



Peace Officer Standards  
and Training

# Certification Actions & Legislative Updates

# *Introductions*

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# *POST Certification Actions - Outline*

- Actions That May Negatively Affect Certification
  - Disqualifying Criminal History
  - Untruthfulness
  - Unlawful Use of Force / Failure to Intervene
  - Failure to Use Body Worn / Dash Camera
  - Prohibit Use or Direction or Administration of Ketamine
  - Rule 28 / Failure to Complete Training Requirements
  - Provide Inaccurate Data for Database
- Process & POST's Role
- Database



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# Common *Misconceptions* about POST

- Role in the legislative process
- Ability to proactively revoke certifications
- POST authority
- POST mission and purpose
- Number of POST staff



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# *Criminal Convictions*

- Conviction, Deferred (Judgement/Sentence/Prosecution), or Pretrial Diversion of:
  - ANY Adult Felony
  - Certain Misdemeanors Committed on or After July 1, 2001
    - Full List: [POST.COLORADO.GOV/CERTIFICATION/DECERTIFYING-MISDEMEANORS](https://POST.COLORADO.GOV/CERTIFICATION/DECERTIFYING-MISDEMEANORS)
  - Most Common:
    - Harassment
    - 3<sup>rd</sup> Degree Assault
    - First Degree Official Misconduct
- Deferred and Dismissed = Affects Certification 24-31-305 (1.5)(b)
  - Sealing of record *may* also impact certification.



# *Sustained Finding of Untruthfulness - Elements*

- The Law Enforcement Agency Notifies POST that the Certificate Holder:
  - Knowingly made an **Untruthful Statement** regarding a **Material Fact**
  - Knowingly **Omitted** a **Material Fact**
- In one of the following circumstances:
  - On an **Official Criminal Justice Record**
  - While **Testifying Under Oath**
  - During an **Internal Affairs Investigation, Administrative Investigation, or Disciplinary Process**



# *Sustained Finding of Untruthfulness - Documentation*

- Statute requires **Clear and Convincing** Standard of Evidence
  - Post-Garrity-Advisement
- POST reviews all cases that:
  - Meet statutory requirements **AND**
  - Respondent requests a Show Cause Hearing
- Agency is **required** to investigate complaints of Untruthfulness
  - If Respondent was employed there within last 6 months.



# Unlawful Use of Force

## - Elements

### Revocation:

- Conviction of a **Crime**
- \*Found **Civilly Liable**
- Failure to **Intervene**

Involving Unlawful Use of Force,  
Resulting in SBI or Death

### Suspension:

- \*Found **Civilly Liable**
- Failure to **Intervene**

Involving Unlawful Use of Force, but  
**NOT** Resulting in SBI or Death





# Body Worn/Dash Cameras - Intentional Acts

## - Elements

### Revocation:

- Intentionally failed to activate BWC/Dash Cam
- Intent to conceal unlawful or inappropriate actions

Resulting in SBI or Death

### Suspension:

- Intentionally failed to activate BWC/Dash Cam
- Intent to conceal unlawful or inappropriate actions

No SBI or Death



# *Prohibit Use or Direction or Administration of Ketamine*

- Peace officer *shall not* *compel, direct, or influence EMS*
- EMS Provider *shall* *report to P.O.S.T within 10-days*
- P.O.S.T notifies agency, which conducts investigation
- Disqualifying incident - *P.O.S.T Board* *may*:
  - *Revoke certification - Death*
  - *Suspend certification - SBI or Failure to Intervene*

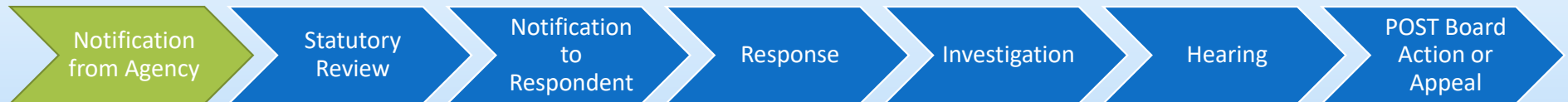


# *Failure to complete Rule-28 Training Requirements*

- 24 hours (12 perishable with one hour each POST skills).
- Notice to peace officer - 30 days to complete required training - suspend thereafter until compliant.
- If training is not completed satisfactorily three times in ten consecutive year period - publish on database.



# Process for Action against Certification



- POST is notified via several possible channels- depending on the disqualifying incident.
- If notified by agency, the agency executive must swear under penalty of perjury / de-certification.
- Revocation of submitter's certification possible if form was submitted with false statement, misstatement or inaccuracy.

**Notification of Finding of Untruthfulness** FORM **13**

Colorado Department of Law - POST  
1300 Broadway 9<sup>th</sup> Floor  
Denver, CO 80203  
post@colga.gov 720-508-6721 FAX 866-858-7486

October 2019 SB19-166  
24-31-305 (2.5)

Agency Name: \_\_\_\_\_ Name of Agency Executive Submitting Form 13: \_\_\_\_\_  
Agency Executive Phone Number: \_\_\_\_\_ Agency Executive Email Address: \_\_\_\_\_  
Peace Officer - Last Name: \_\_\_\_\_ Peace Officer - First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_  
Peace Officer Last Known Personal Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Peace Officer Personal Email Address (if known): \_\_\_\_\_ Peace Officer Personal Cell Phone (if known): \_\_\_\_\_  
Date(s) of Employment: \_\_\_\_\_ Date(s) of Incident: \_\_\_\_\_  
Peace Officer Date of Birth: \_\_\_\_\_ Colorado PID#: \_\_\_\_\_ (000000 or 0000-0000)

Please check the applicable boxes below.

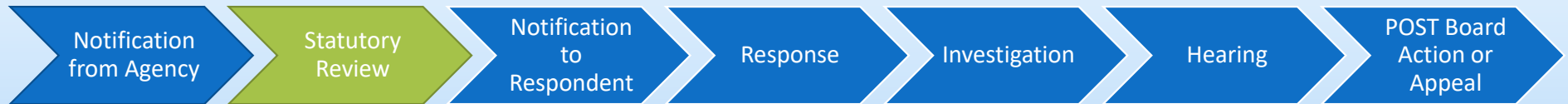
1.  The certificate holder knowingly made an untruthful statement concerning a material fact **OR** knowingly omitted a material fact.  
(At least ONE of the following **MUST** apply; please check ALL that apply)  
 On an official criminal justice record.  
 While testifying under oath.  
 During an internal affairs investigation.  
 During an administrative investigation and/or disciplinary process<sup>1</sup>.

2.  The law enforcement entity that employs or employed the certificate holder has done **such** of the following:  
(ALL of the following **MUST** apply; please check)  
 Completed an administrative process, as defined by a published policy in effect at the time of the untruthful statement concerning a material fact **OR** omission of a material fact.  
 Determined by a clear and convincing standard of the evidence<sup>2</sup> through an administrative investigation and/or disciplinary process the certificate holder knowingly made an untruthful statement concerning a material fact **OR** knowingly omitted a



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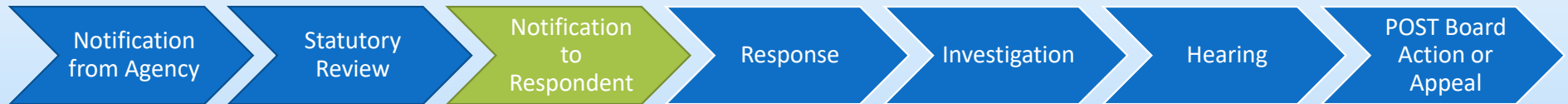
# Process for Action against Certification



- POST reviews the notification specifically for statutory requirements.
- Case is opened *only* if the notification reflects that all statutorily required steps were completed.



# *Process for Action against Certification*

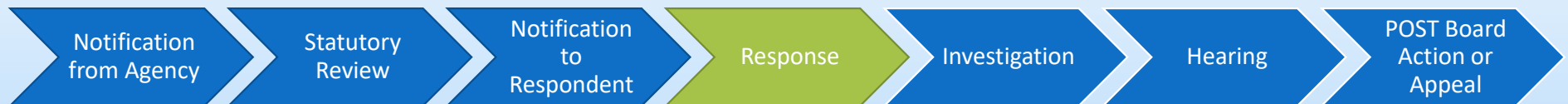


- POST notifies the respondent
  - Criminal Conviction
    - Order to Appear at Show Cause Hearing (following sentencing).
    - Failure to Appear = automatic recommendation for revocation.
  - Untruthfulness
    - Respondent can request Hearing (Administrative Law Judge).
    - Failure to Request = automatic recommendation for revocation.
  - Other Notifications: Unlawful UOF, Body Worn/Dash Cam, Ketamine
    - Similar to the “Untruthfulness” process noted above.



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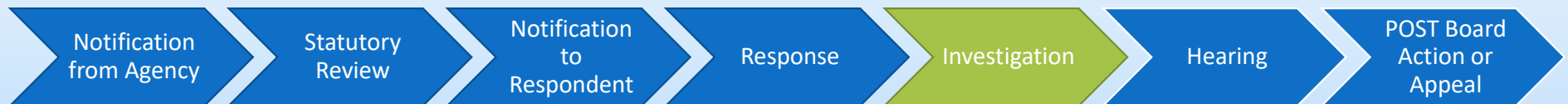
# Process for Action against Certification



- Criminal Convictions
  - Written statement from Respondent due 10 days prior to Show Cause Hearing.
- Untruthfulness, Unlawful UOF, Body Worn/Dash Cam, Ketamine
  - Respondent has a right to a Hearing but **must** request it in writing.



# Process for Action against Certification



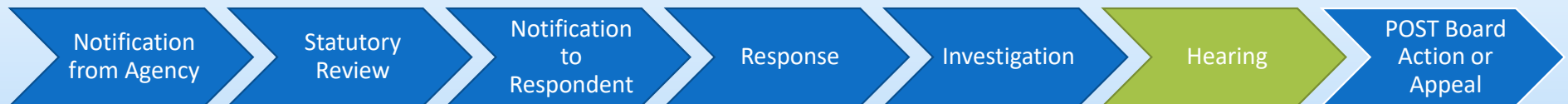
- Does NOT apply to criminal matters
- POST Requests All Relevant Documentation
  - Police Reports
  - Internal Affairs Investigation
- POST Conducts Independent Review
  - Ensures due process
    - **Do not** coordinate findings with the certificate holder's agency.
- Investigator makes recommendation based on the statutory requirements and facts
  - If revocation appears statutorily required, case moves to Hearing. If not, the case does not proceed, and parties are notified of such.



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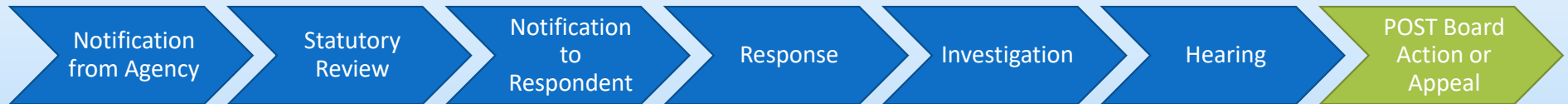
# *Process for Action against Certification*



- POST Director - Show Cause Hearing for criminal convictions.
- POST Administrative Law Judge - Hearing for other matters.
- Respondent has right to legal counsel.
- Respondent's Agency is not a party to the case.
- “Initial Decision” from ALJ is a recommendation to the POST Board.



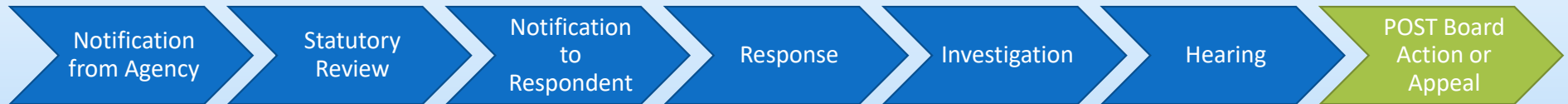
# *Process for Action against Certification*



- Respondent (or legal counsel) can request an appeal at POST Board meeting.
- If majority votes in favor of appeal, a Five-Member Subcommittee of Board members is formed to hear the matter within 30 days.
- Subcommittee decision is a final agency action and the only other recourse is through District Court.



# *Process for Action against Certification*



- Rulemaking is currently in progress to implement HB21-1250 and 1251.
  - Suspension
  - Voluntary Surrender
- Hiring ALJ
- Updating website and forms.



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# *Post-Revocation*

## *- Actions*

- POST reports to the National Decertification Index
  - Majority of states check NDI when granting certification
- Public-Facing Database
- Update records management system



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# *Public-Facing Database*

- SB 20-217 / HB 21-1250
- Searchable – hosted on POST website
- Database Includes: Untruthfulness, Failure to Follow Rule 28, Certification Actions, Termination for Cause
  - Terminated/Resignation/Retirement pending investigation or in lieu of termination.
  - Resignation or Retirement following an incident that leads to opening of investigation within six months.
  - Subject of criminal investigation for a crime which would affect certification (until or unless charges are dropped).



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# *Public-Facing Database*

- Requires law enforcement agencies to check database prior to hire, transfer, etc. and report to POST if they decide to hire someone on database.
- Knowingly or intentionally provides inaccurate data = action against certification (fine, suspension or revocation).
- Credibility Disclosure Notification (Brady/Giglio) SB21-174
  - Basis for notification

