



AZ POST
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The Arizona Peace Officer Standards and Training Board (AZ POST) is mandated by the legislature to establish and enforce the physical, mental, and moral fitness standards for all peace officers in the state. The Board meets the charge to protect the public by overseeing the integrity of Arizona's law enforcement officers by reviewing cases and taking action against the certification of individuals who violate the AZ POST Rules. The following is a summary of some of the actions taken by the Arizona Peace Officer Standards and Training Board at its **March and April 2011**, public meetings. These actions are not precedent setting, in the sense that similar cases will end with the same result, because each case is considered on its individual facts and circumstances. Having said that, this Board publishes this bulletin to provide insight into the Board's position on various types of officer misconduct. As always, the Compliance Specialist for your agency is available to discuss any matter and to assist you with any questions you might have.

March and April 2011

CASE NO. 1

DISHONESTY

Officer A was on patrol near the border when he observed a vehicle he suspected of involvement in illegal alien activity. He reported the vehicle to dispatch and inquired about the availability of Border Patrol. He continued to follow the vehicle from a distance without advising dispatch of his activity or updating his location. After observing the vehicle for about 20 miles, he began to maneuver his marked patrol unit close enough to obtain a license plate number. The occupants apparently observed his action and took evasive action, including driving in the opposite lane toward oncoming traffic. Officer A activated his emergency lights and siren to stop the vehicle. The driver did not stop. An off-duty officer from the same agency happened to be driving by with his family when he observed the pursuit. The suspect vehicle turned onto a dirt road and the off-duty officer observed the passengers trying unsuccessfully to throw a large object out of the window. Officer A pursued the vehicle. The off-duty officer was concerned for Officer A's safety and contacted dispatch to inquire about back-up. The dispatcher had no information about a pursuit and did not know any officers were in that area, so she conducted a roll call. Officer A reported a false location and did not acknowledge his involvement in the activity. Shortly after, Officer A advised dispatch of his actual location, that everything was Code 4 and to cancel other responding officers. He met with his supervisor and admitted to his misconduct. He was truthful throughout the investigation. The Board adopted a consent agreement calling for a six month suspension of peace officer certification for misfeasance, malfeasance and nonfeasance in office.

CASE NO. 2

MALFEASANCE

Officer B received a (photo enforcement) Notice of Violation for running a red light in a department vehicle. An internal inquiry found he had no legitimate reason to run the light and he was issued a citation. About five months later he testified that he had been on the way to an emergency call and was on the phone with his supervisor at the time he ran the light. The facts he described to the court actually happened the day after he got the red light infraction. In truth he was speaking with his aunt on the phone when he ran the light and he was not on his way to an emergency. Officer B claimed he ran the two dates together in his head and was just confused. He had not prepared for his testimony and mistakenly testified falsely. The Board adopted a consent agreement calling for a two year suspension of certification for malfeasance in office.

CASE NO. 3**NONFEASANCE**

Officer C failed to submit a supplemental report on a domestic violence call. When that came to the attention of his supervisor, an audit of his reports was initiated. The audit found that Officer C had failed to complete and submit seven reports on time, ranging from theft with the use of force to aggravated assault. Because of a long history of discipline for failure to complete reports, Officer C resigned. The Board suspended his peace officer certification for one year for misfeasance, malfeasance and nonfeasance in office.

CASE NO. 4**THEFT and DISHONESTY**

Officer D was at a storage facility when a brother and sister approached him and gave him a handgun. They were cleaning their deceased parents' storage unit out, found the gun, and did not want it, so they handed it over to an officer for safe disposal. Officer D kept the gun for his own use. Officer D also entered a manufactured home he had previously intended to purchase and stole a refrigerator, washer, dryer and flat top stove/oven. When interviewed about these two incidents, Officer D was dishonest. The Board revoked his peace officer certification for committing offenses involving dishonesty and malfeasance in office.

CASE NO. 5**ASSAULT/DISORDERLY CONDUCT**

Deputy E was arguing with his girlfriend and he pointed a handgun to his head. Another man had to forcibly remove the gun from him. When responding officers arrived, Deputy E refused to obey orders to put his hands in the air and held his right hand behind him as if possessing a weapon. He was safely taken into custody. Two years prior to this incident, Deputy E threw a beer bottle through a car window because he was angry at seeing his former girlfriend with her ex-husband. The act shattered the window and cut the driver. The Board revoked his peace officer certification for committing offenses involving physical violence.

CASE NO. 6**COMPUTER TAMPERING**

Officer F arrested a female and while he completed the booking paperwork, he turned on her cell phone, browsed through her photographs and discovered several partially nude depictions of her among them. He selected two topless photos and texted them from her phone to his personal cell phone. Officer F admits that he had no law enforcement purpose for going through her phone. He was convicted of computer tampering and placed on two years probation. The Board revoked his peace officer certification for malfeasance in office and the commission of a felony.

CASE NO. 7**DUI DRUGS**

Officer G was injured in the line of duty and prescribed medications for pain, sleep problems and anxiety. Upon return to full duty he maintained that he was no longer using these medications. A few weeks after returning to work, other officers noticed that he appeared to be under the influence of drugs. A supervisor learned that he was scheduled to work a construction detail and went to the site to place him on administrative leave pending an investigation. While en route, the supervisor observed Officer G's patrol car traveling at over 100 miles per hour in the opposite direction with Officer G slumped against the window. An investigation revealed that he was severely impaired by drugs at the time. The Board revoked his peace officer certification for malfeasance in office.

CASE NO. 8**VIOLATION OF ATTY/CLIENT PRIVILEGE**

Officer H was processing a terribly unpleasant woman who had been arrested in a domestic violence matter. The woman repeatedly threatened to sue Officer H and others. She demanded to call her attorney and was permitted to use the phone while officers remained outside the booking area. They could not hear the call, but they believed she left a message for her attorney. The phone in the booking area is a recorded line. Officer H requested a copy of the phone call and provided it along with a memorandum to command staff advising them that the woman had threatened to sue. He stated that her attorney was out to get him and that, "I would like something done to (the attorney) about his attempts to get people to file bogus complaints about me and to try and discredit me through his manipulation. I also know through other defense attorney's (sic) he has told them he wants to take me down and make me look bad." When asked about listening to the recorded phone call to her attorney, Officer H said he was familiar with the attorney/client privilege but he believed she waived it by speaking on a recorded line. The Board adopted a Consent Agreement that viewed this misconduct as a training issue. It seemed that if he had been familiar with a peace officer's duty to respect the privilege, he probably would not have published his misconduct to his command staff. Officer H was required to do some reading and write a memorandum explaining what was wrong with what he did and how he will handle potentially privileged communications in the future. No additional discipline was imposed.

CASE NO. 9**TAX FRAUD**

In 2007, Recruit I fraudulently claimed a dependent on his taxes. A co-worker with six children asked him to claim her teenage daughter as a dependent since she could not benefit from claiming all of them. He told her he did not want to do that but she kept "bugging" him. Eventually, he gave in and claimed the daughter as a dependent and received about \$900.00 from the IRS, which he split with the co-worker. The Board denied him peace officer certification for committing a felony or an offense involving dishonesty.

CASE NO. 10**FALSE REPORT/DISHONESTY**

Officer J stopped and detained a suspected impaired motorist. The driver was arrested by another officer for DUI, partly on the basis of the traffic violations Officer J reportedly observed and later documented in a supplemental report. The defense attorney requested discovery and obtained the reports and the dash-cam video. He contacted the City Prosecutor after observing that the video did not in any important respect corroborate the report. In fact, the video showed that Officer J did not follow the driver and did not observe any of the traffic violations he documented in his report. When confronted with proof that his report was inaccurate, Officer J stuck to his story. The AVL in his patrol car, of course, provided information completely consistent with the video. Officer J had actually based the stop on a citizen's observations and was uncertain the legal validity of making an arrest on that basis. The Board revoked his certification for committing an offense involving dishonesty and malfeasance in office.

CASE NO. 11**SEX ON DUTY**

Officer K was involved with a civilian co-worker. The two engaged in fondling twice and oral sex twice while on duty. The incidents took place in secluded locations and Officer K was completely honest when asked about the conduct. The Board suspended his certification for one year for misfeasance and malfeasance in office.

CASE NO. 12**MALFEASANCE**

Officer L stored over six pounds of methamphetamine in his garage and the trunk of his patrol car, purportedly for reverse buys. His wife had access to the substance and freely used it. During a crisis episode, his wife became suicidal. She informed her parents that she had been obtaining methamphetamine from a large quantity that Officer L stored in their home. The parents confronted him with the bag of meth. He destroyed the contents by washing it down the garbage disposal. He gave the empty bag to his mother-in-law and instructed her to dispose of it. She provided it to the department. In addition to the methamphetamine, Office L had marijuana, jewelry and cash improperly stored in his vehicle. Some of the cash was missing. The Board revoked his peace officer certification for malfeasance in office.

CASE NO. 13**FAILING TO PROTECT**

Officer M was riding with Officer X when they were dispatched to an accident scene. Upon their arrival, the at-fault driver was not at the scene. They followed a trail of debris about a quarter mile to find the at-fault driver, 23 year-old Mary (not her real name), with her un-drivable car. Mary had come from a pool party and was clad in a bikini under a small knit top with spaghetti straps that only covered part of her bikini bottom. She was drunk and fearful because she had a previous DUI conviction. The officers transported her back to the scene to exchange information with the other driver. Then they went to a secluded spot at a nearby school to find shade. Officer X parked and told Officer M he was going to take the handcuffs off Mary. Two incidents occurred at this location involving Officer X's touching, kissing and fondling Mary. Officer M saw them. The first lasted only a few seconds and the second lasted four to five minutes. Officer M did nothing to stop Officer X. They dropped Mary off at a Target store. They discussed the situation and decided not to report the incident to a supervisor. An independent Administrative Law Judge found, after a hearing, that Officer M committed nonfeasance in office and the Board revoked his certification. Officer X had previously relinquished his certification.

CASE NO. 14**SEX ON DUTY**

Officer N was involved in an intimate affair with a woman for about two years. During that time the two had sex between six and eight times while he was on duty. Some of those acts took place in his patrol car at remote, secluded locations. Officer N was completely honest during the investigation. He entered into a Consent Agreement to suspend his peace officer certification for nine months. The Board rejected the nine months suspension but modified the Consent Agreement to impose a one-year suspension of peace officer certification for misfeasance or malfeasance in office.

The Board adopted consent agreements calling for a voluntary relinquishment of certification in the following fact situations. The scenarios stated here reflect the allegations giving rise to the POST case, but the facts were not proven before the Board.

- A reserve deputy accessed and viewed pornography on duty.
- A deputy diverted funds intended for confidential informant payments to her own personal use.
- An officer failed to disclose that he had used marijuana while a New York City police officer when he applied for certification.
- An officer was involved in domestic violence and had lied about his marijuana use during the background investigation.
- An officer crashed his personal vehicle and made a false report about the incident to police.

The Board entered mandatory revocations for the conviction of the following felonies:

- Sexual conduct with a minor, a class 6 felony.
- Theft, a class 4 felony.

On March 16 and April 20, 2011, the Board voted to close out the following cases without initiating a Complaint for disciplinary action. This is neither a finding that no misconduct occurred nor a comment that the Board condones the conduct. In fact, the Board's rules are very broad and all misconduct violates one or more of the disciplinary rules. The Board may choose not to initiate a Complaint in a case even though there is misconduct if, considering all the circumstances, including agency discipline, the conduct does not rise to the level requiring a formal administrative proceeding. In many of these cases, the Board makes a statement that the conduct is an important consideration for a future hiring agency. By not taking disciplinary action, the Board leaves the matter to the discretion of an agency head who may choose to consider the officer for appointment. The Board relies on and enforces the statutory requirement of A.R.S. §41-1828.01 that agencies share information about misconduct with each other, even in cases where the Board has chosen not to take additional independent disciplinary action. Additionally, in some of these cases, further information is necessary before a charging decision can be properly made.

- An officer was found unfit for duty after an evaluation by a healthcare professional.
- An officer inadvertently left a prisoner and the prisoner's property unattended.
- An officer failed to appear in court as subpoenaed.