



## **Montana Public Safety Officer Standards & Training Council**

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### **AGREEMENT**

This Agreement is entered into by the Montana Public Safety Officer Standards and Training Council (POST) and Virgil Allen Fulton (Respondent) for resolution of complaint case number 22-48.

### **RECITALS**

WHEREAS, Respondent was initially appointed as a reserve officer by the Rosebud County Sheriff's Office, and as a deputy coroner by the Rosebud County Coroner on December 22, 1997; and was appointed as a peace officer by the Rosebud County Sheriff's Office on October 1, 1998.

WHEREAS, Respondent holds a POST peace officer basic certificate; a peace officer intermediate certificate; a peace officer advanced certificate; a peace officer supervisory certificate; a peace officer command certificate; and a coroner basic certificate.

WHEREAS, on October 2, 2022, Respondent had been consuming alcoholic beverages when he and his wife engaged in a verbal altercation at the residence of a friend. Respondent then departed the friend's residence in his wife's vehicle after having consumed alcohol. When Respondent's wife arrived home, Respondent refused to give his wife's phone to her. Respondent's wife contacted law enforcement and reported Respondent's behavior. When law enforcement arrived, Respondent was not immediately forthcoming with the investigating officer, denying that he had an argument with his wife and that he had withheld her phone from her.

WHEREAS, Respondent's actions constitute prohibited conduct, as outlined in ARM 23.13.702(3), as follows:

...

(d) unauthorized use of or being under the influence of alcoholic beverages while on duty, or the use of alcoholic beverages in a manner which tends to discredit the officer, the officer's employing authority, or the profession;

(f) neglect of duty or willful violation of orders or policies, procedures, rules, regulations, or criminal law when such action or inaction, committed in the officer's capacity as an officer or otherwise, reflects adversely on the officer's honesty, integrity, or fitness as an officer or is prejudicial to the administration of justice;

(g) willful violation of the code of ethics set forth in ARM 23.13.203;

(h) conduct which, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the employing authority's integrity or the officer's honesty, integrity, or fitness as an officer;

...

WHEREAS, Respondent's actions violated the Code of Ethics, as set forth in ARM 23.13.203, as follows:

(a) My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged;

...

(g) I will strive to work in unison with all legally authorized agencies and their representatives in the pursuit of justice;

...

(i) I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession.

WHEREAS, Respondent's violations as outlined above constitute grounds for sanction of Respondent's POST certifications.

NOW, THEREFORE, in light of the foregoing and in consideration of the mutual representations set forth in this Agreement, and for good and valuable consideration, the parties agree as follows:

### **STIPULATIONS AND CONSENTS**

I. Respondent stipulates, consents, and freely and unconditionally agrees and admits to all of the following:

A. On October 2, 2022, Respondent had been consuming alcoholic beverages when he and his wife engaged in a verbal altercation at the residence of a friend. Respondent then departed the friend's residence in his wife's vehicle after having consumed alcohol. When Respondent's wife arrived home, Respondent refused to give his wife's phone to his wife. Respondent's wife contacted law enforcement and reported the Respondent's behavior. When law enforcement arrived, Respondent was not immediately forthcoming with the investigating officer, denying that he had an argument with his wife and that he had withheld her phone from her.

B. Respondent's POST certification will be subject to a stayed one-year suspension and probation, as follows:

- i. Respondent's certification will be placed on a one-year period of probation from the date of the Executive Director's signature on this Agreement. During this probation, a one-year suspension of Respondent's certification will be stayed, provided Respondent does not violate the terms of this Agreement.
- ii. During the one-year period of probation, Respondent will be ineligible to receive any additional POST certificates, although if he is working as a public safety officer, he will be earning credit for years of service, hours of training, or other qualifications during the probationary period. If Respondent successfully completes the probationary period, Respondent may thereafter apply to POST to receive any additional certificates for which Respondent is eligible after the probationary period ends.

- iii. As a condition of this probation, Respondent must, at all times and regardless of whether on or off duty, abide by all federal and state laws and administrative rules, and any employing agency's policies and procedures. Respondent's failure to abide by all federal and state laws and administrative rules, and any employing agency's policies and procedures shall constitute a breach of this Agreement regardless of whether such conduct occurred on or off duty. Respondent shall inform POST in writing of any potential violation within 10 days of occurrence, and failure to do so shall also constitute a breach of this Agreement.
- iv. As a condition of his probation, Respondent will obtain a chemical dependency evaluation from a licensed provider who is acting within the scope of his or her license when performing such evaluations. Respondent will follow any treatment recommendations which result from the chemical dependency evaluation. Respondent will execute the appropriate releases of information to ensure that POST can monitor Respondent's compliance with this condition. The evaluation and follow-up treatment are to be obtained at the Respondent's expense.
- v. If Respondent breaches this Agreement during the probationary period, POST may initiate proceedings under its regular processes to impose the one-year suspension on any and all POST certifications held by Respondent at the time the suspension is imposed. Respondent agrees that the only issue subject to future adjudication shall be the existence of a breach of this Agreement, which POST must establish by a preponderance of the evidence.
- vi. POST shall have the right to impose the stayed one-year suspension for any violation of this Agreement and may seek any appropriate penalty for the underlying violation giving rise to the breach of this Agreement.

vii. If Respondent breaches this Agreement during the one-year period of probation, but that breach is not discovered and/or charged until after the probationary period expires, Respondent agrees POST may still declare a breach and suspend any and all POST certifications held by Respondent at the time the suspension is imposed for one year.

viii. If, after the one-year probationary period is complete, Respondent has complied with this Agreement and refrained from any violation of this Agreement, this matter will be closed.

C. Respondent fully and forever releases and discharges POST and all of POST's employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages and injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this Agreement.

D. Respondent specifically and affirmatively waives a contested case hearing and all rights to appeal under the Montana Administrative Procedure Act, §§ 2-4-101 *et seq.*, MCA, and elects to resolve this matter on the terms and conditions set forth herein.

E. Respondent acknowledges that Respondent has carefully read this Agreement, understands each term of this Agreement, and that Respondent has had sufficient time to consult with counsel. Respondent acknowledges that Respondent enters this Agreement voluntarily, and without reservation. Respondent acknowledges that no promise, other than those contained herein, and no threat has been made by the POST Council or by any member, officer, agent, or representative of the POST Council to induce Respondent to enter into this Agreement.

II. All parties to this Agreement stipulate and consent to the following:

A. POST has jurisdiction over Respondent and the subject matter of this Agreement.

B. POST has the obligation under § 44-4-403(1)(c), MCA, to "provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers" in Montana.

C. Nothing in this Agreement precludes, diminishes, or restricts any authority granted to POST under the law.

D. Respondent's actions constitute prohibited conduct, as outlined in ARM 23.13.702(3), and subject Respondent's POST certifications to sanction.

E. POST agrees not to pursue further civil or administrative action against Respondent regarding Respondent's conduct set forth herein for so long as Respondent complies with the terms of this Agreement.

F. Should any provision of this Agreement be determined to be invalid, illegal, unenforceable, or in conflict with the law, all remaining terms and clauses shall remain in force and shall be fully severable.

G. The failure or delay of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver, nor shall it deprive such party of the right thereafter to insist upon strict adherence to that term or any term of this Agreement. Any waiver must be in writing signed by the waiving party.

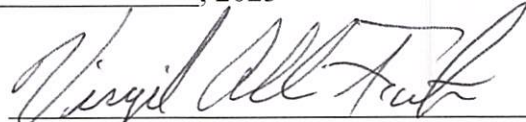
H. This Agreement constitutes the entire agreement between POST and Respondent, and no other promises or agreements, either express or implied, have been made by POST or by any member, officer, agent or representative of POST to induce Respondent to enter into this Agreement.

I. This Agreement may not be modified orally, and any subsequent modifications to this Agreement must be mutually agreed upon in writing to be effective.

J. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Montana.

K. This Agreement is a public record under Montana law and, as such, may not be sealed or otherwise withheld from the public.

Dated this 21 day of July, 2023

  
Virgil Allen Fulton

Dated this 25<sup>th</sup> day of July, 2023

  
Timothy Allred, Executive Director  
Montana POST Council

**RECEIVED**  
JUL 24 2023  
MT POST Council