



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training



March 2018

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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Please note that the actions taken by the POST Council are not binding precedent.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 March 21, 2018, POST Council convened and considered fifteen cases for discipline.

### Case 1

Officer A was investigated by an outside police agency for criminal mischief, threats of violence, and disorderly conduct. The investigation disclosed Officer A was at a bar and had a conversation with approximately three males in the parking lot. One of the males called police alleging that Officer A had threatened to beat them up. Officer A denied the allegation and explained that he walked away from the men when they asked him if he was threatening to assault them. While officers were on scene investigating the complaint, Officer A became angry and hit the exterior wall of the bar, causing damage to the stucco. The bar owner did not want to pursue criminal charges.

Officer A resigned from his agency. Officer A entered a plea of no contest to the charge of disorderly conduct, a class C misdemeanor. The charges of criminal mischief and threats of violence were dismissed with prejudice.

A Notice of Agency Action was filed by POST and mailed to Officer A. Officer A waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer A's certification be suspended for six months. Officer A and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer A and his attorney, the Council ratified POST's recommendation and voted to suspend Officer A's peace officer certification for six months.

## Case 2

Officer B, a correctional officer with a county sheriff's office was the subject of an internal administrative investigation for testing positive on a random drug test. The investigation disclosed that Officer B submitted to a random drug test. The test came back positive for Alprazolam (Xanax). Officer B stated he had taken Xanax the previous night. Officer B claimed the Xanax may have been from an old prescription that belonged to him or to an ex-girlfriend. The investigation was unable to find any information showing Officer B had ever been prescribed Xanax.

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

## Case 3

Officer C was investigated by his agency and an outside agency for BCI violations. The investigation disclosed Officer C had accessed and disseminated warrant information on a confidential informant, after she had asked him for the information. The investigation disclosed the informant asked Officer C for warrant information on her roommate and her roommate's boyfriend, which Officer C disseminated to her.

Officer C also accessed his wife's and father's driver license information without a legitimate lawful purpose. Officer C was demoted from Lieutenant to Patrol Officer. During *Garrity* interviews with his agency and POST, Officer C admitted he did not have a legitimate lawful purpose when he used BCI to access his wife's and father's driver licenses.

Officer C stated he believed it was okay to access and disseminate warrant information to the informant because it was available on a public website. Officer C released bail amounts and level of offense, which is not available on the public website.

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 when he accessed his wife's and father's driver license information without a legitimate lawful purpose. The ALJ also issued findings of fact and conclusions of law stating the charge that Officer C violated UCA 53-6-211 when he accessed and disseminated warrant information on a confidential informant was not proven by clear and convincing evidence. POST recommended Officer C receive a letter of caution. Officer C and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer C and his attorney, the Council ratified POST's recommendation and voted to issue Officer C a letter of caution.

## Case 4

Officer D was investigated by an outside police agency for aggravated assault, domestic violence related assault, carrying a dangerous weapon while intoxicated, and disorderly conduct. The investigation disclosed that Officer D consumed a large amount of alcohol with his wife and their male friend at Officer D's

residence. During the evening, Officer D and his wife were involved in an altercation and the friend attempted to intervene. Officer D pushed his wife onto their couch and she grabbed her phone to call the police. Officer D took the phone and threw it downstairs. Officer D retrieved his duty handgun and pointed it at his friend's head before pressing the muzzle against his friend's chest. Officer D's friend was able to obtain control of the handgun and unload it. Officer D retrieved a folding knife, held it with the blade toward his friend, and told him to drop the handgun. Officer D threw the knife into a nearby bathroom and lay on the floor.

Officer D's wife and the friend provided consistent statements to police at the time of the incident. During *Garrity* interviews with his agency and POST, Officer D said he could not recall having the firearm in his possession and did not recall pointing it at anyone.

A Notice of Agency Action was filed by POST and mailed to Officer D. Officer D elected to have a hearing before an administrative law judge (ALJ). The ALJ subsequently issued findings of fact and conclusions of law stating Officer D violated UCA 53-6-211 as outlined in the notice of agency action. POST recommended Officer D's certification be revoked. 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 revoke Officer D's peace officer certification. As a result of the revocation Officer D will not be eligible for POST certification at any time in the future.

### **Case 5**

Officer E's dog attacked a juvenile male in his neighborhood while the juvenile was collecting donations for his church. The dog bit the juvenile in the lower back and buttocks and caused minor injuries. The dog was removed from Officer E's custody and Officer E was charged with animal running at large, dog not licensed, dog bites, and vicious animal, all city ordinance violations.

During *Garrity* interviews with his agency and POST, Officer E did not dispute that his dog had bitten the juvenile. The POST investigation determined Officer E violated Utah Code Ann. § 76-9-304, allowing a vicious animal to go at large, a class B misdemeanor.

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 be issued a letter of caution. After hearing POST's findings, the Council ratified POST's recommendation and voted to issue Officer E a letter of caution.

### **Case 6**

Officer F was investigated by an outside police agency for domestic violence related criminal mischief. Officer F admitted to investigating officers that he punched and kicked a coffee table, damaging it, during an argument with his girlfriend. Officer F said they lived together and he was in the process of moving out during the argument. Criminal mischief charges were filed on Officer F and Officer F subsequently entered a plea of guilty, to be held in abeyance, to the amended charge of intoxication, a class C misdemeanor.

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

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 one year.

### Case 7

Officer G took two surplus air conditioning units and a surplus file cabinet from the correctional treatment center where he worked so he could attempt to resolve an issue with his air conditioning unit at home. During *Garrity* interviews with his agency and POST, Officer G admitted he took the property, but said he did so after he received permission from the facilities maintenance supervisor. The facility maintenance supervisor denied he ever gave Officer G permission to take the air conditioning units. Officer G's agency determined the value of the air conditioning units and file cabinet was around \$50.

Officer G was charged with theft, a class B misdemeanor. Officer G entered a plea of not guilty to the theft charge and the theft charge was ultimately dismissed.

A Notice of Agency Action was filed by POST and mailed to Officer G. Officer G waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer G be issued a letter of caution. Officer G and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer G and his attorney, the Council ratified POST's recommendation and voted to issue Officer G a letter of caution.

### Case 8

Officer H was investigated for assault and interruption of a communication device. Officer H and his girlfriend had been consuming alcohol and were involved in a verbal argument that turned physical. Officer H told his girlfriend to leave his residence. The girlfriend refused and said she was too drunk to leave. During the physical altercation, Officer H grabbed the girlfriend by her feet and pulled her off of his bed. The girlfriend kicked and punched Officer H to get away from him. The girlfriend picked up her cell phone to call 911, but Officer H grabbed the phone and threw it, shattering the screen. Officer H then grabbed her and dragged her toward the front door. The girlfriend was able to get away, pick up her cell phone, and call 911. The responding officer observed a scuff mark consistent with a carpet burn on the girlfriend's elbow.

Later that same day, the girlfriend contacted the Sheriff's office to report an additional unrelated complaint on Officer H, but then disclosed the assault by Officer H which occurred the previous night. The girlfriend reported the circumstances and actions from the previous interaction with Officer H. The deputy observed carpet burns on the girlfriend's elbows, bruising on the girlfriend's left ankle, and bruising on the girlfriend's right wrist. The injuries were photographed. No further action was taken by the Sheriff's Office due to the incident happening outside of their jurisdiction. The original investigating agency discussed the case with the prosecutor. The prosecutor declined to file charges on either party.

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 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 was stopped for speeding in Nevada. During the encounter, the investigating officer detected the odor of an alcoholic beverage coming from Officer I. Officer I submitted to standardized field sobriety tests which indicated impairment. Officer I was arrested for DUI. Officer I submitted to a chemical breath test and his BrAC was measured to be 0.185. Charges were filed against Officer I for DUI.

During a POST *Garrity* interview, Officer I admitted to consuming alcohol and driving his vehicle with a BrAC over the legal limit.

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. Due to the high BrAC POST recommended Officer I's certification be suspended for one and one-half years. Officer I and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer I and his attorney, the Council ratified POST's recommendation and voted to suspend Officer I's peace officer certification for one and one-half years.

### **Case 10**

Officer J submitted a POST application to attend the Law Enforcement Officer Academy. After reviewing his application, and comparing it to an application submitted four years earlier, along with an addendum to his earlier application, POST determined each contained a different set of information regarding Officer J's criminal history and criminal involvement.

During a *Garrity* interview with POST, Officer J admitted to many more incidents of criminal involvement that he had not disclosed on either of his POST applications. Officer J said he was in a rush to fill out his latest application and was stressed out he was not going to submit it in time for the next academy session. Officer J said he did not want to take the time to think about his criminal history. Officer J said his wife completed and submitted his application for him and she answered each question at his direction.

A Notice of Agency Action was filed by POST and mailed to Officer J. Officer J waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. Due to having multiple violations on multiple applications, POST recommended Officer J's certification be suspended for three and one-half years. Officer J and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer J and his attorney, the Council ratified POST's recommendation and voted to suspend Officer J's peace officer certification for three and one-half years.

### **Case 11**

Officer K was investigated by his agency for accessing Bureau of Criminal Identification (BCI) records for prohibited or not permitted purposes. The agency investigation disclosed that Officer K unlawfully accessed BCI records 12 times. Officer K had been questioned about his actions on two different occasions and had been reminded each time to only access BCI records for legitimate criminal justice purposes.

During a *Garrity* interview with POST, Officer K admitted to accessing his own name as a test on multiple occasions. Officer K also admitted to unlawfully accessing the records of two supervisors, a friend and multiple family members.

A Notice of Agency Action was filed by POST and mailed to Officer K. Officer K waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended Officer K's certification be suspended for nine months. Officer K and his attorney were present at the POST Council meeting and addressed the Council. After hearing POST's findings and hearing from Officer K and his attorney, the Council rejected POST's recommendation and instead voted to suspend Officer K's peace officer certification for six months.

### **Case 12**

Officer L was investigated by his agency for lewdness. The investigation disclosed Officer L was assigned to provide security at a hospital, while an unconscious male prison inmate received medical treatment. The hospital security manager later reviewed the surveillance footage from the room and observed Officer L masturbating, over his clothing, while he was supposed to be providing security.

During *Garrity* interviews with his agency and with POST, Officer L admitted he masturbated in the inmate's hospital room. Officer L admitted the room was open to hospital staff and Officer L knew the room had a surveillance camera. Officer L said he assumed the camera was recording the inmate and not Officer L. Officer L's employment was terminated.

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

### **Case 13**

Officer M, was investigated by his agency for a Bureau of Criminal Identification (BCI) violation. The investigation disclosed that Officer M illegally accessed a BCI record and then disseminated the information to a friend who is a convicted felon. The friend was removing personal property from his ex-wife's house, observed a truck parked in the driveway, and wanted to know who the owner was. The friend took note of the license plate, called Officer M, and asked who owned the truck.

During *Garrity* interviews with his agency and POST, Officer M admitted to illegally accessing a BCI record and disseminating the information for a non-law enforcement purpose.

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

## Case 14

Officer N was stopped for a lane travel violation. During the encounter, the investigating officer detected the odor of an alcoholic beverage coming from Officer N's person and observed signs which indicated impairment. Officer N was asked to exit her vehicle and perform a series of standardized field sobriety tests. Officer N was unable to complete the tests. Officer N submitted to a preliminary breath test (PBT), which indicated a positive reading for alcohol. Officer N was arrested and transported to the police department where she submitted to a chemical breath test. Officer N's BrAC was measured to be 0.113.

During *Garrity* interviews with her agency and POST, Officer N disclosed she took a prescribed muscle relaxer and consumed two alcoholic mixed drinks prior to being stopped by the police.

A Notice of Agency Action was filed by POST and mailed to Officer N. Officer N 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 N's certification be suspended for one year. After hearing POST's findings, the Council rejected POST's recommendation and considering this violation included alcohol and prescription drugs, instead voted to suspend Officer N's peace officer certification for one and one-half years.

## Case 15

Officer O observed a group of inmates get voluntarily stunned by an electronic control device (ECD), operated by another officer, at the jail where he worked. Officer O failed to report the incident to any supervisors at the facility. Officer O resigned from his agency and was charged with official misconduct, a class B misdemeanor. Officer O entered a plea in abeyance to the charge of official misconduct, a class B misdemeanor.

During a *Garrity* interview with POST, Officer O admitted he was present while the inmates were stunned by the ECD and did not report it.

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 Officer O's certification be suspended for three months. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer O's peace officer certification for three 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.