdiction at the time. Officer B said he ate dinner at her residence and then they engaged in sexual conduct. Officer B then returned to his jurisdiction.

A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B 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 B's certification be suspended for three years. Officer C was present at the Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer B, the Council rejected POST's recommendation and voted to suspend Officer B's peace officer certification for 18 months.

Case 3

Officer C hit his seven-year-old son in the forehead causing swelling and bruising. Officer C described hitting his son in the forehead by using the knuckle on his right forefinger. Officer C explained he heard noise coming from the shower and upon checking, observed his son pulling on the adjustable shower head fixture. A state social service agency case worker reported she observed clearly visible swelling and bruising on the child's head ten days after the incident was discovered by school officials. The state social service agency sustained the physical abuse allegation. Investigators screened a class A misdemeanor child abuse charge on Officer C. A city prosecutor ultimately filed an infraction charge of disorderly conduct on Officer C and Officer C pled guilty to the charge.

A Notice of Agency Action was filed by POST and mailed to Officer C. Officer C elected to have a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of fact and conclusions of law stating Officer C violated UCA 53-6-211 as outlined in the notice of agency action. POST recommended Officer C's certification be suspended for two years. Officer C and his attorney were present at the council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer C, the Council rejected POST's recommendation and voted to suspend Officer C's certification for nine months.

Case 4

Officer D was investigated for domestic violence related assault and domestic violence related criminal mischief. While police were investigating the domestic violence, Officer D's wife told police that Officer D had been using steroids. Police notified officer D's agency and an internal administrative investigation was conducted on Officer D. As part of that investigation, Officer D participated in a reasonable suspicion drug test. Test results for Officer D returned positive for steroids. Officer D admitted in the department *Garrity* interview, as well as in the POST *Garrity* interview, that he purchased and used steroids throughout the year of 2015. Officer D admitted to purchasing steroids three times. The POST investigation did not establish clear and convincing evidence of a domestic violence charge.

A Notice of Agency Action was filed by POST and mailed to Officer D. Officer D 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 B's certification be suspended for three and one-half years. Officer D and his attorney were present at the Council meeting and address the Council. After hearing POST's findings, and hearing from Officer D, the Council ratified POST's recommendation and voted to suspend Officer D's peace officer certification for three and one-half years.

Case 5

Officer E was investigated by a law enforcement agency for voyeurism. The investigation disclosed Officer E, while working as a security guard, used his personal cellular phone to take three photographs of a woman, under her skirt, without her knowledge. Officer E was arrested and charged with voyeurism, a class A misdemeanor. During a POST *Garrity* interview, Officer E admitted to taking three photographs of a woman, under her skirt, while at his place of employment. Officer E confirmed the woman had no knowledge he was taking the photographs.

A Notice of Agency Action was filed by POST and mailed to Officer E. Officer E 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 E's certification be suspended for three years. Officer E was present at the Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer E, the Council rejected POST's recommendation and voted to revoke Officer E's peace officer certification.

Case 6

Officer F was investigated by his agency for using marijuana. The investigation disclosed that Officer F had used marijuana while vacationing in Colorado. When Officer F returned to Utah, he disclosed his marijuana use to his supervisor. Officer F disclosed he purchased a package of caramels containing marijuana while visiting a marijuana dispensary in Colorado. Officer F said he ate three caramels and a piece of chocolate, which contained marijuana. Officer F also admitted to smoking marijuana. Officer F said all of his marijuana use occurred during a single day. Officer F said he thought the marijuana would be out of his system before he returned to work. Officer F was terminated from his agency.

A Notice of Agency Action was filed by POST and mailed to Officer F. Officer F 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 F's certification be suspended for two years. Officer F was present at the Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer F, the Council ratified POST's recommendation and voted to suspend Officer F's peace officer certification for two years.

Case 7

Officer G was hunting elk on a dirt roadway with a friend in another state. The friend observed an elk approximately 70 yards from the roadway and stopped his vehicle. Officer G exited the passenger seat of the vehicle and knelt down in the roadway. Officer G loaded his rifle and fired one shot at the elk. After the shot, officers exited a nearby hunting blind and approached Officer G. An officer informed Officer G that the elk was a decoy and part of an investigative operation. The officer also explained to Officer G that it was not legal for him to fire his rifle from the roadway. Officer G was issued a citation for shooting from the road. Officer G contacted the court, pled guilty to a misdemeanor, and paid a fine.

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 ratified POST's recommendation and voted to issue Officer G a letter of caution.

Case 8

Officer H contacted the local police and reported his apartment was burglarized. Officer H told the investigating officer he suspected a 19-year-old female he had met on social media was responsible for the burglary. Officer H told the investigating officer he had been communicating with the female via social media and text messaging. Officer H unlocked his phone and gave it to the investigating officer so he could view the text messages. As the investigating officer was reviewing the text messages between Officer H and the female, he saw the messages also contained a lengthy discussion about Officer H paying the female for sex. The responding officer discovered Officer H agreed to pay a female \$670 to have sex with him. The investigating officer issued Officer H a citation for sexual solicitation. Officer H later pled guilty to sexual solicitation a class B misdemeanor. Officer H's employment was terminated.

A Notice of Agency Action was filed by POST and mailed to Officer H. Officer H failed to respond to the notice of agency action and an order of default was signed by the administrative law judge and mailed to Officer H. POST recommended Officer H's certification be suspended for one year. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer H's certification for one year.

Case 9

Officer I was investigated by his agency for obstruction of justice. During a *Garrity* interview with his agency, Officer I disclosed he lied to law enforcement officers during an accident investigation involving his vehicle, which his wife was driving. Officer I told the investigating officers he had loaned the vehicle to a friend who crashed it. Officer I disclosed he lied because he knew his wife was intoxicated and he did not want her to get arrested for driving under the influence. During a POST *Garrity* interview, Officer I admitted he lied to investigating officers and admitted his friend, who he identified as the driver during the initial investigation, did not exist.

A Notice of Agency Action was filed by POST and mailed to Officer I. Officer I 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 I's certification be suspended for three years. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer I's peace officer certification for three years.

Case 10

Officer J was investigated for intoxication by a local agency. The officer observed Officer J staggering and having difficulty with balance as he was walking on a sidewalk. Officer J had difficulty remembering where he lived and admitted to the officer he consumed alcoholic beverages at two different establishments. Officer J submitted to a portable breath test (PBT) two different times. The first PBT indicated a result of a 0.246 BrAC. The second PBT indicated a result of a 0.266 BrAC. Officer J's BrAC was ascending and he did not have anyone he could contact who could care for him. Officer J was transported to the hospital for evaluation. Officer J was later medically cleared, transported, and booked into the county jail. Officer J was issued a citation for intoxication. Officer J entered into a diversion agreement on the criminal charge.

A Notice of Agency Action was filed by POST and mailed to Officer J. Officer J 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 J be issued a letter of caution. After hearing POST's findings the Council ratified POST's recommendation and voted to issue Officer J a letter of caution.

Case 11

Officer K was investigated by his agency for engaging in sexual conduct while on duty. The investigation disclosed Officer K had met with a woman and engaged in sexual conduct at least two times. Officer K described the first incident, he said he drove his patrol car to the woman's house and engaged in oral sex with her while he was in uniform. Officer K described the second incident; he said he and the woman drove, in his patrol car, to a remote location where he "fondled" the woman's genitals with his hand. Officer K was terminated by his agency. During a *Garrity* interview with his agency, Officer K admitted to engaging in sexual conduct on duty on at least two occasions. During a *Garrity* interview with POST, Officer K admitted to engaging in sexual conduct while on duty on at least three occasions.

A Notice of Agency Action was filed by POST and mailed to Officer K. Officer K 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 K's certification be suspended for four years. Officer K was present at the Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer K, the Council ratified POST's recommendation and voted to suspend Officer K's peace officer certification for four years.

Case 12

Officer L was investigated by police after the boat he was towing hit and knocked down multiple overhead utility lines. Officer L told police he was not driving the truck and that his wife had been driving. Multiple witnesses observed Officer L operating the truck while towing the boat. Police detected the strong odor of an alcoholic beverage coming from Officer L. Officer L performed field sobriety tests and was subsequently arrested for driving under the influence of alcohol. Officer L submitted to an intoxilyzer test, which indicated he had a breath alcohol content of .094. Charges were filed on Officer L for driving under the influence of alcohol, a class B misdemeanor, and violation of overweight/oversize permit, a class B misdemeanor. Officer L pled guilty to an amended charge of impaired driving and the second charge was dismissed.

During an interview with POST, after receiving a *Garrity* warning, Officer L denied ever being in control of the vehicle. Officer L told POST it was his wife who had been driving the vehicle when their boat hit the utility lines. POST interviewed two witnesses who positively identified Officer L as the driver of the vehicle. POST contacted Officer L to schedule a follow-up interview. Officer L refused to come in for a second interview and said he was no longer interested in participating in the POST investigation.

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

Case 13

Officer M was home alone at his apartment when he accidentally discharged a personally owned firearm and sustained a burn to his leg from the muzzle flash. Officer M, who was intoxicated, called 911. Officer M was treated by Emergency Medical Services. The investigating officer issued Officer M a citation for intoxication and carrying a dangerous weapon while under the influence of alcohol. Officer M pled guilty to both charges. Officer M's agency conducted an internal administrative investigation and Officer M's employment was subsequently terminated.

On two separate occasions several months later, police responded to calls for service, found Officer M intoxicated, and charged him with intoxication. Officer M pled guilty to intoxication for one incident and the other case was dismissed. A short time later Officer M and his ex-wife were consuming alcohol and got into a verbal argument. During the argument, Officer M fell from a second story balcony. Officers arrived and were attending to Officer M's injuries when he got up and tried to run away. Officer M yelled at police and struggled with the officers when they tried to arrest him for intoxication. Officer M was booked into the local jail for intoxication, disorderly conduct, and interference with an arresting officer. Officer M pled no contest to intoxication and interference with an arresting officer.

A Notice of Agency Action was filed by POST and mailed to Officer M. Officer M failed to respond to the notice of agency action and an order of default was signed by the administrative law judge and mailed to Officer M. POST recommended Officer M's certification be suspended for two and one-half years. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer M's certification for two and one-half years.

Case14

Officer N and his wife went to a friend's house and consumed alcohol. Late in the evening, Officer N accused his friend of being inappropriate with Officer N's wife. As the two argued both men began pushing each other and the friend's wife got between them, trying to separate them. Officer N began to walk away and the friend pushed his wife to the ground. Officer N turned around, hit the friend in the head two times with a closed fist and then walked away. The friend followed Officer N. When the friend became confrontational with a neighbor, Officer N took the friend to the ground and held him until police arrived. The friend was transported to the hospital and treated for a cut and broken nose. The case was screened with a county attorney who filed aggravated assault and intoxication charges on Officer N. Officer N pled guilty to disorderly conduct, a class C misdemeanor.

A Notice of Agency Action was filed by POST and mailed to Officer N. Officer N elected to have a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of fact and conclusions of law stating POST failed to prove by clear and convincing evidence that Officer N violated UCA 76-5-102, assault, a class A misdemeanor, as outlined in the notice of agency action. POST was however able to prove by clear and convincing evidence Officer N violated UCA 76-9-102, disorderly conduct, a class C misdemeanor, as outlined in the notice of agency action. POST recommended Officer N's certification be suspended for three months. Officer N and his attorney were present at the Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer N, the Council ratified POST's recommendation and voted to suspend Officer N's certification for three months.

Case 15

Officer O was investigated by his agency for a BCI violation. The investigation disclosed that during a BCI audit of his agency's records, it was discovered Officer O accessed his wife's driver license record through BCI. In interviews with the criminal investigator, his agency, and POST, Officer O admitted he accessed his wife's driver license record on two occasions for the purpose of purchasing her an out of state one-day fishing license online. Officer O did not believe his actions were a violation of law because he did not gain anything and had no malicious intent. The case was screened with the county attorney who declined to file charges. Officer O received a written warning from his agency and retained his employment.

A Notice of Agency Action was filed by POST and mailed to Officer N. Officer N 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 that Officer N receive a letter of caution. After hearing POST's findings the Council ratified POST's recommendation and voted to issue Officer N a letter of caution.

Case 16

Officer P was investigated for driving under the influence. The investigation disclosed Officer P was driving from his home to his campsite with his nine-year-old son, in preparation for the elk hunt. Part-way through his trip, Officer P stopped for approximately one hour and listened for elk bugling. Officer P said he consumed two beers while he was listening for elk. Approximately 10 miles from his campsite, Officer P encountered road construction. When driving through the construction zone, Officer P struck a large plastic crash cushion; Officer P's pickup went up onto the crash cushion and became stuck. Officer P was not able to get his pickup unstuck. According to Officer P, once he realized his pickup was stuck, he consumed more than half of a bottle of whiskey (750 mL). Police arrived approximately one hour later. When officers arrived, Officer P was standing outside his vehicle and was obviously intoxicated. Officer P performed field sobriety tests and was arrested for driving under the influence of alcohol. Officer P submitted to an intoxilyzer test which indicated he had a breath alcohol content of .17. Officer P was terminated from his agency. Officer P pled guilty to impaired driving and open container. During two *Garrity* interviews with POST and a *Garrity* interview with his agency, Officer P denied consuming any whiskey prior to getting his pickup stuck on the crash cushion. According to Officer P, he was not intoxicated or impaired when the crash occurred.

A Notice of Agency Action was filed by POST and mailed to Officer P. Officer P 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 P's certification be suspended for two years. Officer P and his attorney were present at the Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer P, the Council ratified POST's recommendation and voted to suspend Officer P's peace officer certification for two years.

Case 17

Officer Q was investigated by an outside police agency for fishing with prohibited bait. The investigation disclosed that Officer Q was fishing in another state. An officer approached Officer Q and verified he had a valid fishing license. The officer inspected Officer Q's fishing equipment to make sure he was using proper tackle for that area. The officer found Officer Q's tackle was in compliance with proclamation regulations; however, Officer Q was found to be fishing with bait. The area in which Officer Q was fishing had a prohibited bait regulation in effect. Officer Q had read the proclamation and believed he was in compliance

with all rules; however, he misunderstood the area in which he was fishing had a bait restriction. Officer Q was issued a citation for fishing with prohibited bait.

A Notice of Agency Action was filed by POST and mailed to Officer Q. Officer Q 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 Q be issued a letter of caution. Officer Q was present at the Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer Q, the Council rejected POST's recommendation and voted to take no action on Officer Q's peace officer certification.

Special Note: The disciplinary proceedings of the POST council are administrative and are independent from any criminal prosecution. POST Investigations is charged with investigating misconduct to determine if there is clear and convincing evidence that a peace officer or certified dispatcher has violated Utah Code 53-6-211 or 53-6-309. The fact that a peace officer or certified dispatcher has been convicted of a criminal violation, or has plead guilty to a criminal violation, is in and of itself clear and convincing evidence that the peace officer or certified dispatcher has violated Utah Code 53-6-211(1)(d) or 53-6-309(1)(d). Where there is clear and convincing evidence to show a violation has taken place POST is obliged to bring that matter to the Council. The POST Council has the statutory authority to determine what the appropriate sanction should be.

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.