

Personnel Complaints

1008.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the California Department of State Hospitals. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1008.1.1 PERSONNEL COMPLAINTS DEFINED

Personnel complaints consist of any allegation of misconduct or improper job performance against any OPS employee that, if true, would constitute a violation of DSH policy, federal, state or local law. Personnel complaints may be generated internally or by the public.

Inquiries about employee conduct or performance that, if true, would not violate DSH policy, or federal, state or local laws, may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by DSH.

This policy shall not apply to any counseling, instruction, informal verbal admonishment or other routine or unplanned contact of an employee in the normal course of duty, by a supervisor or any other employee, nor shall this policy apply to an investigation concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

Personnel Complaints shall be classified in one of the following categories:

Informal - A matter in which the complaining party is satisfied that appropriate action has been taken by an OPS supervisor of rank greater than the accused employee. Informal complaints need not be documented on a personnel complaint form and the

responsible supervisor shall have the discretion to handle the complaint in any manner consistent with this policy.

Formal - A matter in which the complaining party requests further investigation or which an OPS supervisor determines that further action is warranted. Such complaints may be investigated by an OPS supervisor of rank greater than the accused employee or referred to the Professional Standards Unit depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Chief of Law Enforcement (CLE) and the Hospital Police Chief, such matters need not be documented as personnel complaints, but may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

1008.2 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

DSH takes seriously all complaints regarding the service provided by OPS and the conduct of its employees.

OPS will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of DSH to ensure that the community can report misconduct without concern for reprisal or retaliation.

DSH shall make available to the public a written description of the investigation procedures for complaints (Pen. Code § 832.5).

1008.2.1 AVAILABILITY OF COMPLAINT FORMS

Personnel complaint forms will be maintained in a designated visible location. Forms may also be available at other government facilities. Personnel complaint forms in languages other than English may be provided, as determined necessary or practicable.

1008.2.2 SOURCE OF COMPLAINTS

- (a) An OPS employee becoming aware of alleged misconduct shall immediately notify a supervisor.
- (b) A supervisor receiving a complaint from any source alleging misconduct of an employee which, if true, could result in disciplinary action.
- (c) Anonymous complaints and third party complaints shall be accepted and investigated to the extent that sufficient information is provided.

1008.2.3 ACCEPTANCE OF COMPLAINTS

A complaint may be filed in person, in writing, or by telephoning OPS. Although not required, every effort should be made to have the complainant appear in person. The following should be considered before taking a complaint:

- (a) Complaints shall not be prepared unless the alleged misconduct or job performance is of a nature which, if true, would normally result in disciplinary action.
- (b) When an uninvolved supervisor or the Watch Commander determines that the reporting person is satisfied that their complaint required nothing more than an explanation regarding the proper/improper implementation of DSH policy or procedure, a complaint need not be taken.
- (c) When the complainant is intoxicated to the point where his/her credibility appears to be unreliable, identifying information should be obtained and the person should be provided with a Personnel Complaint form.
- (d) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with their parents or guardians are present and after the parents or guardians have been informed of the circumstances prompting the complaint.

1008.2.4 COMPLAINT DOCUMENTATION

Formal complaints of alleged misconduct shall be documented by a supervisor on a personnel complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

A supervisor may elect to document informal complaints as a supervisor or Watch Commander log entry.

All complaints and inquiries shall be documented in BlueTeam.

When a Personnel Complaint form is completed in person, the complainant should legibly write a detailed narrative of his/her complaint. If circumstances indicate that this is not feasible, the complaint may be dictated to the receiving supervisor. In an effort to ensure accuracy in any complaint, it is recommended that a recorded statement be obtained from the reporting party. A refusal by a party to be recorded shall not alone be grounds to refuse to accept a complaint. Whether handwritten or dictated, the complainant's signature should be obtained at the conclusion of the statement. The complainant should be provided with a copy of his/her own original complaint per Penal Code section 832.7.

1008.3 ADMINISTRATIVE REPORTING GUIDELINES

Any personnel complaint containing allegations of peace officer misconduct, whether on or off duty, shall be reported to the Office of Law Enforcement Support (OLES) no later than one business day from the day of discovery. This does not include routine traffic infractions outside the peace officer's official duties.

In addition to sending the Officer Complaint Form or Supervisor Memorandum through the chain of command, supervisors shall complete the required documentation for OLES reporting. The supervisor receiving a personnel complaint shall forward the complaint, including the required OLES documentation (template), to the CLE, Hospital Police Chief, and OLES.

The Hospital Police Chief or the designee shall ensure all personnel complaints containing allegations of peace officer misconduct are submitted to OLES within the prescribed timeline. Upon receipt, OLES will review personnel complaints and determine if the complaint will be investigated by OLES. Personnel complaints not investigated by OLES will be returned to the CLE, who will determine if the complaint will be investigated by his/her office, or returned to the reporting hospital for investigation.

1008.4 ADMINISTRATIVE RE-ASSIGNMENT IN CONJUNCTION WITH HUMAN RESOURCES

An employee subject to a personnel investigation may be re-assigned to a different shift, post or department (generally normal business hours) during the pendency of the investigation and the employee may be required to remain available for contact at all times during such shift and report orders.

1008.5 ASSIGNMENT TO ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature or when circumstances practically dictate that it would impose an unreasonable risk to DSH, the employee, other employees or the public, the Hospital Police Chief, in coordination with DSH Human Resources and the CLE, may assign the accused employee to inactive duty pending completion of the investigation or the filing of administrative charges.

1008.5.1 ADMINISTRATIVE LEAVE

Administrative time off (ATO) is at the discretion of DSH and must comport with California Human Resources (CalHR).

An employee placed on administrative leave may be subject to the following guidelines:

- (a) Under such circumstances, an employee placed on administrative leave shall continue to receive regular pay and benefits pending the imposition of any discipline.
- (b) An employee placed on administrative leave may be required by a supervisor to relinquish any badge, OPS identification, assigned weapon(s) and any other OPS equipment.
- (c) An employee placed on administrative leave may be ordered to refrain from taking any action as an OPS employee or in an official capacity. The employee shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (d) An employee placed on administrative leave may be temporarily reassigned to a different shift (generally normal business hours) during the pendency of the investigation and the employee shall be required to remain available for contact at all times during such shift and report as ordered.
- (e) It shall be the responsibility of the Hospital Police Chief to work with the Hospital Human Resources Department. All events of an OPS employee being placed on ATO must be reviewed by the CLE.
- (f) At such time as any employee placed on administrative leave is returned to full and regular duty, the employee shall be returned to their regularly assigned shift with all badges, identification card and other equipment returned.

1008.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1008.6.1 SUPERVISOR RESPONSIBILITIES

As noted above, all personnel complaints regarding peace officer misconduct must be reviewed by OLES and the CLE. In general, the primary responsibility for the investigation of a personnel complaint returned from the OLES and CLE reviews shall rest with the employee's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Hospital Police Chief or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
 - 1. The original complaint form will be directed to the Watch Commander of the accused employee, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
 - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the employee's Watch Commander or the Hospital Police Chief, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
 - 1. Follow-up contact with the complainant should be made within 24 hours of OPS receiving the complaint.
 - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Watch Commander.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Watch Commander and Hospital Police Chief are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Human Resources and the Watch Commander for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.

- (f) Forwarding unresolved personnel complaints to the Watch Commander, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
 - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused employee are followed (Gov. Code § 3303 et seq.).
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1008.6.2 ADMINISTRATIVE INVESTIGATION OF COMPLAINT

When conducting an administrative investigation, the following applies to employees covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Gov. Code

§ 3303):

- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- (b) Unless waived by the employee, interviews of an accused employee shall be at the California Department of State Hospitals or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused employee.
- (d) Prior to any interview, an employee shall be informed of the nature of the investigation, the name, rank and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.
- (e) All interviews shall be for a reasonable period and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
- (h) Absent circumstances preventing it, the interviewer should record all interviews of employees and witnesses. The employee may record the interview. If the employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview.
- (i) If the allegations involve potential criminal conduct, the employee shall be

advised of his/her constitutional rights pursuant to *Lybarger v. City of Los Angeles* (1985) 40 Cal. 3d 822. This admonishment shall be given administratively whether or not the employee was advised of these rights during any separate criminal investigation.

- (j) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (k) All employees shall provide complete and truthful responses to questions posed during interviews.
- (l) No employee may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Gov. Code § 3307).
- (m) No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a Brady list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Gov. Code § 3305.5).

1008.6.3 ADMINISTRATIVE SEARCHES

Any employee may be compelled to disclose personal financial information pursuant to proper legal process; if such information tends to indicate a conflict of interest with official duties, or, if the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements. (Gov. Code, § 3308.)

Employees shall have no expectation of privacy when using telephones, computers, radios or other communications provided by DSH.

Assigned lockers and storage spaces may only be administratively searched in the employee's presence, with the employee's consent, with a valid search warrant or where the employee has been given reasonable notice that the search will take place. (Gov. Code, § 3309.)

All other departmentally assigned areas (e.g., desks, office space, assigned vehicles) may be administratively searched by a supervisor, in the presence of an uninvolved witness, for non- investigative purposes. (e.g., obtaining a needed report or radio). An investigative search of such areas shall only be conducted upon a reasonable suspicion that official misconduct is involved.

1008.6.4 ADMINISTRATIVE INVESTIGATION FORMAT

Investigations of personnel complaints shall be detailed, complete and essentially follow this format:

Introduction- Include the identity of the employee(s), the identity of the assigned investigator(s), the initial date and source of the complaint.

Synopsis- Provide a very brief summary of the facts giving rise to the investigation.

Summary of Allegation- List the allegations separately (including applicable policy sections) with a very brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence as to Each Allegation- Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of employee and witness statements. Other evidence related to each allegation should be detailed in this section.

Conclusion- A recommendation regarding further action or disposition should be provided only by the Hospital Police Chief.

Exhibits- A separate list of exhibits (recordings, photo, documents, etc) should be attached to the report.

1008.6.5 DISPOSITION OF PERSONNEL COMPLAINTS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve DSH employees. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1008.6.6 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation. In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code section 3304(d) or Government Code section 3508.1. If the nature of the allegations dictate that confidentiality is necessary to maintain the integrity of the investigation, the involved employee(s) need not be notified of the pending investigation unless and until the employee is interviewed or formally charged within one year of discovery.

Upon completion, the report should be forwarded through the chain of command to the Hospital Police Chief of the involved employee(s).

The Hospital Police Chief or designee shall ensure that within 30 days of the final disposition of the complaint (i.e., sustained, not sustained, exonerated, unfounded), the complainant is provided written notification of the disposition (Pen. Code § 832.7(e)).

1008.7 CONFIDENTIALITY OF PERSONNEL FILES

All investigations of personnel complaints, whether originating from a citizen or internally, shall be considered confidential peace officer personnel files. The contents of such files shall not be revealed to other than the involved employee or authorized personnel except pursuant to lawful process.

In the event that an accused employee (or the representative of such employee) knowingly makes false representations regarding any internal investigation and such false representations are communicated to any media source, DSH may disclose sufficient information from the employee's personnel file to refute such false representations. (Pen. Code, § 832.5.)

All sustained citizen's complaints shall be maintained for a period of at least five years. (Pen. Code, § 832.5.) All internally initiated complaints shall be maintained at least two years. (Gov. Code, § 34090 et seq.).

Sustained complaints shall be maintained in the employee's personnel file. Complaints which are unfounded, exonerated or not sustained shall be maintained by the Professional Standards Unit apart from the employee's personnel file.

1008.8 ALLEGATIONS OF CRIMINAL CONDUCT

Where an employee is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Hospital Police Chief shall be notified as soon as practicable when an employee is accused of criminal conduct. The Hospital Police Chief in conjunction with the CLE may request a criminal investigation by an outside law enforcement agency.

An employee accused of criminal conduct shall be advised of his/her constitutional rights (Gov. Code § 3303(h)). The employee should not be administratively ordered to provide any information in the criminal investigation.

No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

DSH may release information concerning the arrest or detention of any employee, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1008.9 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Hospital Police Chief and CLE.

1008.9.1 HOSPITAL POLICE CHIEF RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Hospital Police Chief shall review the recommendation and all accompanying materials and prepare the DSH disciplinary documents for submission to the CLE and facility Executive Director.

1008.10 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that an employee tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tendering of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1008.11 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal any formal adverse action. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code section 3304 and Government Code section 3304.5.

During any administrative appeal, evidence that an officer has been placed on a Brady list or is otherwise subject to Brady restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such Brady evidence shall be limited to determining the appropriateness of the penalty (Gov. Code § 3305.5).

1008.12 PROBATIONARY EMPLOYEES AND OTHER EMPLOYEES

At-will and probationary employees and those employees other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Gov. Code § 3303; Gov. Code § 3304). At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Hiring Authority or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest.

1008.13 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Files Policy.