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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its July 9, 2019, 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) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

**Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

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, RECOMMENDED FINDINGS & RATIONALE**

**17-110**

1. Death Investigation/Taser – Deputies 3 and 5 deployed Tasers and other force was utilized by Deputies 1-8 to gain control of Kristopher Birtcher who appeared to be under the influence of drugs.

Board Finding: Action Justified

Rationale: Deputy 3 and a PERT (Psychiatric Emergency Response Team) Clinician responded to a call for evaluation of a subject under the influence of drugs. Deputy 3 attempted to de-escalate the situation verbally as he evaluated and subsequently concluded that Birtcher was under the influence of a controlled substance. When the deputy attempted to place Birtcher in handcuffs for officer safety, the suspect became resistant and struggled. The PERT clinician then placed a radio call for immediate assistance. Deputy 5 arrived and deployed his Taser, which was ineffective. As reported by independent civilian witnesses, Birtcher lunged toward Deputy 3's holstered pistol. Birtcher ran into the parking lot and fought with deputies as they tried to handcuff him. Birtcher displayed "super strength" and an immunity to Taser deployments, as well as, fist, baton and sap strikes. The deputies were unable to independently control Birtcher and were assisted by nearby citizens. Several additional deputies arrived and managed to physically restrain Birtcher with their bodyweight and the use of handcuffs and cord cuffs. Deputies then placed Birtcher in the recovery position and administered doses of Naloxone in an attempt to counteract a possible drug overdose. Emergency Medical personnel responded to the scene and found Birtcher's pulse to be weakening. EMT's assumed control over his medical care and began administering CPR while en route to a hospital. Soon after

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arrival to the hospital, a doctor pronounced Birtcher deceased. According to a Medical Examiner report, there were multiple abrasions, contusions, and superficial lacerations of the head, face, torso, and extremities; none of which contributed to Birtcher's death. There were also several injuries on the left side of his chest; consistent with the eight taser barbs that were deployed. Based on the autopsy findings, the cause of death was sudden cardiac arrest while restrained, and the manner of death was homicide. Acute methamphetamine intoxication was listed as a contributing factor. The autopsy and toxicological testing show that Birtcher had consumed methamphetamine which caused acute intoxication. His level of methamphetamine intoxication combined with his active resistance, combativeness and the duration of the struggle, all contributed to his death. The evidence showed that actions taken by all involved deputies was lawful, justified and proper.

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## **18-098**

### **1. False Arrest – Deputy 1 arrested the complainant.**

#### **Board Finding: Action Justified**

**Rationale:** The complainant reported that on “July 22, 2017, she attended a Celebration of Life event. Sometime between 6 and 7pm, there was an altercation and the complainant found herself tending to an injured person who had hit his head and could not speak. The complainant repeatedly requested that bar staff contact 911, but they were reluctant. An EMS unit responded and the complainant ‘poked her head’ into the side door of the ambulance to provide medical information pertaining to the injured person’s LOC (level of consciousness) immediately following his injury to the first responders. However, the four First Responders (FR) were busy, so she immediately turned to walk away or find another FR to give the information. As she turned to find another FR or walk away, Deputy 1 confronted her and ‘violently’ began to yell at the complainant to get away, and instantaneously began threatening arrest. As the complainant stood in shock attempting to determine what she had done, and what was happening she told Deputy 1 twice, ‘You’re being a bitch!’ As complainant realized Deputy 1s’ violent yelling was only about [Deputy] 1 threatening an arrest, even though there was zero FR activity occurring in the immediate area, complainant walked away. However, Deputy 1 continued to follow and ‘violently’ yell at the complainant. At some point, Deputy 1 violently pushed the complainant against a nearby vehicle and she subsequently fell backwards. The complainant was then taken to the ground and placed under arrest for ‘resisting arrest.’” An arrest report by Deputy 1 documented the events leading to the complainant’s arrest. As documented, the complainant was reportedly intoxicated, as evidenced by her “glossy eyes that had a sleepy look about them, loud and slurred speech, and the odor of alcohol coming from her person.” Deputy 1 asked the complainant to leave the area and wait elsewhere, but instead she rooted herself in place and refused to leave. The complainant was asked several other times to leave by Deputy 1, as well as paramedics, but she refused and grew increasingly aggressive and confrontational. Deputy 1 gave one final directive to which the complainant retorted with a profanity. Based on the many chances the complainant had to leave the scene, as well as her continued interference with the investigation and refusal to comply with commands, Deputy 1 placed the complainant under arrest for 148(A)(1)PC, Obstructing and Resisting a Peace Officer or Emergency Medical Technician. Deputy 1 said she grabbed the complainant by her arm and instructed her to turn around and place her hands behind her back, but the complainant, pulled her arm away and faced off with the deputy, who was at a physical disadvantage. Per the Arrest Report, the inebriated suspect was approximately 6 inches taller and 30 pounds heavier than the deputy. The deputy grabbed tighter onto the suspect’s arm and used body weight to push her up against a nearby vehicle, but the complainant refused to be handcuffed. A struggle ensued and the complainant pushed the deputy onto the asphalt. By law, a suspect has “no right to resist” a lawful detention and a peace officer may use whatever physical force is necessary to effect arrest. Deputy 1 got up, grabbed the complainant by her hair, and forced her to the ground, while the complainant resisted and flailed her body about. Deputy 1 applied a rear wrist lock which was ineffective, likely due to the complainant’s intoxication level. A paramedic assisted and utilized body weight to hold the complainant down while Deputy 1 called for cover. Deputy 2 responded, assisted in handcuffing, and also held the complainant down while she continued to shout and thrash her body about. As the complainant was escorted to a patrol vehicle for transport, she sat down but then argued and refused to place her feet inside the vehicle. Deputy 1 lifted and pushed her legs into the back seat of the vehicle to secure the door. While the complainant and Deputy 1 reported the same incident from opposing points of view, the law is clear that one must submit to authority and the evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

### **2. Excessive Force/Handcuffs – Deputy 1 placed tight handcuffs on the complainant.**

#### **Board Finding: Not Sustained**

**Rationale:** The complainant said she was “handcuffed and detained in a patrol vehicle where she complained that her handcuffs were too tight.” The purpose of handcuffs is to restrain the movements of a subject in a manner that provides a safe means of transportation for officers and others and to control further physical resistance from a

subject. No general rule says handcuffs must be loose or at what level the handcuffs become too tight, but a standard of practice is to be able to stick one finger in between the cuff and the wrist. An evidentiary photograph was taken of the handcuffed complainant and did not corroborate any wrist welts or other injuries, furthermore, Sheriff's medical records did not corroborate any injuries attributed to handcuffs. However, there was insufficient evidence to either prove or disprove that they were "too tight."

3. Misconduct/Retaliation – Deputy 2 tightened the complainant's handcuffs.

Board Finding: Summary Dismissal

Rationale: The complainant said she was "handcuffed and detained in a patrol vehicle where she complained that her handcuffs were too tight. In response, an unknown male deputy tightened her handcuffs further." Deputy 2 assisted in the complainant's arrest and transported her to a detention facility. Deputy 2 wrote an Arrest and Use of Force Supplemental reports, in which he stated that due to the circumstances of the complainant's arrest, he did not feel it was safe to release one of her hands to sign the EVID-7 (property) form, and notated so on it. There was no further evidence to corroborate or refute this allegation. Deputy 2 terminated employment with the SDSO prior to the complainant submitting her complaint to CLERB. Per CLERB Rules & Regulations 4.1 and 5.8, the Review Board lacks jurisdiction.

4. Misconduct/Procedure – Deputy 2 detained the complainant in a patrol vehicle without adequate ventilation.

Board Finding: Summary Dismissal

Rationale: The complainant said she was "handcuffed and detained in a patrol vehicle where she complained about inadequate ventilation." There was no evidence to corroborate or refute this allegation. Deputy 2 terminated employment with the SDSO prior to the complainant submitting her complaint to CLERB. Per CLERB Rules & Regulations 4.1 and 5.8, the Review Board lacks jurisdiction.

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**18-099**

1. Misconduct/Procedure – Unidentified deputies and/or staff ignored the complainant's medical condition.

Board Finding: Summary Dismissal

Rationale: The complainant reported that she was wearing a heart monitor for a medical condition, but said that her medical needs were completely ignored by deputies and medical staff. "The medical person told me that to have my medical needs met, I would have to be 'completely booked,' and put in with general population. Something to that point, She also belittled my condition telling me, as though she was a doctor, that all I needed was aspirin." In accordance with Sheriff's Policy M.9, Intake Medical Screening, when booked into custody every inmate is medically screened. Medical records confirmed that the complainant had an external heart monitor for an upcoming scheduled procedure. In non-emergency situations, sworn personnel defer to medical staff for medical/health-related issues. Medical staff, medical protocol, and health decisions are made by non-sworn personnel over whom CLERB does not have jurisdiction. The Review Board lacks jurisdiction per CLERB Rules & Regulations 4.1, Authority.

2. Misconduct/Procedure – Unidentified deputies locked the complainant in a room without a telephone.

Board Finding: Action Justified

Rationale: The complainant said, "she was locked in a little room where the telephones did not work and when she voiced that she wanted to make a call, staff to include deputies expressed 'violent behavior' toward her." The complainant provided no identifying information for the involved personnel. Surveillance video captured the complainant's movements throughout her incarceration, and she was placed into two different holding cells in which there was a commode, bench and telephone. The video review did not corroborate the complainant's reports of staff reacting "violently" toward her. While in Intake Holding Cell #4 for approximately two minutes, the complainant did not touch the telephone. While in Intake Holding Cell #3 for at least 90 minutes or longer, the telephone was inoperable. Sheriff's Policy & Procedure N.5, Access To Courts/Attorneys/Legal Advice, in accordance with PC§ 851.5., Arrestee Phone Calls, mandates that inmates have the availability of unlimited collect telephone use for communication with their attorneys. P.2, Telephone Access, stipulates that all inmates will be provided reasonable access to a telephone beyond those telephone calls required by section 851.5 PC. Surveillance video corroborated that the complainant utilized the telephones while in the General Intake area on three separate occasions and subsequently secured bond to bail out of the detention facility. The evidence showed that the complainant had access to a telephone in accordance with case law and policy, and the conduct was lawful, justified, and proper.

3. Misconduct/Procedure – Unidentified deputies and/or staff ignored the complainant's request for food.

**Board Finding:** Not Sustained

**Rationale:** The complainant said she was in Sheriff's custody for approximately twelve hours or longer, and reported that staff to include deputies were "violent" when she asked for something to eat. "I attempted to inform staff, deputies and such about the phone, my medical needs, and food; but I was treated with very hostile behavior and/or repeatedly ignored." The complainant provided no identifying information for the involved personnel. Sheriff's records confirmed that the complainant was held in custody for just under 12 hours; from 8:29 in the evening until 8:23 the following morning. Surveillance video review did not corroborate the complainant's reports of staff reacting "violently" toward her. According to Detentions Policy K.15, the Food Service staff serves meals three times in any 24-hour period with a maximum of 14 hours between the evening meal and the breakfast meal. The complainant arrived after dinner was served and was released prior to lunch. However, K.15, Serving Times and Distribution of meals states that a sack lunch will be offered to each inmate in the intake and search area at the scheduled mealtimes. An Area Activity Report for the Intake Area for July 22, 2017 to July 23, 2017, documented the specific time breakfast was served at 3:47am. It was unknown if the complainant was offered a sack lunch at that time. There was no other available evidence and insufficient evidence to either prove or disprove this allegation.

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**18-101**

1. Excessive Force – Deputy 4 "punched" the complainant.

**Board Finding:** Not Sustained

**Rationale:** The complainant reported that Deputy 4 "punched" him, but provided no clarifying details. Sheriff's records indicated a use of force involving the complainant on June 23, 2018. The complainant reportedly was displaying erratic behavior and verbalizing assaultive behavior and agitation. Deputy 4 observed the complainant trying to rip off a phone cord from the wall. The complainant was removed from the Multipurpose room to a holding cell where he then rammed his wheelchair into the cell door. When Deputies 1 and 4 attempted to remove the wheelchair, the complainant lunged at deputies and a force incident ensued. Deputies reportedly utilized control holds and body weight to effect control over the complainant. There were no reports of a "punch" being administered. In compliance with policy, the complainant was medically evaluated and sustained a small abrasion to his left eyebrow. Detentions Policy I.89, Use Of Force, states that during the course of their official duties, deputies may use physical force to the extent that is reasonable to maintain or restore order, and only that which is reasonable and necessary. Surveillance video was inconclusive for the use of force and therefore there was insufficient evidence to determine if Deputy 4 punched the complainant and/or failed to document it.

2. Excessive Force – Deputies 1 and/or 4 "hog-tied" the complainant.

**Board Finding:** Action Justified

**Rationale:** The complainant reported that he was "hog-tied," but provided no clarifying details. As documented in the use of force reported in Rationale #1, the complainant was reportedly kicking his feet while yelling, "get off my fucking ankles." Deputies reportedly gave the complainant verbal instructions that he did not abide by and Deputy 4 applied a leg chain to secure the complainant's legs. The complainant was then placed on a gurney where his legs were also secured by gurney straps. Video evidence corroborated the complainant's placement and transport on a gurney secured by straps. The complainant was found not to be credible in his recall of this event and the evidence showed that due to the complainant's non-compliance, his legs were secured by leg chains and gurney straps. The evidence showed the restraint utilized was lawful, justified and proper.

3. Excessive Force – Deputies 1 and/or 4 "twisted" the complainant's injured leg.

**Board Finding:** Not Sustained

**Rationale:** The complainant reported that an unknown "deputy twisted his injured leg," but provided no clarifying details. While incarcerated, the complainant wore a leg cast and utilized a wheelchair for mobility. As documented in the use of force reported in Rationale #1, deputies controlled and held both of the complainant's legs as he reportedly kicked his feet and disobeyed their commands. Deputies restricted the complainant's leg movements with a leg chain and gurney strap. Video evidence was inconclusive and there was insufficient evidence to either prove or disprove this allegation.

4. Misconduct/Procedure – Deputies 2 and/or 3 placed the complainant in lockdown.

**Board Finding:** Action Justified

Rationale: The complainant reported he was placed in “lockdown” for three weeks. Following a use of force as described in Rationale #1, the complainant reportedly began to talk incoherently, told deputies he would fight them, and then began to cry uncontrollably and make irrational statements. Due to his demeanor, physical actions, and for everyone’s safety, the decision was made to place the complainant into a safety cell, where he remained until cleared by medical the following day. A Hearing Report by Deputy 3, approved by Deputy 2, documented an order for ten days of disciplinary lockdown for Inmate rule violations related to this incident. Sheriff’s records also documented a subsequent order for five days of disciplinary separation due to Inmate rule violations unrelated to this incident. The complainant was found not to be credible in his recall of this incident, and the evidence showed that the actions that occurred were lawful, justified and proper.

5. Misconduct/Procedure – Unidentified deputies did not offer/allow a shower to the complainant.

Board Finding: Not Sustained

Rationale: The complainant reported that while housed in Administrative Segregation, he did not receive a shower for twelve to fourteen days. Title 15 Minimum Standards For Local Detention Facilities mandates that there be written policies and procedures developed by the facility administrator for inmate showering/bathing, and inmates shall be permitted to shower/bathe upon assignment to a housing unit and at least every other day or more often if possible. Detentions Policy L.11, Personal Hygiene conforms to this standard and mandates that upon assignment to a housing unit an inmate will be allowed a shower and additional showers at least every 48 hours thereafter. Medical records corroborated that the complainant was repeatedly counseled regarding his poor hygiene. Sheriff’s documents also recorded the complainant’s refusal for dayroom time, which is where the showers were located. A preponderance of evidence found that the complainant was responsible for not showering, however, it was unknown if deputies refused to allow the complainant to shower. There was insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Procedure – Unidentified deputies did not provide meals to the complainant.

Board Finding: Not Sustained

Rationale: The complainant reported that while housed in Administrative Segregation, he “went without meals eight or nine different times.” While in mainline, the complainant had a documented history of repeatedly staying in bed during inmate meals. Detentions Policy K.15, Serving Times and Distribution of Meals mandates that staff will serve meals three times in any 24 hour period with a maximum of 14 hours between the evening meal and the breakfast meal. Medical records confirmed that the complainant was noted with several empty meal trays in his cell. Sheriff’s documents recorded the complainant’s refusal for his lunch meal on July 2, 2018. It was also possible for the complainant to take a meal, but not eat it; that would not be logged as a refusal. A preponderance of evidence found that the complainant was responsible for refusing meals, however, it was unknown if deputies refused to provide meals. There was insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Procedure – Unidentified deputies turned off the water in the complainant’s cell.

Board Finding: Not Sustained

Rationale: The complainant reported that while housed in Administrative Segregation, “the water in his cell was turned off for five days so he was forced to drink water from the cell toilet.” An Incident Report dated June 28, 2018, confirmed that the complainant “flooded” his own cell and he was scheduled for a psychological evaluation the following day. The complainant was uncooperative with medical staff and placed on lockdown for his own safety. There was no violation of policy for this incident and the complainant was found not to be credible in his recall of this event, however, it was unknown if the water was turned off and/or for how long. There was insufficient evidence to either prove or disprove the allegation.

8. Misconduct/Truthfulness – Unidentified deputies informed medical staff that the complainant refused his medication.

Board Finding: Not Sustained

Rationale: The complainant reported that unknown “deputies told medical staff that he refused his Lithium, which was untrue.” Sheriff’s medical records corroborated that the complainant had a Lithium prescription while incarcerated that was administered consistently except for one reported refusal by the complainant on June 18, 2018. As the complainant provided no further clarifying information, it was unknown if there were any other incidents and insufficient evidence to either prove or disprove the allegation.

9. Misconduct/Procedure – Unidentified deputies withheld the complainant’s commissary.

Board Finding: Not Sustained

Rationale: The complainant reported that “commissary was withheld multiple times.” Sheriff’s medical records corroborated that on June 26, 2018, the complainant reported to a psychiatrist that he was not given a commissary sheet. B.11.C.1, Inmate Purchases From Sheriff’s Commissary Stores states: Commissary order forms will be distributed to all housing floors on Tuesday. Stores will be ordered by inmates on Tuesday evening. Housing deputies will take all completed and uncompleted store forms and deposit them into the commissary mail bin on the first floor. The stores will be delivered on Wednesday evening. Commissary Records confirmed that the complainant requested and received items for Invoice #3158328 (\$49.60) on June 20, 2018, and Invoice #3174597 (\$76.40) on July 5, 2018. As the complainant provided no further clarifying information, it was unknown if there were any other incidents and insufficient evidence to either prove or disprove the allegation.

10. Misconduct/Discourtesy – Unidentified deputies called the complainant and/or other inmates derogatory names and and/used abusive language.

Board Finding: Not Sustained

Rationale: The complainant reported that “derogatory names were used & verbally abusive language was directed at myself and other inmates.” Sheriff’s Policy & Procedure 2.22, Courtesy, dictates that employees shall be courteous, tactful in the performance of their duties, control their tempers, exercise patience and discretion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language. Employees shall not use insolent language or gestures in the performance of his or her duties. However, the complainant provided no clarifying information pertaining to date or time of incident(s), personnel involved, and/or specific language used; therefore there was insufficient information to investigate this allegation further. There was insufficient evidence to either prove or disprove the allegation.

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## 18-106

1. Misconduct/Procedure – Deputy 1 failed to investigate the complainant’s call for service.

Board Finding: Unfounded

Rationale: In the complainant’s written statement, he alleged that Deputy 1 failed to investigate his call for service. The complainant stated, “Deputy 1 responded for the call. He showed up at the location. Didn’t know at first who came. Found out later on when he [Deputy 1] came to my room with staff. At that point knew this man [Deputy 1] did not respond properly way as Law Enforcement Officer misconduct. Oh inside that room about 2-3 minutes was telling him they [facility staff] had no court order paper to remove me/evict me but he [Deputy 1] argued with me everything and defending them [the care center staff]. Do property way. Should speak with caller of victim. First called info from caller needed assistance with of course he/she needed something before making a phone call to station then go to suspect. Not the other way around. Then give both sides advise; what you acknowledge of what’s right/wrong. By not taking sides or acting up like you’re a lawyer or judge.” In viewing Deputy 1’s BWC, he was observed to interview the care center staff. The care center staff explained that the complainant was not being evicted from the facility, as he was not a resident, but was being discharged from the medical facility. The care center staff members presented the complainant’s discharge documents to Deputy 1 and a second deputy and advised that the complainant had refused to comply with the discharge because he did not want to return to the independent living facility that he had previously resided at. Deputy 1 addressed the complainant and questioned the complainant about his discharge from the care center. Per his own admission, the complainant acknowledged that he did not have a medical reason to remain at the care center. Additionally, the second deputy advised that the complainant being discharged was a civil matter and the deputies could not lawfully intervene unless the care center staff place the complainant under Citizen’s Arrest for trespassing. According to SDSD P&P Section 2.23 entitled, “Request for Assistance,” when any person requests assistance or advice, or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner, and will be properly and judiciously acted upon consistent with established Department procedures. According to SDSD P&P Section 2.27 entitled, “Neglect of Duty,” employees shall not engage in any activities or personal business, which would cause them to neglect or be inattentive to duty. There is no policy within the SDSD P&P that dictates that a deputy must interview one party over another; victim, suspect or witness, initial caller or whomever is approached first. The evidence revealed that responding officers, Deputy 1 and a second deputy, conducted an investigation into the complainant’s call for service. The allegation that Deputy 1 failed to investigate the complainant’s call for service was unfounded. The evidence shows that the alleged act or conduct did not occur.

2. Misconduct/Procedure – An unidentified deputy failed to return the complainant’s phone call(s).

Board Finding: Not Sustained

Rationale: In the complainant's written statement, he stated an unidentified deputy failed to return his phone call(s). The complainant stated, "I called substation to and asked for his supervisor give me a call but never got a call from him. The San Diego Sheriff's Department refused to serve me as a citizen of this country and tax payer. Same story; refusal. This complaint is also against the substation who involved with my case." In an electronic email from CLERB's liaison with the SDSD dated 06-06-19, it was learned that there are no other recordings or CAD events related to this. This may be due to the phone call having been made on a non-recorded/non-emergency line. It was advised that there were no additional calls for service pertaining to this incident. In a telephonic interview with the complainant, dated 06-06-19, the complainant advised that he called the SDSD area substation from his cell phone. It was requested that the complainant contact his cellular phone provider and obtain a copy of the history of his outgoing call log dated 07-24-18 and 07-25-18 to support his claim. In a telephonic interview on 06-10-19, the complainant advised that he called his cellular phone provider, but claimed he was denied a request for records without a court order. CLERB was unable to determine if the complainant attempted to contact the SDSD substation to complain about his interaction with Deputy 1 and/or a second deputy. CLERB was unable to identify what phone number the complainant called, who he may have spoken with, dispatcher or sworn staff member, or if his message to call him back was received by any on-duty sergeant. According to SDSD P&P Section 2.21, entitled, "Citizen Complaints," employees shall courteously and promptly accept any complaint made by a citizen against any employee or any Department policy or procedure. The employee receiving the complaint must decide whether to handle it informally; i.e., verbally, or document the complaint in writing. Employees may attempt to resolve the complaint but shall never attempt to dissuade any citizen from lodging a complaint. If the employee does not believe the complaint has been handled to the complainants' satisfaction, the employee shall notify their immediate supervisor. The supervisor will determine the next course of action. Based on the circumstances and lack of evidence, there was insufficient evidence to either prove or disprove the allegation that an unidentified deputy failed to return the complainant's phone call(s).

3. Misconduct/Discrimination – An unidentified deputy discriminated against the complainant when he refused to accept the complainant's complaint, based on his ethnicity and skin tone.

Board Finding: Not Sustained

Rationale: In the complainant's written statement, he reported that he was discriminated against based on his nationality/ethnicity and skin tone. In the complainant's written statement, he advised, "In my heart, that deputy discriminating me because my name not Smith, Robinson, Washington, and color of my skin. Plus man in same as station who denial and refusal to serve me same station for 2nd time happened again." The complainant was unable to identify who he spoke to when he claimed that he attempted to file a complaint against Deputy 1 and/or a second deputy. In a telephonic interview, the complainant explained that he felt discriminated against when no one returned his call. A sergeant was identified as the one who was assigned as the patrol sergeant on 07-25-18; however, CLERB was unable to determine if the complainant attempted to contact the SDSD area substation to complain about his interaction with Deputy 1 and/or the second deputy. CLERB was unable to identify what phone number the complainant called, who he may have spoken with, dispatcher or sworn staff member, or if his message to call him back was received by a certain on-duty sergeant. According to SDSD P&P Section 2.55 entitled, "Non-Biased Based Policing," members of the San Diego County Sheriff's Department are prohibited from inappropriately or unlawfully considering race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle in deciding whether or not enforcement intervention will occur. Employees shall not consider race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle in establishing either reasonable suspicion or probable cause. According to SDSD P&P Section 3.47 entitled, "Discrimination and Sexual Harassment, the San Diego County Sheriff's Department is committed to the basic foundation of human rights for all Department employees, including the right to exist peacefully, the pursuit of tolerance and understanding of others, and the right to seek fair play and self-determination. In keeping with this commitment, it is this Department's goal to provide a work environment in which all individuals are treated with respect and dignity, free from discrimination. Discrimination, whether verbal, physical, or environmental, is illegal, unacceptable and will not be tolerated within the San Diego County Sheriff's Department. Based on the circumstances and lack of evidence, there was insufficient evidence to either prove or disprove the allegation that the complainant was discriminated against based on his nationality/ethnicity and skin tone.

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## **18-112**

1. Excessive Force – Unidentified deputies restrained the complainant.

Board Finding: Unfounded

Rationale: According to the complainant's written statement, he alleged that unidentified deputies forcefully restrained him. The complainant detailed that he was forcefully medicated against his will; he was restrained by deputies and/or medical staff and was pricked/punctured with a hypodermic syringe. In a personal interview with CLERB staff, the

complainant detailed that while he was incarcerated, he was offered dinner, which he accepted and consumed. Immediately thereafter, he became sleepy and went to sleep for an unknown period. Upon waking up, the complainant advised that he noticed swelling and two puncture marks on his right rear shoulder, two puncture marks on his left rear shoulder, and a puncture mark with a slight scratch on his upper midback. According to jail documents, the complainant was arrested on 01-09-18 and was booked into jail on 01-10-18. During his incarceration, the complainant displayed signs of paranoia, agitation, and confusion. On 01-13-19, the complainant was in mainline housing when he informed detention deputies that, "The government has placed a tracking device in my body. I need to speak with the biggest government in the world. You have to help me. The government is going to get me. They are tracking my thoughts. I cannot go anywhere because the government will get me." The deputies tried to reason with the complainant, but he was adamant that the government was tracking his body and thoughts. It was recommended that the complainant remain on security lockdown for his own safety. The complainant was scheduled to see a psychiatrist on 01-16-18 and it was suggested he start a medication regimen; however, the complainant declined medication. During a medical appointment, the complainant was quoted as saying, "I drink a soda a year ago and accidentally swallowed the pin and got stuck in the middle of my chest. I think the CIA, FBI did it." He denied having a remarkable psychiatric medical history; however, per medical records, the complainant was noted as having an "altered thought process" and "persecutory delusional ideas." Evidence was requested from the San Diego Sheriff's Department (SDSD) that would confirm or refute the allegation that the complainant was forcefully restrained. The SDSD was unable to provide any documentation or evidence confirming that the complainant had been involved in a use of force during his incarceration; there was no use of force documentation. According to SDSD DSB P&P Section F.5 entitled, "Inmate Incident Reporting," all inmate actions shall be documented in the incidents module within the Jail Information Management System (JIMS). Completed forms shall be reviewed, approved, forwarded and disseminated as required. According to SDSD P&P Section 2.48 entitled, "Treatment of Persons in Custody," employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures. According to SDSD P&P Section 2.49 entitled, "Use of Force," employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. Lastly, according to SDSD P&P Section 6.67 entitled, "Forced Blood Draw," a forced blood draw should only be conducted with the approval of a supervisor. Absent articulable exigent circumstances, if a forced blood draw is needed, a search warrant needs to be obtained prior to the blood being drawn. The detention nurses will not participate in forced blood draws. Generally, forced blood draws will be taken at a detention facility. Only the minimal force reasonably necessary to overcome the suspect's resistance may be used to draw blood against the suspect's wishes. The circumstances and the suspect's actions will govern what force is reasonable under the circumstances. A supervisor will be notified and respond to all hands-on forced blood draws. Deputies may not use force that would be excessive, tortuous or shocking. All hands-on forced blood draws will be videotaped if a video camera is available. The SDSD was unable to provide any of the aforementioned documents and evidence, because none existed; there was no record that the complainant was involved in a forced blood draw or was involved in a use of force. The evidence showed that the alleged act or conduct did not occur.

2. Misconduct/Procedure – Unidentified deputies assisted in administering an unknown medication to the complainant.

Board Finding: Unfounded

Rationale: According to the complainant's written statement, unidentified deputies assisted in administering an unknown medication to him. The complainant detailed that on 01-10-18, he suspected that he was forcefully medicated, via unidentified deputies with a hypodermic syringe, while he slept. The complainant advised that when he woke from his nap, he found his back to be swollen and noticed five needle marks in various locations on his back. According to SDSD DSB P&P Section M.18 entitled, "Medication Pass Security," Sheriff's deputies and nurses will collaborate to ensure inmates receive medications in an organized and supervised manner. Deputies will assist medication nurses by providing inmate supervision during routine medication pass. According to SDSD DSB P&P Section M.19 entitled, "Emergency Medication Administration," in the event of medical staff shortages or other emergency situations, sworn staff may deliver medication. According to SDSD DSB P&P Section I.95 entitled, "Forced Blood Draw," no specimens of blood shall be forcibly obtained, except when authorized by law or pursuant to a court order. The watch commander shall review all court orders authorizing the forcible talking of blood, prior to the talking of the sample. In all other instances wherein a forced blood sample is sought, the Watch Commander shall give approval prior to the taking of the sample. Sworn personnel shall not participate in the forcible drawing of blood from an inmate, except to ensure the safety and security of inmates, staff and medical personnel. All blood samples must be obtained in a medically approved manner and any force used to facilitate a blood draw must be reasonable and necessary; that is using only that amount of force reasonably necessary to safely accomplish the task. The Watch Commander will have forcible blood draws recorded on videotape. The recording should include all efforts to gain compliance from the inmate by custody or medical staff prior to force being used. Whenever force is used to secure a blood sample, a use of force inmate status report shall be completed and each deputy using force will complete a deputy's report. A copy of any related court order along with the inmate status report shall be placed

in the inmate's booking jacket. It should be remembered that the sample must be obtained in a medically approved manner and the amount of force should not be excessive or shocking to the conscience, e.g., rendering the prisoner unconscious. Evidence was requested from the SDSD that would confirm or refute the allegation that the complainant was medicated against his will. The SDSD was unable to provide any documentation or evidence confirming that the complainant had had a force blood draw or was forcefully medicated. Additionally, as stated above, there was no use of force documentation. The SDSD was unable to provide any of the aforementioned documents and evidence, because none existed; there was no record that the complainant was forcibly medicated, that he had had blood drawn, or that he was involved in a use of force. Lastly, according to jail documents, there were no emergent situations where deputies would have administered medications to the complainant. The evidence showed that the alleged act or conduct did not occur.

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## **18-115**

1. Misconduct/Procedure – Unidentified Internal Affairs staff/deputies refused to accept a complaint by the complainant.

### **Board Finding: Unfounded**

**Rationale:** In a written letter to CLERB, the complainant stated, "I called substation to get his correct name and asked for his supervisor give me a call but never got a call from him. Then I left a message at substation in Internal Affairs. Never got a response from them either. Then I called main Sheriff's Department to file a complaint with internal affairs, but they refused to take my complaint." In relation to CLERB case #18-0106, the complainant alleged that on 07-24-18, he was involved in an incident where he summoned San Diego Sheriff Department (SDSD) deputies to the scene to assist him. Two deputies responded to the complainant's location. Upon their arrival on scene, the deputies interviewed the care center staff and the complainant. After a brief investigation, the deputies determined that the complainant was involved in a civil dispute. The deputies informed the complainant that they were not able to legally intervene, as the complainant was involved in a civil dispute, versus a criminal incident. The complainant was dissatisfied with the deputies' response and on 07-25-18, he called the SDSD Internal Affairs Division to file a complaint against the deputies. The complainant alleged that staff from the Internal Affairs Division refused to take his complaint or disclose/release information to him. The complainant alleged that unidentified deputies in the SDSD Internal Affairs division refused to investigate his complaints against two Sheriff's deputies. The complainant was asked to provide a copy of his cellular phone outgoing call log history, to support his claim. The SDSD was contacted and an "Investigation Acknowledgment Letter" was requested. It was advised that a complaint had not been filed by the complainant. If the complainant had filed a complaint, then he would have received the correspondence letter. The letter essentially means that a cursory investigation was initiated, and no policy or criminal law violation was found upon receipt of the initial complaint. In this case, no investigation was performed as the complainant had not filed a complaint. Nonetheless, the applicable content of SDSD Internal Affairs P&P Manual Section 2.4 entitled, "Complaints," reads in part as follows: The Internal Affairs Unit is responsible for the administration of all formal complaints which includes: review the complaint for classification and assignment, review of the completed investigations, filing of completed investigations, and maintain an index of all complaints. Reasons for not immediately investigating a complaint may include: Pending criminal case which would conflict with the investigation, inmate grievance procedure not followed, frivolous complaint (per 832.5 PC) or no nexus to employment, and no policy or law violation. It shall be the policy of this Department not to investigate those complaints, of a minor nature, which are received 30 days or more after the date of the alleged incident. If a complaint of this nature is received in writing, it shall be the responsibility of Internal Affairs to respond to the complainant. (emphasis added) Additionally, the applicable content of SDSD Internal Affairs P&P Manual Section 2.5 entitled, "Investigations," reads in part as follows: The Internal Affairs Unit has the primary responsibility for the investigation of all complaints. The Internal Affairs Lieutenant will make the determination where the complaint will be investigated. The allegation that that unidentified deputies in the SDSD Internal Affairs division refused to file a complaint was untrue/unfounded. The evidence showed that the alleged act or conduct did not occur.

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***End of Report***

### **NOTICE**

In accordance with Penal Code Section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States.