



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



March 2017

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Please note that the actions taken by the POST Council are not binding precedent.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. This bulletin is intended to be used as a training document; therefore, it is the policy of POST not to use the names of individual officers or agencies, even though that information may be part of the public record.

On March 30, 2016, POST Council convened and considered 16 cases of officer discipline.

Case 1

Officer A, received a citation for hunting in a prohibited area. Officer A and his eleven year-old son went hunting for swan in a federally regulated bird refuge. Officer A was familiar with the refuge and previously hunted there. Officer A heard about an area of the refuge he had not previously hunted and wanted to try hunting there. Officer A and his son entered the area of the refuge he was informed about and began hunting. Officer A and his son shot two swans and two ducks in the area. When Officer A and his son left the area, they encountered a fish and game warden who informed Officer A they were hunting in a prohibited area. Officer A informed the warden he was not aware hunting was prohibited in the area. The Warden issued Officer A a citation for hunting in a posted closed area. Officer A contacted POST and his department administration and self-reported the situation.

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 receive a letter of caution. After hearing POST's findings the Council ratified POST's recommendation and voted to issue a letter of caution.

Case 2

Officer B and his wife were arguing with their 17 year-old daughter (Officer B's step-daughter) in the living room of their home. During the argument Officer B grabbed his step-daughter on or about the neck and

pushed her backwards. The step-daughter bumped into a nearby couch and then fell to the floor in a seated position. The following day, the step-daughter reported the incident to a school counselor and notification was made to law enforcement. The criminal investigation determined Officer B committed child abuse and he was booked in a county jail.

Officer B pled guilty to child abuse and his plea was held in abeyance by the court. In a Garrity interview with POST, Officer B admitted he shoved his step-daughter, but denied it constituted a violation of law. Officer B explained he did not believe he was guilty, but he entered into the plea in abeyance at his attorney's counsel.

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. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer B's peace officer certification for three years.

Case 3

Officer C, a certified correctional officer, submitted an application to attend the POST law enforcement officer (LEO) training. On the application, Officer C disclosed he had been arrested and convicted of a felony offense as a juvenile. Officer C further disclosed in the application that he had been cited for traffic offenses in the past. A month later, Officer C submitted an additional application to attend POST LEO training. In the second application, Officer C denied ever being arrested, convicted, or involved with a felony offense. Officer C also marked, "No", when the application asked if he had ever been cited for a traffic offense.

When POST investigated the discrepancy between these two applications, Officer C's initial application, submitted three years previously, was also reviewed. POST discovered the original application was also falsified. Officer C failed to disclose his conviction for the felony offense and numerous traffic violations on the original application. During a POST *Garrity* interview, Officer C said he had read all of the instructions on the application, and completed the applications, himself. Officer C said he did not intend to be deceptive in the completion of his applications.

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. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer C's certification for two years.

Case 4

Officer D, was on-duty and in uniform when he discovered his girlfriend's vehicle at a local hotel. Officer D observed a note on the hotel front desk which had his girlfriend's name and a room number. Officer D went to the room and knocked on the door multiple times. Officer D heard movement inside the room, but no one opened the door. Officer D made contact with the hotel clerk and told him he needed to get into the room. According to the clerk, Officer D told him it was for police business. The clerk and Officer D knocked on the door and announced it was the police. Still no one answered the door. The clerk informed Officer D he had a master key and could open the door. Officer D could hear the male behind the closed door on the phone with 911. Officer D told the clerk to open the door. As the clerk was getting ready to open the door, a male inside the room opened the door. The male was on the phone with police dispatch reporting he was

being harassed by a police officer. When the responding officer arrived, the male and Officer D's girlfriend declined to file a complaint.

A Notice of Agency Action for official misconduct as provided in Utah Code Ann. § 76-8-201, a class B misdemeanor 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 Officer D's certification be suspended for one year. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer D's peace officer certification for one year.

Case 5

Officer E shot at a buck deer he knew was on private land. Officer E intentionally waited until it was dark and covertly went onto the private land with his uncle to look for the deer. Officer E was observed trespassing and was reported to law enforcement. When officers made contact with Officer E, he lied and told officers he and his uncle had been walking the dirt road, looking for a lost cell phone and were never on private land. A few weeks later, in a subsequent criminal interview, Officer E admitted he lied to officers. Officer E admitted he went onto private land to look for a deer he thought he had shot earlier in the day.

During a POST *Garrity* interview, Officer E said he lied to officers because he did not want to get in trouble and was worried he might lose his job. Officer E also said he lied because he did not want his uncle to be charged with a crime. Officer E pled guilty to, taking protected wildlife while trespassing and the charge of obstruction of justice was dismissed.

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. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer E's peace officer certification for three years.

Case 6

Officer F was investigated by his agency for engaging in sexual conduct with a local woman while on duty. Officer F secretly met with the woman approximately 20 times while he was on duty. According to the woman, she and Officer F engaged in kissing, hugging, and touching of the breasts and/or genitals at each meeting. Officer F said he could not remember exactly what they did during each meeting. One of these meetings consisted of Officer F having sex with the woman in his department vehicle, while on duty, and in a public place. One of these meetings consisted of Officer F leaving his department vehicle unattended prior to the end of his shift, getting in the woman's car, and going to the woman's residence where they had sex.

Officer F failed to respond truthfully after having been issued a *Garrity* warning during interviews with both his agency and POST, when he was asked about the on-duty sexual conduct. Additionally, Officer F admitted to unlawfully taking a prescription pain medication that was not prescribed to him on multiple occasions. Officer F resigned from his agency after being asked to submit to a polygraph examination. Officer F failed to respond to multiple requests from POST for a follow-up interview.

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

Case 7

Officer G was investigated by his agency for distribution of a controlled substance inside a jail. The investigation disclosed that Officer G met with two different individuals on two separate occasions outside of the jail, to obtain drugs for two inmates. During a *Miranda* interview, Officer G disclosed he met with two different individuals outside the jail, obtained drugs and then delivered them to inmates inside the jail. Officer G also admitted to using some of the drugs he was given by one of the outside parties. Officer G pled guilty to a charge of distribution of a controlled substance, a second degree felony.

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's certification be revoked. After hearing POST's findings the Council ratified POST's recommendation and voted to revoke Officer G's certification.

Case 8

Officer H was on duty and assigned to respond to a burglary at a convenience store. Officer H arrived at the store and was briefed by the first officer on scene. The first officer told Officer H about a \$50 bill that was left behind by the suspects. The first officer later noticed Officer H "hovering" in the area where the \$50 bill was located. After Officer H left that area the first officer noticed the \$50 bill was missing. The first officer confronted Officer H and Officer H denied knowing where the money went.

Officer H was wearing a body camera and the store had a surveillance camera, both of which video recorded the incident. Officer H can be seen on surveillance video reaching to the \$50 bill, picking it up and placing it into his pocket. The investigation disclosed that after being confronted, Officer H placed the \$50 bill back where he found it and notified the first officer that the money had been located.

During a *Garrity* interview, Officer H admitted to taking a \$50 bill from the convenience store and placing it into his pocket. Officer H said he thought about taking the money for himself, but also took the money to keep it protected from someone else stealing it. Officer H said he put the \$50 bill back after the first officer asked him where the money was. Officer H subsequently entered a plea of No Contest to a charge of theft, a class B misdemeanor.

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. 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 two and one-half years. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer H's certification for two and one-half years.

Case 9

Officer I's sister was walking her dog when she became involved in verbal dispute with a neighbor. When Officer I's sister told him about the confrontation, Officer I got in his personal vehicle and drove to the neighbor's residence, a few houses away to speak with the neighbor. When Officer I arrived, he walked onto the neighbor's driveway and asked a child if he could speak with the neighbor. Officer I was confronted by the neighbor and the neighbor's husband who exited their home and told Officer I to leave their property. The neighbor's husband had a handgun in his hand and according to witnesses, the neighbor was yelling and cursing. Officer I got back in his vehicle, returned to his residence and called the local

police. The neighbor also called the police. The police responded and conducted an investigation. At the conclusion of the investigation, Officer I was issued a citation for trespassing and disorderly conduct.

Officer I pled guilty and entered into a plea in abeyance with the local justice court to criminal trespass, an infraction. During *Garrity* interviews with his agency and POST, Officer I denied any criminal conduct. Officer I explained the reason he entered into the plea in abeyance for the trespassing was Officer I, did not want to risk losing the case at trial. Officer I maintained his innocence during the POST *Garrity* interview.

Based on Officer I's guilty plea, 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 receive a letter of caution. After hearing POST's findings the Council rejected POST's recommendation and voted to take no action on Officer I's peace officer certification.

Case 10

Officer J consumed "some beers" at his fiancé's apartment, then went to a concert, where Officer J consumed "several drinks." Officer J said he had beer, mixed drinks, and shots while at the concert, but could not remember how many. Officer J then went to a local bar, where he consumed one mixed drink and one shot. Officer J's fiancé and her cousin took Officer J back to the fiancé's apartment complex. Due to his high level of intoxication, Officer J went to the wrong apartment and tried to enter. Officer J rang the doorbell, pounded on the door, and yelled for someone to let him in. The apartment tenant answered the door and Officer J tried to force his way into the apartment. The tenant pushed Officer J back, closed the door, and called police.

The police arrived and found Officer J sitting on the steps of the apartment. Officer J was issued a citation for intoxication. Officer J entered into a 90 day diversion agreement and after 90 days the charges were dismissed.

A Notice of Agency Action was filed by POST and mailed to Officer J. Officer J requested a hearing before an administrative law judge (ALJ). The ALJ subsequently ruled on a motion for summary judgment and issued findings of facts and conclusions of law stating Officer J violated UCA 53-6-211(d) as outlined in the notice of agency action. POST recommended Officer J's peace officer certification be suspended for three months. Officer J was present at the Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer J the Council rejected POST's recommendation and voted to issue Officer J a letter of caution.

Case 11

Officer K and her husband were consuming alcoholic beverages in their home. An argument ensued and Officer K walked away from her home to calm down after her husband had thrown her phone at the television. Officer K was recovering from leg surgery and had a hard time walking. Officer K fell while trying to cross some rocky ground and was unable to get back up. Officer K called her husband to tell him she had fallen, but her phone disconnected before she could tell him where she was. Officer K's husband called police to assist in finding her. Prior to police arriving, Officer K's husband found her and relayed the information to dispatch. Officer K was taken to a friend's house to be cared for, but was later cited for intoxication. Officer K entered a No Contest plea to be held in abeyance to the intoxication charge and the charge was subsequently dismissed with prejudice after satisfying the terms of the plea in abeyance.

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

Case 12

Officer L confronted a large group of male juveniles and young adults, who were making noise in the parking lot of a carwash across the street from Officer L's house. Officer L began to argue with the group and according to one of the males, made sexual comments about the male's mother and sister. Officer L also made comments to another male about a family member who had committed suicide. A physical altercation ensued. Officer L and one of the males then called 911. During the investigation, Officer L told the investigating officer he had consumed two shots of an alcoholic beverage prior to the incident.

Officer L was charged with assault, disorderly conduct, and intoxication. Officer L entered a plea of guilty to a charge of intoxication. The assault and disorderly conduct charges were dismissed. During *Garrity* interviews with POST and his agency, Officer L denied any criminal conduct. Officer L admitted he consumed alcohol, but denied being intoxicated, and said he only pled guilty to intoxication at the advice of his attorney. During the POST investigation, POST also became aware Officer L was issued a letter of caution for intoxication by the POST council several years ago.

A Notice of Agency Action was filed by POST and mailed to Officer L. Officer L 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 L's certification be suspended for one year. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer L's certification for one year.

Case 13

Officer M was investigated by his agency for policy violations. During a *Garrity* interview, Officer M admitted to having sex with a female court employee at the courthouse where Officer M worked as a court security deputy. Officer M resigned from his agency. Several months later, Officer M went to his ex-wife's residence uninvited and refused to leave. Officer M also sent his ex-wife multiple unwanted text messages and called her multiple times. Officer M was arrested and booked in the local jail for electronic communication harassment - domestic violence and trespassing.

Officer M's ex-wife acquired a stalking injunction against Officer M. Officer M violated the stalking injunction multiple times. Officer M subsequently pled guilty to four counts of violating the stalking injunction.

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. An order of default was signed by the administrative law judge and mailed to Officer M. POST recommended Officer M's certification be revoked. After hearing POST's findings the Council ratified POST's recommendation and voted to revoke Officer M's peace officer.

Case14

Officer N was investigated for an allegation that was later determined to be unfounded. During the investigation it was discovered Officer N had made multiple Bureau of Criminal Identification (BCI) inquiries which did not appear to be for legitimate law enforcement purposes. The investigation disclosed that Officer N accessed BCI records using his estranged wife's information to determine if she was seeking a protective order against him. Officer N accessed BCI records three times searching the name and date of birth of a man he suspected was having an affair with his estranged wife. Officer N accessed his estranged wife's driver license records to obtain her social security number for a form he was completing and Officer N used his own name and date of birth two times to access BCI records, in an attempt to locate any active warrant or protective order information.

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

Case 15

Officer O accidentally took two doses of his prescription medication approximately three hours apart. The medications were prescribed to Officer O to treat anxiety and depression. Officer O then left his residence to drive to work. While Officer O was driving to work, several motorists called 911 and reported Officer O was driving erratically. Officer O traveled approximately 17 miles from the location his vehicle was first reported as reckless, to the time he was stopped by officers. Officers observed, "Obvious signs of impairment." Officer O performed standardized field sobriety tests and was subsequently arrested for driving under the influence. Officer O submitted to a blood test, which later showed positive for Alprazolam and Citalopram. Officer O pled guilty to reckless driving, a class B misdemeanor, and all of the traffic violations were dismissed with prejudice.

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

Case 16

Officer P was involved in a verbal altercation with his wife in the parking lot of a local retail store. The verbal altercation escalated when Officer P became upset over a comment his wife made about sexual acts she had performed with her boyfriend. Officer P started shouting at his wife and kicked her truck at least once. Officer P left a boot print on the truck, but no other damage. Charges were filed against Officer P for domestic violence related criminal mischief and unlawful detention. Both charges against Officer P were subsequently dismissed.

During *Garrity* interviews with his agency and POST, Officer P admitted to kicking his wife's truck after she made a lewd comment. The POST investigation determined Officer P committed disorderly conduct, but did not sustain the allegations of criminal mischief or unlawful detention.

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 three months. Officer P was 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 three months.

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.

