

# <u>AZ POST</u> QUARTERLY INTEGRITY BULLETIN Volume No. 65



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 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 **April, May and June 2013**, 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.

The 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.

The Professionalism Alert is a new feature intended to highlight an issue the Board sees as needing attention. We hope it can be used as a training tool to prevent misconduct and promote professionalism in the Arizona Law Enforcement Community. Let us know if you find it helpful and effective as a training tool for your agency and its officers.

# **PROFESSIONALISM ALERT:**

A simple Google Search produces thousands of examples of headlines similar to the following: "Officer Faces Decertification for Lying about Sex on Duty;" "Married Police Officer Jailed for Having Sex with Vulnerable Women;" and, "Tsk, Tsk, Someone's Been Caught with His Pants Down." [Please note that POST is not recommending any Google search with the word "sex" among the search terms, especially at work.]

Over the past three years, POST has had 50 reports of sexual misconduct from agencies under the required reporting statute. Twenty-five of these former officers had their certifications revoked or they permanently relinquished due to sexual misconduct. Those revocation-worthy cases include the following: sex (on or off duty) and lying about it in the IA; sex with minors, informants, or suspects; sex that has some relationship to duty other than simply being on duty; and, criminal sexual conduct.

Sixteen of the reported sexual misconduct cases did not end in sanction by POST because they consisted of private, off duty conduct, not involving malfeasance in office. An agency might very well have good cause to terminate an officer under these conditions. That is an employment matter. POST does not get involved unless there is some nexus with peace officer duties.

Nine of those officers engaged in some form of sexual conduct on duty and when the internal affairs investigation followed, the officer was truthful. In those cases, the POST Board suspended their certifications. Those suspensions ranged in duration from six to 12 months, depending on the circumstances. For example, an officer who had sexual interludes several times might get a year suspension and an officer who had one sexual encounter on duty might get a six month suspension. Another fact the Board considers is the location of the conduct. Did the officer go to a residence for a bit or was it in the patrol car? Was the car

parked in a secluded location or could a member of the public have stumbled upon them? The Board also looks at the duration away from duty, whether calls were delayed or missed, and every other factor that impacts on public trust in the law enforcement profession.

Every officer knows that it is wrong to have sex on duty. Why, then, do they do it? What can they do to avoid it? What can you do to help them avoid it and save them the self-inflicted hardship and embarrassment, and save the profession from the damage to its reputation?

Peace officers should avoid any personal contact with colleagues or others that might be perceived as, or might lead to, any form of inappropriate relationship. Colleagues and coworkers usually know or have reason to know when trouble is brewing. For example, does the officer take the same person on ride-alongs too often? Are two officers disappearing at the same time repeatedly? You know the signs, and if the signs are there, be a real friend and call them on it. Tell a supervisor what you have observed.

Often there is the notion that it is none of our business, but that is wrong. The public trust takes a hit every time there is a headline like, "Police Officer Caught on Camera Having Sex on Duty." Help protect the profession's reputation and do not turn a blind eye to budding misconduct.

### **REVOCATIONS:**

#### **MALFEASANCE**

Chief A led the law enforcement efforts of a small town department. There were a number of issues with his personal work quality. He repeatedly failed to properly process and store evidence involving several different serious criminal cases. Chief A made a loan of public money to one of his employees to make up for a shortage in the employee's paycheck. This loan was not authorized and in fact constituted a class 4 felony. Chief A also failed to conduct a criminal or internal investigation despite being fully aware that a theft of public monies had occurred within his department. The Board considered that Chief A had previously been disciplined by the Board for similar misconduct by a suspension till lapse. The Board revoked his peace officer certification for committing a felony offense and for malfeasance in office.

#### NONFEASANCE

Officer B failed to complete over 2000 required departmental reports over a four year period. The department had engaged in progressive discipline concerning the failures, but Officer B continued to not do his reports. He appeared before the Board and told them he had too many calls to complete his reports. In response to Board questions he said he did not tell his superiors that he needed a lighter call volume, that they gave him extra time to do reports and that he did not work overtime because he wanted to spend his off-duty time with his family. The Board revoked his certification for nonfeasance and malfeasance in office.

### **DISHONESTY**

Sergeant C provided false information to deputies responding to a domestic violence incident involving him and his wife. The two were at a local resort when a verbal altercation erupted. Mrs. C attempted to get away from Sergeant C by going into the bathroom to pack her belongings. He followed her into the bathroom, closed the door and sat against it so that she could not leave. He had her cell phone and claimed to see a text that upset him. She repeatedly asked to leave and he refused. The Sheriff's Office was eventually called. During their questioning of Sergeant C, the deputies asked if he knew where Mrs. C's cell phone was. He consented to a search of his hotel room and his car, but no cell phone was located. They dialed the cell phone number and Sergeant C was seen manipulating the phone, which he removed from his pocket. He continued to deny that he had his wife's phone until he was advised that a lieutenant from his department was en route. At that point he said, "Alright, here you go." He then produced his wife's cell phone from his pocket. He was tried and found "Not Guilty" on an unlawful imprisonment charge and "Guilty" on the Providing False

Information to Law Enforcement charge. The Board revoked his peace officer certification for committing an offense involving dishonesty.

#### **ASSAULT and DISHONESTY**

Officer D was the subject of a report by his wife that he had falsified his application for employment in 2005. Shortly after that report, his step-son made a complaint that when he was 14 years old in 2007, Officer D fired his Taser at the boy as punishment for poor school grades. Subsequent investigation determined that Officer D had falsified his application and that he used his Taser to assault the boy. After deploying his Taser, Officer D realized that the unit would have recorded the deployment, so he made up a cover story involving an aggressive dog and reported the story to police and his department. He was found guilty of Aggravated Assault. The Board revoked his peace officer certification for assault and false reporting.

#### ON DUTY DUI

Officer E was due to start her shift at 0900. At 0927, on her way to the worksite, she drove a rented vehicle under the influence of alcohol. A phone conversation with a supervisor led the supervisor to order her to pull over. She was arrested and later convicted of Extreme DUI. A Preliminary Breath Test registered a blood alcohol level of 0.235 percent. The department terminated her employment and the Board revoked her peace officer certification.

#### DISHONESTY

Sergeant F had an affair with the wife of another officer. When asked if that was so, he lied. He was interviewed after a Garrity admonition and he again denied a sexual relationship with the woman. Eventually, he admitted that he had lied. The Board revoked his certification for lying after Garrity.

### **DISHONESTY**

Officer G was interviewed as a witness in the internal investigation of a lieutenant for having an inappropriate relationship with a subordinate. The officer denied having any knowledge of inappropriate behavior, when he had walked in on the two hugging and kissing. The dishonesty was subsequent to a Garrity admonition and the Board revoked his peace officer certification.

#### DISHONESTY

Applicant H tried to become a deputy sheriff in 1997, but was disqualified when he disclosed on his POST Personal History Form that he had physically assaulted his wife on at least five occasions. In late 2012 he applied at a different department. He marked "No" to the question, "Have you ever committed a criminal offense involving physical violence?" During an interview with the background investigator, he made no mention of the issues with the first department. The polygraph examiner found that Applicant H was consistent with his statements to the background investigator and there was no deception indicated. POST audited the background investigation file and the discrepancies were noted. The department conducted a follow-up investigation and determined that Applicant H had lied to obtain employment. The POST Board denied certification for willfully providing false information to obtain certification.

### **SUSPENSIONS:**

- A detective repeatedly used improper methods to obtain consent for searches and failed to provide timely Miranda Warnings.
- An officer initially lied to his sergeant about conducting an inventory search of a particular vehicle.
- An officer conducted two separate intelligence database checks for personal, non-law enforcement reasons, to tell a girlfriend and her friend if they had warrants.
- A sergeant mistakenly believed a foot pursuit that happened did not happen. Rather than clear up the mistake, he sent emails and directed an officer to write a report conforming to his mistaken belief.

- A lieutenant committed DUI.
- An officer engaged in sex acts on duty and was truthful about them when asked over two years later.
- An officer, without authorization, checked out of service for 30 minutes to have sex, leaving his town without police coverage briefly.

## **VOLUNTARY RELINQUISHMENTS:**

The scenarios stated here reflect the allegations giving rise to the POST case, but the facts were not proven before the Board.

- An SRO was sending inappropriate text messages to a minor female at his school.
- An officer assaulted a handcuffed prisoner.
- An officer failed to disclose an arrest as required by department policy.
- An officer failed to forward DUI citations to the court and lied about it.
- An officer lied during an IA interview after Garrity admonitions.
- An officer repeatedly accessed ACJIS for personal reasons and shared information with the subjects of the inquiries.

# **MANDATORY REVOCATIONS:** (felony convictions)

- Deprivation of Rights Under Color of Law and Material False Statements to the FBI.
- Conspiracy to Commit Offenses Against the United States, a class D Felony.

# **NO ACTIONS:**

On April 17, May 15, and June 19, 2013, 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.

- A sergeant used a personal credit card he obtained through his employer contrary to policy and contrary to his contract for the card.
- An officer failed to serve a number of legal papers in the jail as was his duty.
- An investigator had a close association with members of a motorcycle gang.
- An officer may have written a fake note that implied threats against himself.
- An agent may have had inappropriate conversations with a witness in order to impress her.
- An officer may have caused his wife to bump a door.
- A Chief of Police was a poor leader who treated his officers badly.
- An officer filed a grievance against his Chief that was inaccurate.
- An officer was repeatedly impolite and used unprofessional language with members of the public.
- A sergeant who was under orders not to contact a particular bureau in the city had a friend contact the bureau for her.
- An officer stopped showing up for work without permission or notice.

- An officer failed to report for duty as scheduled.
- An officer made a video with dead bodies of non-criminal death victims and showed it to co-workers at a private party.
- An officer tried to get an investigation handled "in-house," (rather than involving the human relations department), in a manner his supervisors felt was intimidating.
- A deputy made mistakes in a defense interview due to poor report writing and a lack of attention to his work.
- An officer was videotaped sweeping and bending down when he was on leave for an industrial injury, claiming severe pain.
- Two sergeants were fired for having issues in their backgrounds that the agency knew about when it hired them.
- An officer was the subject of allegations that he inappropriately patted down women. The allegations were not sustained.
- An officer, who was working off duty, was given \$50 by a person who found it. Two other officers had him purchase them lunch out of the money. He impounded a different \$50 the next time he was at work. (All three were before the Board.)