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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 August 14, 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 (13)

#### ALLEGATIONS, FINDINGS & RATIONALE

##### 11-062

- Misconduct/Procedure – Probation Officer 1 wrote three Sentencing Reports when the Courts stated that one would suffice.

Board Finding: Action Justified

Rationale: The complainant asked Probation Officer 1 why it was necessary to prepare three Sentencing Reports after the Courts noted they had no objection for a consolidated probation report. Probation Policies and Procedures Manual, Section 4.1, Purpose of Pre-Sentence Reports, states, "Under no circumstances shall two cases be combined in one report. A separate report shall be created for each case number." Probation Officer 1 prepared documents in accordance with Probation Department Policy. The evidence shows the alleged act did occur but was lawful, justified and proper.

- Misconduct/Procedure – Probation Officer 1 performed redundant and unnecessary paperwork for which the aggrieved is financially responsible in restitution.

Board Finding: Action Justified

Rationale: The complainant believed that Probation Officer 1 was performing redundant and unnecessary paperwork which would result in additional costs assessed to her client. Probation Policies and Procedures

Manual, Section 4.1, Purpose of Pre-Sentence Reports, states, "Under no circumstances shall two cases be combined in one report. A separate report shall be created for each case number." Probation Officer 1 prepared three No Opposition to Local Time (NOLT) Reports, abbreviated Pre-Sentence Investigations, which require less work by the Probation Officer and subsequently a workload savings. Assessments, fees, fines, and restitution in the Orders Granting Probation were documented in accordance with California Government and Penal Codes. The charges attributed to preparation of Probation Department pre-sentence investigations and monthly supervision were consolidated in one of the three Orders. The preparation of separate reports was accomplished in accordance with Probation Department Policy and Procedures and the evidence shows the alleged act did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Probation Officer 1 failed to provide pertinent information to the complainant regarding information needed for court preparation.

Board Finding: Not Sustained

Rationale: After discussing the possibility of a consolidated report with Probation Officer 1 the complainant said she was told that she would need to discuss the matter with "higher ups," but was not provided any names or contact numbers to pursue the issue. Probation Officer 1 denied that she made any statement that would have implied the complainant should contact her supervisor, rather Probation Officer 1 believed she had sufficiently explained that policy and procedure for submittal of individual reports and told the complainant that matter should be directed to the court assigned to the case. There were no audio recordings of this communication and no other evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy – Probation Officer 1 failed to communicate during a professional call with the complainant and subsequently hung-up on her.

Board Finding: Sustained

Rationale: The complainant said that Probation Officer 1 was rude in her attitude during their telephone conversation and ultimately hung up on her without warning. Probation Officer 1 said she told the complainant that she had sufficiently addressed the issues of concern. The complainant however, was not satisfied and asked that it be explained again. Probation Officer 1 believed nothing more could be said to satisfy the complainant and terminated the call. San Diego Probation Department Policy 1306.5U, Courtesy, directs employees to exercise courtesy, tact, patience and discretion in the performance of their duties. Probation Officer 1 terminated the contact without warning, the evidence supports the allegation, and the conduct was not justified.

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## **11-067**

1. Misconduct/Procedure – Deputy 2 failed to investigate a suspect when he had knowledge that the reporting party did not immediately report the aggrieved's death.

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. False Reporting – Deputies 1 and 3 stated that Deputy 2 saw the reporting party at the crime scene only "15 minutes before the aggrieved's death was reported," when Deputy 2 stated that he saw him at the scene "Earlier that morning."

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputies 1-4 failed to follow proper crime scene protocols and procedures in processing the decedent’s body.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **11-069**

1. Misconduct/Medical – Medical Staff at Las Colinas Detention Facility has failed to properly understand and treat the aggrieved’s diabetic condition.

Board Finding: Summary Dismissal

Rationale: Medical services at Las Colinas Detention Facility are provided by civilian employees of the Sheriff’s Department. The Review Board lacks jurisdiction over the conduct of this class of employees, and this allegation has been referred to the Sheriff’s Department for further investigation.

2. Misconduct/Procedure – Unidentified deputies have denied the aggrieved access to groups and special classes because of her housing classification.

Board Finding: Action Justified

Rationale: The Jail Population Management Unit deputy at the Las Colinas Detention Facility (LCDF) is tasked to screen, assess and house inmates according to their security level, medical and psychological needs. The complainant was housed in the infirmary (A3) because she had medical problems that required direct observation by medical staff. Pursuant to T.21L of the LCDF Green Sheet policy, inmates housed in Modules A or E are not to be considered for any educational classes or programs, due to their classification restrictions or safety and security issues. When the complainant was housed in other housing units she participated in a variety of programs offered at LCDF. The evidence shows that the act did occur, but was lawful, justified and proper.

3. Misconduct/Harassment – Deputy 2 harassed and encouraged other deputies to harass the complainant.

Board Finding: Not Sustained

Rationale: Deputy 2 denied harassing the complainant or encouraging other deputies to harass the complainant. She reported that while she had several conversations with the complainant, her interactions were never unprofessional or malicious. Absent any witnesses to the alleged misconduct, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Intimidation – Deputy 3 accused the complainant of lying, without cause and threatened to place her in lockdown.

Board Finding: Not Sustained

Rationale: Deputy 3 has been inactive in a Temporary Total Disability status since June 2011, pending the outcome of a final medical evaluation. As such, Deputy 3 was not available to participate in the investigation. Absent contact with Deputy 3, witnesses to this alleged misconduct or an audio recording of this alleged statement, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Intimidation – Deputy 2 stated to the complainant that “I better watch my back ‘cause she is going to write me up any chance she gets,” or words to that effect.

Board Finding: Not Sustained

Rationale: Deputy 2 denied making this statement or using words to that effect. She reported that she did inform the complainant that if she broke the rules she would be written up, but that her actions and contact with the complainant were never unprofessional or malicious. Absent witnesses to this alleged misconduct or audio recordings of this statement, there was insufficient evidence to either prove or disprove the allegation.

- Misconduct/Procedure - Deputy 2 placed the complainant in lockdown without documenting the reason until a few days later.

Board Finding: Action Justified

Rationale: Deputy 2 reported that the complainant was not placed into lockdown (disciplinary isolation), but was placed in an Administrative Segregation Cell on 05-27-2011 for closer medical observation. Pursuant to Section F.5 of the Sheriff's Detention Facility Services Manual of Policies and Procedures, Deputy 2 documented this action on 05-27-2011 in the Jail Information Management System (JIMS). She further provided the complainant a copy of the Segregated Housing Order (Form J-72), per J.3, signed by Jail Population Management Unit staff, dated 05-27-2011. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

- Misconduct/Procedure – Unidentified deputies failed to respond to the complainant's seven emergency calls while she was in lockdown.

Board Finding: Not Sustained

Rationale: The complainant was placed in Administrative Segregation on three separate occasions from April 14 to June 16, 2011. During this period, numerous deputies monitored the segregated housing units. Attempts to contact the complainant, in efforts to narrow the scope of the investigation by identifying when the complainant may have made the emergency calls were unsuccessful. Moreover, there is no recordation of emergency calls from the segregated housing units. There was insufficient evidence to either prove or disprove the allegation.

- Misconduct/Procedure – Deputy 1 stated to the complainant, "You are never allowed back in the infirmary," or words to that effect, because she had previously been removed from that unit.

Board Finding: Not Sustained

Rationale: Deputy 1 denied stating to the complainant that she would never be allowed back in the infirmary. In context, Deputy 1 reported that he informed the complainant that she would not be allowed back in the infirmary on that particular day due to her disruptive and disrespectful behaviors toward medical staff that continued to impede daily medical operations. Given the apparent miscommunication between Deputy 1 and the complainant, and the absence of any witnesses or audio recording of this statement, there was insufficient evidence to either prove or disprove the allegation.

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**11-077**

- Misconduct/Procedure – Deputy 1 did not allow the complainant to shower while in medical isolation.

Board Finding: Sustained

Rationale: The complainant's chest x-ray, taken during the booking process, was determined to be abnormal and required additional laboratory tests to rule out Tuberculosis. He was assigned to a medical isolation unit during the period July 1-15, 2011. The complainant stated he was denied access to a shower during the period July 1-5, 2011. Deputies assigned to the Housing Unit during this time stated they did not deny the complainant the opportunity to shower; however there was no evidence to demonstrate that the complainant was offered an opportunity to shower until July 5, 2011. California Code of Regulations, Title 15, and department procedure L.11, Personal Hygiene, require inmates be allowed to shower after assignment, and at least every 48 hours thereafter. Video surveillance proved that the complainant remained in his cell until July 5 when he was offered day room time and the ability to shower. While in medical isolation, the complainant's Inmate History recorded opportunities to shower only on July 9 and July 12, 2011; time spans which exceeded the 48 hour requirement. Deputy 1 failed to follow Title 15 and department procedure. The evidence supports the allegation and the conduct was not justified.

- Misconduct/Procedure – Deputy 1 did not allow the complainant to make telephone calls while in medical isolation.

Board Finding: Sustained

Rationale: Deputies assigned to the Housing Unit during this time stated that they did not deny the complainant dayroom time or the opportunity to use the telephone; however evidence showed that the complainant was not allowed to leave his cell until July 5, 2011. Inmate History documentation required by San Diego Central Jail procedure J.3.C.1, Segregation did not reflect any Dayroom/Rec Yard activity during the period July 1-4, 2011. The evidence supports the allegation and the conduct was not justified.

3. Misconduct/Procedure – Deputy 1 failed to remove the complainant in a timely manner from isolation after he was medically cleared.

Board Finding: Action Justified

Rationale: The complainant stated he was not moved out of medical isolation after he had been medically cleared. Evidence showed that lab reports to rule out Tuberculosis were received by medical staff on July 13, 2011 yet the Infection Control Nurse did not notify sworn staff until 8:30 am, July 15, 2011. Once notified that the complainant was medically cleared for release from medical isolation he was moved to another unit at 9:08 am, July 15, 2011. The evidence shows the Infection Control Nurse delayed notification to the housing deputy, but once notified, the actions of sworn staff were lawful, justified and proper.

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**11-083**

1. False Arrest - Deputy 1 arrested the complainant.

Board Finding: Action Justified

Rationale: Deputy 1 initiated a traffic stop for an inoperable brake light on the vehicle driven by the complainant. Evidence showed that the complainant's vehicle left brake light was inoperable and upon further investigation Deputy 1 documented objective symptoms and observed behavior which led to the complainant's arrest for violation of Health and Safety Code 11550(a), Driving Under the Influence of a Controlled Substance. The District Attorney dismissed charges against the complainant because, "On the totality of the circumstances, including the negative tox, we decline prosecution." The fact that no charges were issued did not negate probable cause for the complainant's arrest. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure - Deputy 1 towed the complainant's vehicle.

Board Finding: Action Justified

Rationale: At the conclusion of a traffic stop, the complainant's vehicle came to a stop in a traffic lane marked "No Parking." Deputy 1's investigation resulted in the arrest of the complainant for Driving Under the Influence of a Controlled Substance and his vehicle was towed in accordance with California Vehicle Code § 22651(h), Circumstances Permitting Removal of Vehicle, and Department Policy and Procedure 6.37, Towing Policy. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

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**11-086**

1. Misconduct/Procedure: Deputy 1 released confidential information to an unauthorized person without the right or need to know.

Board Finding: Action Justified

Rationale: The complainant believed that Deputy 1 had released her local address and location to parties in a case under investigation. Deputy 1 denied he released the complainant's address to any unauthorized persons; further, he explained to the complainant that it was necessary to provide to the other parties the location in Nebraska where the crime report originated. Evidence showed that requests for the complainant's address were denied, and when asked about the crime report Deputy 1 referred involved parties to the local Nebraska Police Department to request copies of the initial report. The evidence shows that Deputy 1 provided limited

information, but did not offer any personal or confidential information to unauthorized individuals; the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Harassment: Deputy 1 harassed the complainant over civil matters that have reportedly been concluded.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 1 harassed her after the investigation had been completed. Deputy 1 made two telephone calls to the complainant on July 27, 2011 to discuss the final details of her case. At the end of the first call the complainant became frustrated by the line of discussion and abruptly terminated the call by hanging up. Deputy 1 again called the complainant to ensure she understood the case had been closed. The evidence showed that Deputy 1 did contact the complainant on two occasions July 27, 2011 to discuss closure of the case initiated by the complainant; the alleged act or conduct did occur but was lawful, justified and proper.

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## **11-094**

1. False Arrest – Probation Officer 1 “violated” the complainant on two separate occasions.

Board Finding: Action Justified

Rationale: On May 8, 2009 the complainant was arrested by San Diego Police Department (SDPD) for associating with gang members. Probation Officer 1 documented the Report of Re-Arrest per Penal Code 1203.2(a), and cited the violation of probation conditions. On September 28, 2010 SDPD, aware that the complainant had failed to maintain contact with the Probation Department, observed the complainant walking with his girlfriend and a young child. Probation Officer 1 was contacted and responded to the scene. SDPD arrested the complainant for probation violations and Probation Officer 1 prepared the Report of Re-Arrest per Penal Code 1203.2(a), Violation of Probation Terms, citing each condition violated. The evidence showed that Probation Officer 1 processed the complainant’s re-arrest on a number of occasions for violation of probation conditions, the alleged act did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Probation Officer 2 “held” (Recommended) the complainant for felony probation with misdemeanor charge(s).

Board Finding: Action Justified

Rationale: On May 7, 2008 the complainant was arrested by San Diego Police Department and charged with violation of Penal Code §12031(a)(1), Carrying a Loaded Firearm on One’s Person, and Penal Code § 12031(a)(2)(F), Carrying a Loaded Firearm in Public and the person carrying the firearm is not the registered owner. The District Attorney agreed to strike the (2)(F) felony allegation in a plea agreement and the complainant pled guilty to Penal Code §12031(a)(1). On June 26, 2008 the complainant was sentenced to 180 days custody and placed on three years formal probation. Probation violations resulted in the complainant’s arrest on January 7, 2009 and then again on May 8, 2009. The complainant appeared in Superior Court on June 5, 2009 where the Court acknowledged that Penal Code §12031(a)(1) was a misdemeanor offense rather than a felony but made no effort to modify to the terms of formal probation Board by Probation Officer 2. Summary Probation is usually Board for misdemeanor case, however Formal Probation may be Board for both misdemeanor and felony offenses. The evidence showed the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure - Probation Officer 1 utilized his position with the Probation Department to keep the complainant incarcerated.

Board Finding: Action Justified

Rationale: The complainant believed that Probation Officer 1 used his role as a Probation Officer to keep him incarcerated. Deputy Probation Officers are responsible for carrying out assigned duties as received from supervisory levels, and perform a variety of casework and/or institutional rehabilitative services in compliance

with established policy and procedures, to include ensuring that probationers meet the terms of their probation. In each instance the complainant was rearrested for violation of probation terms Probation Officer 1 documented those violations in Probation Officer's Supplemental Reports and Report of the Defendant's Re-Arrest. The evidence showed the alleged act or conduct did occur but was lawful, justified and proper.

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### 11-095

1. Misconduct/Procedure – Senior Probation Officer 1 failed to conduct an ethical and unbiased investigation.

Board Finding: Unfounded

Rationale: S.P.O. 1 was assigned to complete a NOLT report (No Opposition to Local Time) for a hearing on 7/26/11, after the complainant, Cornelius Wynberg, pled guilty to Burglary and Perjury. A review of the NOLT report, probation report dated 4/10/97 for Case SCD120078, the complainant's probation file, S.P.O. 1's handwritten notes, and DA10 records did not support the complainant's assertion of biased or unethical tactics.

2. False Reporting – Senior Probation Officer 1 included inaccurate and/or untrue information in a probation report.

Board Finding: Not Sustained

Rationale: False Reporting is defined as a person who, **with intent to deceive**, knowingly makes a false statement. The investigation found two typographical errors that did not impact the complainant's probation report and were not done with intentional misrepresentation. There was insufficient evidence to prove this allegation.

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### 11-098

1. Death Investigation – Deputies discovered Francisco Molfa unresponsive and not breathing in his cell.

Board Finding: Action Justified

Rationale: There was no complaint of misconduct in this case; however several inmates reported a delayed response by deputies to "man down." Review of all documents contained in the Homicide Detail and surveillance videotape did not reveal evidence of misconduct. Upon finding Molfa, Deputy 2 took appropriate action and summoned assistance. Deputies 1 and 3 responded and began chest compressions. Jail nursing staff arrived and began cardiopulmonary resuscitation efforts. The Fire Department and Paramedics initiated advanced cardiac lifesaving efforts. Molfa was pronounced dead by Scripps Mercy Hospital emergency room staff. An autopsy showed that Molfa died naturally without drugs and/or alcohol in his system. The evidence showed that the actions of Deputies 1-3 were in compliance with applicable Sheriff Policies and Procedures.

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### 11-099

1. False Arrest – Deputy 1 arrested Shannon Bosman and Duran Herwell for Robbery, Theft and Battery.

Board Finding: Summary Dismissal

Rationale: The complainant failed to maintain contact with CLERB and attempts to locate and/or reach him by postal mail or e-mail were unsuccessful.

2. Misconduct/Procedure – Deputy 2 failed to conduct a proper investigation.

Board Finding: Summary Dismissal

Rationale: See rationale #1.

3. Misconduct/Procedure – Deputies 1 and/or 2 refused to respond to and/or return the complainant's telephone

calls.

Board Finding: Summary Dismissal

Rationale: See rationale #1.

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### **12-051**

1. Criminal Conduct – Deputy 1 accessed the complainant’s criminal history and released the information to a family member

Board Finding: Unfounded

Rationale: The complainant believed Deputy 1 accessed her criminal history through his position as a deputy sheriff and provided the information to his sister for use in a TRO (Temporary Restraining Order) against Martinez. The complainant produced no further evidence to support this allegation. Deputy 1 and his sister both denied that information was requested and/or provided, and further stated the complainant’s criminal history is public record. An audit of law enforcement databases by Deputy 1 in a six-month time range involving the complainant’s name with date of birth, yielded negative results. The evidence shows that the alleged act or conduct did not occur.

2. Misconduct/Procedure – Deputy 1 accessed the complainant’s records.

Board Finding: Sustained

Rationale: Sheriff employees are not to use any computerized informational source(s) for anything other than the performance of official duties. Deputy 1 admittedly accessed the Jail Information Management System (JIMS) for information related to the complainant for personal use, and was in violation of Sheriff’s Policy 7.6, Use Of CLETS-NCIC-ARJIS And Local Information. Deputy 1 denied that he provided the results of his records search to anyone. The evidence supports the allegation and the act or conduct was not justified.

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### **12-066**

1. Criminal Conduct – Deputy 1 ran a background check on the complainant and released the information to a family member.

Board Finding: Unfounded

Rationale: Deputy 1 refuted this allegation and an audit of Sheriff’s department databases corroborated that the alleged act or conduct did not occur.

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### **12-071**

1. Criminal Conduct – Deputies 1 and 2, without permission, audio-recorded and/or video-recorded the complainant and/or took pictures of the complainant’s mother during custody exchanges.

Board Finding: Summary Dismissal

Rationale: The complainant confirmed all incident(s) occurred while the deputies were off-duty. CLERB only has jurisdiction over actions arising out of the performance of the Peace officer's or custodial officer's official duties. The complainant was referred to the Sheriff’s Internal Affairs division.

2. Misconduct/Intimidation – Deputy 2 “uses his knowledge of the system” and/or a loud voice to intimidate the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant confirmed the incident(s) occurred while the deputy was off-duty. CLERB only has jurisdiction over actions arising out of the performance of the Peace officer's or custodial officer's official duties. The complainant was referred to the Sheriff's Internal Affairs division.

3. Misconduct/Harassment - Deputies 1 and 2 harassed the complainant and/or her mother.

Board Finding: Summary Dismissal

Rationale: The complainant confirmed all incidents occurred while the deputies were off-duty. CLERB only has jurisdiction over actions arising out of the performance of the Peace officer's or custodial officer's official duties. The complainant was referred to the Sheriff's Internal Affairs division.

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