



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training



December 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Please note that the actions taken by the POST Council are not binding precedent.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 December 6, 2017, POST Council convened and considered seven cases for discipline.

### Case 1

Officer A's agency became concerned about Officer A after he exhibited some extreme anxiety while responding to a traumatic event. Officer A, subsequently, participated in a Fitness for Duty Evaluation. The psychologist who performed the evaluation submitted a report stating, Officer A "does not appear to be currently fit for duty."

A Notice of Agency Action was filed by POST based on the requirements of UCA 53-6-211(1)(c), 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 peace officer certification be suspended indefinitely to give officer A the opportunity to receive treatment and again become fit for duty. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer A's peace officer certification indefinitely. Officer A's certification may be reinstated whenever he is again evaluated and found fit for duty (*Note: the timeframes established by UCA 53-6-208 are applicable to this case; after 18-months the peace officer certification goes into an inactive status and after four years the certification lapses*).

### Case 2

Officer B was investigated by his agency for falsifying shift logs during multiple overtime shifts at a regional airport. The investigation disclosed Officer B's arrival times at the airport and the activities performed were not accurate on four separate occasions.

During a *Garrity* interview with his agency, Officer B admitted his logs were not accurate and admitted he left the airport property during his shifts. Officer B admitted he knew what was expected of him during the shifts and that his logs did not accurately represent his actions.

Officer B did not participate in a POST interview and his legal counsel asked that the case move forward with the information POST had already obtained.

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 one and one-half years. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer B's peace officer certification for 18 months.

### **Case 3**

Officer C was investigated for sexual solicitation by an outside police agency. An investigation involving two prostitutes lead investigators to obtain a search warrant for Officer C's cell phone. Investigators located a text message on Officer C's cell phone which documented an arrangement to have sex with two prostitutes, at a local motel, on two occasions. Investigators obtained motel video surveillance of Officer C walking into the prostitutes' room on the dates in question.

Investigators attempted to interview Officer C, but he declined to make any statements. Officer C was charged with two counts of sexual solicitation. Officer C subsequently entered a plea of no contest to one charge of sexual solicitation, under Utah Code Ann. § 76-10-1313, a class B misdemeanor. A second charge of sexual solicitation was dismissed without prejudice.

Officer C declined to participate in an interview with POST. During the POST investigation, it was discovered Officer C had been suspended by the POST Council a few years previously for sexual conduct on duty.

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 and one-half years. Officer C was present at the POST Council meeting but declined to address the Council. After hearing POST's findings the Council ratified POST's recommendation and voted to suspend Officer C's certification for two and one-half years.

### **Case 4**

Officer D was investigated by an outside police agency for driving under the influence. The investigation disclosed that Officer D was reported to be driving recklessly in a personally-owned vehicle. The complainant followed Officer D to a residence. Responding officers found Officer D parked in the driveway of his residence, asleep at the wheel, with the keys in the ignition. Officer D showed several clues of impairment during field sobriety tests and gave a breath sample indicating 0.113 BrAC. During a *Garrity* interview with POST, Officer D admitted to driving while under the influence of alcohol. Officer D resigned from his agency. Officer D subsequently entered a guilty plea to an amended charge of impaired driving, a class B misdemeanor.

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. Officer D and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer D and his attorney, the Council ratified POST's recommendation and voted to suspend Officer D's peace officer certification for one year.

### **Case 5**

Officer E consumed alcoholic beverages and then drove his personally-owned vehicle. While driving, Officer E crashed into a center raised island and street sign. Officer E left the scene without reporting the accident and abandoned his vehicle at a city park. Officer E was located hours later by his department administration. Officer E admitted to driving while intoxicated, crashing his vehicle, and leaving the scene. Officer E was issued a citation for leaving the scene, and retained his employment.

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 18 months for the DUI and leaving the scene of an accident. Officer E and his attorney were present at the POST Council meeting and Officer E addressed the Council. After hearing POST's findings, and hearing from Officer E, the Council ratified POST's recommendation and voted to suspend Officer E's peace officer certification for 18 months.

### **Case 6**

Officer F observed as a group of inmates were voluntarily stunned by an electronic control device (ECD), operated by another officer, at the county jail where he worked. Officer F did not intervene and failed to report the incident to any supervisors at the facility. Officer F's employment was terminated and he was charged with official misconduct. Officer F subsequently entered a plea in abeyance to the charge of official misconduct, a class B misdemeanor.

During a *Garrity* interview with POST, Officer F admitted he knew some of the inmates were going to be stunned by the ECD, but did not know when. Officer F disclosed he was uncomfortable with the situation, but did not know who to report it to since he rarely encountered supervisors at the facility.

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 three months. 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 suspend Officer F's certification for three months.

### **Case 7**

Dispatcher G was investigated by POST for failing to properly disclose previous criminal history information on her POST application for dispatcher certification. During a *Garrity* interview, Dispatcher G admitted she willfully falsified information to obtain certification. She explained she did not think about including the information on her POST application, but after taking an ethics class at POST during her

dispatcher training, she realized she had to disclose the information to POST. Dispatcher G admitted she did not disclose the information to POST because she was worried it would negatively affect her employment as a dispatcher. POST confirmed Dispatcher G disclosed the criminal history information to the background investigator for her agency. Dispatcher G retained her employment.

A Notice of Agency Action was filed by POST and mailed to Dispatcher G. Dispatcher G 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 G's certification be suspended for two years. Dispatcher G was present at the POST Council meeting and addressed the Council. After hearing POST's findings, and hearing from Dispatcher G, the Council rejected POST's recommendation and instead voted to suspend Dispatcher G's certification for nine months.

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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.