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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 June 14, 2011 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.sdcountry.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).

DEFINITION OF FINDINGS	
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 (9)

ALLEGATIONS, FINDINGS & RATIONALE

09-063

1. Illegal Search & Seizure - Deputy 1 entered a residence without permission when investigating a noise complaint.

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. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 asked for a homeowner’s date of birth while investigating/arresting for a noise compliant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Excessive Force – Deputy 1 grabbed the arm of a homeowner while investigating a noise complaint.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Excessive Force – Deputy 1 used pepper spray on several people.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. False Arrest – Deputy 1 arrested a person without cause for battering on a peace officer and resisting arrest.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – Deputy 2 made an “unprofessional” comment, as reported in media.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10-040

1. Excessive Force – Deputies 2 and 1 slammed the complainant’s face into the concrete pavement resulting in facial injuries.

Board Finding: Action Justified

Rationale: Deputies 2 and 1 removed the complainant from the patrol vehicle because he was hitting his head on the Plexiglas and kicking the vehicle’s window bars. He was removed from the patrol vehicle to prevent him from injuring himself or causing property damage. As he was taken to the ground and maximum restraints were applied the complainant suffered an abrasion on his right cheek from scraping the gravel on the ground. The evidence shows that the conduct of Deputies 2 and 1 was lawful, justified, and proper.

2. Misconduct/Procedure – Deputies 2 and 1 delayed providing medical treatment to the complainant upon his arrest.

Board Finding: Action Justified

Rationale: Deputies 2 and 1 transported the complainant to San Diego Central Jail immediately after arrest because he had demonstrated that he would be unreasonably difficult for medical personnel to control. The complainant was later medically evaluated and treated at San Diego Central Jail. The evidence shows that the conduct was lawful, justified, and proper.

10-042

1. Misconduct/Procedure – Probation Officer 2 would not explain custody calculations and failed to identify a contact person to the complainant for information related to the Camp Barrett program.

Board Finding: Action Justified

Rationale: Probation Officer 2 advised the complainant that custody calculations were completed by Camp

Barrett administrative staff and that a supervisor would be available to discuss this with her when she visited her son on May 2, 2010. Probation Officer 2 contacted Probation Officer 6 in advance of the complainant's visit and advised that she desired to speak with a supervisor. Probation Officer 2 referred the complainant to the assigned Supervising Probation Officer at Camp Barrett on the date of her visit. The evidence shows that the alleged conduct did occur, but was lawful, justified, and proper.

2. Misconduct/Discourtesy – Probation Officer 6 asked the aggrieved, “What’s your mother’s problem...and obsession (concerning the aggrieved’s release from custody)?”

Board Finding: Not Sustained

Rationale: Probation Officer 6 spoke with the aggrieved in advance of the complainant's May 2, 2010 visit, and asked if he had provided her with his release date information, to which the aggrieved responded affirmatively. Attempts to contact the aggrieved were unsuccessful and there were no witnesses to this conversation to assess the context of the discussion, therefore there is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy – Probation Officer 6 stated to the complainant, “Why don’t you focus on him doing well instead of when and how much time he has left.”

Board Finding: Not Sustained

Rationale: Probation Officer 6 acknowledged that he made such a statement, or words to that effect, to the complainant in an effort to understand that positive or negative behavior would impact her son's release date. There were no witnesses to assess the context of the discussion, therefore there is insufficient evidence to either prove or disprove the allegation

4. Misconduct/Retaliation – Probation Officer 5 made the aggrieved “sit straight up facing a wall” for three to four hours as a form of punishment in response to the complainant's complaint.

Board Finding: Summary Dismissal

Rationale: Probation Officer 5 retired from the Probation Department and is outside CLERB's jurisdiction. Since Probation Officer 5 is no longer employed by Probation Department the Review Board lacks jurisdiction.

5. Misconduct/Procedure – Probation Officer 3 denied the complainant a visit with the aggrieved on Mother's Day after an incident involving Probation Officer 5.

Board Finding: Action Justified.

Rationale: Probation Officer 3 denied the complainant a visit with the aggrieved on Mother's Day because of an incident requiring the aggrieved to be placed in mechanical restraints and transfer to East Mesa Detention Facility. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Procedure – Probation Officer 3 performed a “Take Down” on the aggrieved when he responded to 3's question(s).

Board Finding: Action Justified

Rationale: Probation Officer 3 ordered the aggrieved to follow the “cover” procedure because he had become agitated and resistive. Probation Officer 3 utilized verbal control procedures and the aggrieved complied. There was no force necessary to gain control and handcuff the aggrieved, and once handcuffed the aggrieved was assisted to his feet and escorted for Administrative Removal. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

7. Misconduct/Procedure – Probation Officer 2 failed to include the aggrieved's accomplishments in a recommendation report to the court at a Detention Hearing on March 8, 2010.

Board Finding: Action Justified

Rationale: Probation Officer 2 completed the San Diego County Probation Department Detention/Transfer/Violation Report as required. The hearing in question was set to address probation violations, and as such

school records and “accomplishments” were not appropriate for the probation officer’s reports. Probation Officer 2 advised the complainant that she had an opportunity to introduce school records and accomplishments during the proceedings.

8. Misconduct/Truthfulness – Probation Officer 1 was untruthful with the complainant about probation officer assignments.

Board Finding: Unfounded

Rationale: Probation Officer 1 denied the complainant’s request for the assignment of a new probation officer for the aggrieved’s case and advised the complainant that the aggrieved’s probation officer was responsible for all wards committed to Camp Barrett. After a number of communications, and subsequent to an incident May 9, 2010, the aggrieved was transferred to East Mesa Juvenile Hall and assigned a probation officer responsible for wards committed to that facility. There was no evidence that Probation Officer 1 was untruthful or misrepresented probation officer assignment procedures.

9. Misconduct/Procedure – Probation Officer 4 signed off on Probation Officer 2 report(s) without having knowledge of or an understanding of the recommendations.

Board Finding: Unfounded

Rationale: Probation Officer 4 reviewed, approved, and signed seven separate reports concerning the aggrieved in accordance with Probation Department Policies and Procedures. Probation Officer 4 reviewed the reports for completeness and ensured that recommendations were appropriate. There was no evidence to demonstrate that Probation Officer 4 did not understand the report recommendations prior to affixing approval signatures.

10-047

1. Illegal Search & Seizure – Deputies 1-3 handcuffed the complainant and transported her to Tri-City Emergency room for a psychiatric evaluation.

Board Finding: Summary Dismissal

Rationale: Deputies 1-3 took the complainant into custody and transported her to Tri-City Medical Center based on the evaluation and recommendation of a Psychiatric Emergency Response Team, and there was no prima facie showing of misconduct by Deputies 1-3. The Review Board lacks jurisdiction. The complainant was referred to Psychiatric Emergency Response Team, Inc.

10-048

1. False Arrest – Deputy 1 arrested the complainant for hit and run while driving under the influence.

Board Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction in this matter, and the complainant was referred to the Oceanside Police Department.

2. Criminal Conduct – Deputy 1 tampered with a toxicology sample causing the results to be altered.

Board Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction in this matter, and the complainant was referred to the Oceanside Police Department.

3. Misconduct/Medical – The Sheriff’s Department denied the complainant medication while incarcerated.

Board Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction in this matter, and the complainant was referred to the Sheriff’s

Department.

4. False Reporting – Deputy 1 falsified a police report.

Board Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction in this matter, and the complainant was referred to the Oceanside Police Department.

10-049

1. Misconduct/Procedure – Probation Officer 1 ordered the complainant to sign a blank report; providing no details presented to the court.

Board Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction in this matter, and the complainant was referred to the Public Defender's Office.

2. Misconduct/Procedure – Probation Officer 1 promised the complainant community service in lieu of a fine.

Board Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction in this matter, and the complainant was referred to the Public Defender's Office.

10-053

1. False Arrest – Deputy 1 and Deputy 3 contacted the complainant for a vehicle infraction, but then arrested him for DUI.

Board Finding: Action Justified

Rationale: Deputy 1 conducted a traffic stop after observing the complainant's suspicious driving pattern, and because the complainant's rear license plate lamp was non-operational (a violation of VC§ 24601). Once contacted, Deputy 1 and Deputy 3 determined that the complainant had been driving a motor vehicle while under the influence of an alcoholic beverage and/or drugs, based upon direct observation of the complainant's objective symptoms, the overall performance of his field coordination tests, and the two positive preliminary alcohol screenings. The complainant was subsequently arrested pursuant to the California Vehicle Code sections 23152(a), driving under the influence of alcohol and/or drugs; and 23152(b), driving with a blood alcohol level over .08 percent. The actions of the deputies were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 3 violated the complainant's Civil/Miranda rights.

Board Finding: Action Justified

Rationale: Deputy 3 conducted a field investigation prior to arrest, inquiring into the amount of alcohol the complainant had consumed, as well as requiring him to perform field sobriety tests. These questions and tests can be accomplished without a Miranda admonition. No Miranda warnings are necessary unless both custody and interrogation exist at the same time. There being no further need to interrogate the complainant subsequent to his arrest, the Miranda admonition was unnecessary. The evidence shows that the alleged acts were lawful, justified and proper.

3. Illegal Search & Seizure – Deputy 1 moved the complainant's van.

Board Finding: Action Justified

Rationale: The complainant stopped his vehicle in a no-parking zone. As a courtesy, and in order to avoid the complainant's vehicle being towed or cited, Deputy 1 moved his vehicle to a portion of the street where parking was legal. Moreover, the complainant preferred this action when given the option to either have his vehicle towed to a tow yard where his property would be secured, or having it legally parked and locked at the scene. This action was then lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 3 and/or Deputy 2 laughingly asked the complainant to remove his shoes while he was handcuffed.

Board Finding: Not Sustained

Rationale: Deputy 3 stated that she did not ask the complainant to remove his shoes; that the intake deputy would have asked this question. She further asserts that she did not laugh at the complainant, nor did she observe anyone else laughing at him during booking or at any other time. Deputy 2 did not remember the complainant, nor does he recall his tone or the tone of the other deputies working that night while addressing the complainant. There is then insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 3 performed a forced blood draw on the complainant without consent.

Board Finding: Action Justified

Rationale: Deputy 3 reported that the complainant initially declined providing a blood sample, but as she prepared to read the chemical test refusal admonishment, he reversed his decision, consented to a voluntary blood draw, and no hands-on force was necessary in securing a blood sample. The evidence shows that a blood draw did occur, but was lawful, justified and proper.

6. Discrimination/Other –Deputies 1, 2, and 3 violated the complainant's rights because he is mentally ill.

Board Finding: Unfounded

Rationale: Deputies 1, 2, and 3, as well as the witness deputy, deny that the complainant's rights were violated in any way or for any reason. The deputies involved observed only the overriding substance abuse issues and behaviors that were prevalent that night. The evidence shows that the alleged act or conduct did not occur.

10-067

1. Misconduct/Discourtesy – Deputy 1 refused to offer an apology and/or a handshake after wrongly accusing the complainant of being under the influence.

Board Finding: Summary Dismissal

Rationale: The following CLERB Rules & Regulations apply: Section 4.2 "Misconduct" Defined, Section 9.2 Screening of Complaints, and Section 15: Summary Dismissal. The complainant did not allege facts establishing a prima facie showing of misconduct.

11-034

1. Criminal Conduct – Deputies 1 and/or 2 accessed confidential database(s) to obtain the complainant's personal information.

Board Finding: Unfounded

Rationale: Reserve Deputy 1 denied any violation(s) of Sheriff's policy and an audit of the CLETS, SUN and County local systems were examined by the Department of Inspectional Services (DIS) to conclude no improper searches by any deputies were conducted. The evidence shows the alleged act or conduct did not occur.