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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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### FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its March 13, 2012 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb).

#### **CLOSED SESSION**

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

<b>DEFINITION OF FINDINGS</b>	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

### CASES FOR SUMMARY HEARING (8)

#### **ALLEGATIONS, FINDINGS & RATIONALE**

##### 11-010

- Misconduct/Discourtesy – Deputy 1 took the complainant's parking spot.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

- Misconduct/Intimidation – Deputy 1 “made a hand gesture pointing to a gun displayed on the side of his belt” and kept his hand near the weapon throughout his interaction with the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

- Misconduct/Procedure – Deputy 1 refused to identify his employer when the complainant requested this information.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Discourtesy – Deputy 1 said to the complainant, “I am just a civilian and will not give you a fucking explanation,” when asked for his identity.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Intimidation – Deputy 1 instilled fear in the complainant when he wrote down her license plate number with cause.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Criminal Conduct – Deputy 1 gathered the complainant’s license plate information to access private database records.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Discourtesy – Deputy 1 stated to the complainant, “Fucking bitch get a move on or else,” as the complainant was getting into her car.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Misconduct/Intimidation – Deputy 1 included in his statement to the complainant, “or else” causing the complainant to be frightened and concerned for her safety.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Misconduct/Procedure – Sergeant 2 failed to follow through and/or inform the complainant of the outcome of her Internal Affairs complaint filed on October 13, 2010, and after meeting with him on November 19, 2010.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **11-013**

1. Misconduct/Procedure – Probation Officer 1 improperly classified and housed the aggrieved.

Board Finding: Action Justified

Rationale: The complainant does not believe that her daughter should have been housed at the Girls Rehabilitation Facility (GRF) because she did not believe that her daughter had a drug or alcohol problem. The aggrieved had been arrested by San Diego Police Department for PC §148(a)(1) Resisting an Officer, PC §148.9(a) Giving False Information to a Peace Officer, and BP §25662(a) Possession of Alcoholic Beverage by a Minor. The aggrieved was taken into custody and transported to San Diego County Juvenile Hall. In light of the arrest and charges Probation Officer 1 Board and the Court concurred that the aggrieved be committed to the Short Term Offender Program (STOP). Juvenile females committed to the 21 Day STOP Program fulfill their commitment at the GRF and must pass 21 days to be eligible for release. The evidence shows that the aggrieved was properly classified and assigned to the appropriate facility to comply with the orders of the Court. The alleged act did occur but was lawful, justified and proper.

2. Misconduct/Procedure - Probation Officer 2 missed scheduled medical (physical therapy) appointments for the aggrieved.

Board Finding: Summary Dismissal

Rationale: On February 7, 2011, the complainant notified non-sworn medical staff that her daughter had scheduled appointments for physical therapy and eye surgery. Records revealed that the complainant advised medical staff later that same day that she preferred to wait for her daughter's release to follow up on the appointments. Medical staff further advised the complainant that they could make and transport her daughter to scheduled appointments if desired. This allegation involves non-sworn personnel and the Review Board lacks jurisdiction. The allegation was referred to the Probation Department.

3. Misconduct/Procedure - Probation Officer 2 failed to provide the aggrieved with medication delivered by the complainant.

Board Finding: Summary Dismissal

Rationale: Record review revealed that medication for the complainant's daughter had been provided and was documented as received by the clinic physician on January 26, 2011. There was no record documentation listed to show that the medication had been administered. Prescription medications are administered by the Probation Department's medical provider, California Forensic Medical Group. The Probation Department acknowledged this failure to administer medication and undertook measures to correct future deficiencies. This allegation involves non-sworn personnel and the Review Board lacks jurisdiction. The allegation was referred to the Probation Department.

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## **11-016**

1. False Reporting - Deputies 1-5 "created a report that holds within it a series of false accusations."

Board Finding: Unfounded

Rationale: The complainants dispute several statements contained within Deputy 3's Arrest Report. However, neither offered any credible evidence to support their contradictions other than "it didn't happen." Furthermore, Hohenstein took out protective orders against Patzer that are in effect until 2014. Patzer also pled guilty to battery and was sentenced to three years probation for this incident. By deputy accounts, both complainants were intoxicated at the time of the incident and lack credibility in their recall of these events. A preponderance of evidence, to include photographs of injuries, indicated the alleged act or conduct did not occur.

2. Criminal Conduct – Deputy 3 took \$100 from Patzer's wallet.

Board Finding: Unfounded

Rationale: The complainant said he had a total of \$245 cash in his wallet. The Inmate Personal Property Receipt documented cash in the amount of \$125, and was signed for upon intake into and upon release from the detention facility, by Albert Patzer. Patzer offered no evidence to support the existence of an extra \$100 or that he observed anyone take it. Deputy 3's SERF response refuted the complainant's allegation. By deputies' accounts, both complainants were intoxicated at the time of the incident and lack credibility in their recall of these events. A preponderance of evidence, to include Patzer's signature on receipts, indicated the alleged act or conduct did not occur.

3. Misconduct/Discourtesy – Deputy 3 was "unprofessional" while dealing with Patzer.

Board Finding: Unfounded

Rationale: At the onset, Patzer and Hohenstein's disruptive/assaultive behavior is what drew deputies' attention to them. The complainants were unable to verbalize any specific actions to describe the alleged "unprofessional" behavior. Deputy 3 described her demeanor as "commanding," while handling a crime in progress with an argumentative and intoxicated suspect in her custody. By deputies' accounts, both complainants were intoxicated at the time of the incident and lack credibility in their recall of these events. All

involved deputies denied any actions prohibited by policy and procedure. A preponderance of evidence, to include the complainant's lack of credibility, indicated the alleged act or conduct did not occur.

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## **11-022**

1. Misconduct/Intimidation – Deputy 4 frightened the complainant when he unnecessarily jumped out from behind a parked car and began yelling at her.

Board Finding: Action Justified

Rationale: Deputy 4 denied jumping out from behind a parked car and yelling at the complainant. He reported that he stepped out into traffic and put his hand in the air motioning for the complainant to stop, in an attempt to flag the complainant over. Deputy 4 reported only yelling for the complainant to stop as she was passing him and when it appeared that she was not going to stop. There was insufficient to either prove or disprove the allegation.

2. Misconduct/Procedure - Deputy 4 initiated a traffic stop by yelling to the complainant, “Pull over, I am taking you to jail.”

Board Finding: Action Justified

Rationale: Deputy 4, during the course of a legal traffic stop, instructed the complainant to pull over to the side of the road. She refused, stating directly to the deputy that she was not pulling over. Deputy 4 then told the complainant that she needed to pull over or she would be arrested. The complainant then complied. The evidence shows the alleged act did occur, but was lawful, justified and proper.

3. Misconduct/Intimidation - Deputy 4 demanded the complainant's keys and threatened her with arrest for allegedly speeding.

Board Finding: Action Justified

Rationale: Deputy 4 informed the complainant that she would be arrested if she did not pull over. He demanded the complainant's keys because she had initially refused to pull over, and once she did, pulled over approximately 100 feet from the deputy's motorcycle. Upon confirmation from Sheriff's Inquiry that the complainant was in possession of an expired license, Deputy 4 had planned to tow the complainant's vehicle per 22651(p) CVC (driving without a valid driver's license), and as a safety precaution, confiscated the complainant's keys to prevent her from leaving the scene. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure - Deputy 4 refused to provide proof of the complainant's alleged speeding infraction when requested and stated, “I don't have to show it to you and I'm not going to.”

Board Finding: Action Justified

Rationale: Deputy 4 reported that he showed the complainant the digital readout on his radar gun at the beginning of the traffic stop, although he was under no obligation to offer this under California state law. The complainant did not recall seeing the digital readout when presented. The evidence shows the alleged act or conduct did occur, but was lawful, justified, and proper.

5. Misconduct/Procedure - Deputies 1, 2, and 4 unnecessarily prolonged a traffic stop, while talking and laughing and despite being informed by the complainant that she was feeling ill.

Board Finding: Action Justified

Rationale: Deputy 4 estimated that the length of time from the beginning of the contact to when the complainant was cited and free to leave, was approximately 20 minutes, which included the complainant retrieving personal property from her vehicle. The complainant was immediately released from the scene after she signed the citation and received her copy. Deputies 1 and 2 were on scene only to provide cover for Deputy 4 and did not play any role in the length of time required to conduct the traffic stop. Deputy 2 reported that he remained on

scene with Deputy 4 until the complainant's vehicle was towed, but that the complainant was free to go after she was cited; which was approximately 23 minutes after the traffic stop was initiated. The evidence shows the alleged act did occur but was lawful, justified and proper.

6. Misconduct/Procedure - Deputy 4 towed the complainant's vehicle and left her stranded on the side of the road with her belongings.

Board Finding: Action Justified

Rationale: Deputy 4 reported that the complainant was in possession of a cellular telephone and had made a phone call during the contact, prior to receiving the citation. The complainant reported that she called her husband during the contact and had even asked to remain in her vehicle until her husband arrived. Moreover, the location of the traffic stop occurred in a busy mixed use, business/commercial area during daylight hours. The evidence shows the alleged act did occur but was lawful, justified and proper.

7. Misconduct/Procedure – Deputy 5 at the Encinitas Sheriff's station did not take the complainant's complaint and instead referred her to personnel who were unavailable.

Board Finding: Summary Dismissal

Rationale: Under CLERB Rules and Regulations, Section 4.1 Citizen Complaints: Authority: The Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department... Deputy 5 was determined to be non-sworn personnel. The Review Board lacks jurisdiction over non-sworn professional staff.

8. Misconduct/Procedure - Deputy 3 failed to follow proper procedure regarding a complaint against his staff.

Board Finding: Summary Dismissal

Rationale: Under CLERB Rules and Regulations, Section 4.1 Citizen Complaints: Authority: The Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department...Deputy 3 retired in December, 2011 and the Review Board lacks jurisdiction.

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## 11-023

1. Illegal Search or Seizure – Deputies 1 and 2 demanded identification from the complainant and/or her son without explanation.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Excessive Force – Deputies 1 and 2 forcibly removed the complainant's son from their vehicle.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Illegal Search or Seizure – Deputy 2 handcuffed the complainant's son, patted him down, and detained him in the back of a sheriff's vehicle for 40 to 60 minutes.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Intimidation – Deputy 1 or 2 stated to the complainant, “This is MY Street, MY County” and told her that she “had to” provide identification.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Excessive Force – Deputy 2 grabbed the complainant’s upper left arm, without cause, resulting in two bruises to her bicep area.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Discourtesy – Deputy 1 or 2 stated to the 64 year-old complainant, “Yes, you are free to go young lady,” when the complainant asked if she was at liberty to leave.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Retaliation – Deputy 1 snatched the complainant’s cell phone and forced the complainant from her vehicle in response to her 911 call requesting assistance for her son.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

8. False Arrest – Deputy 2 handcuffed, patted down and arrested the complainant for violation of PC 148.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Excessive Force - Deputy 3 physically forced the complainant into the back of a sheriff’s vehicle and applied handcuffs to the point of torn and bruised wrists.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Misconduct/Procedure – Deputy 2 ignored the complainant’s disability, and as a result the complainant experienced chest pain, was short of breath, passed out during transport, and required hospitalization.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

11. Discrimination/Racial – Deputies 1, 2, and 3 detained and questioned the complainant’s son regarding being a “militia member” because he is young and Hispanic.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

12. Misconduct/Retaliation – Deputy 2 arrested the complainant for exercising her 1st Amendment rights of free speech in refusing to show her identification and questioning the deputies’ authority.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

**11-024**

1. Excessive Force - Deputies 1 and 2 grabbed the aggrieved, a 16 year old minor, pushed and bumped his head into a window while placing handcuffs on him.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Excessive Force - Deputies 1 and 2 forced the aggrieved to the ground, placed him in a choke hold and placed their foot on his neck while the aggrieved was in handcuffs.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. False Arrest – Deputy 2 arrested the aggrieved, without cause.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure - Deputy 2 failed to Mirandize the aggrieved upon taking him into custody.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure - Deputy 2 and/or 3 took a statement from the aggrieved, a 16 year old minor, without having a parent or guardian present.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Truthfulness – Deputy 2 and/or 3 stated to the complainant that her son was arrested for assaulting a police officer, when the aggrieved and witnesses deny that such an assault took place.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Procedure – Deputy 2 failed to provide any paperwork to the complainant and/or the aggrieved upon the aggrieved's release from custody.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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**11-025**

1. Discrimination/Other – Deputy 1 profiled and/or displayed prejudice toward the complainant due to a “HELLS 21” motorcycle patch he wore.

Board Finding: Not Sustained

Rationale: While on traffic patrol, Deputy 1 observed the complainant exceeding the speed limit. Deputy 1 paced the complainant and confirmed excess speed. Deputy 1 stated that due to the distance, he was unaware of

what the complainant was wearing upon his first visual. Field Interview Reports document prior contacts law enforcement had with the complainant on October 29, 2009 and January 24, 2011, concerning his status as a “Hells Angel supporter”. Law enforcement officers are trained to be cautious and vigilant while taking any law enforcement action. Deputy 1 denied profiling the complainant. There was no tangible evidence to either prove or disprove this allegation.

2. Misconduct/Discourtesy – Deputy 1 said to the complainant, “you threatening me motherfucker”.

Board Finding: Not Sustained

Rationale: The complainant and a witness stated Deputy 1 utilized profanity during this interaction, which is a violation of Sheriff’s Department policy. Deputy 1 denied using profanity during his contact with the complainant. There were no audio recordings of this interaction and no other evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 turned off a tape recorder during his interaction with the complainant so it would not record his use of profanity.

Board Finding: Not Sustained

Rationale: Deputy 1 stated he took out his digital recorder because of threats made by the complainant. The digital recorder was not utilized during this contact and there was no audio recording or other evidence available to either prove or disprove this allegation.

4. Misconduct/Intimidation – Deputy 1 told the complainant, “I know where you live,” “I know where you ride,” and “I just talked to someone that knows more about you then you know about yourself”.

Board Finding: Action Justified

Rationale: Deputy 1 said another deputy heard radio traffic and recognized the complainant’s name. Law enforcement personnel frequently exchange pertinent information during the course of duties for officer safety. The evidence shows the conduct occurred and was lawful, justified and proper.

5. False Arrest – Deputy 1 detained the complainant and his companion for 45 minutes, then issued a speeding violation for going with the flow of traffic in the Number 1 lane, as other vehicles sped past in the Number 2 and 3 lanes.

Board Finding: Action Justified

Rationale: According to the Computer Aided Dispatch records, this event began at 10:33 a.m., and ended at 11:11 a.m.; a length of 38 minutes. Deputy 1 initially observed two motorcycles traveling faster than all other vehicles and estimated their speed to be 80-85 mph. Deputy 1 sped up, got closer and paced them at about 82 mph. The complainant did not deny that he was speeding; only that he was “going with the flow of traffic.” There is no “flow of traffic” rule that allows exemption(s) to the basic speed law. The complainant was issued Citation #547789, for exceeding the posted speed limit; a violation of VC§ 22349, Maximum Speed Limit. The evidence shows the conduct was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 1 performed a “wheelie” upon leaving the scene of this incident.

Board Finding: Not Sustained

Rationale: Deputies are required to operate all vehicles in a careful and prudent manner and obey all departmental orders and laws of the state in the performance of their duties. A witness to this incident stated she heard Deputy 1 leave quickly, but her view was obstructed and she did not visually observe the departure. Deputy 1 said in order to gain freeway speed and for merging purposes, he accelerated quickly as he rode down the right shoulder. Deputy 1 denied that his front wheel left the ground. Without any tangible evidence there are insufficient grounds to either prove or disprove this allegation.

7. Excessive Force – Five Sheriff Patrol vehicles and a motorcycle officer approached the complainant with hands on their weapons without provocation during a routine traffic stop.

Board Finding: Not Sustained

Rationale: Deputies responded to Deputy 1's request for back-up. It is common practice for law enforcement officers to respond in numbers to any given situation. Deputy 1 made first contact and did not recall having his hand on his weapon. As authorized by law, deputies may use physical force in the performance of their duties when the need for such force is legally justified and necessary, as well as reasonably and legally applied. Statements made by the complainant and Deputy 1 are in dispute and there was insufficient evidence to either prove or disprove this allegation.

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**12-007**

1. Misconduct/Discourtesy – Deputy 1 said, “This is my fucking court and I own it!”

Board Finding: Summary Dismissal

Rationale: This incident occurred three days prior to Deputy 1's retirement from the Sheriff's Department on January 26, 2012. CLERB Rules & Regulations 4.1, Jurisdiction states the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. CLERB's authority to investigate this complaint ended with Deputy 1's retirement, because the Review Board can no longer compel cooperation from a former employee.

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End of Report