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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

555 W BEECH STREET, SUITE 505, SAN DIEGO, CA 92101-2940  
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### REGULAR MEETING AGENDA

### TUESDAY, JANUARY 13, 2015, 5:30 P.M.

### San Diego County Administration Center

### 1600 Pacific Highway, Room 302/303, San Diego, 92101

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the 3-hour public parking spaces.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

#### DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

#### WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 555 W Beech Street, Ste. 505, San Diego, CA.

#### 1. ROLL CALL

#### 2. MINUTES APPROVAL

- a) Minutes of the December 2014 Regular Meeting (*Attachment A*)

#### 3. PRESENTATION / TRAINING

- a) N/A

#### 4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

#### 5. NEW BUSINESS

- a) Election Nominations for the 2015 CLERB Executive Board

-continued on next page-

**6. UNFINISHED BUSINESS**

- a) N/A

**7. BOARD MEMBER COMMENTS**

**8. PUBLIC COMMENTS**

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

**9. SHERIFF / PROBATION LIAISON QUERY**

**10. 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). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

| <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 (7)**

**ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE**

**12-055**

- 1. Death Investigation/Officer-Involved Shooting – Deputy 1 shot and killed Elwood Edwards.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing in this death investigation; a review was conducted in accordance with CLERB Rules & Regulations 4.6, Citizen Complaint Not Required: Jurisdiction with Respect to Actions involving Death. The decedent was visiting a childhood friend when he began to demonstrate a number of strange and bizarre behaviors. Without cause, he punched this friend in the face, and ran down the street throwing rocks and bricks at passing cars. The decedent arrived at a local convenience store, where he threw a brick through the store’s front window, and through the back window of a truck parked in the store’s lot. He entered the store, threw items around and overturned counters and display racks, sending frightened customers and employees fleeing from the store. After leaving the store and engaging in physical confrontations with several citizens, the decedent secured a 4-foot long, jagged stick, which Deputy 1 described as a “spear,” and lunged at Sheriff’s Deputies and Oceanside Police Officers during a standoff. The decedent failed to comply with deputies’ orders to drop the jagged stick, and began to aggressively approach Deputy 2. Deputy 1 feared that the decedent would injure or kill Deputy 2 with the jagged weapon, so he fired one round into the subject, fatally wounding him. Officers began lifesaving measures before medical personnel responded, but the subject was declared dead at the scene. Less lethal force options had been considered, but were either

unavailable, or assessed to be potentially ineffective. The discharge of a firearm by Deputy 1 was legal, justified and proper under the Sheriff's Department's Policies & Procedures, and state law. There is no evidence to support any allegation of misconduct against Sheriff's Department personnel.

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### **12-108**

1. Death Investigation/Traffic – Deputy 1 collided with the decedent, Jose Alfredo Malacara, resulting in his death.

Recommended Finding: Sustained

Rationale: Deputy 1 observed a vehicle straddling two lanes of traffic, believed the driver may have been under the influence, and accelerated to speeds in excess of the posted speed limit to close a gap between the vehicles. The decedent walked onto the roadway from the median, between intersections controlled by signal devices in violation of the California Vehicle Code, and was fatally struck by Deputy 1's patrol vehicle. The Medical Examiner determined that the cause of death was multiple blunt force trauma, and the manner of death was classified as Accident. The evidence showed that Deputy 1 violated Department Procedure 5.1, Non-Emergency and Emergency Vehicle Operation, when he operated his patrol vehicle in excess of the posted speed limit, and the act was not justified.

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### **14-010**

1. Misconduct/Harassment – Deputy 2 parked near and surveilled the complainant's two residences on multiple occasions.

Recommended Finding: Not Sustained

Rationale: The complainant reported that on four separate occasions, unidentified deputies parked two to three houses away from her two rental residences, and surveilled these residences without cause. Some of this information was provided to the complainant by tenants in her residences. She contacted the Sheriff's Department and was informed that deputies were simply increasing patrol in her area; that no surveillance was being conducted at her particular residences. Department dispatch records from the dates and locations reported by the complainant were requested; but per Department records, there were no calls for service to or regarding the complainant's two addresses, on or around those dates reported. The complainant did not provide any evidence to support her claims, leaving insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 2 offered the complainant's tenant immunity for information against the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that an unidentified deputy, on an unspecified date, offered the complainant's tenant immunity for information against her. This former tenant has relocated, and the complainant was unable to provide current contact information on her for further inquiry. This complaint lacks an identified deputy; a specified incident date, and a key witness to this alleged misconduct, warranting a finding of summary dismissal.

3. Misconduct/Discourtesy – Deputy 1 called the complainant a "slum lord."

Recommended Finding: Not Sustained

Rationale: The complainant alleged that during a call for service to one of her rental residences, regarding a landlord-tenant dispute, Deputy 1 called her a "slum lord." Deputy 1 denied calling the complainant a slum lord, stating that in context, he described to the complainant that her rental practices would fit the definition of a slum lord. Absent an audio recording of this statement and its context, it cannot be determined if the statement was a violation of the department's courtesy policy, as there is insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 1 stated that the complainant’s tenants were “low lives.”

Recommended Finding: Sustained

Rationale: The complainant reported that during a call for service, Deputy 1 stated to her that her tenants were “low lives.” Deputy 1 acknowledged that he made this statement, and provided reasons as to why the statement was made. Despite his rationale, this statement constituted a violation of Policy 2.22, Courtesy, which directs that deputies not use rude or disrespectful language during the course of their duty. The evidence supported the allegation and the act or conduct was not justified.

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**14-022**

1. Misconduct/Procedure – Deputies questioned/interrogated the complainant without Miranda.

Recommended Finding: Action Justified

Rationale: The complainant reported that he was kept at the scene for over three hours and questioned and interrogated without being mirandized. Deputies 2, 3 and 4 were the initial responders, but contacted area detectives due to the nature of the reported crime(s). The complainant was placed in a patrol vehicle, without questioning, pending the arrival of station detectives. Deputy 1 responded and reported that he read the complainant a Miranda admonishment and the complainant agreed to speak; however, the interview was never done by the detective because of the complainant’s report of injury and subsequent medical treatment. The evidence showed Deputy 1’s conduct was lawful, justified and proper.

2. Misconduct/Procedure – Deputies extensively detained the complainant in a patrol vehicle without proper ventilation.

Recommended Finding: Action Justified

Rationale: The complainant said he was placed into a patrol car with the windows sealed shut and no ventilation for over two hours, while deputies investigated, waited on a detective, and took statements from the alleged victim. CAD records stated that deputies had a prisoner at 3:29 pm, detectives arrived on scene at 4:18 pm, followed by the fire department at 4:44 pm, and the complainant was transported to a hospital at 5:00 pm. The complainant was a suspect, and was placed into a patrol vehicle to be kept separate from his victim, while deputies conducted their investigation. Deputies 2 and 3 explained that the patrol vehicle windows were rolled up because the air conditioner was on at maximum level. The evidence showed the deputies’ actions were lawful, justified and proper.

3. Misconduct/Procedure – Deputies initially ignored the complainant’s repeated medical requests for a head injury.

Recommended Finding: Action Justified

Rationale: The complainant said he continually complained of being dizzy and injured earlier in the day, but all deputies ignored his complaints and requests for medical attention. Deputies 3 and 4 refuted this accusation. Deputy 2’s initial contact with the complainant was absent any issues, but when later informed by the complainant that he needed medical assistance, it was immediately requested. Deputy 1 said he contacted the complainant for questioning and was not made aware of any complaints, but observed the complainant to be sweaty, slumped down and spoke in a low volume, so he awaited paramedic’s arrival. Medical records indicated the complainant had mild bruising on his cheek and forehead. The evidence showed the deputies’ actions were lawful, justified and proper.

4. Misconduct/Procedure – Deputies refused to press charges against a person who assaulted the complainant.

Recommended Finding: Action Justified

Rationale: The complainant said he was assaulted earlier in the day by the alleged victim and made numerous complaints to all deputies that he wanted to press charges, but they would not let him. Deputies said the complainant reported that he was struck by the victim while talking to her, but there were no facts or evidence

to suggest that he was ever a victim. The deputies determined that the complainant was struck by the victim while trying to climb into her window without permission, and they had enough evidence to place him under arrest. The evidence showed the alleged act or conduct that occurred was lawful, justified and proper.

5. Misconduct/Procedure – Deputies stole the complainant’s property and gave it away without consent.

Recommended Finding: Action Justified

Rationale: The complainant said deputies stole his property and gave it away without his consent. The victim reported and described several missing items from her home. When Deputy 3 contacted the suspect, he was given verbal consent by the complainant to search his person for weapons and contraband. Deputy 3 confiscated prescription pills and memorabilia that belonged to the victim, and returned these items to their rightful owner. The evidence showed the deputies’ actions were lawful, justified and proper.

6. False Arrest – Deputy 2 arrested the complainant for criminal threats, but the charges were dropped.

Recommended Finding: Action Justified

Rationale: The complainant said he was booked for “criminal threats,” but when he went to court, the DA dropped his charges, so he believed he was “falsely accused and charged.” Based on the on-scene investigation, deputies determined that there was probable cause for a warrantless arrest and the complainant was taken into custody. The complainant was on state parole and wearing a GPS ankle bracelet at the time of his arrest. He was found to be in violation of his parole and criminally responsible for the charges. The District Attorney's Office referred this case to State Parole for disposition in lieu of bringing forth charges in a new case. The complainant pled guilty and is currently serving a prison sentence for his crimes and violation of his parole. The evidence showed the complainant’s arrest was lawful, justified and proper.

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**14-084**

1. Excessive Force – Deputies 1 and 2 kicked, punched and broke the complainant’s ribs on June 25, 2014.

Recommended Finding: Summary Dismissal

Rationale: The complainant has repeatedly refused to sign the required forms in the CLERB complaint packet; primarily, a release form necessary to access medical records to corroborate evidence of alleged injury. The complainant was contacted multiple times and maintains refusal to cooperate with the CLERB process, preventing a thorough or accurate investigation.

2. Discrimination/Sexual - Deputy 2 has “continually sexually harassed” the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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**14-120**

1. Excessive Force – Deputy 1 “battered” and “assaulted” the complainant, and then “covered it up” by throwing the complainant “in the hole.”

Recommended Finding: Summary Dismissal

Rationale: The complainant has refused to sign a required form in the CLERB complaint packet; namely, a Request/Agreement, which allows for the initiation of a CLERB investigation. The complainant’s refusal to provide this documentation interferes with CLERB’s ability to initiate and conduct a thorough investigation into his complaint, and is submitted to the Board for Summary Dismissal.

2. False Report – Deputy 2 wrote a false report to justify placing the complainant “in the hole.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 2 failed to inform the complainant regarding his length of placement “in the hole” until 4 days later.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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**14-140**

1. Misconduct/Discourteous – Deputy 1 was “unnecessarily aggressive” and uncivil” toward the complainant while conducting a traffic stop.

Recommended Finding: Summary Dismissal

Rationale: The complainant was cited by an officer with the California Highway Patrol, over whom CLERB has no jurisdiction. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

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*End of Report*