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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its March 10, 2015 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.

CLOSED SESSION

- **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).
 - 12-108 / Malacara (Sustained – Deputy 1)
 - 14-010 / Zulauf (Sustained – Deputy 1)
 - 12-151 / Martinez

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 (7)

ALLEGATIONS, FINDINGS & RATIONALE

14-013

1. Excessive Force – Deputies 1-4, and/or 6-9, slammed the handcuffed complainant to the ground, shoved her face down, applied bodyweight, and pulled her hair.

Board Finding: Action Justified

Rationale: The complainant reported that deputies sat on her arms and legs, and pressed her to the floor while her waist, hands, and feet were cuffed and attached to a tether. After the complainant assaulted another inmate, and refused to comply with deputies' commands, departmental approved force was utilized to restrain her. She continued to be non-compliant even after deployment of a Taser. Video evidence corroborated deputies' reports for their use of body-weight, downward pressure, and head control utilizing the complainant's pony-tail/bun. The complainant sustained a bloody lip while deputies incurred knee scrapes, bruising and soreness. The

amount of force reported and observed was necessary and reasonable to immobilize the complainant, and in compliance with policy.

2. Excessive Force – Deputy 4 tasered the handcuffed complainant.

Board Finding: Action Justified

Rationale: The complainant said she screamed for help and was tasered “almost lifeless,” then reported lying still for 15 minutes because she could not move. Video evidence clearly showed that the complainant was belligerent and unwilling to follow any deputy directives. Detentions Policy & Procedures prohibits the use of a Taser on a restrained prisoner “who is under control,” however, deputies reported that just prior to deployment, the complainant tried to bite Deputy 8, and attempted to push herself up off of the floor. Evidence clarified that the complainant did not abide by deputy commands, delayed jail operations, was threatening, and verbally assaultive. The Taser was deployed and the complainant was quiet for mere seconds before expressing further profanities, which extended the delay of jail operations for over an hour. The evidence showed the alleged act did occur and was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputies screamed at the complainant to “shut the fuck up.”

Board Finding: Not Sustained

Rationale: The complainant reported that 6-7 unnamed deputies screamed at her to “shut the fuck up,” then threw her onto a gurney. Deputies 1-4, and 6-9, denied using any profanity in their interaction(s) with the complainant. Video evidence did not support the complainant’s contention either, but because the incident was not recorded in its entirety, there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 11 did not respond to the complainant’s grievance(s).

Board Finding: Action Justified

Rationale: The complainant asked that CLERB investigate this incident, because she had submitted grievances, but did not get a response. Detentions Policy mandates that grievances be investigated and resolved within one week. A request for associated documents produced the complainant’s grievance and responses from supervisory personnel within the required time period. The complainant subsequently clarified that she did receive, but was dissatisfied with the responses because they sided against her. The evidence showed that the grievance responses provided by Deputies 5 and 10, were lawful, justified and proper based upon departmental policy.

5. Misconduct/Harassment – Deputy 11 attempted to dissuade the complainant from filing a grievance.

Board Finding: Not Sustained

Rationale: This allegation was brought forth by the complainant’s mother, based upon correspondence by her daughter, and absent any material evidence to support the allegation. By policy, informal resolution to grievances is desirable and Board, however, Deputies 1-4, and 6-9, refuted having any further contact with the complainant about this matter. There was insufficient evidence to either prove or disprove this allegation.

14-016

1. Excessive Force – Deputies 1 and 2 removed the aggrieved from his bunk, dislocating his shoulder and thumb.

Board Finding: Action Justified

Rationale: The complainant reported on behalf of the aggrieved, that Deputies 1 and 2 dislocated the aggrieved’s shoulder and thumb while removing him from his bunk. Deputy 2 was conducting a security check, when he observed and removed a sheet that shielded the aggrieved’s bunk, which is against facility rules. The aggrieved began yelling and shouting expletives at Deputy 2, in what appeared to be an attempt to incite other inmates. Deputy 2 instructed the aggrieved to get up from his bunk to be escorted out of the module, but he refused. When deputies attempted to take his hand to remove him from his bunk, the aggrieved jumped off his

bunk, and with a clenched fist, took a fighting stance. Deputies detailed in their reports the employment of several department approved Use of Force control compliance techniques which included: Empty Hand Control and a Hammerlock Control Hold, in order to gain control of the non-compliant, potentially assaultive inmate. The aggrieved was injured in the process and received medical attention. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable to overcome resistance and achieve control or compliance. The evidence showed the alleged act did occur, but was lawful, justified and proper.

14-021

1. False Reporting – PO 1 wrote information for the complainant’s current arrest, based on old/previous warrants.

Board Finding: Action Justified

Rationale: The complainant said, “I’m doing time for old warrants, on old cases, that I already served time on” because Probation Officer 1 wrote false information using old warrants. An Ex Parte Warrant Matter report, confirmed that the complainant was arrested on January 20, 2014 on a 10 day flash incarceration; a probation condition in which a probationer can be arrested and incarcerated for a period of up to 10 consecutive days, without a court hearing, for any violation of a post release supervision condition. PO 1’s report was accurate, and the evidence showed the complainant’s arrest was lawful, justified and proper.

2. Misconduct/Procedure – PO 2 calculated a release date of March 7, 2014, but the complainant remained incarcerated.

Board Finding: Action Justified

Rationale: The complainant said he remained incarcerated past March of 2014; the release date that PO 2 calculated. After being arrested on 1/20/14 and placed on 10-day flash incarceration, the complainant remained in custody on a bench warrant that was outstanding for additional probation violations of using controlled substances/alcohol and failure to report to Probation. On 2/7/14, the complainant appeared on the warrant, at which time the Court sentenced him. Due to the court sentencing at the time of appearance, probation did not submit any recommendation. Court Orders dated 2/7/14 verified the Court’s calculation of custody credits. The evidence showed that the alleged act or conduct attributed to PO 2, did not occur, but that the complainant’s sentencing calculation was lawful, justified and proper.

14-098

1. Illegal Search or Seizure – Deputy 2 entered the complainant’s home uninvited.

Board Finding: Summary Dismissal

Rationale: This alleged incident occurred approximately 14 months prior to the complaint being filed. Pursuant to Section 15, Summary Dismissal, of CLERB’s Rules and Regulations, the Review Board does not have jurisdiction because the complaint was not timely filed; a signed complaint must be received within one year of the incident that gave rise to the complaint. The complainant indicated that she had not been incarcerated or incapacitated during the past year, precluding tolling options.

2. Excessive Force - Deputy 2 entered the complainant’s home with their guns drawn.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

3. False Arrest – Deputy 2 arrested the complainant after finding a single medication out of a bottle.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

4. False Arrest – Deputy 1 arrested the complainant for possession of stolen identification.

Board Finding: Action Justified

Rationale: The complainant alleged that she was falsely arrested for being in possession of stolen identification. Deputy 1 contacted the complainant in a parking lot after citizens reported that she was in an argument with another woman. The two women had argued over a separate matter when, while providing her identification to Deputy 1, the complainant was found to be in possession of a California ID card belonging to another person. When questioned about the ID, the complainant stated to Deputy 1 that the ID card was “probably stolen,” and that she had found the ID in her car after giving a friend a ride. The complainant claimed that this friend, who she knew to have been in possession of a number of stolen credit cards and identification cards, had probably dropped the card in her car the night before, and she had plans to return it to him. Based on the complainant’s possession of the admittedly stolen identification card, and her knowledge of it being stolen, Deputy 1 arrested the complainant for violation of PC§ 496, Receiving Stolen Property, and she was booked into the Vista Detention Facility. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

14-127

1. Misconduct/Procedure – PO 1 will not allow the complainant to use medicinal marijuana while on probation.

Board Finding: Action Justified

Rationale: The complainant reported that he is a candidate for Prop. 215 and Senate Bill 420, which allows medicinal marijuana for ill patients who qualify; however he failed to submit to CLERB, medical authorization to acquire his medical records, and his attorney did not respond to our request for information. In September 2014, the complainant pled guilty to a felony conviction for possession of concentrated cannabis, and a review of the probation conditions set forth on October 21, 2014, prohibits his possession and use of controlled substances. At the complainant’s request, the Court granted permission on January 5, 2015, for transfer to a different County. The evidence showed that there had been no modifications to the Court-ordered probation terms prohibiting the use of controlled substances, and the San Diego County Probation Department’s refusal to consent to medical marijuana did occur, but was lawful, justified and proper.

14-137

1. Death Investigation - Deputies 1 and 2 discovered the decedent lying unconscious on the floor, in his single person cell.

Board Finding: Action Justified

Rationale: Deputies 1 and 2 escorted the decedent to/from the medical ward at approximately 3 a.m. Against medical advice, the inmate refused to remain in the Medical Observation Unit, stating he did not want to lose his cell that he had occupied for a long time. About an hour and a half later, Deputies 1 and 2 discovered the decedent unresponsive on his cell floor, with his eyes open and fluid coming from his mouth. They initiated life-saving procedures in compliance with departmental policy until medical staff intervened, and then pronounced his death at 4:49 a.m. An autopsy determined the natural death occurred due to bronchopneumonia, without any pre-existing risk factors. The evidence showed the actions taken by Deputies 1 and 2 were lawful, justified and proper.

14-143

1. Misconduct/Procedure – Probation Officers released unruly juvenile probationers at a trolley station; jeopardizing public safety when they became involved in an altercation.

Board Finding: Action Justified

Rationale: The complainant observed two juvenile probationers engaged in a verbal dispute that began to turn

physical, until staff members intervened. Probation Officers 1-4 had transported a group of 40 juvenile probationers to the trolley station at the conclusion of their day school program. While waiting for the trolley, Probation Officers heard a disturbance, observed the probationers gathering, and moved to intervene and separate two hostile probationers from the group. Those two probationers were later arrested for violating the terms of their probation and taken to Juvenile Hall. Ten unassociated youths approached the probationers, and dispersed upon seeing the Probation Officers, preventing any further problems. The investigation revealed that this was an isolated incident; however, the Probation Department initiated a review of departmental policies and procedures to consider Probation Officer responsibilities, and local law enforcement involvement, in similar off-school incidents. The evidence showed that the Probation Officers acted within departmental policy and their conduct was lawful, justified and proper.

End of report