



# POST Investigations Bulletin

State of Utah

## Department of Public Safety Peace Officer Standards and Training



March 2020

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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Please note that the actions taken by the POST Council are not binding precedent.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 26, 2020, POST Council convened and considered 10 cases for discipline.

### Case 1

#### **Falsification of government record, possession or use of controlled substance**

In 2017 and 2018 Officer A falsified government records and in 2016 Officer A possessed or consumed a controlled substance. In his 2017 application for employment with a local police agency, Officer A disclosed stealing one television and no previous drug use. In the 2018 application with the same agency, Officer A disclosed eating a marijuana sucker in 2016 while he was employed with the Utah Department of Corrections (UDC) and that he had stolen two televisions. During a *Garrity* interview with POST, Officer A admitted he had ingested marijuana only after investigators made multiple inquires and pointed out inconsistencies in his statements. Officer A admitted to consuming marijuana on more than one occasion while working for UDC. When Officer A was asked why he did not disclose the information in the 2017 application, Officer A said he feared it would have prevented him from getting a job. The theft of the televisions was previously investigated by POST in 2017 and resulted in a three-month suspension of Officer A's certification.

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 a three and a half (3 ½) year suspension of Officer A's certification. After hearing POST's findings, the Council rejected POST's recommendation and instead voted to revoke Officer A's certification.

### Case 2

#### **Criminal mischief**

Officer B a supervisor at the Utah Department of Corrections (UDC), entered a supply room where one of his subordinate officers was having a conversation with two inmates. Officer B selected toothbrushes from one of the supply shelves and began sharpening them to a point on the concrete floor. Officer B used a lighter to melt one toothbrush to a point. Officer B also provided one of the inmates a toothbrush so he could sharpen it to a point. After suggestion from the inmates, Officer B allowed one of the inmates to use the stove in the kitchen to heat the toothbrush to a point without supervision. Officer B eventually joined the inmate in the kitchen where a weapon was manufactured by twisting two toothbrushes together to a point. Officer B secured the manufactured weapons and they were disposed of in a garbage receptacle inside a control room.

Charges were not filed against Officer B; however, an internal administrative investigation determined his conduct was unlawful and he resigned from his employment.

During *Garrity* interviews with POST and his agency, Officer B admitted he manufactured the weapons; however, he did not consider them to be dangerous because the manufacturing process had not been completed.

A Notice of Agency Action was filed by POST and mailed to Officer B. Officer B requested a hearing held before the administrative law judge. The ALJ subsequently issued findings of facts and conclusions of law stating Officer B violated UCA 53-6-211 as outlined in the notice of agency action regarding Count II (criminal mischief); however the ALJ did not find clear and convincing evidence to support that Officer B violated UCA 53-6-211 as outlined in the notice of agency action regarding Count I (prohibited items inside a corrections facility). Officer B and his attorney were present at Council meeting 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 sic (6) months.

### **Case 3** **Lying under *Garrity*, falsification of government record, theft**

Officer C was investigated by his agency for discrepancies on his daily logs and timesheets throughout multiple days. The investigation determined that Officer C had intentionally completed inaccurate daily logs on at least four dates. The investigation further disclosed that Officer C lied to his division commander, internal administrative investigators, and POST after having been given warnings based upon *Garrity vs. New Jersey*.

The internal administrative and POST investigations concluded Officer C lied about the hours he claimed on his timesheets (12 hours multiplied by his hourly rate of \$31.00, totaling \$372). During a *Garrity* interview with POST, Officer C admitted he falsified his time and daily logs to save from using vacation and sick leave.

A Notice of Agency Action was filed by POST and mailed to Officer C. Officer C waived his right to a hearing before an administrative law judge and stipulated to the facts as contained in the notice of agency action. POST recommended revocation of Officer C's certification. Officer C and his attorney were present at Council meeting and spoke to the Council. After hearing POST's findings, and hearing from Officer C and his attorney, the Council rejected POST's recommendation and instead voted to suspend Officer C's certification for three and a half (3 ½) years.

### **Case 4** **Written false statement, willful falsification of an application to obtain certification**

Officer D was investigated for willful falsification of an application to obtain certification and written false statements. In October 2019, Officer D completed an application for Syracuse City Police Department

(SCPD) and an application for POST. Both applications ask questions about Officer D receiving discipline from any former or current law enforcement agency that he has worked for. In 2018, Officer D received a verbal warning from the law enforcement agency he was working for. In mid-2019, Officer D received a written warning from the law enforcement agency he was working for. Officer D did not document the warnings on his POST application or SCPD application.

During a *Garrity* interview with POST, Officer D admitted to receiving the verbal and written warning. Officer D admitted that he did not document the verbal or written warning on any application he completed.

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 a two and a half (2 ½) year suspension of Officer D's certification. After hearing POST's findings, the Council ratified POST's recommendation.

### **Case 5**

#### **Falsification or alteration of a government record, official misconduct**

Officer E was investigated for missing property. The investigation disclosed Officer E did not properly handle citizens' property on multiple occasions. Officer E documented in a report that he booked a coin that had been turned in as found property. Weeks later, while cleaning his patrol car, Officer E found the coin in his vehicle and chose to throw it in the trash. Officer E did not document his actions.

Another instance involved a necklace belonging to a female who had been arrested earlier. The necklace had been overlooked the night the female was arrested. The necklace was placed in an envelope and given to Officer E. Officer E attempted to contact the female but was unsuccessful. The necklace was never booked into evidence.

During a POST *Garrity* interview, Officer E confirmed he reported he had booked the coin into evidence. Officer E said he recognized the coin when he found it in his car weeks later and chose to throw it in the trash. Officer E was also asked about the necklace. Officer E confirmed he had been given an envelope containing a necklace that belonged to a female he had previously arrested. Officer E stated he located the envelope in his vehicle weeks later and threw the envelope in the trash. The two incidents occurred on different dates. When asked why he threw the two items away, Officer E stated he was afraid others would find out about his improper handling of evidence and feared being teased about it by fellow officers.

A Notice of Agency Action was filed by POST and mailed to Officer E. Officer E failed to respond to the notice of agency action and an order of default was signed by the administrative law judge. POST recommended Officer E's certification be suspended for one and a half (1 ½) years. Officer E and his attorney were present at Council meeting and spoke with the Council. After hearing POST's findings, and hearing from Officer E and his attorney, the Council rejected POST's recommendation and instead voted to suspend Officer E's certification for nine (9) months.

### **Case 6**

#### **Possession of a controlled substance and drug paraphernalia**

Officer F was investigated by a local police agency for assault, possession or use of a controlled substance, and possession of drug paraphernalia. The investigation disclosed that Officer F was involved in an argument with his wife. During the argument, police arrived on scene and Officer F's wife told police that Officer F used steroids. The local police agency located six vials of steroids and one syringe that was used to inject the steroids. Officer F admitted to the local police agency that the steroids and syringe belonged to him. The assault was unfounded.

The case was screened with the county attorney and charges were filed on Officer F for possession or use of a controlled substance and possession of drug paraphernalia. Officer F entered a plea of guilty to be held in abeyance to the charge of possession or use of a controlled substance and possession of drug paraphernalia.

During *Garrity* interviews with his department and POST, Officer F admitted to using steroids. Officer F admitted that the steroids and syringe located by the local police agency belonged to him. Officer F said he used the steroids to get ready for a bodybuilding competition.

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 and mailed to Officer F. POST recommended suspending Officer F's certification for one and a half (1 ½) years. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer F's certification for one and a half (1 ½) years.

### **Case 7** **Lying under *Garrity***

Officer G was investigated by his department for questioning officers from a different department about a conflict case the other department handled. The conflict case involved a sergeant known to Officer G. During a department *Garrity* interview, Officer G disclosed he only questioned two officers from other agencies about the conflict case. Officer G denied speaking with any other officers about the conflict case or attempting to obtain information about the case.

The internal administrative (IA) investigation identified four additional officers Officer G had spoken with inquiring about the conflict case. A second department *Garrity* interview was conducted with Officer G. Officer G admitted that he brought up the topic of the conflict case to three of the four officers his department identified. Officer G explained he asked one of the officers when the date and time of the incident was because he could not locate the information on the department report management system. Officer G said he asked the second and third officer something about what had happened during the conflict case, but he did not recall any specific details. The IA sustained the allegation of lying under *Garrity* and Officer G retired from his agency.

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

### **Case 8** **Lying under *Garrity* and impersonation of an officer**

Officer H, a certified special functions constable, was investigated for a traffic violation and impersonating an officer. Officer H was driving his silver Dodge Charger on I-15 and pulled up alongside a restored 1971 Chevrolet Chevelle. Officer H claimed the Chevelle had California license plates, was driving in and out of the HOV lane, and cut him off. Officer H said he drove up next to the Chevelle, shook his finger at the occupants, and told them to slow down. Officer H said he did not remove his constable badge from his vehicle's visor and did not show the occupants of the Chevelle his badge. Officer H said he never had his badge in his hand when interacting with the occupants of the Chevelle. The occupants (the driver was a retired law enforcement officer) of the Chevelle alleged Officer H flashed a badge at them with his hand, told them he was watching them, and told them to slow down.

Charges of impersonation of an officer and a traffic violation were filed on Officer H with a local justice court. Officer H was found guilty of both charges. Officer H appealed the court decision and in district court was found not guilty of the impersonation charge.

During a *Garrity* interview with POST, Officer H said as the Chevelle began to pass him on the left on I-15 he moved his visor, which was down and to the side, back into its original position. Officer H said as the Chevelle passed him he said something like, "Nice car." The Chevelle backed off, took pictures of Officer H's vehicle, and then re-approached him. Officer H said the occupants of the Chevelle were angry. Officer H said the badge was on his visor and he moved the visor, but he never indicated to them to pull over. Officer H said he never tried to initiate a traffic stop, he did not get behind them, and he didn't do anything along those lines. The POST investigation substantiated lying under *Garrity* and impersonation of a police officer.

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

### **Case 9** **Lying under *Garrity***

Officer I attended a New Year's Eve party at a house in Mesquite, Nevada. An individual at the party handed Officer I two THC edible candies which he consumed. Officer I knew the candies contained THC. Later that night at the same party, a marijuana joint was passed to Officer I, who took possession of it, took a drag, and then passed the joint back to the group.

While employed at the sheriff's office, Officer I applied for employment with another agency. During the pre-employment testing process a few months later, Officer I disclosed the marijuana use. Officer I was disqualified from the testing process for the drug use. The next shift Officer I worked at the sheriff's office, after returning from the other agency's testing process, he was asked by his sergeant how it went. It was at this time that Officer I informed his sergeant he was disqualified from the testing process because of marijuana use a few months earlier.

During *Garrity* interviews with both his department and POST, Officer I admitted he consumed two THC edible candies, knowing the candies contained THC. During the IA *Garrity* interview Officer I admitted he possessed and placed a marijuana joint to his lips, but denied smoking the joint. During the POST *Garrity* interview, Officer I admitted he took a drag off of the marijuana joint.

Officer I resigned from his department in lieu of termination. No criminal charges were filed.

A Notice of Agency Action was filed by POST and mailed to Officer I. Officer I requested a hearing before an Administrative Law Judge (ALJ). The ALJ subsequently issued findings of facts and conclusions of law stating Officer I violated UCA 53-6-211 as outlined in the notice of agency action. POST recommended revocation 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 instead voted to suspend Officer I's certification for three (3) years.

### **Case 10** **Falsification of a government document**

Officer J was investigated by his agency for falsification of a government record. The investigation disclosed that on seven occasions Officer J submitted meal allowance forms (FI-48) that were fraudulent to

collect the meal allowance. Officer J's daily log for the dates that Officer J submitted the seven fraudulent FI-48's, documented that Officer J did not work the hours he claimed on the FI-48.

During a *Garrity* interview with his department, Officer J admitted the FI-48's he submitted were fraudulent. No criminal charges were screened. At the conclusion of the investigation, Officer J resigned from his agency.

Officer J did not participate in the POST investigation.

A Notice of Agency Action was 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. POST recommended Officer J's certification be suspended for one and a half (1 ½) years. After hearing POST's findings, the Council ratified POST's recommendation and voted to suspend Officer J's certification for one and a half (1 ½) years.

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*Special Note: The disciplinary proceedings of the POST council are administrative and are independent from any criminal prosecution. POST Investigations is charged with investigating misconduct to determine if there is clear and convincing evidence that a peace officer or certified dispatcher has violated Utah Code 53-6-211 or 53-6-309. The fact that a peace officer or certified dispatcher has been convicted of a criminal violation, or has plead guilty to a criminal violation, is in and of itself clear and convincing evidence that the peace officer or certified dispatcher has violated Utah Code 53-6-211(1)(d) or 53-6-309(1)(d). Where there is clear and convincing evidence to show a violation has taken place POST is obliged to bring that matter to the Council. The POST Council has the statutory authority to determine what the appropriate sanction should be.*

For reference we have included below Utah Code 53-6-211 and 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.