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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 September 8, 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

- 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).
- 14-083 / Aubry-Mainez (Sustained – Unidentified Deputies)

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 (15)

ALLEGATIONS, FINDINGS & RATIONALE

14-068

1. Misconduct/Procedure – PO's 1 and 2 re-arrested the complainant for his use of prescribed medical marijuana.

Board Finding: Action Justified

Rationale: The complainant alleged that PO's 1 and 2 "violated" him for his use of prescribed medical marijuana. The complainant was released to Post Release Community Supervision (PRCS) pursuant to Penal Code section 3450, Post Release Community Supervision Act of 2011, and was subject to community supervision to be provided by the Probation Department. General and special conditions of release were outlined and explained to the complainant, and his signature endorsed agreement to comply with the stated conditions. One significant condition of the complainant's probation required that he not possess or use any controlled substances without a valid prescription. Per Probation Department policy, probationers requesting to use medical marijuana while on probation, must conform to current supervision policies (probation terms) regarding the use of controlled substances, including marijuana, until the terms of probation are modified by the Court. The complainant was further admonished by the court not to use medical marijuana, but persisted, and in

doing so was rearrested on two separate occasions for violation of PC § 166, Criminal Contempt. On both occasions, the complainant was re-arrested for a number of probation violations including his use of controlled substances. The evidence showed that the act did occur, but was lawful, justified and proper.

14-071

1. Excessive Force – Deputy 1’s canine assaulted the complainant for 10-20 seconds.

Board Finding: Action Justified

Rationale: The complainant stated that he complied with the deputy orders before a canine charged and bit his upper arm causing injury. Deputies were dispatched to a burglary in progress, and the complainant was seen, failed to stop as directed, and was observed climbing a wall into the yard of a nearby residence, in an attempt to flee. Deputies entered the back yard of the residence, making canine announcements to notify anyone in the area that a canine would be deployed; the complainant remained hidden and did not respond. Deputy 1’s canine partner began to pull hard toward the base of a palm tree, and Deputy 1 repeated the canine announcement. The complainant again failed to respond to the canine announcement, and deputies were unaware of his presence until the canine made initial contact. Deputy 1 reported that once he could see the complainant, he told him to stop fighting the dog, to stop yelling, and put his hands in the air. As soon as the complainant complied with deputy orders, and deputies could safely move down a slope and take the complainant into custody, the canine was released. Sheriff’s Department Addendum F, Use of Force Guidelines, states that the use of trained canines are a viable force option when employed under the direction of their handlers. According to the Department’s Canine Unit Manual 4.4, Utilization of Canines, use of canines to locate, apprehend or control a felony suspect is permitted when it would be unsafe for the deputies to proceed into the area. Case law has held that use of a canine was not considered excessive force when the suspect was wanted for a felony offense and fled police; use of a canine to find a fleeing, hidden, unsearched felony suspect, and to secure him until he stopped struggling and was handcuffed, was determined to be objectively reasonable. The complainant had fled the scene of a burglary in progress, failed to stop when ordered, climbed a fence in an attempt to flee, had numerous opportunities to comply with canine announcements by the Sheriff’s helicopter and deputies, but he failed to do so. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

2. Misconduct/Medical – The complainant received marginal medical care for a severe injury and had on-going complications.

Board Finding: Summary Dismissal

Rationale: The complainant stated that there was disregard for a sterile environment while in Sheriff’s custody. A review of Sheriff’s Medical records corroborated a well-documented medical history of daily treatment for the complainant while incarcerated. CLERB lacks jurisdiction over medical institutions, issues and/or staff, and this matter was referred to the Sheriff’s Department for follow-up

14-072

1. Misconduct/Procedure – Deputy 1 performed an illegal U-turn without lights/siren.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 1 performed an illegal U-turn in order to initiate a traffic stop. Deputy 1 denied that he made a U-turn, reporting that he was traveling in the same direction as the complainant when he observed a Vehicle Code violation. Absent any witnesses, or audio/video recordings, there was insufficient evidence to prove or disprove the allegation.

2. Illegal Seizure – Deputy 1 detained the complainant and issued a citation for a vertical license plate on his stock manufactured motorcycle that should have been exempt.

Board Finding: Action Justified

Rationale: The complainant believed his motorcycle should have been exempted from the cited Vehicle Code violation. Deputy 1 reported that he observed an equipment violation on the complainant's motorcycle and initiated a traffic stop. The license plate on the motorcycle driven by the complainant was vertically rather than horizontally mounted, in violation of California Vehicle Code § 5201(a), Positioning of Plates. CVC § 5201(a) was amended by Senate Bill 1318, effective January 1, 2011, and there were no grandfathering or exceptions authorized. The evidence showed that the traffic stop and the issuance of the citation did occur, but were lawful, justified and proper.

3. Illegal Seizure – Deputy 1 unduly extended the duration of the traffic stop.

Board Finding: Not Sustained

Rationale: The complainant believed the duration of the traffic stop was excessive for a simple Vehicle Code violation. Deputy 1 denied that the duration of the traffic stop was excessive, and stated that the complainant was uncooperative and did not immediately follow orders. Deputy 1 placed the complainant in handcuffs and searched him; the complainant continued to be uncooperative and requested a supervisor come to the scene. Deputy 2 arrived on scene about five minutes later, briefly spoke with the complainant and deputies, and then directed Deputy 1 to take photographs of the complainant and his motorcycle before he was released. At the conclusion of Deputy 2's contact, Deputy 1 resumed the traffic stop procedures, verified license/vehicle information, photographed the complainant and his motorcycle, and issued him a citation for the equipment violation. The complainant estimated the contact lasted over 30 minutes, and Deputy 1 stated the encounter took approximately 26 minutes. Based on the circumstances surrounding the stop, there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 1 told the complainant to “shut the fuck up,” and threatened to “haul his ass to jail,” or words to that effect.

Board Finding: Not Sustained

Rationale: The complainant stated that when he asked why he had been stopped, Deputy 1 responded “shut the fuck up,” and later told him he would “haul his ass to jail.” Deputy 1 denied that he made these statements, or used profanity during the encounter. Other on-scene deputies were questioned, but could not or did not corroborate the complainant's assertion. Absent any independent witnesses, or audio/video recordings, there was insufficient evidence to prove or disprove the allegation.

5. Discrimination/Other – Deputy 1 profiled the complainant as a “Prospect for the Peckerwoods” motorcycle “gang.”

Board Finding: ~~Unfounded~~ Not Sustained

Rationale: The complainant reported that Deputy 1 profiled him because of his affiliation with a motorcycle “gang.” Deputy 1 denied that he profiled the complainant, reporting that he initiated a traffic stop because of an equipment violation, and once stopped, noticed that the complainant was wearing an under rocker that showed he was a prospective member of a local motorcycle gang. The complainant stated he had heard about the change in the vehicle code concerning the display of motorcycle license plates, but did not argue that the equipment on his motorcycle was properly displayed. Deputy 1 had a lawful reason for stopping the complainant, and the alleged conduct did not occur.

6. Misconduct/Intimidation – Deputy 1 threatened the complainant with jail when he would not provide permission for photographs of himself and/or his motorcycle.

Board Finding: Not Sustained

Rationale: The complainant said that Deputy 1 threatened him with jail if he did not submit to photographs of himself and his motorcycle. Deputy 1 denied that he threatened the complainant with arrest if he failed to submit to the photographs. Deputy 1 did report that photographs were taken of the complainant and his motorcycle, because of the complainant's involvement with a motorcycle club that has participated in criminal activity. Other on-scene deputies were questioned, but could not or did not corroborate the complainant's

assertion. Absent any independent witnesses, or audio/video recordings, there was insufficient evidence to prove or disprove the allegation.

7. Illegal Search - Deputy 1 searched the complainant after he requested permission and the complainant refused.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 1 searched him despite his protest. Deputy 1 reported that he asked the complainant if he could search him, to which the complainant responded, "You're going to do it anyway." Deputy 1 stated that since the complainant had not answered his question, he again requested the consent to search, and the complainant responded, "go ahead." Other on-scene deputies were questioned, but could not or did not corroborate the complainant's assertion. Absent any independent witnesses, or audio/video recordings, there was insufficient evidence to prove or disprove the allegation.

8. Misconduct/Procedure – Deputy 1 left the complainant handcuffed after finding no weapons or drugs.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 1 kept him in handcuffs after he had been searched and was not found to be in possession of weapons or drugs. Officers are permitted to do whatever is reasonable to protect themselves. Deputy 1 reported that he advised the complainant that he was kept in handcuffs because of his previous reluctance to follow directions, and for the complainant's and deputies' safety. Reports by both the complainant and Deputy 1 showed that the act did occur, but was lawful, justified and proper.

9. Misconduct/Procedure – Deputy 2 told the complainant that he had "no rights" because of his affiliation with a motorcycle gang.

Board Finding: Summary Dismissal

Rationale: Deputy 2 retired in March 2015 and is no longer subject to CLERB's requests for information. The Review Board lacks jurisdiction based on CLERB Rule & Regulation 4.1 in that Deputy 2 is no longer employed by the Sheriff's Department, and is not required to cooperate with this investigation.

10. Misconduct/Intimidation – Deputy 2 threatened the complainant with jail when the complainant would not provide permission for pictures of himself and/or his motorcycle.

Board Finding: Summary Dismissal

Rationale: See Rationale #9.

14-073

1. False Arrest – Deputy 1 cited the complainant for violations of the California Vehicle Code.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 1 cited her for changing lanes without signaling, not updating her address, and not having license plates, violations which she contested. Deputy 1 reported that he observed the complainant make an unsafe turning movement which almost caused her to collide with his patrol vehicle, a violation of California Vehicle Code (CVC) § 22107, Turning Movements and Required Signals. During the ensuing traffic stop the complainant was also cited for violation of California Vehicle Code § 5200(a), Display of License Plates, because the front license plate was not displayed on the vehicle, and §14600(a), Change of Address, because the addresses on the complainant's license/registration did not match. The evidence showed that the act did occur, but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 signed the complainant's name to her citation.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 1 presented her with a citation with his signature in the "Promise

to Appear” block intended for the complainant. The complainant said she refused to accept the citation because she objected of the violations cited, and because Deputy 1 had signed in the location intended for the complainant. Deputy 1 reported that he explained to complainant that her signature was her written promise to appear on the matter, and she could address her objection to the violations in traffic court. Deputy 1 also reported, that when the complainant signed the citation, he noticed that the signature did not match the complainant’s driver’s license. Deputy 1 denied that he signed the complainant’s name to the citation. There were no independent witnesses to corroborate the signature on the citation, therefore there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Intimidation – Deputy 2 and/or 3 threatened the complainant.

Board Finding: Not Sustained

Rationale: The complainant reported that Deputy 2 and/or 3 threatened to “throw her to the ground,” if she did not allow her vehicle to be searched. Deputies 2 and 3 denied attempting to search the complainant’s vehicle, but admittedly looked into the vehicle through the closed windows. Deputy 2 denied making any threats, Deputy 3 did not recall if he had made any such a statement and Deputy 1 denied hearing any such threat. Absent independent witnesses or audio recordings there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 2 and/or 3 refused to provide the complainant with their name and identification number.

Board Finding: Not Sustained

Rationale: The complainant stated that an unidentified deputy refused to provide their name and identification when requested. Deputy 1, the arresting officer, stated that the complainant asked for his name and identification, which he provided. Deputies 2 and 3 did not recall if the complainant asked for their name and identification number. There was insufficient information to prove or disprove the allegation.

5. Misconduct/Discourtesy – Deputy 3 told the complainant, “You’re a shitty person,” or words to that effect.

Board Finding: Sustained

Rationale: The complainant stated that she asked a male deputy for his name and ID, but he refused to provide the information, which prompted the complainant to call him a crook. Deputy 3 and the complainant exchanged words during the contact to the effect, “You are a shitty person,” and “You’re a shitty Sheriff.” This verbal exchange did occur, but it is unclear whether Deputy 3 or the complainant initiated the exchange. Sheriff’s Department Policies and Procedures 2.22, Courtesy, states employees shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Additionally, except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language. The circumstances surrounding this allegation did not rise to a violent or dangerous situation, therefore the use of coarse or profane language was a violation of Department Policy and Procedure. The evidence supports the allegation and the act or conduct was not justified.

6. Misconduct/Discourtesy – Deputy 2 and/or 3 accused the complainant of being, “Drunk and on drugs,” or words to that effect.

Board Finding: Not Sustained

Rationale: The complainant reported that Deputies 2 and/or 3 accused her of being drunk and on drugs. Deputy 2 denied making or hearing any such statement, and Deputy 3 did not recall making or hearing such a statement. Absent independent witnesses or audio recordings there was insufficient evidence to prove or disprove the allegation.

7. Illegal Search or Seizure – Deputy 5 detained the complainant at her place of employment.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 5 went to her place of employment and detained her without

reason. Sheriff's Department records did not reveal any deputies in the area of the complainant's place of employment on the dates provided by the complainant. According to the complainant's employer, the complainant worked the graveyard shift and there were no other employees available to support the allegation. There was insufficient evidence to prove or disprove the allegation.

8. False Arrest - Deputy 4 arrested the complainant for "Obstruction."

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 4 arrested her for obstruction. Deputy 4 responded to a request to assist other deputies conducting a DUI investigation which was being conducted in the parking lot at the complainant's place of employment. The complainant had demanded that deputies move their vehicles from the parking lot so that customers could come and go freely. The complainant stated she began to converse with passengers in the suspect vehicle. Deputy 4 stated he told the complainant that they would leave when the investigation was completed, and told her to return to her place of employment. The complainant remained outside the business, and yelled at deputies performing the DUI evaluation. Based on initial reports that the complainant had obstructed a DUI investigation, and Deputy 4's observations of the complainant's behavior, the complainant was placed under arrest for violation of Penal Code § 148(a), Resist, Obstruct, Delay a Peace Officer. The evidence showed that the act did occur, but was lawful, justified and proper.

9. Misconduct/Procedure - Deputy 4 released the complainant without any means of transportation.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 4 released the complainant from custody at 2 a.m. without any means of transportation. The complainant however, did report that she had contacted a co-worker to pick her up from the Sheriff's Station upon release. Deputy 4 reported that adults cited and released at the Sheriff's Station are responsible to make their own transportation arrangements upon release. The complainant was processed, issued a citation, and released at approximately 1:00 am. The evidence showed that there was no policy or procedural violation, and the act did occur, but was lawful, justified and proper.

10. Misconduct/Harassment - Deputy 5 threatened the complainant with arrest for crossing the street after she was released from the Sheriff's Substation.

Board Finding: Not Sustained

Rationale: The complainant stated that after she had been released, three to four deputies approached her and asked what she was doing, and she was told to get out of the street or she would be arrested. Deputy 2 was transporting a prisoner when she observed the complainant standing in the middle of an intersection, and told her to get out of the road because she was going to get hit by a car. She reportedly did not comply and Deputy 2 called for additional officers because of her prisoner transport. The investigation was unable to identify additional deputies because there was no further documentation to support the contact. The accounts provided by the complainant and Deputy 2 are in conflict, and absent independent witnesses or audio recordings there was insufficient evidence to prove or disprove the allegation.

14-074

1. Excessive Force – Deputy 3 pushed the complainant's head into a wall causing a cut over his eye.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 3 forcefully pushed him into a wall, causing injury. Deputy 3 reported that the complainant refused to complete the booking process and failed to comply with deputy orders. Deputies determined that the complainant's boisterous behavior could incite other inmates, so he was moved to the Search Room. The complainant reportedly continued to yell at deputies and failed to follow orders, so Deputy 3 used bodyweight to push the complainant toward the wall in the Search Room. Deputy 3 stated that he did not recall pushing the complainant's head, but acknowledged that the complainant's head may have struck the wall. Deputy 1 observed Deputy 3 place the complainant's body up against the wall, reported that he saw the

complainant's upper body and head make contact with the wall, but did not observe any injuries. Detentions Policy and Procedure 1.89, 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. There were no independent witnesses to attest to the incident, nor was surveillance video available. There was insufficient evidence to prove or disprove whether the amount and the application of force used by Deputy 3 was reasonable and necessary.

2. Misconduct/Procedure – Deputy 1 held the complainant's arm while Deputy 3 pushed his head into a wall causing a cut over his eye.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 1 held the complainant's arm while Deputy 3 forcefully pushed his head into a wall. Deputy 1 denied having contact with the complainant while in the Search Room. There were no reports or independent witnesses to attest that Deputy 1 assisted in holding the complainant for the purpose of having his head pushed into the wall. Absent independent witnesses or surveillance video, there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 2 held the complainant's arm while Deputy 3 pushed his head into a wall causing a cut over his eye.

Board Finding: Summary Dismissal

Rationale: Deputy 2 left the Sheriff's Department in July 2014 and he is no longer subject to CLERB's requests for information. The Review Board lacks jurisdiction based on CLERB Rule & Regulation 4.1 in that Deputy 2 is no longer employed by the Sheriff's Department, and is not required to cooperate with the investigation.

4. Excessive Force – Deputy 3 hit the complainant in the head with a flashlight 6-7 times.

Board Finding: Sustained

Rationale: The complainant stated that Deputy 3 hit him in the head with a flashlight causing him to lose consciousness. As Deputies 1, 2, and 3 escorted the complainant to a holding cell, the complainant broke free from their hold, and hit Deputy 3 in the nose. Deputies 1, 2, and 3 used hand controls and body weight to take the complainant to the ground in an effort to regain control. Supervisors arrived and assisted by holding the complainant's legs, as he continued to resist. Deputy 3 was unable to control the complainant's right arm, used ineffective fist strikes to the complainant's head, and then used his flashlight to deliver multiple strikes to the top of the complainant's head. Superior officers on scene admonished Deputy 3 for the head strikes, but he again hit the complainant in the head. Department Policy and Procedure, Addendum F Section, Use of Force Guidelines directs that the use of impact weapons should generally start with muscle mass, and then if that proves ineffective, deputies may escalate to striking bones or joints. The policy further state that strikes to the head or neck should be avoided due to the potential for serious injury. Five deputies were using hand controls and bodyweight to hold the resisting complainant down at the time of the flashlight strikes, with more deputies' just moments away. Deputy 3's use of the flashlight to the complainant's head was not reasonable or necessary, as attested to by superior officers on the scene. The evidence supported the allegation and the act was not justified.

5. Excessive Force - Deputy 3 pulled the complainant's right arm behind his back with such force that it was pulled from the socket.

Board Finding: Not Sustained

Rationale: The complainant reported that a deputy pulled his right arm with such force that it was pulled from its socket. Deputy 3 acknowledged that he pulled the complainant's right arm behind his back and rotated it forward, because the complainant had resisted the efforts of multiple deputies trying to get him under control. Detentions Policy 1.89, 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. Medical documentation confirmed that the complainant sustained a dislocated right elbow. There was insufficient evidence to prove or

disprove whether the amount of force used by Deputy 3 in his attempt to handcuff the complainant was reasonable and necessary.

14-075

1. Excessive Force – Deputies 2, 4, and 11 threw the complainant on a stretcher, placed him into full restraints, ripped off all his clothing, and then transported him to x-ray while naked.

Board Finding: Action Justified

Rationale: The complainant reported that Deputies 2, 4, and 11 escorted him to a stretcher where he was thrown face-down, placed in full restraints, and unclothed. Video surveillance showed that Deputies 2 and 4 did escort the shirtless complainant from the dayroom enclosure to a stretcher, where he was placed face-down and strapped onto the stretcher. Prior to being moved to a holding cell, Deputy 11 removed the complainant's jail-issued green pants and sandals, leaving him dressed only in underwear and socks. The evidence showed that the alleged acts or conduct did occur, but were lawful justified and proper.

2. Misconduct/Procedure – Deputy 8 had the complainant self-perform an anal cavity search in front of approximately 20 deputies, including a female.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 8 made him perform an anal cavity search. Deputies learned that the complainant may have been in possession of contraband and removed him from the dayroom enclosure. An x-ray revealed that the complainant did have contraband concealed in his body, and was given the option to remove the contraband himself, or the Sheriff's Department would obtain a warrant and have the contraband removed at a medical facility. The complainant chose to remove the contraband himself, and placed it into a brown paper bag. Deputy 8 denied there were 20 deputies present, but acknowledged that a female sergeant was present at times. Video evidence showed that a female sergeant, in a supervisory role, came into view on two very brief occasions; however, she was not present during the contraband removal. There were no procedural violations in having the self-removal of contraband prior to seeking a court order for medical intervention, or for the female sergeant to be present. The alleged actions did occur, but were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 7 transported the complainant from GBDF to SDCJ in a patrol unit while he was hogtied and naked.

Board Finding: Action Justified

Rationale: The complainant stated that he was transported in a patrol car while hogtied and naked, and the investigation determined that this was accurate. Deputy 7 reported that the complainant remained in maximum restraints because of his escape risk classification. Deputy 8 reported that the complainant was placed in back of the vehicle on his left side, with his head on the seat behind the driver so that he could be monitored in transit. Deputy 7 also reported that a blanket was placed on the seat of the transport vehicle and the complainant was strapped in with a seat belt. Because of the maximum restraints and the seat belt, Deputy 7 was unable to secure a blanket over the complainant's body. Department Use of Force Guidelines allows inmates that present an escape risk to be transported using maximum restraints in lieu of leg chains, and there was no policy requiring clothing/cover. The evidence showed that the acts did occur, but were lawful, justified and proper.

4. Misconduct/Truthfulness – Deputy 8 falsely reported that the complainant “threatened to kick all their asses,” or words to that effect.

Board Finding: Unfounded

Rationale: The complaint reported that Deputy 8 lied in his reports. Deputy 8 stated that he heard the complainant make threats to “kick all their asses,” or words to that effect, while the complainant was being transported from a holding cell to the transport vehicle. Deputy 8 documented in his report statements made by the complainant in previous reports where he threatened harm to deputies and his cellmates. Given the complainant's documented history for making threats against others, and Deputy 8's report of similar threats

made during his movement to the patrol vehicle, the preponderance of evidence showed that the alleged act did not occur.

5. Misconduct/Truthfulness – Deputy 6 falsely reported that the complainant was covered with a sheet.

Board Finding: Sustained

Rationale: The complainant said Deputy 6 falsely reported that the complainant was covered with a sheet when he was transported. The Facility Commander reported that he conferred with Deputy 6 after the complainant had been removed from GBDF, and was briefed that a sheet had been placed on the complainant as he was rolled out to the transport vehicle. The Commander later documented in a Grievance Response that the complainant was covered in a sheet and taken to a patrol car, but could not attribute this to any report. Deputy 6 stated that he believed such a report had been filed; however, the investigation did not reveal any such report. Video evidence showed that the complainant was not covered as he was moved from the holding cell to a patrol vehicle for transport. The investigation also revealed that the complainant was not covered in the patrol vehicle during transport to San Diego Central Jail. The evidence supported that allegation.

6. Misconduct/Procedure – Deputy 6 would not allow deputies to readjust the complainant’s restraints and/or seek immediate medical assistance after he was injured during a use of force event.

Board Finding: Action Justified

Rationale: The complainant reported that Deputy 6 would not allow the adjustment of his restraints, or provide medical assistance when requested. Deputy 6 reported that the complainant did request his restraints adjusted and told a deputy to check the handcuffs to see if they were too tight. Video evidence showed deputies approach the complainant multiple times, and on at least one occasion appeared to adjust the handcuffs. Deputy 6 denied that the complainant requested medical care in his presence, yet video evidence showed that medical personnel were present for the x-rays, and later observed conducting an evaluation at the complainant’s request. The evidence showed the alleged actions and conduct did occur, but were lawful, justified and proper.

7. Misconduct/Procedure – The Sheriff’s Department did not monitor the restrained complainant as required by Department Policies and Procedures.

Board Finding: Sustained

Rationale: Detentions Policy and Procedure I.93, Use of Restraint Equipment, requires that inmates placed in restraints are to be medically evaluated for continued retention at least every two (2) hours thereafter. Medical observation of the restrained inmate is to continue according to medical protocols. Deputies were present throughout the encounter; however, medical personnel were not observed providing the necessary supervision required at least twice every thirty minutes, to ensure no unexpected health concerns or injuries occurred. The evidence supported the allegation and the act or conduct was not justified.

8. Excessive Force – Deputies 1, 3, 5, 9, and 10 beat the restrained complainant.

Board Finding: Action Justified

Rationale: The complainant said that he was slammed to the floor and beaten by deputies, because he knocked a tray of box lunches to the floor, grabbed hold of a fence, and would not let go. Video surveillance showed the complainant purposely knocked a tray of box lunches to the floor, and then grabbed the entry-gate to the elevator lobby. Deputies used Department approved control compliance techniques, body weight, carotid restraint, and fist strikes to subdue the complainant. The complainant’s actions necessitated the deputies’ use of force to overcome his active resistance and compliance with deputy orders. The evidence showed the alleged actions and conduct did occur, but were lawful, justified and proper.

14-078

1. Misconduct/Procedure – Deputy 2 ignored the complainant’s requests for a safety cell garment or other covering while he was in a Safety Cell.

Board Finding: Action Justified

Rationale: The complainant stated he was held in a safety cell for an extended period of time without any garment or blanket. Detentions Policies and Procedures J.1, Safety Cells, Definition and Use, state that safety cell garments may be withheld if there is reason to believe that the inmate is likely to attempt to use the safety cell garment to harm oneself. Based on complainant's identifiable risks provided by the arresting officers and medical personnel, the complainant's safety cell garment was withheld pending evaluation. The evidence showed that the alleged act or conduct did occur, but was lawful, justified and proper.

2. Discrimination – Deputy 2 “racially discriminated” against the complainant in not providing a safety cell garment or other covering while he was in a Safety Cell.

Board Finding: Unfounded

Rationale: The African-American complainant believed that unidentified deputies racially discriminated against him because he observed that a Hispanic inmate was provided a safety cell garment. Detentions Policies and Procedures J.1, Safety Cells, Definition and Use, requires all inmates placed into a safety cell to be issued a safety cell garment unless there is reason to believe that the inmate is likely to attempt to use the safety cell garment to harm oneself. The decision not to provide the complainant with a safety cell garment was based on identifiable risks provided by the arresting officers and medical personnel, not racial factors. The evidence showed that the alleged act or conduct did not occur.

3. Misconduct/Procedure – Deputy 1 failed to respond to the complainant's grievance regarding a Safety Cell incident.

Board Finding: Summary Dismissal

Rationale: The complainant stated that he did not receive responses to grievances submitted concerning his treatment in the safety cell. The complainant reported that he submitted a grievance on May 27, 2014 and never received a response; the investigation was unable to locate any documentation of the grievance. The complainant reported he then submitted a second grievance on the same matter on July 16, 2014 at George Bailey Detention Facility. Because the incident occurred at Vista Detention Facility (VDF), the grievance was forwarded to Vista VDF for appropriate action. Deputy 1 documented a response to the complainant's grievance; however the investigation was unable to determine the means of delivery to the complainant because Deputy 1 has retired from the department; therefore CLERB lacks jurisdiction over this allegation.

14-079

1. Misconduct/Procedure – Deputy 1 housed the complainant in Mainline Housing.

Board Finding: Action Justified

Rationale: The complainant alleged that he was improperly housed in Mainline Housing when he should have been housed exclusively in a psych unit. The purpose of the Inmate Classification System is to screen, assess and house inmates in a manner that will protect the safety of the community, staff and other inmates while assisting detention managers and staff in making sound decisions regarding inmate population management. An inmate's initial classification is determined by their original booking charges, criminal history information, medical status and the interview with the inmate. The inmate is then assigned to the most appropriate housing location based on their classification designation and housing availability. Upon re-entry into local custody, the complainant was classified as a Level 4 – High Medium inmate; meaning he either had current assaultive charges, a prior assaultive history, an escape history or he was a parole violator. There were no hazards & instructions, administrative alerts or special housing instructions that precluded the complainant from being housed in general population, as designated by his classification level. Deputy 1 assigned the complainant to mainline housing based on his classification level, and this action was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 denied the complainant medical attention when he fell from his bunk.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 denied him medical attention when he fell from his bunk, due to being overdosed on his prescription medication. The complainant reported that he was so disoriented and “drugged up” on medication, that he did not know the identity of the involved deputies, nor the specific date and time that this alleged incident occurred. A review of the Jail Information Management System Medical Records and Incident Reports on or around the reported estimated date, failed to produce documentation of this alleged incident. Without specific dates, times and identities of involved deputies, an investigation into this allegation could not be conducted, as there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Medical – SDCJ Medical staff overdosed the complainant on his prescription medication, “Dylantin.”

Board Finding: Summary Dismissal

Rationale: The complainant alleged that medical staff at San Diego Central Jail overdosed him on his prescription medication, rendering him disoriented on multiple occasions. The prescription and administration of medication to inmates in local custody is a function performed by non-sworn medical staff. As such, the Review Board lacks jurisdiction over this particular complaint.

4. Misconduct/Procedure – Deputy 2 denied the complainant toilet paper and a hygiene kit.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 denied him toilet paper and a hygiene kit while in local custody. The complainant did not provide the dates and times of this alleged incident, nor the identities of involved deputies, rendering it virtually impossible to conduct an investigation into this matter. A review of Grievances and Incident Reports recorded in the Jail Information Management System failed to produce documentation of this alleged incident. As such, there was insufficient evidence to prove or disprove the allegation.

14-082

1. Excessive Force – Deputy 1 threw the elderly complainant to the ground injuring her.

Board Finding: ~~Action Justified~~ Not Sustained

Rationale: The complainant reported that Deputy 1 responded to her residence and threw her to the ground, causing injury. Deputy 1 was dispatched to investigate a report that the complainant intended to do self-harm. Upon arrival, he contacted a witness and the complainant, and determined that a second deputy and medical assistance were needed to facilitate transport of the complainant to a hospital. Deputy 1 contacted the complainant in her bedroom, and advised her that she needed to remain in the bedroom until his partner arrived. A witness also remained in the room and observed the complainant as she became more agitated, until such time the complainant stated she needed to use the bathroom. Deputy 1 denied the complainant’s request, because he did not want her to gain access to weapons or items which could cause harm to her or others. The complainant did not comply with Deputy 1’s commands, and twice attempted to leave the room, at which time Deputy 1 blocked her exit and pushed her back. On the complainant’s third attempt to exit, Deputy 1 stated she had her arms raised to his face level, and he grabbed her arm, used department approved holds to take her to the floor, and placed her in handcuffs. Medical records did not attribute any injuries to the alleged use force. Department Policies and Procedures 6.48, Physical Force, and Addendum Section F, Use of Force Guidelines, permit the use of force necessary and objectively reasonable to overcome resistance. The complainant had been uncooperative and refused to comply with Deputy 1’s commands for approximately 20-30 minutes before she attempted to exit a third time and it became necessary to use force. The evidence showed that the force used was lawful, justified and proper.

2. Excessive Force – Deputy 1 tightly handcuffed the elderly complainant causing injury.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 1 applied handcuffs so tightly that her wrists were injured. Case law has addressed claims that handcuffing may constitute excessive use of force through the tightening of handcuffs in a manner causing extreme pain or injury. Deputy 1 reported that he applied the handcuffs appropriately in a locked position, and at no time did he hear the handcuffs tighten. Deputy 1 further reported that he did not hear the complainant make any statement that the handcuffs were too tight, but did observe another deputy readjust them. The witness deputy did not recall hearing the complainant make any statement that the handcuffs were too tight, but did recall loosening or removing them prior to placing the complainant into an ambulance. Medical records did not document any injuries to the complainant's wrists. There was insufficient evidence to prove or disprove that the handcuffs were applied too tightly.

3. Misconduct/Truthfulness – Deputy 1 lied about the complainant calling 911 three times.

Board Finding: Unfounded

Rationale: The complainant stated that Deputy 1 has lied about her calling 911. Deputy 1 reported that the complainant was demanding he leave her room, and when he did not give into the demands, the complainant called 911 on three separate occasions. The investigation revealed that the complainant did initiate three 911 calls, which were recorded by Sheriff's Communications and confirmed the calls had been placed. The evidence showed that Deputy 1 did not lie about the 911 calls, and the alleged act did not occur.

14-085

1. Misconduct/Procedure – Deputy 2 classified the complainant and transferred him to a facility where he was assaulted.

Board Finding: Action Justified

Rationale: The complainant reported that he was assigned to George Bailey Detention Facility (GBDF), housed with known enemies, and was assaulted. During the classification process, the complainant requested to be placed in Protective Custody (PC). Deputy 2 confirmed the complainant's prior protective custody status and assigned him to PC housing. Further review of the complainant's inmate history identified only one individual that should be kept separate from the complainant, and that individual had moved to state prison five months prior to classification. There were no jail record entries, which would preclude the complainant's assignment to the GBDF protective custody housing module. Deputy 2 reviewed, documented, and classified the complainant per Detentions Policies and Procedures R.11, Inmate Facility Assignment Criteria, prior to his transfer to GBDF. The evidence showed that the alleged act did occur, and was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 did not document an inmate-on-inmate assault.

Board Finding: Action Justified

Rationale: The complainant stated that there was no documentation to show that he had been assaulted by another inmate. Deputy 1 observed the injured complainant, removed him from the housing unit, and documented the incident in a Crime/Incident Report as required by Detentions Policy and Procedure F.9, Crime Reports and Major Incident Documentation. Follow-up investigations also documented potential suspects, but there was insufficient evidence to pursue prosecution, and the case was suspended. The evidence showed the inmate-on-inmate assault was documented in accordance with department policy and procedure, and Deputy 1's actions were lawful, justified and proper.

14-086

1. Misconduct/Procedure – Deputy 1 housed the complainant in a "Level 5" module, where he was on lock down 23 hours per day.

Board Finding: Action Justified

Rationale: The complainant alleged that he was housed in a “Level 5” module, where he was on lock down twenty three hours per day. Following an attack by other inmates, the complainant was escorted to medical, where he was evaluated, treated, and after spending several days in medical observation, cleared for mainline housing. The complainant was classified as a Level 3, Low/Medium inmate, and was housed in a module for low/medium offenders, with custody levels 1-3. Deputy 1 assigned the complainant to a module consistent with his classification level, and reported that the complainant was never housed in a Level 5 module. The complainant was initially locked down for one day while in Medical, pending a psychological evaluation, but did not spend any time locked down once he was housed in mainline. Deputy 1 housed the complainant according to his custody level, and this act was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 ignored or denied the complainant’s multiple requests to be seen by medical.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 ignored or denied his multiple requests to be seen by medical. Medical records, however, document the complainant’s multiple contacts with medical staff, following an inmate attack. The complainant was unable to identify any deputies that he may have contacted regarding his requests, or provide dates and times when these alleged contacts were made, rendering it virtually impossible to identify any involved deputies, in order to investigate these claims. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 2 ignored or denied the complainant’s requests for the incident report related to his attack.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 ignored or denied his requests for the incident report related to his attack. The complainant was unable to identify any deputies that he may have contacted regarding his requests, or provide dates and times when these alleged contacts were made, rendering it virtually impossible to identify any involved deputies, in order to investigate these claims. There was insufficient evidence to either prove or disprove the allegation

4. Misconduct/Medical – Medical Staff did not x-ray the complainant’s injuries until 4 days after the injuries were sustained.

Board Finding: Summary Dismissal

Rationale: The complainant alleged that Medical Staff did not x-ray his injuries until 4 days after the injuries were sustained. Detentions medical records document that the complainant was x-rayed 2 days after sustaining his injuries. That withstanding, allegations against non-sworn employees of the Sheriff’s Department are outside CLERB’s purview, and the Review Board lacks jurisdiction over these complaints.

5. Misconduct/Medical – Medical Staff failed to provide pain medication to the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant alleged that medical staff failed to provide him pain medication. Allegations against non-sworn employees of the Sheriff’s Department are outside CLERB’s purview, and the Review Board lacks jurisdiction over these complaints.

14-087

1. Misconduct/Procedure – Deputy 1 failed to provide the complainant his property when he was transferred to another facility.

Board Finding: Not Sustained

Rationale: The complainant reported that he was transferred from George Bailey Detention Facility (GBDF) to San Diego Central Jail (SDCJ) without his personal property. The complainant had been transferred following

an incident involving multiple inmates and multiple transfers. The Sheriff's Department Inmate History indicated that the complainant's property was received at SDCJ three days after the transfer; however, it could not be determined when that property was delivered to the complainant. The complainant reported that he received some, but not all, of his property approximately one week after transfer. The complainant was not able to identify deputies that he spoke with concerning the lost or missing property, nor did he submit any documentation to Sheriff's deputies to initiate an investigation. There was insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 placed the complainant in lockdown upon arrival at San Diego Central Jail (SDCJ).

Board Finding: Action Justified

Rationale: The complainant stated he was transferred to SDCJ and placed in lockdown, because of an incident at GBDF in which he was not involved. The complainant was identified as one of 13 inmates cited for rule violations after inmates surrounded and assaulted two deputies. The complainant was afforded a Disciplinary Hearing, and was given three days of disciplinary isolation for disrespect to staff, assault on staff, and boisterous activity. The evidence showed the alleged act did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 ignored the complainant's requests for his property.

Board Finding: Not Sustained

Rationale: The complainant stated he told Deputy 1 that he had not received his property and footwear after being transferred from GBDF. The complainant acknowledged that he communicated his requests verbally, and did not file any written Inmate Grievance or Inmate Request related to the missing property and footwear. The complainant was unable to identify any deputies that he may have contacted. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 1 failed to provide sandals to the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated that he had been transferred from GBDF to SDCJ without footwear. The investigation was unable to determine if the complainant was wearing footwear when he was transferred from GBDF and received at SDCJ. The complainant was not able to identify any deputy that he spoke with concerning his footwear, nor did he submit any Grievance Reports or Inmate Requests to initiate an investigation. There was insufficient evidence to prove or disprove the allegation.

14-088

1. Misconduct/Discourtesy – Deputy 1 stated to the complainant, “Put a shirt on you fucking blind faggot,” or used words to that effect.

Board Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 stated to him, “Put a shirt on you fucking blind faggot,” or used words to that effect. Deputy 1 was conducting security checks in the module when he observed the complainant in the Dayroom not wearing a shirt. He gave the complainant a lawful order when he instructed him to put a shirt on, but denied using an expletive and speaking disparagingly to the complainant while giving this order. Deputy 1 admitted using profanity in a distinctly separate statement to the complainant, but pursuant to Sheriff's Policy 2.22, Courtesy, deputies are allowed the use of coarse, profane or violent language when necessary, to establish control during a violent or dangerous situation. Deputy 1 was alone in the module as this contact began to escalate, so his use of profanity in the separate statement to quickly diffuse a potentially dangerous situation was within policy. The entire incident was captured on surveillance video, however, there was no audio recording of the alleged statement in question, and therefore insufficient evidence to either prove or disprove the allegation.

2. Excessive Force – Deputy 1 placed the complainant in a “Choke hold.”

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 placed him in a “Choke hold” during a force incident. Deputy 1 reported that after instructing the complainant to put a shirt on, the complainant became argumentative, agitated and increasingly non-compliant, necessitating removal from the module. When Deputy 1 attempted to grasp the complainant’s wrist in order to escort him from the module, the complainant pulled away, becoming actively resistant. Deputy 1 denied utilizing a "Choke hold" or "Carotid restraint," stating that he placed his hand around the complainant’s head area in a "Head Lock" during the struggle to control him. 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. Per sheriff’s policy, the use of a carotid restraint is permissible, but was not utilized during this incident. Surveillance video captured this incident and corroborated the department approved use of force as described by Deputy 1, showing that the alleged act did occur, but was lawful, justified and proper.

3. Excessive Force – Deputy 1 “slammed” the complainant’s body to the pavement, resulting in numerous stitches and a fractured elbow.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 “slammed” him to the pavement, resulting in numerous stitches and a fractured elbow. The complainant actively resisted Deputy 1’s efforts to control him, in order to escort him from the module. In an attempt to place the complainant at a disadvantage and gain control of the situation, Deputy 1 and two other deputies providing assistance, used their combined body weight to apply downward pressure to bring the complainant to the ground. 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 captured this incident and corroborated the use of force as described by Deputy 1, showing that force was used to control the complainant, but was lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 1 whispered in the complainant’s ear, “Blind boy” and numerous other degrading comments.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 whispered in his ear, “Blind boy” and numerous other degrading comments. Deputy 1 denied that he whispered in the complainant's ear at any time, nor used any degrading comments toward him. Absent an audio recording of these alleged statements, there was insufficient evidence to prove or disprove the allegation.

14-104

1. Excessive Force – Deputies 1-7 “beat-up” the complainant, hit him with “gunshot,” and caused permanent injury.

Board Finding: Action Justified

Rationale: The complainant reported that he was beaten and hit with gunshot, causing permanent injury. The complainant had been in the 6th Floor Recreation Yard in excess of 3 hours and refused to exit. Video evidence showed the complainant refusing to comply with orders to leave. Video and audio evidence showed that the Watch Commander and deputies attempted to convince the complainant to come to the door, so that he could be escorted back to his cell. The Watch Commander determined that it was necessary to forcefully extract the complainant, per Detentions Policies and Procedures I.83, Use of Cell Extraction Procedures. The complainant failed to comply with verbal warnings and Deputy 7 fired one 40mm soft baton round at the complainant’s left shoulder. A Tactical Team entered the Recreation Yard, and directed the complainant to get on the floor; he sat down, cross-legged on the floor. Deputy 7 then told him to get onto his stomach and the complainant refused. The Tactical Team used Department approved control compliance techniques to subdue the complainant.

Deputies 3 and 5 applied Immobilizing Control Electronics (ICE) shields to the complainant's upper body, but did not activate the shields; Deputy 4 delivered four baton strikes to the complainant's left thigh; and, Deputies 1, 2, 3, 5, and 6 used hand controls to place the complainant in restraints. Medical assistance was provided shortly after the complainant was restrained. Medical records did not corroborate any permanent injuries alleged by the complainant. The complainant's actions necessitated the deputies' use of force to overcome his active resistance and failure to comply with deputy orders. The evidence showed that the use of force did occur, and was lawful, justified and proper.

15-068

1. Misconduct/Discourtesy – Deputy 1 was rude and discourteous to the complainant.

Board Finding: Summary Dismissal

Rationale: The complaint was filed more than more than one year after the date of the incident giving rise to the complainant. San Diego County Administrative Code Section 340.9 states that, “the Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the time duration of such incarceration or incapacity shall not be counted in determining whether the one year period for filing the complaint has expired. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 failed to take a crime report.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

End of report