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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

555 W BEECH STREET, SUITE 505, SAN DIEGO, CA 92101-2940  
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775  
www.sdcounty.ca.gov/clerb

### FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its January 14, 2014 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 / Officer Discipline Recommendation:** 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).
- 12-102 / Steinmetz (Sustained – Deputy 3)

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 (19)

#### ALLEGATIONS, FINDINGS & RATIONALE

#### 12-123

1. Misconduct/Procedure – Deputy 3 applied handcuffs that were too tight on the complainant.

Board Finding: Not Sustained

Rationale: The complainant said the handcuffs were so tight it felt like knives were cutting through his wrists. Deputy 3 said he checked the complainant's handcuffs for proper fit as required by Sheriff's policy that stipulates that one finger must fit between a prisoner's wrist and the handcuff. Deputy 3 and other deputies on scene denied hearing any complaints of tightness from the complainant. Medical documentation noted a healed linear cut on the complainant's right wrist, but did not state when the injury occurred. There was insufficient evidence to prove or disprove this allegation.

2. Misconduct/Procedure – Deputy 3 escorted the handcuffed complainant by pulling down on the handcuffs and causing pain and injury.

Board Finding: Not Sustained

Rationale: Videotape evidence supported the complainant's assertion, but guiding/controlling a handcuffed prisoner is permissible as reported by Deputy 3. What cannot be determined is whether this technique was done per policy as reported by the deputy, or to promote pain as alleged by the complainant. There is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 3 kicked the complainant's legs apart causing pain to his groin.

Board Finding: Not Sustained

Rationale: The complainant stated this action occurred prior to entering the multipurpose room. Deputy 3 acknowledged kicking the complainant's legs apart during a pat-down search for contraband. Again, what is uncertain is if the action was done per policy as reported by the deputy, or to promote pain as alleged by the complainant. There is insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 3 sat the complainant on the floor, said “derogatory words,” and kicked him again.

Board Finding: Not Sustained

Rationale: The complainant did not specify the derogatory terminology exchanged and there was no audio recording available for review. A kick was not detected during review of the video recording, but Deputy 3 acknowledged kicking the complainant for re-direction after the complainant moved toward the deputy while he was attempting to remove a handcuff. There was insufficient evidence to either prove or disprove discourtesy.

5. Misconduct/Procedure – Deputy 3, while un-handcuffing the complainant, pulled his arms up causing pain.

Board Finding: Sustained

Rationale: Video evidence corroborated Deputy 3 lifting the complainant's handcuffed arms up behind his back as asserted by the complainant. Sheriff's Policy and Procedure 2.48, Treatment of Persons in Custody, states that employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Deputy 3 reported that he performed this action in order to remove the complainant's handcuffs, but the evidence supports the allegation and the act or conduct was not justified.

6. Excessive Force/Handcuffs – Deputy 3 twisted the complainant's handcuff so tight his right wrist bled.

Board Finding: Sustained

Rationale: The complainant said Deputy 3 took one cuff off and then twisted the other so hard that blood ran down his arm. Deputy 3 reported that he only rotated the complainant's wrist for handcuff removal and denied checking for and/or seeing any injuries. Although undetectable on surveillance video, a review of medical records documented scabbed areas on the complainant's right wrist and noted healed linear cuts on both sides of his right wrist. Removal of handcuffs by a deputy should not cause injury. The medical evidence supports the allegation and the act or conduct was not justified.

7. Misconduct/Procedure – Deputy 3 left the injured complainant alone and without medical attention.

Board Finding: Sustained

Rationale: Surveillance video corroborated that deputies left the complainant in a multipurpose room for almost two hours. Sheriff's policy mandates that all uses of force be documented and that prisoners must be evaluated for any resulting injuries. Deputy 3 did not report any force and therefore the complainant did not receive medical treatment on the date of the incident. The complainant then submitted Inmate Grievances to report Deputy 3's behavior and injuries he sustained. A Sergeant responded to the complainant's grievance on October 9 and ordered the complainant medically evaluated. Medical records documented scabbed areas and also noted healed linear cuts on lateral and medial sides of the right wrist. Two days later, x-rays confirmed that the complainant also sustained a fractured scaphoid bone. The evidence supports the allegation and the act or conduct was not justified.

8. Misconduct/Intimidation – Deputy 3 told the complainant, “I’m going to put your name in our database so I can pump all my bullets into your chest and won’t nothing happen to me.”

Board Finding: Not Sustained

Rationale: There was no audio recording available to corroborate the statement as alleged. However, a review of the video showed Deputy 3 bent over and seemingly speaking into the complainant’s left ear as he stood over him in a position of power. Deputy 3 admittedly had a conversation with the complainant, but disputed Townsend’s testimony. There is insufficient evidence to support either version of this one-on-one conversation.

9. Misconduct/Procedure – Deputy 1 observed Deputy 3 mistreating an inmate and failed to take any action.

Board Finding: Not Sustained

Rationale: Deputies 1 and 2 provided cover to Deputy 3 during escort to a multipurpose room. Deputy 1 then provided cover to Deputy 3 in the multipurpose room, to Deputy 2 who was at the Module 8D door conducting day count, as well as a trainee deputy who he was responsible for monitoring. Video evidence corroborated Deputy 1 being present in the multipurpose room intermittently. Deputy 1 reported hearing the complainant make death threats toward deputies, and also the corrective action taken by Deputy 3 to protect himself from an assault. Deputy 1 denied the complainant received any type of mistreatment. There is insufficient insufficient evidence to prove the allegation.

10. Misconduct/Procedure – Deputy 2 observed Deputy 3 mistreating an inmate and failed to take any action.

Board Finding: Not Sustained

Rationale: Deputies 1 and 2 provided cover to Deputy 3 during escort to a multipurpose room. Once there, Deputy 2 was engaged in other duties outside of the multipurpose room. Video evidence showed a deputy, most likely Deputy 2, at the doorway of the multipurpose room, but never entering the room. Because there was no audio recording, it is also unknown what, if anything, Deputy 2 heard with respect to this incident. There was insufficient evidence to either prove or disprove the allegation.

11. Misconduct/Procedure – Deputy 4 did not respond to the complainant’s Inmate Grievance concerning this event.

Board Finding: Action Justified

Rationale: The complainant reported that he was told on several occasion that his complaint was forwarded to IA for investigation and he was interviewed by a detective, but did not receive any final disposition. Detentions Policy N.1, Grievance Procedures, requires evaluation of the grievance to determine the action required. On three occasions, Detentions supervisors advised the complainant in writing, that his grievance was a complaint against staff and was forwarded to IA for investigation. Internal Affairs personnel were questioned and responded that an IA complaint was initiated, investigated, and almost finalized; upon completion the complainant will be informed of their findings. The evidence shows Sheriff’s policy was properly applied.

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## 12-124

1. False Arrest – Deputy 1 arrested the complainant after his friend lied about an assault.

Board Finding: Action Justified

Rationale: Deputies 1 and 2 responded to a report of domestic violence. The victim stated she lived with the complainant and they had sexual relations, which the complainant denied. Deputies recovered a 5' copper pipe that the victim said was used by the complainant to strike her knees and legs. Deputies observed several old bruises on the victim and arrested the complainant as the dominate aggressor. The complainant said his charges were later reduced. Deputy 3 was the detective assigned to this case, but reportedly did not have any contact with either the suspect or victim. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

2. Illegal Seizure – Deputies 1 and 4 towed the complainant’s RV (recreational vehicle).

Board Finding: Action Justified

Rationale: Deputies 1 and 4 were unable to secure the complainant’s unlocked motor home that was in a high crime area and resting on blocks in the street. To prevent vandalism and/or theft, the vehicle was towed per VC§ 22651, Circumstances Permitting Removal of Vehicle / Driver Arrested. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 mishandled and/or broke the complainant’s property.

Board Finding: Not Sustained

Rationale: The complainant said deputies took his “copper spiritual walking staff” and “ground the quartz crystal tip in to the ground” then “flared out the end of it by smacking it on the pavement.” The walking stick was a copper pipe that the victim identified as the weapon used by the complainant to abuse her. The pipe was seized, photographed, and placed into evidence at the Vista Patrol Station. Deputy 1 noted there was “no property damage.” There is insufficient evidence to either prove or disprove the deputies mishandled the complainant’s property.

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## 12-125

1. Misconduct/Discourtesy – Deputy 1 “verbally assaulted” the complainant and his character.

Board Finding: Not Sustained

Rationale: The complainant confronted Deputy 1 about his “attitude.” Deputy 1 told the complainant not to give him attitude or do anything stupid, after the complainant punched a holding cell door. The complainant allegedly responded with “I am stupid.” There is dispute over the context and terminology used by both parties. Absent any audio recording of this conversation, there is insufficient evidence to support either side.

2. Excessive Force – Deputy 1 “smashed” the complainant into a wall and “bounced him off the concrete floor, resulting in fractured glasses and pain to Pennington’s head, ankle, and hip.

Board Finding: Action Justified

Rationale: Deputy 1 reported the complainant punched his cell door in protest of not immediately receiving requested food. The deputy and inmate engaged in discussion until the complainant raised his hand near the deputy’s head in an aggressive motion. Deputy 1 used a wall to gain control of the complainant, and then took him to the ground for handcuffing. Surveillance video recordings corroborated some of these actions. Deputies are permitted to use force to overcome perceived resistance. Medical records documented that the complainant suffered a laceration/scratch on his chin. Deputy 1’s actions were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 failed to provide medical attention to the injured complainant after a use of force incident.

Board Finding: Action Justified

Rationale: The complainant said he was taken to a holding cell for 27 hours and received no medical attention. Following his takedown by Deputy 1, the complainant refused to follow instructions and stand on his own. Deputies restrained the complainant until jail medical staff evaluated and treated him for a minor laceration under his chin. The complainant’s injury did not require stitches and a bandage was applied. The complainant alleged further injury following this incident and was again evaluated by medical personnel two days later, at which time the chin laceration was documented as healed. Medical staff reported no signs or symptoms of trauma, but treated the complainant for “muscle strain.” The evidence shows the alleged act or conduct that occurred was lawful, justified and proper.

1. Illegal Seizure – Deputy 2 detained the aggrieved without reasonable suspicion.

Board Finding: Sustained

Rationale: Deputy 2 was on foot patrol at a high school football game when he heard the aggrieved yell from the stands, “Look, here’s what we pay our tax dollars for.” ~~Deputy 2 exerted legal authority when he directed the aggrieved to leave the stands and accompany him to see the school principal; however he failed to articulate specific facts to establish reasonable suspicion of criminal activity. Deputy 2 believed the aggrieved’s statement was not normal behavior for a child unless they were under the influence of a substance, asking for help in a concealed manner, or needing medical assistance.~~ He said he contacted the aggrieved to conduct an investigation to determine if the aggrieved had violated Penal Code § 647(f), Disorderly Conduct, yet, there was no supportive evidence to demonstrate any attempt to determine if the aggrieved had been unable to exercise care for his own safety or the safety of others, by reason of being under the influence of any substance. For an investigative stop or detention to be valid, there must be reasonable suspicion that criminal activity may be afoot and the person detained is connected with that possible criminal activity. Arrest reports failed to articulate any specific facts to establish reasonable suspicion of criminal activity by the aggrieved. The evidence supports the allegation that Deputy 2 unlawfully detained the aggrieved, and the act was not justified.

2. Excessive Force – Deputy 2 grabbed the aggrieved by the arm and pulled him from the bleachers.

Board Finding: Not Sustained

Rationale: Deputy 2 reported that he directed the aggrieved to leave the bleachers and accompany him to see the school principal, and the aggrieved refused. Deputy 2 entered the bleachers and placed a hand on the aggrieved’s shoulder, which caused him to pull away. A verbal command repeated the third time resulted in compliance. The complainant acknowledged Deputy 2’s authority and agreed to go with him to see school officials. No independent witnesses came forward to corroborate the extent of force required to remove the aggrieved from the bleachers; there was insufficient evidence to either prove or disprove this allegation.

3. Excessive Force/Other – Deputy 2 grabbed the aggrieved by the arm and threw him to the ground.

Board Finding: Action Justified

Rationale: Deputy 2 stated the aggrieved repeatedly raised his hands near the deputy’s face; a behavior which he deemed active resistance and cause for potential injury. The aggrieved stated that when directed, he complied with direction to lower his hands, and to keep them out of his pockets, yet Deputy 2 forcefully slammed him to the ground. Deputy 2 reported that force was used to take the aggrieved to the ground because he failed to comply with commands. The force used was reasonable and necessary for the circumstances as authorized by the Department’s Use of Force Policy. The evidence showed that the alleged act did occur but was lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 2 yelled at the aggrieved and said, “Shut your fucking mouth and do as I say,” or words to that effect.

Board Finding: Sustained

Rationale: Deputy 2 acknowledged he made such a statement. The aggrieved admittedly told Deputy 2, “Stop fucking grabbing me, I will go with you, just don’t grab me.” Deputy 2 said he made the statement or words to that effect, when he responded in kind to facilitate his interview; however, Sheriff’s Department Policy 2.22, Courtesy, prohibits employees from using coarse and profane language during the performance of their duties. The evidence supports the allegation, and the act or conduct was not justified.

5. Excessive Force/Carotid Restraint – Deputy 2 used a choke hold on the aggrieved.

Board Finding: Not Sustained

Rationale: Deputy 2 said that he placed a hand on the aggrieved’s chest and took him to the ground, and denied using any type of choke hold during his contact with the aggrieved. The complainant stated that Deputy 2 threw

a hand at his neck with painful force and forcefully took him to the ground. There were no independent witnesses to corroborate the extent of the force used, and there was insufficient evidence to prove or disprove this allegation.

6. Misconduct/Discourtesy – Deputy 1 told the aggrieved, “You are never going to come to this school again,” or words to that effect.

Board Finding: Not Sustained

Rationale: Deputy 1, responding as the School Resource Officer, denied making the alleged statement. An Assistant School Principal was on scene and indicated that the aggrieved would be suspended from school because of the incident with Sheriff Deputies. Deputy 1 stated he relayed the information about the suspension to the complainant and the aggrieved. There were no independent witnesses to corroborate the conversation between Deputy 1 and the aggrieved, and there is insufficient evidence to prove or disprove this allegation.

7. Misconduct/Procedure – Deputy 3 did not provide the complainant with requested information about the incident involving the aggrieved.

Board Finding: ~~Action Justified~~ Not Sustained

Rationale: Deputy 3 stated that when asked by the complainant, she provided the information requested. The complainant requested the first names of those involved and Deputy 3 stated she offered only the rank and last names, spelling the last names for her. Department Procedure 2.20, Identification, did not require that first names be provided upon request. The evidence showed that the alleged act did occur but was lawful, justified and proper.

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## **12-136**

1. False Arrest – Deputy 3 arrested the complainant for Domestic Violence.

Board Finding: Action Justified

Rationale: Deputies 1-3 responded to a 911 call from the complainant’s wife. The victim reported domestic violence battery by her spouse, while he was under the influence of marijuana and alcohol. Deputies obtained a statement and observed injuries to the victim. Deputies contacted the complainant, who stood in his open doorway holding a beer can, and observed him exhibiting signs/symptoms of intoxication. Deputy 3 placed the complainant under arrest per 836(a)(2) PC, Peace Officer Arrests, which allows a felony suspect to be arrested without a warrant. An Emergency Protective Order was granted to the victim and is currently in effect until 2015. The evidence shows the alleged act did occur and was lawful, justified and proper.

2. Excessive Force – Deputies 1, 2 and/or 3 used force resulting in injury to the complainant.

Board Finding: Unfounded

Rationale: The complainant did not specify force used, but provided medical records for a rotator cuff injury. Sheriff’s medical personnel evaluated the complainant following his arrest. There was no documentation of the complainant reporting, or medical staff observing, any injuries. Following his release from jail a week later, the complainant said he experienced pain after deputies slammed him to the ground injuring his left arm, and that he was diagnosed with a rotator cuff injury. Deputies denied utilizing force other than that addressed in Allegation #3. Furthermore, the complainant was admittedly intoxicated and under the influence of marijuana at the time of the incident. A preponderance of evidence does not support this alleged act and there is no evidence to support that the conduct occurred.

3. Excessive Force – Deputy 1 used OC spray against the handcuffed complainant.

Board Finding: Action Justified

Rationale: The complainant said his handcuffs were too tight so he kicked the car door to alert deputies and they responded by using OC spray. Once deputies effected an arrest and placed the inebriated complainant into a

patrol car, he began to kick at a passenger window. Deputy 1 gave the complainant several orders to stop, but the complainant responded with profanities and continued kicking. Deputy 1 then deployed a three-second burst of Oleoresin Capsicum (O.C.) to prevent the complainant from damaging the patrol vehicle and/or injuring himself. Sheriff's Policy 2.49, Use of Force, and the Use of Force Guidelines allow deputies to use nonlethal chemical agents in an offensive manner, even on handcuffed subjects, when their presence and verbal commands have been ineffective. The Fire Department was called to the scene to assist with decontamination, but due to the complainant's belligerent behavior they were unable to treat him. The evidence shows Deputy 1's conduct was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 3 went to the George Bailey Detention Facility to inquire about an incident and read the complainant his Miranda Rights.

Board Finding: Action Justified

Rationale: The complainant said he was Mirandized and then referred Deputy 3 to his attorney. Deputy 3 went to the detention facility to obtain a statement from the complainant, and read the Miranda admonishment from his notepad. When the complainant declined to speak with him, Deputy 3 ended the interview and left. The evidence shows Deputy 3's conduct was lawful, justified and proper

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### 12-137

1. Misconduct/Procedure – Deputy 1 failed to provide necessities to the complainant while in a holding cell for an extended period of time.

Board Finding: Summary Dismissal

Rationale: The complainant's contentions stem from general jail house conditions versus specific deputy misconduct. The complainant offered no evidence to support his allegations, and based upon his prior CLERB complaints, his credibility is in dispute. The complaint lacks merit.

2. Misconduct/Procedure – Deputy 2 breached security and released inmate(s) during lockdown who congregated and did drugs with other inmates.

Board Finding: Summary Dismissal

Rationale: The complainant identified two potential witnesses who could not be located and/or failed to cooperate with the CLERB investigation. The complainant offered no evidence to support his allegations and based upon his prior CLERB complaints his credibility is in dispute.

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### 12-140

1. False Arrest – Deputy 2 arrested the complainant after her estranged spouse falsely reported she had a weapon.

Board Finding: Action Justified

Rationale: Deputy 2 denied that the complainant was arrested for possession of a weapon. The complainant's husband called Sheriff's Communications to report a family disturbance, and the complainant acknowledged that she had picked up a corkscrew as a defensive measure during the argument. Deputy 1 and 2 responded to the family disturbance and contacted both parties. The complainant's husband reported an incident from the previous night alleging that the complainant broke a glass and cut a television cable, and signed a Citizen Arrest Declaration citing violation of California Penal Code § 594(b)(2)(A), Malicious Mischief; Vandalism. Upon contact, the complainant resisted Deputies 1 and 2 as they attempted to take her into custody. Deputy 2 cited the complainant for violation of California Penal Code § 148, Resist, Obstruct, Delay of Peace Officer because she was uncooperative, had pushed deputies, and resisted during a lawful detention. The evidence showed the arrest for violations of Penal Code §§ 148(a)(1) and 594(b)(2)(A), did occur, and was lawful, justified and proper.

2. Excessive Force – Deputies 1 and 2 “slammed the 70-year-old complainant's head into the ground.”

Board Finding: Action Justified

Rationale: The complainant stated the Deputies grabbed her arms and twisted them behind her back, and forcefully took her to the ground. Deputies 1 and 2 reported the complainant was uncooperative and refused to comply with Deputies' orders preventing them from gaining control. Deputy 2 used a department approved leg sweep to take the complainant to the ground so that she could be placed in handcuffs. Once in custody, the complainant told Deputies she did not require medical attention, and she later advised Sheriff's Detentions staff that she had not been injured in the 72 hours preceding arrest. After release, the complainant experienced headaches and sought treatment from a local medical facility. Deputies are permitted to use force to overcome resistance and effect an arrest. The evidence showed force used was reasonable and necessary, and was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 applied handcuffs that were too tight.

Board Finding: Not Sustained

Rationale: Deputy 2 denied the handcuffs were applied too tightly. The complainant stated the Deputies grabbed her arms and twisted them behind her back, forcefully took her to the ground, and put her in handcuffs. Deputy 2 and other deputies on scene denied hearing any complaints of tightness from the complainant. There was insufficient evidence to prove or disprove this allegation

4. False Reporting – Deputies 1 and 2 did not correctly describe events in their police reports.

Board Finding: Not Sustained

Rationale: Deputies 1 and 2 stated that their reports were truthful and accurate. The complainant cited a number areas of debate in the events reported, but provided no evidence to corroborate her beliefs. There was insufficient evidence to prove or disprove this allegation.

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**12-144**

1. False Arrest – Deputy 1 arrested the complainant for being under the influence of a controlled substance.

Board Finding: Action Justified

Rationale: Deputy 1 responded to an alarm call at a vacant business. The complainant informed Deputy 1 that he and his contractor entered the property with keys provided by a real estate agent representing the owner; a claim which was disputed by the building owner. Deputy 1's observation of the complainant during the contact indicated he was under the influence of a controlled substance. The complainant reportedly could not stand still or stop talking, and his pupils appeared constricted. Deputy 1 conducted field tests which documented an elevated pulse rate and distorted time perception, and the complainant was observed to have fluttering eyelids and a white pasty tongue; symptoms which can be indicative of drug use. California case law states that, 'being under the influence' within the meaning of Health and Safety Code § 11550, Under the Influence of a Controlled Substance, merely require that the person be under the influence in any detectable manner. The complainant's presence in the building without owner authorization, and the documented objective symptoms observed by Deputy 1 were probable cause to arrest. The evidence showed the alleged act did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 incorrectly administered tests to determine if the complainant was under the influence of a controlled substance.

Board Finding: Action Justified

Rationale: Deputy 1 has been trained to perform drug influence evaluations to determine violations of Health and Safety Code § 11550, Under the Influence of a Controlled Substance. The complainant stated that Deputy 1 did not ask if he had a medical impairment or if he was taking any prescription medication, failed to ask proper questions, and conducted some of the tests while handcuffed. Based on Deputy 1's observation during the contact, he believed the complainant was under the influence of a controlled substance because he could not stand still, not stop talking, and his pupils appeared constricted. Deputy 1, a witness, and a witness Deputy

stated the complainant was questioned about his medical status and asked if he was taking any medications; questions to which the complainant responded. Deputy 1 conducted a series of field tests which documented an elevated pulse rate, distorted time perception, eyelid flutter during tests, and revealed the complainant had a white pasty tongue; symptoms which can be indicative of drug use. The evidence showed the alleged act did occur but was lawful, justified and proper.

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## 12-151

1. Illegal Search & Seizure – Deputy 1 approached, detained and/or ordered the aggrieved to stop.

Board Finding: Not Sustained

Rationale: The aggrieved has a cognitive disorder and was not interviewed. A 911 transfer call was made with reference to domestic violence, but the caller hung up and Sheriff's dispatch was unable to trace the call. There was no suspect description provided or confirmation of a crime being committed. Deputy 1 observed the aggrieved in close proximity to the alleged crime scene and believed he tried to conceal his identity. Deputy 1 attempted to detain the aggrieved, but he (suspect) did not know/understand he (Deputy 1) was a peace officer. By law, before a detention exists it is necessary for a person (suspect) to submit to authority. There was insufficient evidence to either prove or disprove the allegation.

2. Excessive Force – Deputy 1 sprayed the aggrieved with pepper spray.

Board Finding: Not Sustained

Rationale: The aggrieved has a cognitive disorder and was not interviewed. Media accounts were in conflict with deputies' statements. Deputy 1 told the aggrieved to stop, but he failed to comply. Due to the aggrieved's mental condition, he did not know that a person in a patrol vehicle with a uniform and a badge, was a peace officer, and did not understand he was required to submit to Deputy 1's authority. To gain compliance, effect an arrest and/or prevent escape, force may be utilized. The Sheriff's Use of Force Addendum allows for the use of chemical agents in an offensive manner, when a deputy's presence and verbal commands have been ineffective. Although, the Principles of Control in the Addendum states they may be used prior to hands-on control, if a physical confrontation appears to be unavoidable and injury may result. Deputy 1 utilized a level of force above the aggrieved's reported level of resistance. Deputy 1 declined to be interviewed, which prevented clarification of circumstances that may have precluded compliance with the suggested procedure. There was insufficient evidence to either prove or disprove the allegation.

3. Excessive Force – Deputy 1 hit the aggrieved with his baton.

Board Finding: Not Sustained

Rationale: See Rationale #2.

4. False Arrest – Deputy 1 arrested the aggrieved.

Board Finding: Not Sustained

Rationale: The aggrieved has a cognitive disorder and was not interviewed. Deputies may arrest someone without a warrant only if they have probable cause to believe he/she committed an offense. The alleged offense in this incident was an unsubstantiated report of domestic violence. There was no confirmed offense, nor any suspect description. Deputy 1 issued the aggrieved a citation for 148 PC, which was subsequently dropped. Due to the aggrieved's cognitive disorder, he did not know what a peace officer was or understand that it is unlawful to resist, obstruct, or delay one. There was insufficient evidence to either prove or disprove the allegation.

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## 12-152

1. Discrimination/Religious – Deputy 2 refused to provide the complainant with Halal meals.

Board Finding: Summary Dismissal

Rationale: The complainant was released from custody and failed to provide a valid out-of-custody address. He also failed to maintain contact with CLERB and his whereabouts are unknown. A search of local, state, and federal databases failed to reveal his location. Due to the complainant's non-cooperation in maintaining contact, this case will be closed without further investigation.

2. Misconduct/Procedure – Deputy 2 improperly housed the complainant at George Bailey Detention Facility in violation of facility assignment restrictions.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 2 improperly classified the complainant's race.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 2 failed to respond to the complainant's grievances.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 1 removed the complainant's privileged communications from his cell.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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**12-155**

1. Misconduct/Procedure – Deputy 1 allowed a high risk inmate access to the complainant resulting in his being attacked and injured.

Board Finding: Sustained

Rationale: Deputy 1 opened the cell door of another inmate while the complainant was in the dayroom. Video surveillance showed the complainant using the telephone during his dayroom time. As Deputies approached to conduct a security check, Deputy 1 stated he thought the complainant had returned to his bunk, and closed the complainant's cell door. Deputy 1 stated he was unable to view the security camera monitor because he was monitoring deputies performing the security check, and the investigation revealed that the tower view of the module phone bank is obstructed. After the security check was completed, Deputy 1 opened the cell door for the next inmate scheduled for dayroom time. The inmate proceeded down the stairs and attacked the complainant. Surveillance video showed that Deputy 1 opened the cell door of a high risk inmate which resulted in the assault of the complainant. The evidence supports the allegation and the act was not justified.

2. Misconduct/Procedure - Deputy 3 moved the complainant to a cell smeared with feces.

Board Finding: Not Sustained

Rationale: Surveillance video showed that Deputy 3 escorted the complainant to a cell in SDCJ Module 6E, a cell which the complainant said was smeared with feces. There were no documented reports that the complainant's new housing required cleaning, nor were there any Grievances or Inmate Requests on file that demonstrated that the complainant brought the matter to the attention of any deputy. The complainant reported, "...later that night," Inmate Workers went to the cell and cleaned the walls; however, video surveillance did not show anyone enter the cell for cleaning in the twelve hours after the complainant arrived. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 2 failed to move the complainant’s commissary items to his new Housing Unit.

Board Finding: Not Sustained

Rationale: Deputy 2 said he collected the complainant’s personal property and commissary items from his cell, placed the items into a brown property bag, and then delivered the property bag to the complainant in his new Housing Unit. Surveillance video confirmed that Deputy 2 left the complainant’s cell with a property bag and other unidentifiable items and delivered those items to the complainant in his new housing assignment. However, the contents of the brown property bag nor the items held by Deputy 2 could not be determined. There is insufficient evidence to prove or disprove that the complainant’s commissary items were not returned.

4. Misconduct/Procedure – Deputy 3 failed to provide the complainant with bedding in his new Housing Unit.

Board Finding: Not Sustained

Rationale: Video surveillance showed that an unidentified deputy removed a mattress and bedding from the complainant’s new Housing Unit and placed a new mattress and what was believed to be a bedroll consisting of a white sheet, a blanket, and a towel in the cell prior to the complainant’s arrival. The contents of the bedroll could not be determined as they were rolled up inside the new folded mattress. There were no documented reports that the complainant requested additional bedding after moving to his new housing unit. There is insufficient evidence to prove or disprove that the complainant’s ~~commissary items were not returned~~ bedding was not returned.

5. Misconduct/Procedure – Deputy 3 failed to respond to the complainant’s grievance about lost property.

Board Finding: Not Sustained

Rationale: The complainant stated that he submitted grievances on at least three occasions to report commissary items that were not returned when he was relocated to a new Housing Unit. The first grievance located was filed December 8, 2012, six days after the alleged loss, and reported commissary items that “needed to be returned.” The Housing Deputy collecting the grievance forwarded it to the Floor Sergeant in accordance with Detentions Policy and Procedure N.1, Grievance Procedure. When the Housing Deputy was questioned by the Watch Commander he reported that the complainant returned from a Safety Cell the day before but his personal property had not moved. Additionally, commissary requests in his cell revealed he had received the items most recently ordered. Based on that information, no record of lost inmate property was recorded per Detentions Policy and Procedure Q.63, Lost Inmate Money or Property. Subsequent grievances filed at George Bailey Detention Facility (GBDF) cited multiple issues on the same Grievance Form, including: commissary, medical and housing grievances. Grievances addressing missing commissary items were properly forwarded to the commissary for action per Department Procedure. There is no record that action was taken to locate and/or replace the complainant’s commissary items. There is insufficient evidence to prove or disprove the allegation.

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## **13-004**

1. Misconduct/Procedure – Classification deputies incarcerated the severely injured complainant against medical advice.

Board Finding: Unfounded

Rationale: The complainant was arrested by San Diego Police Department and transported to Alvarado Hospital Medical Center for treatment of dog bites and removal of taser barbs prior to incarceration. The complainant was uncooperative and uncommunicative throughout his stay at Alvarado Hospital, was discharged to police custody, and transported to San Diego Central Jail. Sheriff’s Department medical personnel subsequently referred the complainant to University of San Diego Medical Center Emergency Department for further evaluation, and he was again discharged to law enforcement custody. There were no medical entries in the complainant’s record to indicate he was incarcerated against medical advice. The evidence showed that there was no procedural misconduct and the alleged act did not occur.

2. Misconduct/Procedure – Deputy 1 routinely denied the complainant medical care during his incarceration at San Diego Central Jail (SDCJ), resulting in infection.

Board Finding: Unfounded

Rationale: Deputy 1 did not recall any interactions with the complainant or denial of medical care. There were no recorded emergencies or sick call requests to demonstrate that Deputy 1 failed to provide the complainant access to medical care per Department Policy and Procedures M.5, Medical Emergencies, or M.15, Sick Call. Additionally, there were no reported signs or symptoms of infection documented in the complainant's record. The evidence showed that the alleged act did not occur.

3. Misconduct/Procedure – Deputy 4 routinely denied the complainant medical care during his incarceration at San Diego Central Jail (SDCJ), resulting in infection.

Board Finding: ~~Not Sustained~~ Action Justified

Rationale: Deputy 4 did not recall denying the complainant medical care. There were no recorded emergencies or sick call requests to demonstrate that Deputy 4 failed to provide the complainant access to medical care per Department Policy and Procedures M.5, Medical Emergencies, or M.15, Sick Call. On one occasion the complainant refused to attend Sick Call, and Deputy 4 completed the Refusal of Treatment Form and obtained a witness deputy signature to document the inmate's refusal as required by M.15, Sick Call. Because the complainant refused medical care Deputy 4 was not obligated to take him to Sick Call, and in this instance the alleged act did occur but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 routinely denied the complainant medically approved devices (wheelchair, cane) during his incarceration at SDCJ.

Board Finding: Action Justified

Rationale: Deputy 1 did not recall preventing the complainant access to medically approved devices; however, on one occasion, Deputy 1 reportedly confiscated the complainant's cane after a two-day authorization lapsed. The complainant was re-evaluated and reauthorized use of a cane on the following day. The evidence showed the alleged act did occur but was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 4 routinely denied the complainant medically approved devices (wheelchair, cane) during his incarceration at SDCJ.

Board Finding: Summary Dismissal

Rationale: Deputy 4 denied that the complainant was prevented access to medically approved devices. Sworn detentions staff is not involved in the approval of medical devices for inmate patients. This is a function performed by non-sworn medical staff over whom CLERB has no jurisdiction. This matter was referred back to the Sheriff's Department for further investigation.

6. Misconduct/Procedure – Deputies 1 and/or 4 ignored a Medical Doctor's order for a shower prior to a dressing change.

Board Finding: Not Sustained

Rationale: Deputies 1 and 4 denied that they were given such an order. There were no medical record entries directing deputies to ensure the complainant was provided a shower prior to dressing change, and the Medical Officer treating the complainant did not recall ordering such a procedure. There was insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Procedure – Deputies 2 and/or 3 did not provide the complainant with a medically approved wheelchair and instead "dragged" the injured inmate from medical to his cell.

Board Finding: Not Sustained

Rationale: The complainant's medical record did not contain authorization for a wheelchair, or any instructions which required transport to/from medical treatment via wheelchair. Deputies 2 and 3 did not recall the incident

described by the complainant, and there was no Grievances, Inmate Requests, Use of Force reports, or video recordings to document the incident. There was insufficient evidence to either prove or disprove the allegation.

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### **13-009**

1. Illegal Search - Deputies 1, 2, 3, 4 and 5 burst through the complainant's front door.

Board Finding: Action Justified

Rationale: Deputies 1, 2, 3, 4 and 5 forced entry into the complainant's home to execute a Search Warrant after Deputy 3 knocked on the residence door, loudly announced law enforcement's presence and demanded entry several times. Deputies waited several seconds before entering the home, with Deputy 3 reporting that she observed someone peering through the upstairs blinds of the apartment while they were knocking. Pursuant to Penal Code § 1531, Entry into House, deputies are authorized to break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. Per case law, refusal takes place just by the passage of time, without any response from inside. The evidence showed the alleged act did occur, but was lawful, justified and proper.

2. Excessive Force – Deputies 1, 2, 3, 4 or 5 knocked the complainant to the ground.

Board Finding: Not Sustained

Rationale: Deputies 1, 2, 3, 4 and 5 entered the complainant's home and all denied that they knocked the complainant to the floor or observed the complainant knocked to the floor. Deputy 5 entered the home first and reported that he contacted the complainant on the first tier of the apartment's stairway and remained with her as the other deputies rushed by. He reported that he did not observe any deputy knock the complainant to the ground nor did he see the complainant recovering from having been knocked to the ground. Detective 1 reported that he observed Deputy 5 contact and detain the complainant against the wall of the stairs so other deputies could safely pass by. Deputy 3 reported that the complainant was instructed to get on the ground. Absent video evidence of this entry and contact, there is insufficient evidence to either prove or disprove the allegation.

3. Illegal Seizure - Deputies 3 and 5 handcuffed the complainant and her husband.

Board Finding: Action Justified

Rationale: Deputy 5 contacted the complainant and her husband during the execution of a Search Warrant on their residence. During this contact, the complainant was handcuffed for officer safety until deputies cleared the residence. Deputy 3 handcuffed the complainant's husband, as he was arrested and later booked on charges of Penal Code §§ 459 (F), Commercial Burglary, and 496 (A), Possession of Stolen Property. The evidence showed the alleged act did occur, but was lawful, justified and proper.

4. Illegal Search - Deputies 1, 2, 3, 4 and 5 ransacked the complainant's home.

Board Finding: Action Justified

Rationale: Deputies 1, 2, 3, 4, and 5 all denied that they ransacked the complainant's home. They reported that a search of the complainant's home was conducted pursuant to the Search Warrant and items were moved in order to locate items listed in the Search Warrant. Deputies noted that the complainant's home was very neat and organized, and with a young, sick child asleep in a rear bedroom of the home, great care was taken not to break or damage any of their property nor disturb the child. According to Merriam-Webster dictionary, ransack is defined: "to search (a place) for something in a way that causes disorder or damage." Per reports by the involved deputies and photographs of the home after the search provided by the complainant, the complainant's home was not ransacked, and the evidence showed the actions of the deputies were lawful, justified and proper.

5. Misconduct/Procedure - Deputy 3 failed to identify to the complainant what they were searching for.

Board Finding: Action Justified

Rationale: Deputy 3 reported that she provided the complainant and her husband a copy of the search warrant while they were seated in their living room and instructed them to read it. After reading the warrant, Deputy 3 provided both an explanation for the warrant and what property was being searched for. Other deputies on scene reported that Deputy 3 explained the search warrant to the complainant and her husband and allowed them to read a copy approximately five minutes upon entering the home, and after it was determined safe to do so. The evidence showed the alleged act did occur, but was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 3 refused to allow the complainant to be uncuffed in order to care for her young child.

Board Finding: Action Justified

Rationale: Deputy 3 confirmed that she initially did not allow the complainant to be uncuffed because she had not interviewed her and was uncertain if she was involved in the case as a possible suspect. Deputy 3 stated that she did not feel comfortable, due to officer safety issues, interviewing the complainant while uncuffed. The complainant was also reported to be very upset with her husband because he had placed their family into this situation. Following the interview, in which the complainant was reported to be very cooperative, Deputy 3 uncuffed her so that she could take care of her son. The evidence showed the alleged act did occur, but was lawful, justified and proper.

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### **13-010**

1. Excessive Force – Deputy 1 grabbed the complainant’s hand and forced it behind his back.

Board Finding: Action Justified

Rationale: Deputies 1 and 2 responded to a request to assist California Park Rangers control a group of loud and uncooperative individuals at a campsite. The complainant remained verbally aggressive and failed to comply with Deputy 1’s direction, resulting in a Use of Force. Deputy 1 reported that he guided the complainant’s arm behind his back in order to escort him away from the campsite and his companions, and arrest him. Because of the size of the group and their apparent willingness to interfere in the efforts of law enforcement, Deputy 1 did not feel it was safe to conduct the complainant’s arrest within the campsite. Deputy 1 employed a department approved Use of Force control compliance technique to conduct this escort and his actions were lawful, justified and proper.

2. Excessive Force – Deputy 1 “slammed the complainant” against the hood of a patrol vehicle.

Board Finding: Action Justified

Rationale: Deputy 1 denied that he slammed the complainant against the hood of a patrol vehicle. Deputy 2 witnessed this incident and reported that the complainant appeared to pull away from Deputy 1 while being escorted and attempted to spin around on Deputy 1, who was directly behind him. Deputy 2 then observed Deputy 1 push the complainant’s body down over the patrol car hood to get him in a more tactical position for handcuffing. Pursuant to Policy 6.48, Physical Force, and the Use of Force Addendum, deputies may use any physical force they deem reasonably necessary to overcome resistance and to effect an arrest. Given the marginal difference between being “slammed” or being “pushed,” the evidence shows the alleged act or conduct did occur, but was lawful, justified and proper.

3. Excessive Force – Deputy 1 “threw the complainant to the ground.”

Board Finding: Action Justified

Rationale: Deputy 1 denied that he threw the complainant to the ground, reporting that he employed a department approved takedown maneuver – hip toss – to place the complainant on the ground. Deputy 2 observed this takedown maneuver and reported that the force used appeared to be nothing more than necessary to counteract the complainant, who was actively trying to combat Deputy 1’s efforts to place him under arrest. Pursuant to Policy 6.48, Physical Force, and the Use of Force Addendum, deputies may use any physical force they deem reasonably necessary to overcome resistance and to effect an arrest. The evidence shows the alleged

act or conduct did occur, but was lawful, justified and proper.

4. Excessive Force – Deputy 1 “pushed/rubbed the complainant’s face into the ground.”

Board Finding: Not Sustained

Rationale: Deputy 1 denied that he pushed or rubbed the complainant’s face into the ground. Deputy 2 denied that he observed this action, but reported observing Deputy 1 on the ground struggling with the complainant who was on his stomach, writhing his body in an attempt to break free and stand up. Two of the complainant’s nine witnesses responded to this investigation, with one reporting that he could not see what happened once Deputy 1 and the complainant were on the ground, and the other reporting that he observed Deputy 1 pushing the complainant’s face into the ground. In the absence of video evidence, there is insufficient evidence to either prove or disprove the allegation.

5. Excessive Force – Deputy 1 placed his knee into the complainant’s back.

Board Finding: Not Sustained

Rationale: Deputy 1 denied that he placed his knee into the complainant’s back. Deputy 2 assisted with trying to control the lower half of the complainant’s body while he was on the ground, but reported that during this commotion, he did not observe Deputy 1 place his knee into the complainants back. In the absence of video evidence, there is insufficient evidence to either prove or disprove the allegation.

6. Excessive Force – Deputy 1 choked the complainant while he was lying on the ground.

Board Finding: Action Justified

Rationale: Deputy 1 reported that he struggled to apply a Carotid Restraint hold on the complainant, but had to abandon that effort because the complainant was kicking an assisting Ranger in the midsection, and the restraint could not be applied effectively. Deputy 2 was involved in the efforts to control the complainant, but denied seeing Deputy 1 choke him. Per Policy 6.48, Physical Force, and the Use of Force Addendum, Deputies are authorized to utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate, or afford the Deputy control of, the confrontation incident. Deputy 1 attempted to apply a department approved Use of Force control compliance technique and his actions were lawful, justified and proper.

7. Excessive Force – Deputy 1 squeezed the complainant’s handcuffs several moments after they had already been applied.

Board Finding: Not Sustained

Rationale: Deputy 1 denied that he squeezed the complainant’s handcuffs several moments after they had already been applied, and there were no witnesses to support this allegation. The complainant provided a picture that showed slight linear redness in the wrist area, but without further evidence, it cannot be determined if the injuries were intentionally inflicted or resulted from the complainant’s resistance during handcuffing. There is insufficient evidence to either prove or disprove the allegation.

8. False Arrest – Deputy 1 arrested the complainant for delaying him.

Board Finding: Action Justified

Rationale: During his contact with Deputy 1 and Deputy 2, the complainant continued to be verbally aggressive, non-compliant and had previously displayed pre-assaultive indicators when talking with Park Rangers. The complainant also appeared to be the group leader, and as such persisted in contributing to the group’s overall non-compliance with the Park Ranger’s and Deputy’s instructions; interfering with their efforts to resolve a disruptive situation. Pursuant to California Penal Code § 148: Resist, Obstruct, Delay of Peace Officer "Every person who willfully resists, delays, or obstructs any public officer or peace officer, ...in the discharge or attempt to discharge any duty of his or her office or employment" is guilty of a misdemeanor and subject to arrest. Deputy 1 acted within the law in effectuating this arrest. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

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**13-022**

1. Misconduct/Procedure – Deputies 3 and 10 failed to respond in a timely manner to the diabetic complainant’s emergency summons from his holding cell.

**Board Finding:** Not Sustained

**Rationale:** Deputy 3 reported that after responding to another situation that required his immediate attention, he spoke with the complainant regarding his medical condition approximately 10-15 minutes after the complaint of low blood sugar was made to him. Deputy 3 stated that he then spoke with the medical triage nurse about the complainant and was advised to escort him to the 2<sup>nd</sup> floor, where he would be re-evaluated. Deputy 10 was assigned to Intake Control during this incident and did not recall any emergency summons generated from the complainant’s holding cell on the night in question. Video surveillance did not show the time when Deputy 3 was initially contacted by the complainant nor is there a record of summons that emanate from the holding cells at San Diego Central Jail. Absent this data, there is insufficient evidence to determine whether or not deputies responded in a timely manner to the complainant’s call for help and therefore insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – Deputies 1, 2, 3, 7 or 8 stated that the diabetic complainant “...was okay, he was just playing,” or used words to that effect, delaying his access to medical treatment.

**Board Finding:** Not Sustained

**Rationale:** Deputies 1, 2, 3, 7 and 8 denied that they made this statement alleged by the complainant. They also denied that they heard any deputy make this statement. Deputies 1, 2 and 8 had no recollection of the complainant at all. These were the only deputies of record that were deployed in or around the area where this statement was alleged to have been made and efforts to identify the specific offending deputy were unsuccessful. Without an audio/video recording of this incident, there is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy – Deputies 6, 4, 5, 8 or 9 told the complainant to cooperate while changing clothes or, “We’ll put you in a cell and let the diabetes do its work,” or words to that effect.

**Board Finding:** Not Sustained

**Rationale:** Deputies 6, 4, 5, 8 and 9 all denied telling the complainant, “We’ll put you in a cell and let the diabetes do its work,” or using words to that effect. They also unanimously denied any recollection of the complainant. These were the only deputies of record that were deployed in or around the area where this statement was alleged to have been made and efforts to identify the specific offending deputy were unsuccessful. Without an audio/video recording of this incident, there is insufficient evidence to either prove or disprove the allegation.

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**13-024**

1. Excessive Force – Deputies 2, 4 and 6 hit and kicked the complainant during intake.

**Board Finding:** Action Justified

**Rationale:** The complainant exited a holding cell without permission and began to walk toward a deputy who was alone in the sally port when Deputy 2 and Deputies 4 and 6 intercepted him and ordered him to turn and face the wall. The complainant refused, grabbed Deputy 4’s shoulders and a struggle ensued. Deputies 2, 4 and 6 detailed in their Deputy Reports the employment of several department approved Use of Force control compliance techniques which included: verbal commands, empty hand control, using body weight, kicks and closed fist strikes in order to gain control of an assaultive inmate. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable in the defense of self or others, and to overcome resistance. Surveillance video of this incident was available, but only captured the

initial portion of the force used. The evidence showed, however, that the act did occur, but was lawful, justified and proper.

2. Excessive Force – Deputies 1, 3, 5, 7 and 8 beat the complainant while in or around the safety cell area.

Board Finding: Not Sustained

Rationale: Deputies 1, 3, 5, 7 and 8 denied beating the complainant nor did they observe the complainant beaten by any deputy. None of the deputies questioned had any recollection of coming into contact with the complainant. There are no Medical Records, Incident Reports or filed Grievances documenting this alleged occurrence, and surveillance video from the incident date and location no longer exists. Absent video recording of this incident, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputies 1, 3, 5, 7 and 8 conducted a strip search on the complainant in the presence of a female deputy.

Board Finding: Not Sustained

Rationale: Sheriff's Detentions Policy I.53, Pre-Arrestment Inmate Searches, require that all persons conducting or otherwise present during a strip search or visual body cavity search shall be of the same sex as the inmate being searched, except for physicians or licensed medical personnel. Deputies 1, 3, 5, 7 and 8 denied having conducted a strip search on the complainant in the presence of a female deputy. Deputies 5 and 8 further asserted that in their respective 20 and 17 years they've been with the Sheriff's Department, they have never conducted a strip search on a male in the presence of a female deputy. Deployment Roster lists Deputy 3 as the lone female deputy on duty that day, and though not conclusive, she reported that she was never near the strip search area on the incident date. Absent a video recording of this incident, there was insufficient evidence to either prove or disprove the allegation.

4. Excessive Force – Deputy 1 or Deputy 7 tripped the complainant and struck him several times with his fists.

Board Finding: Not Sustained

Rationale: Deputy 1 and Deputy 7 both denied that they tripped the complainant and struck him with their fists, nor did they observe the complainant tripped and beaten by any deputy. Neither deputy questioned had any recollection of coming into contact with the complainant, nor are there Medical Records, Incident Reports or filed Grievances documenting this alleged occurrence. Surveillance video from the incident date and location no longer exists and absent video recording of this incident, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Unidentified deputies denied the complainant access to a shower.

Board Finding: Not Sustained

Rationale: Detentions Policy L.11, Personal Hygiene, requires that an inmate is allowed a shower upon assignment to a housing unit and additional showers at least every 48 hours thereafter. The complainant alleged that after being assigned to a 4<sup>th</sup> Floor Housing Module, unidentified deputies repeatedly ignored his requests for a shower. The complainant was assigned to this module on 10-15-2012 at 1:12AM and remained in this module until he was released from custody on 10-17-2012 at 5:36PM. The complainant did not specify any dates, times or work shifts that his requests for a shower were reportedly ignored, nor did he describe or identify any deputies requested. Surveillance video of the module was not available and there is insufficient evidence to prove or disprove the allegation.

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## 13-046

1. Misconduct/Procedure – Deputy 1 did not cite and/or arrest an individual that assaulted the complainant.

Board Finding: Action Justified

Rationale: Deputy 1 did not cite an alleged assailant identified by the complainant. The alleged crime was not

committed in the Deputy's presence, and there were conflicting statements from the complainant and other parties at the scene. California Penal Code § 849, Arrest without Warrant, states that any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever he or she is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested. Based on the conflicting statements, Deputy 1 stated there was insufficient probable cause to make an arrest. He documented the incident, provided involved parties with the case number, and forwarded the report to Detectives/District Attorney for follow-up investigation. The evidence showed the alleged act did occur but was lawful, justified and proper.

2. False Report – Deputy 1 falsely reported an assault on the complainant.

Board Finding: Not Sustained

Rationale: Deputy 1 stated that his report was truthful and accurate. The complainant debated the events reported, but provided no evidence to corroborate his beliefs. There was insufficient evidence to prove or disprove this allegation.

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### 13-062

1. Discrimination – Deputies 1 and 2 housed the transgender complainant in Administrative Segregation because of sexual preference.

Board Finding: ~~Unfounded~~ Action Justified

Rationale: Deputies 1 and 2 denied that the complainant was housed in Administrative Segregation because of sexual preference. The complainant had been housed in the Special Inmate Module (SIM) at George Bailey Detention Facility until an altercation with another inmate resulted in removal for disciplinary reasons. Upon completion of the disciplinary housing assignment the complainant was not returned to the SIM, but was placed in Administrative Segregation in accordance with Sheriff's Detentions Policy and Procedure J.3, Segregation: Definition and Use, because of a demonstrated inability or unwillingness to co-exist with other transgender inmates, and a failure to comply with facility rules and regulations. The complainant was later returned to SIM housing only to be reassigned again pending discipline after an altercation. The evidence showed that Deputies 1 and 2 did not discriminate against the complainant because of his sexual preference and the alleged act did not occur.

2. Misconduct/Medical – Medical personnel failed to provide prescribed medication to the complainant.

Board Finding: Summary Dismissal

Rationale: The Review Board has no jurisdiction over complaints involving jail medical personnel or issues, only over complaints involving Sheriff's Deputies and Probation Officers employed by the County of San Diego. (County Charter § 606 (f)(1); San Diego County Administrative Code, Article XVIII, §§ 340, 340.9 (a)), and the complaint was referred to the San Diego Sheriff's Department. The Review Board lacks jurisdiction.

3. Misconduct/Medical – Medical personnel have failed to provide treatment.

Board Finding: Summary Dismissal

Rationale: The Review Board has no jurisdiction over complaints involving jail medical personnel or issues, only over complaints involving Sheriff's Deputies and Probation Officers employed by the County of San Diego. (County Charter § 606 (f)(1); San Diego County Administrative Code, Article XVIII, §§ 340, 340.9 (a)), and the complaint was referred to the San Diego Sheriff's Department. The Review Board lacks jurisdiction.

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### 13-086

1. False Report – PO1 filed false information in a report presented to the Superior Court of California – County of San Diego.

Board Finding: Not Sustained

Rationale: PO1 denied his reports contained any false or untruthful information. The complainant believed PO1 falsely documented a telephone conversation concerning the whereabouts of her son; a conversation which PO1 and the complainant recalled differently. During a Court Hearing the complainant's son, in consultation with counsel, waived his right to an Evidentiary Hearing and admitted to one of three probation violations cited rather than accept a charge of drug transportation. Her interpretation of misrepresentation and or contextual inaccuracies does not constitute a deliberate act by PO1 of untruthfulness. There was no audio recording of the telephone conversation, as such there was insufficient evident to either prove or disprove the allegation

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*End of report*