



POST Investigations Bulletin

State of Utah

Department of Public Safety Peace Officer Standards and Training



September 2019

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Please note that the actions taken by the POST Council are not binding precedent.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 September 25, 2019, POST Council convened and considered 25 cases for discipline.

Case 1

Exploitation of a vulnerable adult, theft

On March 5, 2018, Officer A was investigated by a local police agency for exploitation of a vulnerable adult. The investigation disclosed that on February 28, 2018, Officer A stole an iPad from a patient at a local nursing home where he was employed. The patient, who he cared for, had diminished mental capacity and was unable to speak. Officer A admitted to investigators that he stole the iPad for personal use.

On July 17, 2018, Officer A was charged in district court with abuse, neglect or exploitation of a vulnerable adult, a third-degree felony. On September 13, 2018, Officer A entered a guilty plea to an amended charge of theft, a class A misdemeanor as part of a plea deal.

On May 29, 2019, during a *Garrity* interview with POST, Officer A admitted to stealing the iPad from a patient at the nursing home he worked at.

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. An order of default was signed by the administrative law judge and mailed to Officer A. POST recommended revocation of Officer A's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to revoke Officer A's certification.

Case 2

Threatening or use of a dangerous weapon during a fight or quarrel

Officer B was investigated for threatening or using a dangerous weapon in a fight or quarrel. The investigation disclosed Officer B was duck hunting on the opening day of the duck hunt. Officer B's hunting party was set up in weeds that were two and a half to three feet tall. Three hunters were approaching Officer B's

hunting party at approximately 250 to 300 yards away and one hunter shot a duck that flew up into the air. The hunter fired three shots in the direction of Officer B's hunting party. Officer B stood up and yelled at the shooter to stop firing his gun. Officer B approached the other hunting party with his shotgun in his left hand and his handgun in his right hand. A verbal altercation ensued between Officer B and the other hunting party. Officer B shouted at the hunting party, using an expletive, and asking who had shot at him. An individual from the other hunting party said the shooter was a first-time hunter and that it was a mistake. The individual told Officer B to put his handgun away multiple times. Officer B refused until the other individual said he was going to call the police. Officer B holstered his handgun, identified himself as an officer, and produced his badge. Officer B did not take any law enforcement action but told the group to leave the area. Officer B returned to his hunting party; the other party left the area and called 911.

Law enforcement responded, the case was screened with the county attorney, and charges were filed on Officer B. On May 5, 2017, Officer B was found guilty in a jury trial of threatening with or using a dangerous weapon in a fight or quarrel, under Utah Code Ann. § 76-10-506, a class A misdemeanor. The conviction went through the appeals process and was reviewed by the Utah Supreme Court. On June 6, 2019, the Utah Supreme Court upheld the conviction decided by the lower court.

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 a period of three (3) years. Officer B and his attorney were present and spoke to the Council. After hearing POST's findings and hearing from Officer B and his attorney, the Council ratified POST's recommendation and voted to suspend Officer B's certification for three (3) years.

Case 3 **Carrying a concealed firearm**

On one occasion, Officer C carried a loaded firearm concealed on his person without a valid permit while he was on vacation in Montana. The incident was disclosed to POST by Officer C when he submitted an addendum to his POST application.

During a *Garrity* interview with POST, Officer C admitted he knew his provisional permit had been expired and made the decision to carry his firearm concealed on his person while walking around the town in Montana.

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. Considering Officer C disclosed the otherwise unknown conduct to POST, POST recommended Officer C receive a letter of caution in accordance with the disciplinary guidelines. Officer C was present at the Council meeting and spoke to the Council. After hearing POST's findings, and hearing from Officer C, the Council ratified POST's recommendation and voted to issue Officer C a letter of caution.

Case 4 **Cruelty to animals, forgery, falsification of government record**

Officer D was investigated for animal cruelty. The investigation disclosed that on February 1, 2018, Officer D took a dog to the city pound. Officer D did not feed or water the dog and the dog was found dead on March 6, 2018. Officer D was charged with animal cruelty and it was later dismissed with prejudice.

On September 19, 2018, Officer D, was investigated for forgery. The investigation disclosed Officer D had submitted at least two hand-written timecards that documented he worked more hours than he had. Officer

D also forged his lieutenant's name on the hand-written timecards. Officer D was charged with forgery and later entered a plea to be held in abeyance on four counts of forgery.

During a *Garrity* interviews with his agency, Officer D admitted to failing to feed and water the dog which resulted in the death of the dog. Officer D also admitted to documenting more hours on his hand-written timecard than he had worked. Officer D also admitted to forging his lieutenant's name on the hand-written timecards. Officer D did not participate in the POST investigation.

A Notice of Agency Action was filed by POST and mailed to Officer D. Officer D 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 D. POST recommended revocation of Officer D's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to revoke Officer D's certification.

Case 5 **Possession of a controlled substance, open container**

Officer E was investigated for her involvement in a fatal motor vehicle accident. Officer E made a left turn in front of a motorcyclist who impacted the right rear portion of her vehicle. The motorcyclist sustained fatal injuries. During the accident investigation, an officer detected the odor of an alcoholic beverage emitting from Officer E's breath. Officer E participated in a series of standardized field sobriety tests. The officer did not observe enough clues to suggest Officer E was impaired.

During an inventory of Officer E's vehicle, a flask containing alcohol and several empty beer cans were located. Several edible gummies containing THC were also located next to the flask. It was also determined that Officer E's vehicle had an illegal window tint. During *Garrity* interviews with her department and POST, Officer E admitted the flask belonged to her, but she did not know who the THC gummies belonged to.

Officer E's employment with her department was terminated for department policy violations.

On January 29, 2019, Officer E entered a guilty plea to a charge of a right of way offense, an infraction, and an open container in a vehicle on a highway, a class C misdemeanor. The possession or use of a controlled substance charge was dismissed without prejudice.

A Notice of Agency Action was filed by POST and mailed to Officer E. Officer E 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 E's conduct involved a fatal crash and there were multiple violations, POST recommended a three (3) year suspension of Officer E's certification. After hearing POST's findings, the Council rejected POST's recommendation and voted to revoke Officer E's certification.

Case 6 **Assault, criminal mischief, disorderly conduct**

Officer F went to a bar with his live-in girlfriend and consumed alcoholic beverages before returning to their residence. When they arrived at their residence, Officer F and his girlfriend fell asleep. At some point Officer F and his girlfriend woke up and engaged in an argument and physical altercation over accusations of Officer F being unfaithful. The police were contacted and responded to the location. The police determined Officer F was the predominant aggressor and arrested him for domestic violence related assault, intoxication, and disorderly conduct. On November 20, 2018, Officer F entered a plea of no contest to the disorderly conduct charge and the other two charges were dismissed.

During a *Garrity* interview with his agency, Officer F admitted he believed there was enough probable cause and physical evidence for him to be arrested for the incident; however, he denied striking his girlfriend. Officer F resigned from his agency on December 20, 2018.

On January 18, 2019, Officer F had an argument with his roommate over rent that had not been paid. Officer F returned to the residence and punched a window next to the entrance to the residence which resulted in damage. On February 22, 2019, Officer F was charged with domestic violence related criminal mischief, a class B misdemeanor. On June 12, 2019, the charge against Officer F was dismissed.

Officer F did not participate in the POST investigation.

A Notice of Agency Action was filed by POST and mailed to Officer F. Officer F failed to respond to the Notice of Agency Action and an order of default was signed by the administrative law judge. Considering there were multiple violations, POST recommended Officer F's certification be suspended for three (3) years. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer F's certification for three (3) years.

Case 7 Disorderly conduct

Officer E applied to attend law enforcement training at POST. During the application review process, it was determined Officer E had submitted two previous applications for POST training, one on February 20, 2014, and one on April 20, 2015. In his second application, Officer E disclosed an incident where he patronized a prostitute in December 2013. The incident was not included on his first application. Officer E' third application included an additional theft which was not included on his previous two applications, even though the incident took place when he was a juvenile.

As part of the review process, POST determined Officer E' first and second applications were approved; however, he did not attend training after his first application was submitted and approved. POST discovered Officer E was not offered employment for the agency which he initially applied as a result of the background process. POST requested the results of a polygraph examination conducted by that agency and discovered Officer E had several other incidents that were not included on any of his applications which included a hit-and run traffic accident, possession of child pornography, criminal mischief, falsification or alteration of a government record, the murder of a family dog, and taking protected wildlife out of season.

During a *Garrity* interview with POST, Officer E did not deny the incidents that were included in the polygraph examination, but said they were not included in his applications because he had forgotten about them-- the POST investigation determined Officer E submitted two POST applications soon after he admitted the new information during the polygraph examination.

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. Considering the severity of the offenses Officer G did not list on his applications, POST recommended suspending Officer G's certification for three (3) years. Officer G was present at the Council meeting and spoke to the Council. After hearing POST's findings, and hearing from Officer G, the Council ratified POST's recommendation and voted to suspend Officer G's certification for three (3) years.

Case 8 Aggravated assault

Officer H was investigated by a multi-agency taskforce for an officer involved critical incident. The investigation disclosed Officer H responded to a truck stop in a neighboring jurisdiction to assist an officer from that jurisdiction on a vehicle burglary in progress with multiple suspects.

The investigation determined one of the suspects, a female, had been involved in vehicle burglaries and had a screwdriver in her hand when Officer H arrived. Officer H fired three rounds striking the female suspect twice in her right leg.

The County Attorney's Office concluded Officer H was not justified in using deadly force but declined to charge Officer H criminally because "the state would not be able to prove the requisite criminal intent."

During a *Garrity* interview with POST, Officer H admitted to intentionally shooting the female suspect in the knee. When asked why Officer H made the decision to shoot her in the knee, Officer H said he believed if he did not handle the situation at that moment, the female suspect was going to die in suicide-by-cop incident. Officer H explained he is a trained EMT and had previously thought about the best way to stop a person with the least potential for causing death. Officer H admitted he disregarded all existing firearms training and department training by shooting someone in the knee, but believed it would be the best means to prevent the female suspect from having the potential to harm herself or others.

POST determined Officer H's use of deadly force was not justified and therefore, his actions constituted aggravated assault.

A Notice of Agency Action was filed by POST and mailed to Officer H. Officer H requested a hearing held before the administrative law judge (ALJ). The ALJ subsequently issued findings of facts and conclusions of law stating Officer H violated Utah Code Ann. § 53-6-211 as outlined in the notice of agency action. POST recommended revocation of Officer H's certification. Officer H was present at the Council meeting and spoke to the Council. After hearing POST's findings, the findings of facts and conclusions of law, and hearing from Officer H, the Council rejected POST's recommendation and voted to suspend Officer H's certification for a period of four (4) years.

Case 9 **Willful falsification to obtain certification**

On May 21, 1991, Officer I submitted an application to obtain POST certification. On April 16, 2019, after retiring in July of 2016, Officer I wanted to reactivate his certification and submitted a second application to POST. During the review process, the two applications were compared to one another. Officer I disclosed five arrests in his 2019 POST application: three traffic and two criminal. The five arrests occurred within six years of Officer I' 1991 application, but Officer I did not disclose any of the five arrests in the criminal history portion of his 1991 application when it was asked.

During a POST *Garrity* interview, Officer I was asked why he did not disclose the information in his 1991 application, and he responded by saying he did not know why.

A Notice of Agency Action was filed by POST and mailed to Officer I. Officer I waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended a two (2) year suspension of Officer I's certification. Officer I was present at the Council meeting and spoke to the Council. After hearing POST's findings and hearing from Officer I, the Council rejected POST's recommendation and voted to issue Officer I a letter of caution.

Case 10 **Falsification or alteration of government record**

Officer J was investigated for distribution of a schedule III or IV controlled substance and unlawful and unprofessional conduct. Officer J was conducting medical rounds at the county jail. Officer J was assigned and authorized to conduct medical rounds at the jail. Officer J was a certified EMT and observed an inmate that appeared to be going through withdrawals from narcotics. The inmate had been administered a half strip of Suboxone earlier in the day. Officer J administered an additional half strip of Suboxone to the inmate but did not document it on the inmate's medical administration record. Officer J resigned from the department. Criminal charges were screened against Officer J with the county attorney. The county attorney declined to file charges against Officer J.

During a *Garrity* interview with POST, Officer J admitted to administering an additional half strip of Suboxone to an inmate and not documenting it on the inmate's medical administration record. Officer J admitted to knowing he was required to document any medication he administers to an inmate. Officer J said he knew if he would have documented giving the inmate suboxone he would have been terminated, but he intentionally removed the Suboxone from the medical cart in front of the camera.

POST investigators determined the medical administration record was a government record and Officer J falsified the record by not documenting the medication he administered to the inmate. Investigators also determined Officer J was authorized to conduct medical rounds and administer the medication to the inmate.

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 and an order of default was signed by the administrative law judge and mailed to Officer J. POST recommended a one (1) year suspension of Officer J's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer J's certification for one (1) year.

Case 11 **Willful falsification to obtain certification**

On or about April 5, 2011, Officer K submitted a POST application to attend law enforcement officer training at a satellite police academy. Officer K disclosed he had used marijuana in 2011. The application was denied based upon the drug use information he provided. Officer K was told he had to wait until January 1, 2013, to apply for POST training.

On or about October 22, 2012, Officer K submitted a POST application to attend dispatcher training. Officer K failed to disclose the drug use. The discrepancy between the two applications was not discovered. Officer K's application was approved and he received dispatcher certification.

On or about July 7, 2016, Officer K submitted a POST application to attend law enforcement officer training. Officer K disclosed the drug use and he was permitted to continue training. The discrepancy on his dispatcher application was not discovered by POST. In 2018 an officer contacted POST and asked about Officer K's ability to be a peace officer. POST reviewed his applications and discovered the discrepancy.

During a *Garrity* interview with POST, Officer K said he thought he listed the information on his dispatcher application and did not know why it was not included. Officer K said he never had an issue with the disclosure of his previous drug use and did not intentionally leave the information off the application. POST also determined Officer K had not disclosed all his previous traffic convictions on his most recent POST application. During the *Garrity* interview, Officer K said he only disclosed what was on his driver license history.

A Notice of Agency Action was 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 certifications be suspended for two (2) years. Officer K and his attorney were present at Council and spoke to the Council. After hearing POST's findings, hearing from Officer K and his attorney, the Council rejected POST's recommendation and voted to suspend Officer J's certification for one (1) year.

Case 12 Impersonation of an officer

Officer L entered a local tow company to retrieve a personal trailer and two four wheelers that had been towed the previous day. Officer L told employees of the tow company that he was a peace officer for a local police department and worked on a task force. Officer L was able to retrieve his trailer and four wheelers at a discounted price. One of the employees was unsure if Officer L was truthful and called police to verify. After finding out Officer L was no longer working as an officer, the employee reported the conduct to police. Charges were filed on Officer L for impersonation of a peace officer. Officer L's next scheduled court appearance is pending.

During a *Garrity* interview with POST, Officer L admitted he told the employees of the local towing company that he was an officer with a local police department and was on a task force. Officer L said he received a discounted rate from the tow company.

A Notice of Agency Action was mailed to Officer L. Officer L failed to respond to the Notice of Agency Action. An order of default was signed by the administrative law judge and mailed to Officer L. POST recommended a one (1) year suspension of Officer L's certification. Officer L was present at the Council meeting and spoke to the Council. After hearing POST's findings and hearing from Officer L, the Council ratified POST's recommendation and voted to suspend Officer L's certification for one (1) year.

Case 13 Driving under the influence of alcohol

Officer M was operating a vehicle when he backed into a tree. A police officer observed the collision take place and initiated a traffic stop. The officer determined Officer M was under the influence of alcohol and placed him under arrest. Officer M's BrAC was measured to be 0.17. Officer M was charged with driving under the influence of alcohol.

Officer M is an unemployed POST certified dispatcher and did not participate in the subsequent POST investigation.

A Notice of Agency Action was mailed to Officer M. An order of default was signed by the administrative law judge and sent to Officer M after he failed to respond to the Notice of Agency Action. Considering Officer M was over two times the legal limit, POST recommended a two (2) year suspension. After hearing POST's findings, Council ratified POST's recommendation and voted to suspend Officer M's certification for two (2) years.

Case 14 Reckless endangerment

Officer N was operating a golf cart at the correctional facility where he worked when he and another officer witnessed an inmate walking between two buildings during a time when movement was not typical. The other officer, in the passenger seat, stepped on the accelerator of the golf cart and Officer N steered toward the inmate, from approximately fifty feet away, in a "joking" manner. As Officer N neared the inmate, he stepped on the brakes but was not able to come to a complete stop before striking the inmate with the golf

cart. A criminal investigation determined Officer N's conduct was reckless and charges were filed against him for reckless endangerment. The reckless endangerment charge was later dismissed; however, Officer N was charged with reckless driving, a class B misdemeanor, and unlawful motor vehicle use on a public or private roadway, a class C misdemeanor, in the local justice court. Officer N entered a plea to be held in abeyance for both charges.

During *Garrity* interviews with his agency and POST, Officer N admitted his conduct was unprofessional and endangered the safety of the inmate but said he did not intentionally hit the inmate and said it was an accident.

A Notice of Agency Action was mailed to Officer N. Officer N requested a hearing which was held before the administrative law judge (ALJ). The ALJ subsequently issued findings of facts and conclusions of law stating Officer N violated Utah Code Ann. § 53-6-211 as outlined in the Notice of Agency Action. POST recommended revocation of Officer N's certification. Officer N was present at the Council meeting and spoke to the Council. After hearing POST's findings and hearing from Officer N, the Council ratified POST's recommendation and voted to revoke Officer N's certification.

Case 15 **Willful falsification to obtain certification**

On or about December 18, 2013, Officer O completed a POST application to attend the corrections academy. On the application, Officer O marked, "No" on a question which asked if he had ever been convicted of, arrested for, or involved in a crime of unlawful sexual misconduct. Officer O's application was approved, he completed the academy, and became certified.

On or about September 22, 2017, during a pre-employment examination, Officer O disclosed he had forcefully performed oral sex on his ex-girlfriend on one occasion in 2010. After the disclosure, the incident was criminally investigated and Officer O was charged with forcible sodomy, a 1st degree felony. Officer O entered a guilty plea to an amended charge of attempted forcible sexual abuse, a 3rd degree felony.

During a *Garrity* interview with POST, Officer O admitted he "pushed the envelope" with his ex-girlfriend on the night the incident occurred and said he realized he should have disclosed the incident on his POST application.

A Notice of Agency Action was 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. Considering Officer O is a convicted felon, POST recommended a three and a half (3 ½) year suspension of his certification. After hearing POST's findings, the Council rejected POST's recommendation and voted to revoke Officer O's certification.

Case 16 **BCI Violation**

Officer P unlawfully accessed protected information regarding her ex-fiancé on May 3, 2017, and June 21, 2017.

On July 18, 2017, during a *Garrity* interview with her department, Officer P said she did not remember why she conducted the search of her ex-fiancé's information. Officer P told investigators while she did not remember accessing protected information regarding her ex-fiancé, she must have done it.

During a POST *Garrity* interview, Officer P did not remember accessing protected information regarding her ex-fiancé. Officer P said she did not ask anyone to access protected information regarding her ex-fiancé and the ex-fiancé did not ask her to access the protected records.

A Notice of Agency Action was mailed to Officer P. She 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 P did not disseminate the records, POST recommended she receive a letter of caution. After hearing POST's findings, the Council rejected POST's recommendation and voted to suspend Officer P's certification for three (3) months.

Case 17

Threats of violence, impersonation of a peace officer, providing false or misleading information

Officer Q was walking on a trail with a group of friends when he engaged in an argument with two individuals after he scared a group of teenagers who were walking on the trail. During the argument, Officer Q told the two individuals that he was a peace officer and they needed to show him their green cards. Officer Q then told the individuals he was going to bury them in the woods and reached towards the small of his back, making the individuals believe he had a firearm. The individuals called police and Officer Q fled the scene on foot. Officers were able to locate Officer Q. He admitted to asking the individuals about their legal status, but stated he only identified himself as an ex-correctional officer to scare them. Officer Q denied threatening the individuals.

The case was screened with the county attorney and charges were filed on Officer Q. On April 30, 2019, Officer Q entered a guilty plea to the charge of providing false/misleading statements, under Utah Code Ann. § 76-8-504.5, a class A misdemeanor, and to threat of violence, under Utah Code Ann. § 76-5-107, a class B misdemeanor. The impersonation of a peace officer charge was dismissed with prejudice. Officer Q did not participate in the POST investigation.

A Notice of Agency Action was mailed to Officer Q. An order of default was signed by the administrative law judge and mailed to Officer Q after he failed to respond to the Notice of Agency Action. Considering Officer Q was on POST suspension from a previous case, POST recommended revocation of Officer Q's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to revoke Officer Q's certification.

Case 18

Sexual conduct while on duty, lewdness

Officer R was in a control room at the correctional facility where he was employed when he was observed, by a supervisor, masturbating. The supervisor reported the incident to his chain of command and an investigation was initiated. Criminal charges for lewdness were filed against Officer R and his employment was terminated.

During *Garrity* interviews with his agency and POST, Officer R admitted he was masturbating in the control room while watching pornographic material on his personal phone. Officer R said he does not know why he masturbated at work and said the details were "hazy." Officer R said he had recently started taking a full dose of medication prescribed by his doctor and the possible side effects included behavior changes.

A Notice of Agency Action was mailed to Officer R. An order of default was signed by the administrative law judge and mailed to Officer R after he failed to respond to the Notice of Agency Action.

Case 19

Theft by extortion

Officer S sent text messages to his wife threatening to show a picture of her using an illicit substance to the child services. It was his attempt to stop his ex-wife from obtaining a portion of his retirement pension during arbitration. Officer S's ex-wife was afraid of Officer S's threats; therefore, she did not attempt to obtain a portion of his retirement pension. Officer S did not participate in the criminal investigation.

The case was screened with the district attorney and Officer S was charged with theft by extortion, a 2nd degree felony. Officer S entered a plea to be held in abeyance to an amended charge of theft by extortion, as provided by Utah Code Ann. § 76-6-406, a class A misdemeanor.

Officer S did not participate in the POST investigation. A Notice of Agency Action was mailed to Officer S. An order of default was signed by the administrative law judge and mailed to Officer S after he did not respond to the Notice of Agency Action. POST recommended revocation of Officer S's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to revoke Officer S's certification.

Case 20 **Possession of a firearm in airport secure areas**

Officer T went to the airport to work a shift for his part-time employer. Officer T forgot he had placed a handgun in his part-time employer work bag. Once Officer T arrived at work, he set the work bag on the security screening belt. A security employee observed the gun in the workbag and contacted the local police. The local police agency screened charges with the city attorney and a charge was filed on Officer T for possession of the gun at the airport in a secure area. Officer T entered a plea to be held in abeyance to the above listed charge, an infraction.

During *Garrity* interviews with both his department and POST, Officer T admitted he placed the gun in his bag and then forgot to take it out. Officer T admitted he did not have a concealed carry permit at that time. Officer T said he only keeps the gun either in a safe in his vehicle or a safe in his home. Officer T's department sustained a personal conduct policy violation and issued him a verbal warning for the offense.

A Notice of Agency Action was mailed to Officer T. Officer T waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. Considering Officer T reported this incident to his employer and POST, POST recommended he be issued a letter of caution. Officer T was at the Council meeting and spoke to the Council. After hearing POST's findings and hearing from Officer T, the Council rejected POST's recommendation and voted the case be closed with no action.

Case 21 **BCI Violation**

Officer U accessed protected information five times during a period of several months. During a *Garrity* interview with her agency, Officer U admitted she accessed the information to verify her registration or insurance status. Officer U did not participate in the POST investigation.

A Notice of Agency Action was mailed to Officer U. An order of default was signed by the administrative law judge and mailed to Officer U after she failed to respond to the Notice of Agency Action. Considering Officer U did not disseminate the information, POST recommended she be issued a letter of caution. After hearing POST's findings, the Council ratified POST's recommendation and voted that Officer U be issued a letter of caution.

Case 22

Communications fraud, driving under the influence of alcohol, hit and run

Officer V reported his credit card had been fraudulently used on three occasions. Officer V completed an affidavit of fraud with the credit union and filed a report with a law enforcement agency. The investigation determined the transactions were completed by Officer V's wife and Officer V had knowledge of the transactions.

Officer V was charged with communications fraud, a 3rd degree felony, but later pled guilty to an amended charge of attempted communications fraud, a class A misdemeanor.

On another occasion, Officer V was involved in a traffic accident which caused property damage and failed to remain at the scene. Officer V's vehicle was immediately stopped by an officer and it was determined that Officer V was driving under the influence of alcohol. Officer V's BrAC was measured to be 0.203. Officer V was charged with driving under the influence of alcohol, hit and run, and two additional traffic violations. Officer V pled guilty to the charge of driving under the influence and the other charges were dismissed.

Officer V declined to participate in the POST investigation. The POST investigation also determined Officer V was investigated by POST in 2012 and received a three-month suspension for a BCI violation. Officer V was also investigated by POST in 2017 for disorderly conduct and received a letter of caution.

A Notice of Agency Action was mailed to Officer V. An order of default was signed by the administrative law judge and mailed to Officer V after he failed to respond to the Notice of Agency Action. Considering the past POST sanctions and multiple violations, POST recommended revocation of Officer V's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to revoke Officer V's certification.

Case 23

Assault, domestic violence in the presence of children, disorderly conduct

A law enforcement agency responded to Officer W's residence for a welfare check. The investigation determined a verbal argument had taken place between Officer W and his 18-year-old daughter the day before. During the argument, Officer W forced his daughter to the ground and slapped her in the face. The argument was witnessed and/or overheard by four other children in the residence.

Charges were filed and Officer W entered a plea to be held in abeyance to disorderly conduct, a class B misdemeanor, and one count of domestic violence in the presence of a child.

During a *Garrity* interview with his agency, Officer W admitted he forced his daughter to sit down and slapped her face. Officer W's employment was terminated.

POST made multiple attempts to set an interview with Officer W, until Officer W stated he was unable to come in due to work. A Notice of Agency Action was mailed to Officer W, he waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. Considering there were multiple violations, POST recommended a three (3) year suspension of Officer W's certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer W's certification for three (3) years.

Case 24

Voyeurism

Between the approximate dates of April 1, 2018, and May 8, 2018, Officer X installed a digital recording device in his 17-year-old stepdaughter's bedroom without her knowledge. Officer X checked on the device and learned it was not recording so he reinstalled the memory card and put the device back in his stepdaughter's bedroom. After the stepdaughter discovered the recording device and reported it to police, the memory card was examined and police discovered 77 videos, 23 of which contained footage of the juvenile's breasts, vagina, and buttocks while she was in the act of changing or getting dressed. The county attorney's office filed two counts of voyeurism against Officer X. Officer X later entered a plea to be held in abeyance to one count of voyeurism, a class A misdemeanor.

During a POST *Garrity* interview, Officer X confirmed he had installed the video recording device in his stepdaughter's bedroom without her knowledge. He stated he knew it was against the law. Officer X claimed he wanted to obtain proof his stepdaughter was taking and sending nude photographs of herself with her cellphone. Officer X stated he was planning on showing his wife the proof so that she would believe him and something could be done about the sexting. Officer X admitted he knew he was going to have to watch the videos to verify she was sexting prior to giving the video to his wife.

A Notice of Agency Action was mailed to Officer X. An order of default was signed by the administrative law judge and mailed to Officer X after he failed to respond to the Notice of Agency Action. Considering there were multiple violations and the victim was a juvenile, POST recommended revocation of Officer X's peace officer certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to revoke Officer X's peace officer certification.

Case 25 Driving under the influence

Officer Y was on duty and driving his marked patrol vehicle. Another officer observed his driving pattern and stopped Officer Y for speeding and failure to maintain a single lane. During the traffic stop, the officer determined Officer Y was unable to safely operate a motor vehicle and arrested him. Officer Y was taken to a local hospital where he submitted to a chemical blood test. Preliminary blood results showed Officer Y was under the influence of Ambien and Benadryl.

The case was screened with the county attorney and the charge of DUI was filed on Officer Y. Officer Y plead guilty to an amended charge of impaired driving, under Utah Code Ann. § 41-6a-502.5, a class B misdemeanor.

During a *Garrity* interview with POST, Officer Y admitted to taking Ambien and driving his department issued patrol vehicle.

A Notice of Agency Action was mailed to Officer Y. An order of default was signed by the administrative law judge and mailed to Officer Y after he failed to respond to the Notice of Agency Action. Considering Officer Y was in a marked patrol vehicle and wearing his uniform, POST recommended a two (2) year suspension of his certification. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer Y's certification for two (2) years.

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

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.