



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training



June 2017

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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Please note that the actions taken by the POST Council are not binding precedent.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 June 7, 2017, POST Council convened and considered 9 cases of officer discipline.

### Case 1

Officer A, was investigated by his agency for an allegation he used marijuana. During a *Garrity* interview with his agency, Officer A admitted he used marijuana three or four times a week over a six to eight month period. Officer A said the last time he used marijuana was two days before the agency *Garrity* interview. Officer A resigned from his agency before the administrative matter was concluded. Officer A also failed to show up to his scheduled *Garrity* interview with POST.

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

### Case 2

Officer B was involved in a non-injury motor vehicle crash which was investigated by a local police agency. During the investigation, one of the officers noticed Officer B had the odor of an alcoholic beverage on his breath, slurred speech, and "compromised" balance. During standardized field sobriety tests, Officer B showed multiple signs of impairment. A preliminary breath test also indicated positive for alcohol. Officer B was subsequently arrested for driving under the influence (DUI) of alcohol and transported to a nearby

precinct. Officer B submitted to an Intoxilyzer breath test, which indicated his breath alcohol content (BrAC) was .174. Officer B was issued a citation and released from custody. Officer B did not notify his agency of his arrest. When the agency became aware of the arrest his employment was terminated.

During a *Garrity* interview with POST, Officer B initially claimed he only consumed four ounces of wine prior to driving his vehicle. After more direct questioning, Officer B admitted he consumed twelve or more ounces of grain alcohol and four ounces of wine prior to operating his motor vehicle and becoming involved in the traffic crash. Officer B ultimately pled guilty to driving under the influence of alcohol, a class B misdemeanor.

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

### Case 3

Officer C was hosting a party at his residence. Everyone at the party was very intoxicated. Officer C went to bed after consuming more than 12 beers and three to five shots of Tequila. Officer C then heard an argument outside his bedroom door. Officer C opened his bedroom door and saw his son-in-law and another person arguing. Officer C thought the argument was about to turn physical so he grabbed his son-in-law and told the other person to leave because the party was over. The son-in-law tried to get away from Officer C; the two lost their balance and fell through a bedroom door, damaging the door. The police arrived to find Officer C and his son-in-law standing face-to-face in a fighting posture. Officer C and the son-in-law were arrested and booked into jail for intoxication and assault. Officer C later pled guilty to intoxication, a class C misdemeanor and the court dismissed the assault charge.

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

### Case 4

Officer D, a correctional officer, documented he completed jail security checks (watch tours) every half hour in accordance with his agency's policy. Officer D documented the security checks in his daily shift log, which is maintained as an official jail record. After receiving a prisoner complaint about not receiving treatment for an open wound, Officer D's supervisor looked into the documented security checks and discovered Officer D documented multiple security checks, which he never completed. During *Garrity* interviews with his agency and POST, Officer D admitted he made false entries regarding the completed security checks on his daily shift log. These false log entries constituted falsification of a government record, a class B misdemeanor; however, the matter was not referred for criminal charges. Officer D subsequently retired from his agency.

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 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 was investigated by his agency for domestic violence related assault. Officer E's ex-wife reported that during their marriage from 2009 to 2015, Officer E hit her several times, pushed her into a closet, and would not let her leave the house on multiple occasions. She reported that their four-year-old son was present during most of these incidents. Officer E's ex-wife also described an incident where Officer E threatened to kill an individual Officer E thought was video recording him.

During a *Garrity* interview with his agency, Officer E admitted that without a legitimate or lawful reason, he physically prevented his ex-wife from leaving their home. Officer E admitted to pushing his ex-wife into a wall during an argument. Officer E admitted some of these instances had taken place in front of their son. Officer E admitted to brandishing a firearm during a confrontation with an individual Officer E thought was recording him.

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

### **Case 6**

Officer F applied to, and was hired by, a Utah law enforcement agency. It was later determined, Officer F knowingly lied on the employment background packet he submitted to the law enforcement agency. Officer F marked "no" where the application asked if he had ever participated in any supervised rehabilitation program. Officer F also failed to disclose he had a prescription drug use history. During *Garrity* interviews with POST and his agency, Officer F admitted he lied on the employment background packet because he was desperate for a job and he believed the drug treatment information would prevent him from getting hired. The POST investigation determined that Officer F had correctly included this drug use and drug treatment history on his POST application, but had failed to include it on his agency's background questionnaire. The omission of this information on the agency background packet constitutes falsification of a government document; however, the matter was not referred for criminal prosecution.

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 one year. Officer F was present at the Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer F, the Council rejected POST's recommendation and instead voted to issue Officer F a letter of caution.

### **Case 7**

Officer G was investigated by his agency for engaging in sexual conduct while on duty. The investigation disclosed the following instances of sexual conduct on duty: Officer G and a female co-worker had sexual intercourse in an unmarked law enforcement vehicle in a public place while Officer G was traveling for training. Officer G had sexual intercourse with the same female co-worker in a private residence after Officer G completed a security detail and before he signed off-duty. Officer G left his assigned area during his regular on-duty hours and engaged in sexual intercourse on two additional occasions with the female co-

worker at a residence where she was house-sitting. Officer G and the female co-worker had sexual intercourse on at least one occasion in her personal vehicle, immediately after Officer G and the co-worker ended their duty shift, and while the vehicle was parked in a secure parking lot the agency uses to park law enforcement vehicles.

During *Garrity* interviews with his agency and POST, Officer G admitted to engaging in sexual conduct while on duty on all of the above occasions. 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 suspended for four years. Officer G was present at the Council meeting and addressed the Council. After hearing POST's findings, and hearing from Officer G, the Council rejected POST's recommendation and instead voted to suspend Officer G's certification for three years.

### Case 8

Dispatcher H, was investigated for domestic violence related assault and intoxication. Dispatcher H consumed three shots of whiskey at her residence. She and a boyfriend with whom she cohabitated, left the residence and went to a local restaurant for dinner. While at the restaurant, Dispatcher H was served an additional five shots of an alcoholic beverage. Dispatcher H was involved in an argument with her boyfriend while at the restaurant which continued into the parking lot. Dispatcher H pushed her boyfriend in the chest at least four times, in rapid succession, during the argument. The investigating officer observed that Dispatcher H's pupils were dilated and her eyes were red and glossy. Dispatcher H was arrested for domestic violence related assault and intoxication. At the jail, the arresting officer served Dispatcher H with a copy of the jail release agreement which included a no-contact order.

During the early morning hours, Dispatcher H was released from the county jail and she returned to her residence in violation of the jail release-no contact order. While at her residence, another argument ensued between Dispatcher H and her boyfriend. Law enforcement responded to the scene. Officers arrested Dispatcher H for violation of the jail release agreement-no contact order and transported her back to the county jail. Charges for domestic violence related assault and intoxication were filed on Dispatcher H. Dispatcher H entered a plea of guilty to be held in abeyance to the charge of domestic violence related assault, a class B misdemeanor, and intoxication, a class C misdemeanor. The charge of violating a jail release agreement-no contact order was later dismissed with prejudice.

Several weeks later, Dispatcher H was contacted by an outside agency and informed they were looking for her new boyfriend who was a fugitive from justice. The outside agency informed Dispatcher H they had just observed the wanted fugitive inside her residence, through a window. Dispatcher H denied that the fugitive was inside her residence and initially refused to allow officers to search the residence. Dispatcher H eventually consented to a search of her residence. The fugitive was located and arrested inside Dispatcher H's residence. Dispatcher H was also arrested for obstruction of justice and both individuals were transported to the county jail. A charge of obstruction of justice was filed on Dispatcher H. Dispatcher H entered a plea of guilty to be held in abeyance to the charge of obstruction of justice, a 3rd degree felony.

A Notice of Agency Action was filed by POST and mailed to Dispatcher H. Dispatcher 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 Dispatcher H's POST dispatcher certification be revoked. After hearing POST's findings the Council ratified POST's recommendation and voted to revoke Dispatcher H's certification.

## Case 9

Officer I was stopped by police for failure to operate in a single lane and because the front passenger door opened while the vehicle was in motion. The officer detected the odor of an alcoholic beverage coming from Officer I. Officer I performed standardized field sobriety tests. Officer I was arrested for driving under the influence of alcohol and having an open container of alcohol in his vehicle. Officer I submitted to an Intoxilyzer test, which indicated Officer I had a breath alcohol content of .111. Officer I pled guilty to the amended charge of impaired driving, a class B misdemeanor.

A few months later, officers responded to Officer I's residence on reports of a possible domestic violence incident. Officers arrived and observed Officer I and his wife exiting their vehicle in their driveway, with Officer I exiting the driver door of the vehicle. An officer detected the odor of an alcoholic beverage coming from Officer I. Officer I performed standardized field sobriety tests, and officers determined Officer I's level of impairment did not rise to the level of driving under the influence. Officers learned Officer I had an alcohol restricted driver license. Officer I submitted to a portable breath test, which indicated positive for alcohol. The portable breath test indicated .111. Officers determined no domestic violence violation had occurred. Officer I was arrested and booked into the county jail for an alcohol restricted driver violation. Officer I pled guilty to the amended charge of intoxication in or about a vehicle, under a local municipal code, a class B misdemeanor.

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

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*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](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 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 Dispatcher 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. 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.