**Professional Compliance Bulletin**

**Issue #67**

**January 2017**

The Criminal Justice Standards and Training Commission has as its mission “to ensure that the citizens of the State of Florida are served by the most qualified, well trained, competent and ethical criminal justice officers in the nation”. The Commission meets quarterly in an open forum to address issues relating to criminal justice. As a part of these quarterly meetings, cases regarding officer misconduct are reviewed and action is taken against the officer’s criminal justice certification. Disciplinary action is based on the facts of each case and is guided by both Florida Statute and Florida Administrative Code. The following is a sample of the cases the Commission heard at its meeting held on January 26, 2017.

**Case #40081- Sexual Harassment; Battery**

The respondent retired from the Gainesville Police Department subsequent to an internal investigation which sustained the charge of improper conduct and sexual harassment. On August 17, 2015, a complaint was made against the respondent alleging sexual harassment. During a sworn interview on September 9, 2015, the complainant alleged that the respondent made inappropriate comments toward her which started in 2003 when she was assigned to the training bureau. She indicated that the respondent would make it a point to look at her breasts and state that her breasts were fake. She indicated that she was very uncomfortable discussing the topic with the respondent. The respondent would comment about her breasts anytime she did not wear her uniform with a ballistic vest. She would tell the respondent to stop making comments, but he continued. The victim recalled an incident when the respondent stood in front of a door, blocking her from exiting and told her to prove to him that her breasts were not fake. The complainant indicated that there were no witnesses to the incident and that she did not notify her chain of command. The complainant recalled another incident when the respondent was her commander. She was in the gym when the respondent entered and approached her. She indicated that the respondent got very close to her ear and looked straight down at her breasts and stated that they were fake. She told the respondent to stop. When she moved to another gym machine, the respondent followed behind her stating that her breasts were too perfect to not be fake and continued to stare at her breasts. She indicated that after that incident, she changed her workout routine to avoid the respondent. The complainant recalled a more recent incident which occurred around July 2015, while attending a tactical briefing. She indicated that she was sitting in a chair, talking with a lieutenant, when the respondent pulled her ponytail and spun her chair around, causing her to lose her balance as he pulled her toward him. When the complainant looked up, she was inches away from the respondent’s groin area. She indicated that the lieutenant witnessed the incident. The complainant also mentioned that the respondent would take her cellphone and scroll through her photos, prompting her to place a pass code on her cellphone to prevent the respondent from looking through her cellphone. She recalled a few times that the respondent would take her cellphone and refuse to give it back. When the complainant asked for her phone back, the respondent would place the phone between his legs in the groin area and tell her if she wanted it, she had to come and get it. She indicated that he would only give her the cellphone when she became loud. The complainant stated that she did not initially report the respondent’s behavior because she feared retaliation from him. During a sworn interview on September 10, 2015, a lieutenant indicated that he witnessed the respondent pull the complainant’s ponytail during a July 2015 tactical briefing. He was sitting next to the complainant when he noticed someone walking behind them. When the lieutenant looked, he observed the respondent grabbing the complainant’s ponytail, causing the complainant’s body to get snatched to the left, causing her to lose her balance. The respondent was standing close by while the complainant attempted to pick herself up. The lieutenant indicated that the complainant’s face was inches away from the respondent’s groin. He described the complainant’s face as “sheer and utter embarrassment.” During a sworn interview with the respondent on September 28, 2015, he described his professional relationship with the complainant to be very close and strong. The respondent stated he and the complainant made funny comments to each other. Whenever she made a funny comment about him, he would joke that her breasts were fake and they would laugh it off, claiming it was their joke. When questioned about the gym incident, the respondent stated that the complainant called him fat and he responded by telling her she was fake. The two laughed about the comments and moved on. The respondent recalled the incident when he pulled the complainant’s ponytail. He considered the act as a tug on her ponytail as a sign of affection or friendship. The respondent admitted that he took the complainant’s phone as a joke but denied placing the phone between his legs. No criminal charges were filed.

**Penalty Guideline**: Probation with Training to Suspension; Suspension

FDLE Prosecution requested a 180-day retroactive suspension; 60-day prospective suspension 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of a Commission-approved ethics course and sexual harassment training prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission approved the settlement agreement.

**Case # 39280-** **Petite Theft; Organized Scheme to Defraud**

The respondent was terminated from the Alachua County Sheriff’s Office (ACSO) prior to the conclusion of an internal investigation which sustained the charges of criminal acts and untruthfulness. On October 15, 2014, the ACSO received a complaint alleging that the respondent was observed pumping gas into his marked vehicle. Once full, he was observed placing the pump nozzle on the ground, moving his marked vehicle away from the gas pumps, and moving his personal vehicle to the same gas pump. The respondent then walked over to the pump, picked up the same pump nozzle from the ground, and pumped gas into his personal vehicle. Based on the allegation of possible gas theft involving an ACSO gas card, a criminal investigation was conducted. During the criminal investigation, surveillance footage was obtained from the gas station. On October 15, 2014, the video showed that the respondent used his agency gas card to pay for gas for the ACSO marked vehicle as well as his personal vehicle. It was noted that it could not be determined exactly how much gas went into his personal vehicle during this transaction. Further investigation revealed that on August 29, 2014, video showed that the respondent used this agency gas card to pump $37.73 worth of gas into another personal vehicle. On September 6, 2014, the video showed that the respondent used the agency gas card again to pump $28.38 worth of gas into his personal vehicle. On October 10, 2014, the video showed that one of the respondent’s personal vehicles was waiting at the gas pump when the respondent pulled up behind the vehicle in his agency marked vehicle. The respondent then walked to the gas pump, swiped his agency gas card, and walked back to his marked vehicle. The respondent left the area and $36.75 worth of gas was pumped into the vehicle using the agency gas card. On October 17, 2014, during an interview, the respondent admitted using his agency issued card to put gas into his personal vehicles but could not remember the exact number of times. He stated that he had been using his agency issued gas card to purchase gas for his personal vehicles since 2012, or the beginning of 2013. He also admitted that he falsified his gas entry log when he used his agency issued gas card. It was noted that the ACSO was only able to obtain videos for August 29, 2014, September 6, 2014, October 10, 2014, and October 15, 2014. Based on the four videos, the respondent was arrested for petit theft and fraud - swindle. Although only four videos were obtained, it was noted that the gas station’s tracking data indicated that the respondent’s gas card was used from May 6, 2014 to October 15, 2014 purchase 400.81 gallons of gas. The detective believed that only half of that was used in the agency’s marked vehicle and determined that the respondent used $732.00 for his personal use. Additionally, the detective reviewing the respondent’s security key card entries to the court house and four dates were deemed suspicious when compared to the gas card data. On October 18, 2013, January 31, 2014, April 23, 2014, and May 6, 2014, the respondent’s agency issued gas card was used at the gas station and the respondent’s key card showed he accessed areas of the court house 2 to 4 minutes later. It was determined that the respondent could not have pumped gas and been at the court house within 2 to 4 minutes, indicating someone else used the gas card. The charge of petit theft was upgraded to grand theft by the State Attorney’s Office. On January 13, 2015, the respondent entered into a pre-trial intervention program for 12 months for grand theft. The charge of fraud – swindle was dismissed. He was ordered to pay restitution of $835.06 to the Alachua County Sheriff’s Office.

**Penalty Guideline**: Suspension to Revocation; Suspension to Revocation

FDLE Prosecution requested revocation of the respondent’s certification.

**Disciplinary Action by the Commission:** The Commission accepted the requested penalty.

**Case # 39983- Excessive Use of Force**

The respondent was terminated from the Lake City Correctional Facility subsequent to an internal investigation which sustained a violation of rules of conduct. On January 13, 2014, an incident occurred between the respondent and an inmate. According to the inmate, a correctional officer informed the respondent that several inmates, including himself, were not participating in the morning exercise. The respondent called the inmates to the front of the dormitory and told them to apologize to the correctional officer. The inmate told the respondent that he was not going to apologize because he did not do anything wrong. The respondent approached the inmate and told him that he would slap him if he did not apologize. The respondent slapped the inmate on the left side of his face. Several other inmates present during the incident stated that the respondent walked up to the inmate and slapped him in the face. A review of the surveillance camera depicted several inmates standing as the respondent approached them. The respondent walked up to an inmate and stopped. A few seconds later, the respondent slapped the inmate in the face. During an interview with the correctional officer witness, she stated that she informed the respondent that the inmate and several other inmates were not participating in the morning exercise. The respondent called the inmates to the officer’s desk and told them to apologize to her. The inmate refused to apologize. The respondent walked up to the inmate and said something to him, but she could not hear what was said. The respondent slapped the inmate in the face. The witness indicated that she did not see the inmate move toward the respondent prior to the slap. During an interview with the respondent, he stated that he told the inmate to apologize to the correctional officer for his actions. The inmate refused to apologize and began cussing. The respondent approached the inmate and attempted to counsel him about his actions. The respondent admitted that he reacted and slapped the inmate on the left side of his face. The respondent stated that his actions were wrong and he was sorry. No criminal charges were filed.

**Penalty Guideline**: Suspension to Revocation

FDLE Prosecution requested a 30-day prospective suspension; 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of Commission-approved anger management counseling prior to the end of the probationary period.

**Disciplinary Action by the Commission:** The Commission accepted the requested penalty.

**Case # 37936-** **Grand Theft; Public Assistance Fraud**

The respondent was terminated from the Department of Corrections subsequent to being notified of her arrest on the charge of Grand Theft and Public Assistance Fraud. The Florida Department of Law Enforcement conducted an investigation into allegations that the respondent improperly applied for public assistance. It was also determined that the respondent, by means of false statements or omissions, failed to report her gainful employment between April of 2012 and May of 2014. It was discovered that between June 1, 2012 and May 31, 2014, the respondent made several false statements in order to receive public assistance. During the investigation, records from the Department of Children and Families were reviewed which indicated that the respondent stated she was not employed and that her only available income was child support payments. It was determined that the respondent was employed by the Department of Corrections from December of 2006 to February of 2016. As a result, the respondent received $18,616.41 in benefits that she was not entitled to receive. On October 14, 2015, the respondent was arrested by the Miami-Dade Police Department for Grand Theft and Public Assistance Fraud. On January 8, 2016, the charges against the respondent for Grand Theft and Public Assistance Fraud were nolle prosequi, due to successful completion of a Pretrial Diversion Program. The terms of the program were unavailable.

**Penalty Guideline**: Revocation; Suspension to Revocation

FDLE Prosecution requested a voluntary relinquishment.

**Disciplinary Action by the Commission:** The Commission accepted the settlement agreement.

**The following information is provided to facilitate an understanding of the Professional Compliance process.**

The Criminal Justice Standards and Training Commission is required by Section 943.1395(8)(b)2 to conduct a workshop to receive public comment and evaluate disciplinary guidelines and penalties. Statute requires the panel be made up of twelve members, six in management positions, six in officer positions. The workshop was held on February 9, 2017, at Seminole State College, Center for Public Safety. The task force was made up of the following members:

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| **Position** | **Name** |
| Management | Chairman Edward L. Griffin (Warden) |
| Management | Sheriff Ric L. Bradshaw |
| Management | Commissioner David Hobbs (Sheriff) |
| Management | Chief Larry D. Krantz |
| Management | Chief Jeff M. Pearson |
| Management | Director David Vincent |
| Officer | Commissioner William Weiss (Deputy Sheriff) |
| Officer | Commissioner Matthew “Matt” L. Williams (Sergeant) |
| Officer | Commissioner Nicholas Marolda, Jr. (Detective) |
| Officer | Commissioner Kathleen Connell (Sergeant) |
| Officer | Sergeant William Lawless |
| Officer | Sergeant Paul Villaverde |

**ISSUE NUMBER 1:**

The 2015 Legislature created Chapter 784.049 F.S.-Sexual Cyberharassment. This charge applies to persons who publish a sexually explicit image of another to Internet websites without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. The first offense is a first degree misdemeanor. A second offense after a conviction is a third degree felony. The misdemeanor charge should be added to the list of misdemeanor moral character violations and associated penalty guidelines.

**Amended Rule 11B-27.0011(4) F.A.C. Moral Character-Misdemeanor Violations**

(b) Except as otherwise provided in Section 943.13(4), F.S., a plea of guilty or a verdict of guilty after a criminal trial for any of the following misdemeanor or criminal offenses, notwithstanding any suspension of sentence or withholding of adjudication, or the perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not:

1. Sections 316.193, 327.35, 365.16(1)(c),(d), 414.39, 741.31, 784.011, 784.03, 784.047, 784.048, 784.049(3)(a), 784.05, 784.046(15), 790.01, 790.10, 790.15, 790.27, 794.027, 796.07, 800.02, 800.03, 806.101, 806.13, 810.08, 810.14, 812.014, 812.015, 812.14, 817.235, 817.49, 817.563, 817.565, 817.61, 817.64, 827.04, 828.12, 831.30, 831.31(1)(b), 832.05, 837.012, 837.05, 837.055, 837.06, 839.13, 839.20, 843.02, 843.03, 843.06, 843.085, 847.011, 856.021, 870.01, 893.13, 893.147, 901.36 914.22, 934.03, 944.35, 944.37, and 944.39, F.S.

**Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Misdemeanor Violations**

(b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4),F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

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|  | **Violation** | **Recommended Penalty Range** |
| 17. | Sexual Cyberharassment, (784.049(3)(a) F.S.) | Prospective suspension, and probation with counseling to revocation |

**Task Force Vote: Passed**.

**ISSUE NUMBER 2:**

Amend current rule language to add an enumerated penalty guideline for the felony charge of Sexual Cyberharassment.  This rule language will apply the same penalty guideline for the current felony charge of Felony Stalking.  Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)(b), F.A.C. may be considered when determining the appropriate final disciplinary action by the Commission.

**Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Felony Violations**

(a) For the perpetration by the officer of an act that would constitute any felony offense, pursuant to paragraph 11B-27.0011(4)(a), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from suspension of certification to revocation. Specific violations and penalties that shall be imposed, absent mitigating circumstances, include the following:

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|  | **Violation** | **Recommended Penalty Range** |
| 9. | Felony Stalking, Sexual Cyberharassment (784.048, 784.049(3)(b) F.S.) | Revocation |

**Task Force Vote: Passed**.

**ISSUE NUMBER 3:**

Amend rule to specify that the charge of Malicious Battery (Section 944.35(3)(a)(1) F.S.) is included in the penalty guideline with the misdemeanor charge of Battery. The current penalty guideline rule places Malicious Battery within the generic penalty guideline of probation to suspension for misdemeanor moral character violations. Given that the charge of Malicious Battery is essentially a Battery with malicious intent occurring in a state prison it should be included with Battery in the penalty guidelines.

**Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Misdemeanor Violations**

(b) For the perpetration by the officer of an act or conduct, as described in paragraph 11B-27.0011(4)(c), F.A.C., if such act or conduct does not constitute a crime described in paragraphs (5)(a)-(b) of this rule section, the action of the Commission shall be to impose the following penalties, absent aggravating or mitigating circumstances:

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|  | **Violation** | **Recommended Penalty Range** |
| 2. | Battery; Malicious Battery (784.03; 944.35(3)(a)(1) F.S.) | Suspension |

**Task Force Vote: Passed**.

**ISSUE NUMBER 4:**

Amend Rule 11B-20.0012, F.A.C. which outlines instructor misconduct. Currently we do not have a Commission rule that prohibits romantic or sexual relationships between certified instructors and students attending basic recruit training. Given the ability of an instructor to control access to the profession, it is possible for an instructor to use this power to coerce a student to participate in a relationship that he or she feels is required in order to successfully complete the program and become a certified officer. It should be noted that this rule would apply to any certified instructor with oversight of a basic recruit academy, to include directors and coordinators. The penalty for committing this offense would fall under current penalty guidelines contained in Rule 11B-20.0012, F. A.C. for instructor violations. The Florida Criminal Justice Training Center Director’s Association voiced support for this rule change at their August 2016 business meeting. Discussion was held on the proposed rule and the Task Force directed Commission staff to craft language to address concerns raised during the discussion. The following rule language was then presented at a second meeting of the Task Force held via teleconference on March 17, 2017.

**Amended Rule 11B-20.001 Definitions and Minimum Requirements for General Certification of Instructors.**

(j) “Romantic or sexual relationship” means a relationship that may be evidenced by one or more of the following: kissing; fondling of the genital area, buttocks, or breasts; oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.

**Amended Rule 11B-20.0012(2) F.A.C. Denial and Discipline of Instructor Certification**

(2) The Criminal Justice Standards and Training Commission is authorized to impose disciplinary action against an instructor’s certification if:

(f) The instructor teaches or supervises a basic recruit trainee in any Commission-approved Basic Recruit Training Program and engages in a romantic or sexual relationship, as defined in Rule 11B-20.001(1)(j), F.A.C., with that basic recruit trainee and The instructor commits an act or acts establishing a “lack of good moral character,” defined in subsection 11B-27.0011(4), F.A.C.

1. Submission to the relationship is made either explicitly or implicitly a term or condition of the basic recruit trainee’s ability to complete the Basic Recruit Training Program; or

2. Submission to or rejection of the relationship by the basic recruit trainee is used as a basis for decisions affecting the basic recruit trainee’s participation in the Basic Recruit Training Program; or

3. The relationship is consensual and results in the basic recruit trainee receiving an undue advantage or some benefit in the Basic Recruit Training Program as a result thereof.

**Task Force Vote: Passed.**

**ISSUE NUMBER 5:**

The 2016 Legislature created Chapter 836.12 F.S.-Threats. The charge applies to any person who threatens a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, or an elected official, or a family member of such persons, with death or serious bodily harm. A first offense is a first degree misdemeanor. A second or subsequent offense is a third degree felony. The misdemeanor charge should be added to the list of misdemeanor moral character violations and associated penalty guidelines.

**Amended Rule 11B-27.0011(4) F.A.C. Moral Character-Misdemeanor Violations**

(b) Except as otherwise provided in Section 943.13(4), F.S., a plea of guilty or a verdict of guilty after a criminal trial for any of the following misdemeanor or criminal offenses, notwithstanding any suspension of sentence or withholding of adjudication, or the perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not:

1. Sections 316.193, 327.35, 365.16(1)(c),(d), 414.39, 741.31, 784.011, 784.03, 784.047, 784.048, 784.049(3)(a), 784.05, 784.046(15), 790.01, 790.10, 790.15, 790.27, 794.027, 796.07, 800.02, 800.03, 806.101, 806.13, 810.08, 810.14, 812.014, 812.015, 812.14, 817.235, 817.49, 817.563, 817.565, 817.61, 817.64, 827.04, 828.12, 831.30, 831.31(1)(b), 832.05, 836.12(2), 837.012, 837.05, 837.055, 837.06, 839.13, 839.20, 843.02, 843.03, 843.06, 843.085, 847.011, 856.021, 870.01, 893.13, 893.147, 901.36 914.22, 934.03, 944.35, 944.37, and 944.39, F.S.

**Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Misdemeanor Violations**

(b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4),F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

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|  | **Violation** | **Recommended Penalty Range** |
| 16. | Threats (836.12(2) F.S.) | Prospective suspension to revocation |

**Task Force Vote: Passed**.

**ISSUE NUMBER 6:**

Amend current rule language to add an enumerated penalty guideline for the felony charge of Threats.  This rule language will apply the same penalty guideline for the current felony charge of Felony Assault.  Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)(b), F.A.C. may be considered when determining the appropriate final disciplinary action by the Commission.

**Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Felony Violations**

(a) For the perpetration by the officer of an act that would constitute any felony offense, pursuant to paragraph 11B-27.0011(4)(a), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from suspension of certification to revocation. Specific violations and penalties that shall be imposed, absent mitigating circumstances, include the following:

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|  | **Violation** | **Recommended Penalty Range** |
| 19. | Felony Threats (836.12(3) F.S.) | Revocation |

**Task Force Vote: Passed**.

**ISSUE NUMBER 7:**

Amend rule to specify that the charge of Falsifying Records (Section 839.13(1) F.S.) is included in the penalty guideline for misdemeanors involving false reports and statements. The current penalty guideline places this offense in the generic penalty guideline of probation to suspension despite the similarity to other offenses in the false reports and statements section of penalties. The felony charge of Falsifying Records (839.13(2) F.S.) will be added to the penalty guideline for felonies involving false reports and statements. Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)(b), F.A.C. may be considered when determining the appropriate final disciplinary action by the Commission.

**Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Misdemeanor Violations**

(b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), F.A.C., but where there was not a violation of Section 943.13(4),F.S., the action of the Commission shall be to impose a penalty ranging from probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

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|  | **Violation** | **Recommended Penalty Range** |
| 4. | False reports and statements (817.49, 837.012, 837.05(1), 837.055, 837.06, 839.13(1), 901.36, 944.35(4)(b), F.S.). | Prospective suspension to revocation |

**Task Force Vote: Passed**.

**ISSUE NUMBER 8:**

Amend current rule language to add an enumerated penalty guideline for the felony charge of Falsifying Records (839.13(2) F.S.)  This rule language will apply the same penalty guideline for the current felony charge of felonies involving false reports and statements.  Any aggravators or mitigating circumstances as outlined in Rule 11B-27.005(6)(a)(b), F.A.C. may be considered when determining the appropriate final disciplinary action by the Commission.

**Amended Rule 11B-27.005(5) F.A.C. Range of Penalties-Felony Violations**

(a) For the perpetration by the officer of an act that would constitute any felony offense, pursuant to paragraph 11B-27.0011(4)(a), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from suspension of certification to revocation. Specific violations and penalties that shall be imposed, absent mitigating circumstances, include the following:

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|  | **Violation** | **Recommended Penalty Range** |
| 8. | False Statements (837.02, 837.021, 837.05(2), 838.022, 839.13(2) F.S.) | Prospective Suspension to revocation |

**Task Force Vote: Passed**.

If you have any issues that you would like to be addressed in the Quarterly Bulletin, please forward them to R. Stacy Lehman, Professional Compliance Section Manager in the Bureau of Standards, at the Florida Department of Law Enforcement, P.O. Box 1489, Tallahassee, Florida 32302 or via e-mail at: stacylehman@fdle.state.fl.us.