



Professional Compliance Bulletin



Issue 38
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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 that were heard by the Commission at its meeting held on August 6, 2009.

Case # 26367 Resisting an Officer without Violence; Perjury in an Official Proceeding

The respondent resigned from his employment with the Venice Police Department pursuant to a sustained investigation of allegations of conformance to laws, use of alcohol - off duty, insubordination, courtesy, truthfulness and a number of other charges. On January 12, 2008, the respondent was involved in an altercation in a restaurant. He was having a dispute with his wife, which incited a broader dispute. His wife threw a cup of ice at him, and a few of the cubes hit a bystander, who grew irate. Another officer stepped between the two and quieted them down. The dispute flared back up with multiple participants and the man struck by the ice swung at the respondent's brother-in-law, but missed and hit a nearby woman by mistake. The respondent, who knew his brother-in-law had been the target, started shouting obscenities. Management of the restaurant tried to get the respondent to leave, but he struggled and fought back. Another patron and friend of the respondent grabbed him and escorted him outside. While struggling, the respondent shouted and cursed. He then entered the restaurant again and was removed by restaurant staff. Once outside, he tried repeatedly to get back inside, even after being told that he was not welcome in the establishment again. He fought with restaurant staff and told the manager he was going to kill him. On the third time he tried to re-enter the door, he swung at restaurant staff but hit a bystander, then shouted that he had a gun and a badge in his car and again threatened to kill the manager. The police were called. When the respondent heard the police arrive, he took off his sports team shirt in order to hide his identity. He admitted that this was his motivation to another officer who was a friend of his. When the arriving officers asked him for information, he was argumentative and refused to answer the officers' questions. In a sworn interview on January 28, 2008, the respondent was hostile and uncooperative, and he made a number of statements which were contradicted by both video surveillance evidence and the testimony of the other participants. The case was referred to the State Attorney's Office, but the primary victim did not want to prosecute. For that reason, no criminal charges were filed in this case.

Penalty Guideline: Probation to suspension; Prospective suspension to revocation

The respondent agreed to a one year retroactive suspension and a ninety-day prospective suspension to be followed by a one year period of probation and provide staff with proof of successful completion of an anger management course prior to the end of the probationary period.

Disciplinary Action by the Commission: The Commission accepted the terms of the settlement agreement.

Case # 26821 Sex on Duty

The respondent resigned from the Florida Highway Patrol subsequent to an internal investigation which sustained a charge of conduct unbecoming. On March 18, 2008, a complaint was filed against the respondent and a duty officer allegedly having sex in her home, while the respondent was on-duty. The duty officer's husband returned home to find the respondent's FHP vehicle parked at his residence. He was notified that a supervisor was enroute to the residence. The respondent left the residence in his vehicle. The supervisor arrived on scene and had the complainant complete a written statement. While at the residence, the supervisor located a portable radio assigned to the respondent. The duty officer gave a sworn statement indicating that she and the respondent had been in a sexual relationship for six years. She indicated that on March 18, 2008, her husband came home early and entered the room, where she and the respondent had just had sex. The respondent chose to resign instead of participating in the administrative interview. No criminal charges were filed.

Penalty Guideline: Suspension to revocation

The respondent agreed to a one year retroactive suspension and a one year period of probation and provide staff with proof of successful completion of an ethics course prior to the end of the probationary period.

Disciplinary Action by the Commission: The Commission accepted the terms of the settlement agreement.

Case # 27138 Firing Weapon – Discharge Firearm from Vehicle

The respondent resigned from his employment with the Okaloosa Department of Corrections prior to the conclusion of an internal investigation wherein an allegation of offenses or misconduct which violate general rules of behavior or are specifically prohibited by law was sustained against him. On June 26, 2008, an Okaloosa Sheriff's Deputy responded to a location in reference to shots being fired. The reporting person stated that he observed the respondent's vehicle come to a stop in front of the respondent's ex-wife's house. The reporting person further stated that he observed an arm come out of the window of the vehicle holding a gun. The gun was fired and the reporting person stated that he saw the muzzle flash. Deputies interviewed the respondent's ex-wife who stated that she was not home at the time; however, she reported that the respondent appeared at her place of business that evening and appeared to be intoxicated. Sheriff's deputies located the respondent's vehicle at his residence and made contact with him. He initially denied that any such incident had occurred and stated that he had been at his house all night. Deputies obtained a consent to search the vehicle in question and located a Glock .40 caliber handgun with spent shell casings. Upon locating the weapon, the respondent admitted that he fired a shot in the air in front of his ex-wife's residence earlier that evening. The respondent was subsequently arrested and charged with Firing Weapon- Discharge Firearm from Vehicle. On December 4, 2008, the respondent appeared in court and entered a plea of No Contest to the lesser included offense of Improper Display of a Firearm. He was adjudicated guilty and sentenced to one year probation, \$270 in fines/costs and was ordered to submit to a mental health evaluation.

Penalty Guideline: Suspension to revocation

Staff recommended revocation of respondent's officer certification.

Disciplinary action by the Commission: The Commission accepted staff's recommendation.

Case # 26632 False Official Statement; False Report of a Crime; Perjury in an Official Proceeding

The respondent resigned from the Pinellas County Sheriff's Office subsequent to an investigation which sustained charges of Truthfulness, Improper Conduct, Use of Force Reporting and Code of Ethics. On December 15, 2007, the respondent was involved in an altercation with an inmate which resulted in a use of force. The respondent reported that, during the handcuffing process, an inmate head-butted him. The respondent notified the Detention Investigation Unit (DIU) to respond and charge the inmate with Battery on a Law Enforcement Officer. The respondent's verbal account of the incident did not match the incident report that he initially submitted. The first memo submitted by him made no mention of the head-butt. He reconstructed his initial memo by adding an additional line indicating that the inmate tried to head-butt him and struck him twice. The respondent was found to be untruthful by deliberately or intentionally omitting or misrepresenting material facts including, but not limited to the memo written on December 15, 2007, and the incident report written on the same date. On February 6, 2008, the respondent gave a sworn statement as a part of the administrative investigation indicating that he was head butted by the inmate. He further stated that he and the inmate never actually butted heads, but rather touched noses. Other officers and inmates in the area at the time of the incident were interviewed as a part of the investigation, but none of them could corroborate the respondent's allegation that the inmate head-hutted him. No criminal charges were filed in this case.

Penalty Guideline: Prospective suspension to revocation (each count)

Staff recommended a one year retroactive suspension, a forty-five day prospective suspension to be followed by a one year period of probation and provide staff with proof of successful completion of an ethics course prior to the completion of the probationary period.

Disciplinary Action by the Commission: The Commission accepted staff's recommendation.

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

The Commission approved the following new rule language (highlighted in red) during the August 2009 Commission Meeting in Ponte Vedra Beach. We anticipate implementation of this new rule language in the Spring of 2010 after proceeding through the rule promulgation process.

1.) INCORPORATION OF A STATUTE OF LIMITATION FOR OLD MORAL CHARACTER VIOLATIONS

1) Impose an eight-year statute of limitation for misdemeanor violations listed in Rule 11B-27.0011(4)(b), F.A.C.; 2) Impose an eight-year statutory limitation on non-criminal cases listed in Rule 11B-27.0011(4)(c), F.A.C.; 3) Not set a statute of limitations for felony violations listed in Rule 11B-27.0011(4)(a), F.A.C., or for positive drug tests; and 4) The eight-year statute of limitation would begin on the date the offense was committed and end on the date the case would be presented for a Probable Cause Determination.

Rule Number: 11B-27.004(12)(a), F.A.C.

Rule Title: Probable Cause Determination.

The Commission agreed on the following proposed rule language:

(12)(a) In cases in which the facts presented to Commission staff are inconclusive, lack reliability, are insufficient to permit a reasonable determination of what occurred, or fail to demonstrate that the alleged misconduct meets the statutory criteria for Commission action, Commission staff is authorized to "no cause" the case. Commission staff is authorized to reopen a case that has been "no caused" if new evidence or witnesses become available to Commission staff. However, Commission staff shall "no cause" a violation of paragraph 11B-27.0011(4)(b) or (c), F.A.C., if the officer is alleged to have committed the violation more than eight years prior to the case being presented at a Probable Cause Determination Hearing.

2.) POSITIVE DRUG TESTS

Rule Number: 11B-27.0011(4)(d), F.A.C.

Rule Title: Moral Character.

The Commission agreed on the following proposed rule language:

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:

(a) – (c) No change.

(d) A certified officer's unlawful injection, ingestion, inhalation, or other introduction of any controlled substance, as defined in Section 893.03, F.S., into his or her body as evidenced by a drug test in accordance with Sections 112.0455, 440.102, or 944.474, F.S. Testing positive for controlled substances by a urine or blood test that results in a confirmed nanogram level pursuant to Rule 11B-27.00225, F.A.C., or is consistent with and indicative of the ingestion of a controlled substance pursuant to Chapter 893, F.S., and not having a specific nanogram level listed in Rule 11B-27.00225, F.A.C., shall be an affirmative defense to this provision to establish that any such ingestion was lawful. Any test of this kind relied upon by the Commission for disciplinary action, shall comply with the requirements for reliability and integrity of the testing process pursuant to Rule 11B-27.00225, F.A.C.

3.) ADDITION OF SECTIONS 784.046 (DATING VIOLENCE), FS AND 810.145(VIDEO VOYEURISM), FS TO THE MORAL CHARACTER VIOLATIONS

Rule Number: 11B-27.0011(4)(b)1., F.A.C.

Rule Title: Moral Character.

The Commission agreed on the following proposed rule language:

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:

(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, 414.39, 741.31, 784.011, 784.03, 784.047, 784.048, 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, 810.145, 812.014, 812.015, 812.14, 817.235, 817.49, 817.563, 817.565, 817.567, 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, 914.22, 934.03, 944.35, 944.37, and 944.39, F.S.

4.) ADDITION OF SECTION 810.145, FS TO THE PENALTY GUIDELINES

The Officer Discipline Penalty Guidelines Task Force voted at its February 17, 2009 meeting to add Section 810.145, F.S., to Rule 1B-27.005(5)(b), F.A.C., with a penalty range of prospective suspension and probation with counseling to revocation.

Rule Number: 11B-27.005(5)(b), F.A.C.

Rule Title: Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

The Commission agreed on the following proposed rule language:

(5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:

(a) No change.

(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:

8.	Prostitution or lewdness; voyeurism, <u>video voyeurism</u> (796.07, 810.14, <u>810.145</u> , F.S.)	Prospective suspension, and probation with counseling to revocation
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5.) AMENDMENT OF "ANY OVERT, CONSPICUOUS, OR PUBLIC ACT OF A SEXUAL OR SIMULATED SEXUAL NATURE" NON-CRIMINAL CHARGES

Rule Number: 11B-27.0011(4)(c)11., F.A.C.

Rule Title: Moral Character

The Commission agreed on the following proposed rule language:

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:

(c) The perpetration by an officer of acts or conduct that constitute the following offenses:

11. Any willful and offensive exposure or exhibition of his or her sexual organs in public or on the private premises of another or so near thereto as to likely be seen except in any place provided or set apart for that purpose.

1244. Willful failure of the agency administrator to comply with Chapter 943, F.S., as it pertains to the Criminal Justice Standards and Training Commission or Commission rules.

1342. Intentional abuse of a Temporary Employment Authorization, pursuant to Section 943.131(1), F.S.

6.) ENGAGING IN SEX WHILE ON DUTY

Rule Number: 11B-27.0011(4)(c)5., F.A.C.

Rule Title: Moral Character

The Commission agreed on the following proposed rule language:

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:...

(c) The perpetration by an officer of acts or conduct that constitute the following offenses:

5. Engaging in oral, anal, or vaginal penetration by, or union with, the sexual organ of another person or engaging in anal or vaginal penetration by any other object while on duty, or at any time the officer is acting under the color of authority as a Commission-certified criminal justice officer, and not done for a bona fide medical purpose or in the lawful performance of the officer's duty.

7.) BRIBERY AND UNLAWFUL COMPENSATION

Rule Number: 11B-27.005(5)(a), F.A.C.

Rule Title: Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

The Commission agreed on the following proposed rule language:

(5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges recommended in the following disciplinary guidelines:

(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:

	Violation	Recommended Penalty Range
<u>16.</u>	<u>Bribery (838.015, F.S.)</u>	<u>Revocation</u>
<u>17.</u>	<u>Unlawful compensation or reward for official behavior (838.016, F.S.)</u>	<u>Revocation</u>

If you have any issues that you would like to be addressed in future Professional Compliance Bulletins, please forward them to Glen W. Hopkins, 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 glenhopkins@fdle.state.fl.us.