

Portland Police Bureau _____

Police Review Board: Summaries and Reports

November 15, 2016 - July 14, 2017



**Portland Police Bureau
1111 SW 2nd Ave.
Portland OR 97204**

Police Review Board Cases with Final Dispositions

Publication: November 2017

Board Date	Case #	Chief's Final Discipline	Publication Note:
2/17/2016	2015-B-0030	One Workday SWOP (Employee 2)	<p>This case was referred to the Police Review Board by the precinct commander (RU Manager); the branch assistant chief and the captain of the Professional Standards Division concurred with the recommendation. IPR concurred with the recommended finding of Sustained for Allegation #1 (Employee #1) and controverted the recommended finding of Sustained for Allegation #2 to a finding of Not Sustained (for Employee #2). A controverted finding results in an automatic referral to the PRB.</p> <p>Acting Chief of Police Donna Henderson agreed with the PRB's recommended findings and the PRB majority's recommendation for discipline. The disciplinary process of this case carried over into the new appointment of Chief Marshman.</p>
2/17/2016	2015-B-0030	LOR (Employee 1)	<p>This case was referred to the Police Review Board by the precinct commander (RU Manager); the branch assistant chief concurred with the recommendation. IPR concurred with the recommended finding of Sustained for Allegation #1 (Employee #1) and controverted the recommended finding of Sustained for Allegation #2 to a finding of Not Sustained (Employee #2). A controverted finding results in an automatic referral to the PRB.</p> <p>Acting Chief of Police Donna Henderson agreed with the board's recommended findings and recommended discipline for Employee 1. The disciplinary process of this case carried over into the new appointment of Chief Marshman.</p>
3/30/2016	2015-B-0026	Three Workweek SWOP	<p>Acting Chief Donna Henderson agreed with the board's recommended findings and the PRB majority's recommendation for discipline. The disciplinary process of this case carried over into the new appointment of Chief Marshman.</p>
6/13/2016	2015-C-0336	Termination	<p>Chief Marshman disagreed with the PRB's recommended finding for Allegation 1 and found the allegation Sustained. Chief Marshman agreed with the PRB majority's recommended finding for Allegation 2.</p>
9/28/2016	2016-C-0107	Retired	<p>This case was referred to the Police Review Board by the division manager (RU Manager); the branch assistant chief and IPR concurred with the recommendation.</p> <p>Chief Marshman agreed with the PRB's recommended findings and recommendation for discipline.</p>

Board Date	Case #	Chief's Final Discipline	Publication Note:
12/1/2016	2011-C-0237	No discipline. No longer employed as a sworn officer.	<p>Chief Marshman agreed with the PRB majority's recommended finding and recommendations.</p> <p>The training recommendation was assigned to the Training Division as an action item.</p>
12/21/2016	2016-C-0194	CC	<p>The RU Manager's designee recommended a finding of Not Sustained for Allegation #1. The branch assistant chief, the captain of Professional Standards, and IPR controverted Allegation #1. A controverted finding results in an automatic referral to the PRB.</p> <p>Chief Marshman agreed with the PRB majority's recommended finding.</p> <p>Policy recommendation assigned to the Professional Standards Division.</p>
1/4/2017	2016-B-0025	In Policy	<p>This case was referred to the PRB as required under City Code 3.20.140 (B)(1)(c)(4) and reviewed as a use of deadly force involving a police vehicle.</p> <p>Chief Marshman agreed with the PRB's recommended findings.</p> <p>Recommendation 1 assigned to Strategic Services Division. Recommendation 2 assigned to Professional Standards Division.</p>
1/26/2017	2016-C-0205	Resigned	<p>This case was referred to the PRB by the division manager (RU Manager); the branch assistant chief and the captain of the Professional Standards Division concurred with the recommendation.</p> <p>Chief Marshman agreed with the PRB's recommended findings and agreed with the PRB majority's recommendation of termination.</p>
4/19/2017	2016-C-0433	CC	<p>This case was referred to the PRB as required under City Code 3.20.140 (B)(1)(c)(4).</p> <p>Chief Marshman agreed with the PRB's recommended findings and agreed with the PRB minority's recommendation for corrective action under Category B of the Discipline Guide.</p>
6/21/2017	2017-B-0007	All Actions In Policy	<p>This case was referred to the PRB as required under City Code 3.20.140 (B)(1)(c)(1).</p> <p>Chief Marshman agreed with the PRB's recommended findings.</p>

DATE: February 25, 2016
TO: Christopher Paillé
Review Board Coordinator
FROM: Anne Presentin
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on February 17, 2016, to review the following case:

IA Case Number: **2015-B-0030**

Employees: **Employee #1**
Employee #2

Summary of Alleged Complaint:

██████████ during qualifications, Employee #2 handed Employee #2's Glock to firearms instructor Employee #1 at the Central Precinct Range. Employee #2 had inserted a loaded magazine into Employee #2's firearm and, without telling Employee #1, handed it to Employee #1. Employee #1 began the process of removing the slide by pulling the slide back and pulled the trigger firing a round into the floor.

This case was referred to the PRB by the RU manager and IPR (controverted finding, Allegation #2).

Allegation #1: *Employee #1 had a negligent discharge of a firearm when Employee #1 failed to check if the handgun handed to Employee #1 was loaded before Employee #1 pulled the trigger.*

Recommended Finding: **Sustained / Five members**

Applicable Directive: **315.30 – Satisfactory Performance**

Majority Opinion:

The Board unanimously recommended a sustained finding based on a review of the case file. Members agreed that Employee #1, as a range instructor, is well aware of the four cardinal safety rules associated with handling firearms. These rules are posted in the range and taught to all PPB members continually. The first rule is to always treat all firearms as if they are loaded. When Employee #1 began to disassemble the gun without confirming that it was unloaded, Employee #1 failed to follow this rule and did not meet the directive for satisfactory performance, the Board agreed.

Minority Opinion:

N/A

Allegation #2: *Employee #2 handed a loaded firearm to Employee #1 without telling Employee #1 it was loaded.*

Recommended Finding: **Sustained / Five members**

Applicable Directive: **315.30 – Satisfactory Performance**

Majority Opinion:

The Board unanimously recommended a sustained finding saying Employee #2 did not adhere to known and long-established workplace standards of firearms handling and range training, which could have resulted in significant injury. Three members specifically mentioned the language in the directive that requires Bureau members to “maintain sufficient competency” and “conform to work standards.” Three Board members called out the sign present in the range area which says firearms are to be loaded and unloaded on the range. The act of loading the magazine into the gun constitutes loading, all members agreed. Two members also said Employee #2 was not sufficiently attentive to what Employee #2 was doing, which led to a violation of work standards.

Minority Opinion:

N/A

Recommendations: Corrective Actions/Discipline

Employee #1

One day SWOP – Five members

Majority Opinion:

Board members agreed the policy violation was consistent with category C of the discipline guide, “Conduct that involves a risk to safety or that has or may have a pronounced negative impact on the operations or professional image of the department, or on the relationships with other officers, agencies or the public.” They recommended corrective action of one day suspension without pay, the presumptive discipline. One member said Employee #1 is a benefit to the Police Bureau and should not be prevented from continuing to serve as an instructor. Another member cited Employee #1’s length of service and previous lack of discipline for recommending the presumptive discipline.

Minority Opinion:

N/A

Employee #2

One day SWOP – Four members

Two days SWOP – One member

Majority Opinion:

Four members found Employee #2's actions to be consistent with category C of the discipline guide, "Conduct that involves a risk to safety or that has or may have a pronounced negative impact on the operations or professional image of the department, or on the relationships with other officers, agencies or the public." They recommended corrective action of one day suspension without pay, the presumptive discipline. Members agreed that there were no mitigating or aggravating circumstances. One member said Employee #2's action was an error of omission by not saying the gun was loaded.

Minority Opinion:

One member also found Employee #2's actions to be consistent with category C of the discipline guide, "Conduct that involves a risk to safety or that has or may have a pronounced negative impact on the operations or professional image of the department, or on the relationships with other officers, agencies or the public." The member recommended corrective action of two days suspension without pay and cited Employee #2's years of experience, inattentiveness during the incident and statements made to Internal Affairs to try to lessen or mitigate Employee #2's actions as aggravating factors.

Other Recommendations

No other recommendations.

DATE: April 12, 2016
TO: Christopher Paillé
Review Board Coordinator
FROM: Anne Pressentin
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on March 30, 2016, to review the following case:

IA Case Number: **2015-B-0026**

Employee: **Employee #1**

Summary of Alleged Complaint:

Employee #1 crashed . A state trooper investigated the crash and spoke with Employee #1 noting Employee #1 had a strong odor of an alcoholic beverage on Employee #1's breath, bloodshot eyes, and slurred speech. Employee #1 admitted to consuming alcohol earlier in the day. Employee #1 was transported to a hospital.

This case was referred to the Police Review Board by the involved employee's manager, with concurrence of the recommendation by the branch assistant chief, and Professional Standards.

Allegation #1: *While off duty, Employee #1 was driving under the influence of intoxicants.*

Recommended Finding: **Sustained / Five members**

Applicable Directive: **310.00 – Conduct, Professional; 315.00 – Laws, Rules and Orders**

Majority Opinion:

The Police Review Board unanimously recommended a sustained finding based on the case file and facts presented, including Employee #1's admission that Employee #1 consumed alcohol before driving and crashing and the scientific evidence of a blood alcohol level of 0.21, which exceeds the legal limit.

Minority Opinion:

N/A

Allegation #2: *Employee #1 did not notify Employee #1's supervisor at the earliest possible time after being investigated for DUI.*

Recommended Finding: **Not sustained / Five members**

Applicable Directive: **315.00 – Laws, Rules and Orders**

Majority Opinion:

Board members unanimously recommended a finding of not sustained because of extenuating circumstances

Employee #1's command staff visited Employee #1 [REDACTED], which led Employee #1 to conclude that required notification had occurred. One member noted that the purpose of the directive was to ensure command staff were made aware of instances where members are cited, arrested, subject to a restraining order, investigated or have their driver's license suspended. Members said it was clear Employee #1 is aware of the directive and no other action was necessary.

Minority Opinion:

N/A

Recommendations:

Corrective Actions/Discipline

Three week SWOP – Three members
Two week SWOP – Two members

Majority Opinion:

Three members said Employee #1's actions were consistent with Category E of the discipline guide, which includes DUII as example misconduct, and recommended corrective action of three workweek suspension without pay. Two of the members made the recommendation because they found this incident to be the second violation in seven years [REDACTED] and said the presumptive discipline was appropriate. One member found this incident to be the first DUII in seven years and said previous disciplinary action was an aggravating factor.

Minority Opinion:

Two members also said Employee #1's actions leading to a DUII were consistent with Category E of the discipline guide and recommended corrective action of two week suspension without pay. One member said Employee #1 is a hard worker with many awards, which are mitigating factors, [REDACTED]

[REDACTED]. Another member said it was the first DUII violation in seven years, and Employee #1 has shown remorse and taken steps to gain treatment.

Other Recommendations

No other recommendations.

DATE: June 27, 2016
TO: Christopher Paille
Review Board Coordinator
FROM: Anne Pressentin
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on June 13, 2016, to review the following case:

IA Case Number: **2015-C-0336**

Employee: **Employee #1**

Summary of Alleged Complaint:

Complainant alleged Employee #1, while off duty, had oral sex and intercourse with complainant while complainant was unable to consent during a party at Employee #1's home. Complainant went to the hospital to have a sexual assault examination the following day and reported the incident to the local jurisdiction. Detectives from the local jurisdiction conducted an investigation.

This case was referred to the Police Review Board by the RU manager, with concurrence of the recommendation by the branch assistant chief, the captain of Professional Standards, and IPR. IPR also controverted Allegation #2 from sustained to not sustained.

Allegation #1: *While off-duty, Employee #1 had oral sex and sexual intercourse with complainant while complainant was unable to consent due to complainant's level of intoxication.*

Recommended Finding: **Not sustained / Five members**

Applicable Directive: **Directive 310.00 – Conduct, Professional (CONDUCT)**

Majority Opinion:
The PRB unanimously recommended a finding of not sustained based on the preponderance of the evidence from the record. The record highlighted conflicting witness statements.

Minority Opinion:
N/A

Allegation #2: *Employee #1 acted unprofessionally and in a manner tending to bring reproach or discredit to the Police Bureau and the City by having sexual contact with complainant after complainant had consumed alcohol.*

Recommended Finding: **Sustained / Four members
Not sustained with debrief / One member**

Applicable Directive: **Directive 310.00 – Conduct, Professional (CONDUCT)**

Majority Opinion:

Four members of the Board recommend a finding of sustained saying Employee #1's decision-making was poor, as evidenced by Employee #1's own statements. They said any officer, including Employee #1, who has responded to domestic violence and date rape calls while on duty should have acted prudently and asked additional questions before engaging in any sexual contact. Members also said there was a nexus with the Bureau because issues of sexual assault can easily move from the private to public realm and result in reproach toward the City. Two members agreed that issues of honesty and integrity apply regardless of whether they are on or off duty and it affects decision-making. The two members said Employee #1's behavior did not meet the standard of reasonable rules of good conduct and Employee #1 did not seem to recognize this during the internal affairs investigation.

Minority Opinion:

One member recommended a finding of not sustained with a debrief, saying the analysis of allegations 1 and 2 are similar and it is unknown what exactly happened. The investigation left many questions unanswered and the record shows that both Employee #1 and the complainant have credibility issues, but that consuming alcohol and having sex off duty does not violate the applied directive. The board member also said allegations of sexual assault can enter the public domain quickly. Given the facts in the record, the actions of Employee #1 are concerning, the board member said, and Employee #1 did not recognize this. For this reason, a debrief was recommended.

Recommendations:

Corrective Actions/Discipline

Discipline Category: Category D / Four members

Corrective Action: 40 hours SWOP / Four members

Rationale:

Four members found Employee #1's behavior to be consistent with category D of the discipline guide, "Conduct substantially contrary to the values of the PPB or that substantially interferes with its mission, operations or professional image, or that involves a serious risk to officer or public safety, or intentionally violates bureau policy." Members further recommended a 1-week suspension without pay due to aggravating factors, included previous policy violations resulting from poor decision-making on duty and poor decision-making in this off-duty case which could have resulted in harm.

Other Recommendations

No other recommendations.

DATE: October 07, 2016
TO: Michael W. Marshman
Chief of Police
FROM: Mark Fulop
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on September 28, 2016, to review the following case:

IA Case Number: **2016-C-0107**

Employee: **Employee**

Summary of Alleged Complaint:

The Washington County Sheriff's Office contacted PPB to say they took a police report from Complainant, [REDACTED]. [REDACTED] alleged Employee physically assaulted [REDACTED] three times.

Allegation #1: *Employee physically assaulted [REDACTED] Complainant, splitting [REDACTED] chin open around August of 2015. (CONDUCT)*

Recommended Findings: Sustained – 5 Members
Applicable Directives:
315.00 - Laws, Rules and Orders
310.00 - Conduct, Professional

Opinion: Several members said domestic violence is contrary to everything the Portland Police stands for, showing willful disregard, lack of ethics and integrity. Members noted that Employee admitted to [REDACTED] conduct but failed to take responsibility for [REDACTED] actions. All five members saw this conduct as clearly violating Directive 315.00 Laws, Rules and Orders; and Directive 310.00 – Conduct Professional.

Allegation #2: *Employee physically assaulted [REDACTED], Complainant, by putting [REDACTED] hands around [REDACTED] throat causing bruising. (CONDUCT)*

Recommended Findings: Sustained – 5 Members
Applicable Directives:
315.00 - Laws, Rules and Orders
310.00 - Conduct, Professional

Opinion: Members concurred that the evidence that Employee admitted to [REDACTED] role in domestic violence but failed to take accountability for [REDACTED] actions and that further noted that Employee suggested Complainant, provoked the violence. All five members saw this conduct as clearly violating Directive 315.00 Laws, Rules and Orders; and Directive 310.00 – Conduct Professional.

Allegation #3: *Employee physically assaulted [REDACTED], Complainant, by slapping [REDACTED] in the face causing a red mark. (CONDUCT)*

Recommended Findings: Sustained – 5 Members
Applicable Directives:
315.00 - Laws, Rules and Orders
310.00 - Conduct, Professional

Opinion: Allegation 3 was also found to be unanimously sustained based on the same findings of the previous allegations. Members noted that Employee admitted to [REDACTED] conduct but failed to take responsibility for [REDACTED] actions. All five members saw this conduct as clearly violating Directive 315.00 Laws, Rules and Orders; and Directive 310.00 – Conduct Professional.

Recommendations: Corrective Actions/Discipline

Termination/5 Voting Members

Opinion:

The voting members were unanimous in their recommendation of termination. This was arrived by members placing the sustained allegations in Category F; Presumptive. The reasoning was that Employee's actions could have resulted in death and did result in bodily injury. Members also discussed [REDACTED] disregard for PPB valued and lack of integrity and the character required by officers. The reasoning was that Employee's lack of accepting responsibility for [REDACTED] actions makes [REDACTED] unfit to perform [REDACTED] duties that include responding to domestic violence calls. Members could not find mitigating circumstances that would alter the presumptive categorizing of Employee's actions.

Other Recommendations

None.

DATE: Dec. 14, 2016
TO: Christopher Paillé
Review Board Coordinator
FROM: Anne Pressentin
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on Thursday, Dec. 1, 2016, to review the following case:

IA Case Number: **2011-C-0237**

Employee: **Employee #1**

Case Summary: On June 18, 2011, officers arrested Suspect #1 on suspicion of driving under the influence of intoxicants. Officers used force during the arrest including hands, Taser, and a takedown. The case was declined following the initial intake investigation.

As a result of a finding of liability in a civil trial, the case was reopened as required by DOJ Agreement Item #133. This case was assigned to an Internal Affairs investigator in March 2016.

The Police Review Board reviewed only Allegation #1 as a result of a recommended finding of Sustained by the RU manager, the branch assistant chief, the IA captain, and IPR director. Allegation #2 and #3 found Not Sustained by all reviewing parties (listed) and not reviewed by the Police Review Board.

Allegation #1: *Employee #1 used inappropriate force when taking Suspect #1 into custody.*

Recommended Finding: **Sustained / Four members
Not Sustained / One member**

Applicable Directive: **1010.20 – Physical Force**

Majority Opinion:

A majority of the PRB recommended a finding of Sustained and cited several reasons for their recommendations. Three members said the number of strikes to the head were unreasonable, given the policy in place at the time. Two members said Employee #1's actions were outside of training guidance to address the threat of a suspect who was pinned on top of their own hand. Two members said the civil trial evidence showed that Suspect #1 was unable to free their arm due to being pinned and was therefore unable to comply with commands for handcuffing.

The four members also considered the applicable clause in the U.S. Dept. of Justice settlement agreement, which requires an internal investigation "with the civil trial finding creating a rebuttable presumption that the force used

also violated PPB policy, which presumption can only be overcome by specific, credible evidence by a preponderance of evidence." The members arrived at their recommended "sustained" finding based on different reasons than the DOJ settlement and did not find any evidence to rebut the civil case.

Minority Opinion:

One member recommended a finding of Not Sustained, saying the City argued at civil trial that the actions of Employee #1 were justified and within policy.

Recommendations:

Corrective Action/Discipline

Discipline Category: Category D / Four members

Corrective Action: No corrective action / Four members

Rationale:

Four members of the PRB found the actions of Employee #1 to be consistent with category D of the discipline guide, "Conduct substantially contrary to the values of the PPB or that substantially interferes with its mission, operations or professional image, or that involves a serious risk to officer or public safety, or intentionally violates bureau policy." Because Employee #1 is no longer a sworn officer with PPB, all members recommended no discipline.

If Employee #1 was still a sworn officer, then two members would have recommended 1 day suspension without pay, given it was Employee #1's first violation in five years and the length of time that had passed since the incident. One member would have recommended a letter of reprimand due to the length of time that had passed and the consensus recommendation at the time not to investigate Employee #1's actions.

Training

Develop a training guidance to gain control of suspects who are face down with hands underneath their body.

Vote: Unanimous (5)

Rationale:

The PRB said it is a common problem to gain control of suspects who are lying on top of their hands and could be armed. This situation leads to use of force in some cases. Training Division does provide some training, but an update to tactics may be needed.

Other Recommendations

Engage in further discussions with the U.S. DOJ over the “rebuttable presumption” provision in Item #133 of the DOJ settlement agreement to consider modifying that provision to be in compliance with state and federal law.

Vote: Unanimous (5)

Rationale:

Members said the section of the settlement caused concern because it appeared to direct the actions of the PRB if the language is taken literally. One member said the PRB needs to independently consider the facts of the case, any testimony given by involved members, the PPB directives and Constitution when making recommendations.

DATE: Jan. 4, 2017
TO: Christopher Paillé
Review Board Coordinator
FROM: Anne Pressentin
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on Wednesday, Dec. 21, 2016, to review the following case:

IA Case Number: **2016-C-0194**

Employee: **Employee #1**

Summary of Alleged Complaint:

Officers received a call on an unwanted subject camping on the sidewalk and blocking a loading zone area. The complainant (building security) indicated Subject #1 had been a continual problem for them.

Portland Patrol Inc. (PPI) officers arrived and tried to get Subject #1 to move. When Subject #1 refused to do so, Portland Police Employee #1 and Employee #2 were dispatched to the scene to handle the situation. Subject #1 was subsequently arrested on a Criminal Trespass II charge and booked into the Justice Center Jail.

The Criminal Trespass case was dismissed in court after Subject #1's defense attorney obtained video from the location of occurrence which showed Subject #1 was on a sidewalk across the street from the building in question. Subject #1 filed a complaint alleging Subject #1 was wrongfully arrested and missing some paperwork and rain gear Subject #1 had at the time Subject #1 was taken to jail.

Allegation #1: *Employee #1 did not accurately document probable cause to arrest Subject #1 for Criminal Trespass II in Employee #1's report.*

Recommended Finding: **Sustained / Three members**
Not Sustained with a Debrief / Two members

Applicable Directive: **830.00 – Arrest Without Warrant**
910.00 – Field Reporting Handbook
Instructions

Majority Opinion:

Three members of the Review Board recommended a finding of sustained because Employee #1's report was inaccurate in its documentation of probable cause. They said officers are responsible for collecting accurate information and must not rely on assumptions or the work of a partner organization. In this case, Employee #1 assumed the property was private and not City property. One PRB member highlighted that the Portland Patrol Inc. member who called to request PPB assistance reported the individual was violating a sidewalk ordinance, not trespass laws.

Minority Opinion:

Two members of the Review Board recommended a finding of not sustained with a debrief. One member said, given the wording of the allegation, Employee #1 did document probable cause. Another member said Employee #1 did what was required, but Employee #1's assumptions were ultimately found to be incorrect. Both members said the report could have been improved and recommended a debrief.

Recommendations:

Corrective Action/Discipline

Corrective Action: Command Counseling / Three members

Rationale:

Three members of the Board said the conduct was consistent with Category A of the Discipline Guide, "Conduct that has or may have a minimal negative impact on operations or professional image of PPB." They recommended the lowest level of corrective action, command counseling. The members said Employee #1 made an honest mistake and has no previous record of discipline.

Other Recommendations

Policy

Review the Discipline Guide to consider adding a corrective action less than command counseling for Category A actions, such as a debrief.

Vote: Four concur
One decline

Rationale:

Four members said a review of the Discipline Guide has merit. They said officers who make honest mistakes would have an opportunity to improve without a discipline record. One member said other jurisdictions have similar options for corrective action.

One member declined to concur saying the Discipline Guide was created with intention and any changes could have ramifications.

DATE: Jan. 13, 2017
TO: Christopher Paillé
Review Board Coordinator
FROM: Anne Pressentin
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on Wednesday, Jan. 4, 2017, to review the following case:

IA Case Number: **2016-B-0025**

Employee: **Employee #1**

Summary of Area of Review:

Employee was dispatched to a city park about a Subject who allegedly threatened an area resident. The person who called 911 reported that Caller was on the front porch of Caller's home when an unknown Subject told Caller Subject was going to go get a gun and return to shoot everyone. The 911 caller said the threatening Subject rode off on Subject's bicycle. The Caller said Caller followed the Subject into the nearby park.

Employee arrived in the park and located the Subject. When Employee began to engage the Subject, Subject rode off on Subject's bicycle. Employee followed the Subject in Employee's patrol car for several blocks and used the public address loud speaker to command the Subject to stop, which Subject ignored.

Employee reported that, while driving at a very low speed, Employee used Employee's patrol car to impact the back tire of the bicycle the Subject was riding in order to cause Subject to stop. When the impact occurred, the Subject fell from Subject's bicycle onto the roadway and suffered minor injuries for which Subject was treated at Portland Adventist Hospital. Subject was later released to detectives and then lodged in jail.

Area of Review #1: *The Application of Deadly Force.*

Recommended Finding: **In Policy / Seven members**

Applicable Directive: **1010.00 – Use of Force**

Majority Opinion:

The Review Board unanimously recommended an In Policy finding based on the totality of the circumstances and the lack of other viable options to bring the subject safely into custody, noting that other available options presented greater risks to the public, the subject, and officers. The members concluded that the actions of Employee were more accurately described as "use of force," and not "application of deadly force," given the low speed of the police vehicle, risk of injury to the subject and intent of the contact to the rear bicycle tire. One member said Employee's actions were reasonable to resolve the situation with the lowest level of force possible.

Minority Opinion:

N/A

Recommendations:

Corrective Action/Discipline

No recommendations.

Other Recommendations

Policy

Recommendation 1:

Recommendation 1: Implement three action items as presented by the RU manager:

1. Policy revision to Directive 630.05 (Vehicle Pursuits) to clarify the types of vehicles applicable to the policy. If the intent is to regulate the motor vehicle pursuits, which is how the directive has been historically applied, change "vehicles" to "motor vehicles."
2. Policy revision to Directive 630.05 (Vehicle Pursuits) that either removes "ramming" from the directive or consolidates the definition with Directive 1010.00 (Use of Force).
3. Policy revision to Directive 1010.00 that addresses the use of a patrol vehicle as a force option.

Vote: Unanimous (7)

Rationale: The Board acknowledged that revisions to policy 630.05 were already in process and the draft revision accomplishes the intent of the recommendation. The Board said adding a patrol vehicle as force option, requires officers to consider the totality of the circumstances during interventions. Members also discussed and declined to recommend a fourth option of drafting a new pursuit policy for alternative transportation modes such as bicycles.

Recommendation 2:

Amend the SOP for Police Review Boards to ensure documents in the case file are free of mark ups that might unduly influence readers.

Vote: Unanimous (7)

Rationale: Members noted that copies of the applicable directives in the case file for this case had hand-written notations, which were not necessary.

DATE: February 09, 2017
TO: Michael W. Marshman
Chief of Police
FROM: Mark Fulop
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on January 26, 2017, to review the following case:

IA Case Number: **2016-C-0205**

Employee: **Employee**

Summary of Alleged Complaint:

Employee participated in a foot pursuit of a wanted suspect. After the suspect was captured without the use of force, [redacted] was escorted along a trail to an awaiting police car. Along the trail, the handcuffed suspect fell to the ground. The suspect complained that while [redacted] was on the ground, Employee kicked [redacted] in the side before pulling [redacted] to [redacted] feet to continue walking. A sergeant responded to the scene to conduct an investigation for an after action report. The Chief's Office sent the after action to Internal Affairs to review for policy violations.

Allegation #1: *Employee used inappropriate force when [redacted] kicked Citizen in the side. (FORCE) (Directives 1010.00-Use of Force; 315.30-Satisfactory Performance).*

Recommended Findings: Sustained – 5 Members

Applicable Directives:
1010.00 – Use of Force
315.30 – Satisfactory Performance

Opinion:
In reviewing the evidence regarding the force that Employee used with the subject, it was determined that the kick and hold used to upright the subject was a violation of policy under force rules. One member said there was no reason for Employee to have kicked the subject. By the preponderance of the evidence the voting members believed there was a violation of the force policy and the Satisfactory Performance directive. The five voting members were unanimous in sustaining Allegation #1.

Allegation #2: *Employee failed to complete a Force Data Collection Report (FDCR) after using a force option listed on that report (PROCEDURE) (Directives 1010.00-Use of Force).*

Recommended Findings: Sustained – 5 Members
Applicable Directives:
1010.00 – Use of Force

Opinion: The evidence suggests that Employee's physical contact with the subject was a reportable force and was recognized by other officers on the scene. Given that Employee did not complete the report, this allegation was sustained unanimously by the voting members.

Allegation #3: *Employee wrote a report associated with case 16-152473 that did not accurately portray the incident being reported. (PROCEDURE) (Directive 910.00 – Field Reporting Handbook Instructions; 1010.00 – Use of Force).*

Recommended Findings: Sustained – 5 Members
Applicable Directives:
910.00 – Field Reporting Handbook Instructions
1010.00 – Use of Force

Opinion: During the IA investigation significant details of the incident were identified that were not included in Employee's report associated with the case. As such, the voting members agreed that Employee's report failed to accurately document the incident as required. There was a unanimous vote to sustain this allegation.

Recommendations: Corrective Actions/Discipline
3 weeks SWOP / 2 Voting Members
Termination / 3 Voting Members

Opinion: Two members based their recommendation on category E of the discipline guide, with multiple violations. The members acknowledged that the Officer's actions were intentional and aggravating circumstances. The members also noted that the absence of previous discipline history was a mitigating factor. As a result, the two members recommended a presumptive category 3 Workweek SWOP. These two members noted that if allegation #3 had been about truthfulness rather than inaccurate reporting, they would have recommended termination. The other three voting members believed that the aggravating circumstances of excessive use of force with a subject who was handcuffed and controlled, outweighed any mitigating factors and recommended termination.

Other recommendations
None.

DATE: April 26, 2017
TO: Christopher Paillé
Review Board Coordinator
FROM: Mark Fulop
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on April 19, 2017, to review the following case:

IA Case Number: **Internal Case Number** 2016-C-0433

Employee: **Employee**

Summary of Alleged Complaint:

Employee deployed their ECW during an arrest of a wanted person. Employee did not issue a warning prior to deploying their ECW. Employee's use of force was found out of policy during the after action process because they did not articulate active aggression justifying their use of force.

Allegation #1: *Employee used inappropriate force when they deployed Electronic Control Weapon (ECW) on a civilian while arresting the civilian for a warrant.*

Recommended Finding: **Sustained/Unanimous**

Applicable Directive: **1010.00 – Use of Force; 1051.00 – Electronic Control Weapon System**

Opinion: Voting members unanimously sustained the recommended finding. According to PPB policy, there are three specific circumstances when an officer is permitted to deploy an ECW. The circumstances of this incident did not meet any of those three standards, primarily because there was never more than a vague hypothetical threat articulated. While the facts of this case do not rise to the level of excessive force under the Graham standard, they also do not meet the Directive 1501.00 standard of when an officer may deploy their ECW.

Allegation #2: *Employee failed to issue a warning before deploying an Electronic Control Weapon (ECW) on civilian while arresting civilian for a warrant.*

Recommended Finding: **Not Sustained w/Debriefing/Unanimous**

Applicable Directive: **1051.00 – Electronic Control Weapon System**

Opinion: Voting members unanimously determined the allegation was Not Sustained w/Debriefing. The standard used to reach a sustained finding was a preponderance of the evidence, and that standard was not met, due to

differing accounts of what happened. Employee did not document that they gave a verbal warning, the civilian was unclear on whether they had been warned, but an independent witness at the scene seemed to recall that Employee had given a verbal warning before deploying their ECW. Voting Members reasoned that the debriefing is the perfect opportunity to reinforce the importance of documentation and review the applicable policies.

Recommendations:

Corrective Actions/Discipline

Command Counseling/4 Voting Members (Category A)

Command Counseling/3 Voting Members (Category B)

Majority Opinion: Four Voting Members determined that Employee's action fell within Category A because of the minimal negative impact that [redacted] actions had on operations or the professional image of the PPB. These members recommended command counseling as the presumptive corrective action in the Discipline Guide for this category.

Minority Opinion: Three Voting Members determined that Employee's conduct rose to Category B of the Discipline Guide as the negative impact of the public's image may be higher than a minimal impact. However, it was also felt that Employee's actions were mitigated by [redacted] record of positive work history. Category B with mitigating circumstances also supported the recommendation of command counseling as the most appropriate corrective action.

DATE: July 11, 2017
TO: Christopher Paillé
Review Board Coordinator
FROM: Mark Fulop
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on Wednesday, June 21, 2017, to review the following case:

IA Case Number: Internal Case Number

Employees: Employee 1
Employee 2
Employee 3

Summary of Incident: Administrative investigation into the circumstance surrounding the officer involved shooting at 3427 SE 22nd Avenue on February 9, 2017.

Area of Review #1: *The Application of Deadly Force.*

Recommended: (Employee 1) In Policy / Unanimous
Applicable Directive: (FORCE) (Directive 1010.00 - Use of Force)

Opinion: In the course of an encounter with Suspect, who had called 911 saying he was going to commit suicide, the officers determined that Suspect had a handgun. During the incident, Suspect threw a handgun out of his van and then sat at the door of the vehicle with the gun within his reach. Board members believed that Employee 1, who is both ECIT and AR trained, employed sound tactics to de-escalate the situation. The board also agreed that when Suspect reached down toward the gun, Employee 1 acted in response to what he believed was an immediate threat of death to himself, other officers, and the community. Employee 1 fired his weapon and, once Suspect was no longer an immediate threat, de-escalated his use of force. Voting members determined Employee 1's actions demonstrated sound and effective practices and met the Graham Standard. For these reasons, the voting members unanimously found that Employee 1's actions were in policy.

Recommended: (Employee 2) In Policy / Unanimous
Applicable Directive: (FORCE) (Directive 1010.00 - Use of Force)

Opinion: Employee 2, also attempted to negotiate and de-escalate the situation with Suspect. Board members believed that Employee 2 demonstrated sound tactics in approach to the incident. When Suspect ignored commands and reached down toward the gun, board members

believed that Employee 2 acted with what [redacted] thought was an immediate threat of death to [redacted] Employee 1, other officers present, and the community. Employee 2 deescalated [redacted] use of force when [redacted] believed Suspect was no longer an immediate threat. Board members found Employee 2's actions effective and consistent with the Graham Standard and found [redacted] action in policy.

Area of Review #2: *Operational Planning and Supervision.*

Recommended: (Employee 3) In Policy / Unanimous
Applicable Directive: (PROCEDURE) (Directive 315.30 – Satisfactory Performance; 850.20 – Police Response to Mental Health Crisis)

Opinion: Employee 3 acted appropriately as first supervisor on scene, creating a plan, delegating responsibilities, and making adjustments as necessary. Board members believed Employee 3's actions and tactics were found to be sound and consistent with training. Examples cited included: asking for a less lethal shotgun, an additional AR operator, ECIT and CNT/SERT resources. In reviewing the actions of Employee 3, the voting board members unanimously determined [redacted] actions were in policy.

Area of Review #3: *Post Shooting Procedures.*

Recommended: (Employee 3) In Policy / Unanimous
Applicable Directive: (PROCEDURE) (Directives 1010.10 - Post Deadly Force Procedures; 630.50 - Emergency Medical Aid)

Opinion: Board members discussed how after the shots were fired, Employee 3 communicated about the situation, organized a custody team after officers succeeded in getting Suspect into the middle of the street and sought immediate medical attention for Suspect. Employee 3 knew medical was staged and once it was safe to proceed, ensured medical aid was provided. Employee 3 separated the officers after the incident and continued the post-shooting responsibilities until Employee 4 arrived. Based on the review of Employee 3's performance throughout the incident, the voting board members unanimously determined the actions of Employee 3 were in policy.

Recommendations: There were no recommendations