



# POST Investigations Bulletin

## State of Utah

### Department of Public Safety

### Peace Officer Standards and Training



January 2019

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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Please note that the actions taken by the POST Council are not binding precedent.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 January 3, 2019, POST Council convened and considered 10 cases for discipline.

#### Case 1

#### Falsification or alteration of Government Record

On or about September 6, 2017, Officer A accessed his department time management system (TIMS) to sign off-duty from home and claimed he worked a full shift. Officer A lives approximately 40 minutes outside of his work jurisdiction and did not have a take-home law enforcement vehicle. On or about September 17, 2017, Officer A accessed TIMS to sign on-duty, from home, three hours earlier than his scheduled shift and claimed to have worked more than his approved amount of work hours.

During a *Garrity* interview with the investigating agency, Officer A stated there were times he had gone home and checked off duty with the intent to readjust his time. Officer A was asked if he had adjusted his time on the days he left early and he said he thought he had. Officer A was asked again if he had actually adjusted his time, not just thought he had. Officer A said the investigation showed that he had not adjusted the time. Officer A told the investigator they both knew where the investigation was going and he would be losing his job over this. Officer A resigned from his agency.

Officer A did not participate in the POST investigation. During the investigation, POST discovered Officer A had a previous POST investigation for driving under the influence, which resulted in a one year suspension.

A Notice of Agency Action was filed by POST and mailed to Officer A; however, Officer A failed to respond. An order of default was subsequently signed by the administrative law judge and mailed to Officer A. Considering that Officer A was sanctioned by the POST Council in a previous case, POST recommended Officer A's certification be suspended for 18 months. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer A's certification for 18 months.

## **Case 2** **Lying Under *Garrity***

On March 20, 2013, Officer B assisted an outside police agency with the execution of a search warrant. During the execution of the warrant, Officer B seized property he believed was associated with cases within his agency. On April 8, 2013, Officer B completed a report documenting the execution of the warrant and identified the property as "Found Property" with no owner information. Since there was no owner information attached to the property in the report, the property was subsequently destroyed or sold.

On April 8, 2014, one year after the original report was written, and after becoming aware the property had been inappropriately destroyed, Officer B accessed his original report and added the owner's name to the "involvements" section of the report. Officer B also inserted the owner's name to the original narrative of the report.

On January 10, 2017, during a *Garrity* interview with his agency, Officer B admitted he added the name of the individual to the "involvements" section of his report, but denied making any changes to the actual narrative of the report.

During *Garrity* interviews with POST, Officer B said based upon the record management system log information provided to him, he was "ninety-nine percent" certain he made the changes to the report, but he did not recall doing so.

A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B elected to have a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of fact and conclusions of law stating Officer B violated UCA 53-6-211 as outlined in the notice of agency action. POST recommended Officer B's certification be revoked in accordance with the disciplinary guidelines. Officer B was present and spoke to the Council. After hearing POST's findings, the ALJ's findings of fact and conclusions of law, and hearing from Officer B, the Council rejected POST's recommendation and instead voted to suspend Officer B's certification for four years.

## **Case 3** **Willfully falsifies any information to obtain certification**

On October 17, 2016, Officer C applied for peace officer training to obtain certification. Officer C marked “No” to all questions which asked if he had ever used methamphetamine or been involved in a crime involving the unlawful use, possession, or sale of a controlled substance. On May 17, 2018, Officer C participated in a pre-employment polygraph examination and disclosed he had used methamphetamine almost daily from March 2012 until September 2013. Officer C also disclosed he had given his prescriptions to friends in high school and sold methamphetamine three times.

During a *Garrity* interview with POST, Officer C said he completed his application and did not understand why he did not disclose his methamphetamine use in his POST application.

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 subsequently signed by the administrative law judge and mailed to Officer C. POST recommended Officer C’s certification be suspended for two years in accordance with the disciplinary guidelines. After hearing POST’s findings, the Council ratified POST’s recommendation and voted to suspend Officer C’s certification for two years.

#### **Case 4 Driving under the influence**

On June 25, 2018, Officer D was pulled over for a vehicle backing violation in Idaho. The Idaho police officer suspected Officer D of driving under the influence of alcohol (DUI). Officer D admitted to consuming three draft beers and numerous cans of beer earlier in the evening. The officer had Officer D perform the standardized field sobriety tests and submit to two breath tests. Officer D’s breath alcohol content (BrAC) was measured at 0.113 and 0.114. Officer D was arrested and booked into the county jail for DUI. Officer D was administratively investigated by her department and the allegation of DUI was sustained. On August 23, 2018, Officer D’s employment was terminated. In September 2018, Officer D pled guilty to a criminal charge of DUI in an Idaho court.

During a *Garrity* interview with POST, Officer D said, “The evidence is there. I take full responsibility for the decision I made. It was a bad decision.”

A Notice of Agency Action was filed by POST and mailed to Officer D. Officer D 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 D receive a one year suspension in accordance with the disciplinary guidelines. After hearing POST’s findings, the Council ratified POST’s recommendation and voted to suspend Officer D’s certification for one year.

#### **Case 5 Assault**

On or about July 1, 2017, Officer E provided unauthorized defensive tactics training to a civilian employee. During this training, Officer E punched the civilian employee in the upper right side of her chest.

During a *Garrity* interview with POST, Officer E admitted he conducted unauthorized defensive tactics training with the civilian employee and hit her in the upper right side of her chest. Officer E could not remember the exact wording the civilian employee used to give him consent, but said it was definitely implied because the civilian employee asked “if you hit me, will it knock me out?”

During interviews with POST, the civilian employee said she did not give consent for Officer E to punch her because she did not expect to be punched. The witness who observed the unauthorized training told POST investigators he did not believe the civilian employee did or said anything that Officer E would perceive as consent to train her.

A Notice of Agency Action was filed by POST and mailed to Officer E. Officer E elected to request a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of facts and conclusions of law stating Officer E violated UCA 53-6-211 as outlined in the Notice of Agency Action. POST recommended Officer E's certification be suspended for two years in accordance with the disciplinary guidelines. Officer E and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer E and his attorney, the Council rejected POST's recommendation and instead voted to issue Officer E a letter of caution.

### **Case 6** **Lying under *Garrity*, engaging in sexual conduct while on duty**

On or about January 27, 2017, Officer F was investigated by his agency for allegations regarding an inappropriate relationship between him and a 17-year-old nanny he had hired to care for his children. After being given a *Garrity* warning, Officer F denied having any relationship with the nanny beyond conversations and denied any physical relationship with the nanny.

On or about August 14, 2017, an additional administrative investigation was initiated after Officer F's police chief received citizen complaints about an inappropriate relationship occurring between Officer F and the nanny. The investigation was handled by an outside law enforcement agency. During the investigation and while under *Garrity*, Officer F admitted he had kissed his nanny many times beginning in September 2016. The administrative investigation also determined Officer F had sexual intercourse with his wife, while on-duty at the police department, on more than one occasion.

Officer F declined to participate in the POST investigation.

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 revoked in accordance with the disciplinary guidelines. Officer F was present at the POST 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 revoke Officer F's certification.

### **Case 7** **BCI Violation**

On October 30, 2012, Officer G was investigated by his agency for accessing BCI division records for a non-law enforcement purpose. An internal investigation was conducted and concluded Officer G had unlawfully accessed the driver license records of at least four dispatchers.

During *Garrity* interviews with POST and his agency, Officer G admitted to accessing three of the dispatcher's driver license records. On November 5, 2013, Officer G appeared in court regarding the fourth record and entered a plea of no contest to the criminal charge of unlawfully accessing BCI division records, a class B misdemeanor, which was amended to a class C misdemeanor.

A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G elected to request a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of facts and conclusions of law stating Officer G violated UCA 53-6-2111(d) as outlined in the notice of agency action. Considering there were multiple offenses, POST recommended Officer G's certification be suspended for 15 months. Officer G and his attorney were present and addressed the Council. After hearing POST's findings and hearing from Officer G and his attorney, the Council rejected POST's recommendation and instead voted to suspend Officer G's certification for six months.

### **Case 8**

#### **Lying under *Garrity* and willfully falsifying any information to obtain certification**

On June 19, 2018, Officer H was investigated by POST for willfully falsifying any information to obtain certification. The POST investigation disclosed that on or about July 29, 2014, and May 22, 2018, Officer H submitted POST applications in which he listed his last date of methamphetamine use as July 22, 2009. In a pre-employment polygraph interview, Officer H admitted he had used methamphetamine at his sister's house in 2010.

During a *Garrity* interview with POST, Officer H denied using methamphetamine in 2010 and stated the polygraph examiner had lied in his report. Officer H also claimed the polygraph examiner lied when he reported Officer H admitted to going to work impaired on methamphetamine. POST investigators reviewed a video recording from the polygraph examination and determined Officer H had in fact admitted to using methamphetamine in 2010 at his sister's house and admitted going to work impaired on methamphetamine.

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 subsequently signed by the administrative law judge and mailed to Officer H. POST recommended Officer H's certification be revoked in accordance with the disciplinary guidelines. After hearing POST's findings the Council ratified POST's recommendation and voted to revoke Officer H's peace officer certification.

### **Case 9**

#### **Driving under the influence**

On February 19, 2018, Officer I was involved in a traffic accident where she struck the rear end of another vehicle. The investigating officer determined Officer I had taken a prescription medication earlier in the day which affected her ability to safely operate a motor vehicle. Officer I was arrested for driving under the influence of alcohol, drugs, or a combination of both as provided in Utah Code Ann. §41-6a-502, a class B misdemeanor.

On May 24, 2018, Officer I pled guilty to an amended charge of impaired driving as provided in Utah Code Ann. § 41-6a-502.5, a class B misdemeanor. Officer I resigned from her employment on March 31, 2018.

During a *Garrity* interview with POST, Officer I admitted she took more than the prescribed dose of her prescription medication and was operating a motor vehicle when she was involved in a traffic accident.

A Notice of Agency Action was filed by POST and mailed to Officer I. Officer I waived her right to a hearing before an administrative law judge and stipulated to the facts as contained in the Notice of Agency Action. Considering Officer I was involved in a traffic accident after operating a motor vehicle while under the influence, POST recommended Officer I's certification be suspended for 18 months. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer I's certification for 18 months.

## Case 10 Unfit for Duty

On July 18, 2018, Officer J was ordered by his agency to complete a fitness for duty evaluation due to recent behavioral and performance issues at work. Officer J was evaluated by a licensed psychiatrist and was found not currently fit for duty. As result of the evaluation's findings, Officer J's employment was terminated.

On September 26, 2018, during a POST *Garrity* interview, Officer J stated he had responded on two calls that he struggled to deal with. Officer J said he had been seeing a therapist and that it was helping him cope with his stressors.

A Notice of Agency Action was filed by POST and mailed to Officer J. Officer J failed to respond to the Notice of Agency Action. An order of default was subsequently signed by the administrative law judge and mailed to Officer J. POST recommended Officer J's certification be suspended indefinitely in accordance with the disciplinary guidelines. After hearing POST's findings, the Council ratified POST's recommendation and voted to indefinitely suspend Officer J's certification until he is able to provide a report from a psychiatrist or psychiatric nurse practitioner stating Officer J is fit for duty.

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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 Utah Code 53-6-208. 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.

**53-6-208. Inactive certificates – Lapse of certificate – Reinstatement.**

- (1) (a) The certificate of a peace officer who has not been actively engaged in performing the duties as a certified and sworn peace officer for 18 consecutive months or more, but less than four consecutive years, is designated “inactive.”  
(b) A peace officer whose certificate is inactive shall pass the certification examination and a physical fitness test before the certificate may be reissued or reinstated.
  
- (2) (a) The certificate of a peace officer who has not been actively engaged in performing the duties as a certified and sworn peace officer for four continuous years or more is designated as "lapsed."  
(b) A peace officer whose certificate is lapsed shall pass the basic training course at a certified academy, the certification examination, and a physical fitness test before the certificate may be reissued or reinstated.