



INTRODUCTION

Pursuant to § 18-11 of the Charter of the City of Rochester, and in the interest of public accountability, the Police Accountability Board has made the following investigative report public. It has been redacted so as not to disclose the identities of the officers and civilians involved.

Pursuant to *Rochester Police Locust Club, Inc. v. City of Rochester*, 41 N.Y.3d 156 (2023), Rochester Police Officers can only be disciplined by the Rochester Police Department. Accordingly, where a finding of police misconduct has been sustained by the Board, the PAB issues disciplinary recommendations to the Chief based on our Disciplinary Matrix.

The final Board decision as to the PAB determination of misconduct and recommended discipline are followed by the investigatory report prepared by PAB staff.

BOARD DECISION

Public Tracking Number (PTN): 2023-0165

Date of Panel Review: 04-Apr-2024 8:50 PM (EDT)

Board Members Present: [REDACTED], [REDACTED], [REDACTED]

Case Findings: Exonerated

Dissenting Opinion/Comment: N/A.



DEFINITIONS

Exonerated: A finding at the conclusion of an investigation that either the alleged act did not occur, or that although the act at issue occurred, the subject officer's actions were lawful and proper and within the scope of the subject officer's authority under police department guidelines.

Not Sustained: A finding at the conclusion of an investigation that there is insufficient evidence to establish whether an act of misconduct occurred.

Sustained: A finding at the conclusion of an investigation by a preponderance of the evidence that the subject officer committed the act charged in the allegation and that it amounted to misconduct.

Closed: Vote to close the case.



Officer Name- Allegation # 1:

Officer [REDACTED] [REDACTED] General Order 560 (Psychiatric Crisis Intervention): Officer [REDACTED] improperly conducted a mental hygiene detention. The Police Accountability Board exonerated this allegation. The Board agreed.

- **Does the Board Agree with the Findings of Fact? Yes**
 - **Does the Board Agree with the Substantiated Evidence of Misconduct? Yes**
 - **Does the Board Agree with the Proposed Disciplinary Action? Yes**
-

Officer Name- Allegation # 2:

Officer [REDACTED] [REDACTED] General Order 337 (Use of Force): Officer [REDACTED] used an inappropriate amount of force in the detention of [REDACTED] [REDACTED]. The Police Accountability Board exonerated this allegation. The Board agreed.

- **Does the Board Agree with the Findings of Fact? Yes**
 - **Does the Board Agree with the Substantiated Evidence of Misconduct? Yes**
 - **Does the Board Agree with the Proposed Disciplinary Action? Yes**
-

Officer Name- Allegation # 3:

Officer [REDACTED] [REDACTED] General Order 560 (Psychiatric Crisis Intervention): Officer [REDACTED] improperly conducted a mental hygiene detention. The Police Accountability Board exonerated this allegation. The Board agreed.

- **Does the Board Agree with the Findings of Fact? Yes**
 - **Does the Board Agree with the Substantiated Evidence of Misconduct? Yes**
 - **Does the Board Agree with the Proposed Disciplinary Action? Yes**
-

Officer Name- Allegation # 4:

Officer [REDACTED] [REDACTED] General Order 337 (Use of Force): Officer [REDACTED] used an inappropriate amount of force in the detention of [REDACTED] [REDACTED]. The Police Accountability Board exonerated this allegation. The Board agreed.

- **Does the Board Agree with the Findings of Fact? Yes**
- **Does the Board Agree with the Substantiated Evidence of Misconduct? Yes**
- **Does the Board Agree with the Proposed Disciplinary Action? Yes**

CLOSING REPORT

STATEMENT OF AUTHORITY

Article XVIII of the Rochester City Charter defines the authority and duties of the Police Accountability Board. Pursuant to § 18-1, "The Police Accountability Board shall be the mechanism to investigate such complaints of police misconduct and to review and assess Rochester Police Department patterns, practices, policies, and procedure...The Police Accountability Board shall provide a nonexclusive alternative to civil litigation."

EXECUTIVE SUMMARY

The following events took place on July 7, 2023, at approximately 3:30 pm, at [REDACTED] Rochester, New York, 14620.

On the above mentioned date and time Officer [REDACTED] and Officer [REDACTED] responded to the above location in response to a 911 call made by [REDACTED]. Upon arriving at the location, Officer [REDACTED] knocked on the door and identified herself as a member of law enforcement. [REDACTED] opened the door and allowed both Officers entrance.

Once in the living room of the apartment, Officers come into contact with [REDACTED], the tenant, sitting near the front window in a motorized wheel chair. [REDACTED] then identified herself as [REDACTED] social worker. [REDACTED] immediately tells Officers that [REDACTED] is not doing well and that [REDACTED] wanted to jump out of the window and die. Further conversations with [REDACTED] and [REDACTED] reveal that [REDACTED] is upset because [REDACTED] owes money to certain persons and is unable to pay them because [REDACTED] is unable to cash [REDACTED] check which [REDACTED] has on hand.

Officer [REDACTED] then tells [REDACTED] that the Officers will have to take him to the hospital given the nature of his statements, to which Officer [REDACTED] concurs. [REDACTED] then begins to pick up various tools and the Officers remove the tools from [REDACTED] hand. [REDACTED] then grabs a strap that is attached to [REDACTED] motorized wheelchair, pulls on it, and wraps the strap around [REDACTED] neck. The Officers quickly remove the strap from [REDACTED] neck and inform [REDACTED] that they will be placing [REDACTED] in handcuffs. The Officers then ask [REDACTED] to place [REDACTED] hands behind [REDACTED] back and [REDACTED] does not comply. Each Officer then grabs one of [REDACTED] arms and physically puts [REDACTED] hands behind [REDACTED] back and place [REDACTED] in handcuffs. [REDACTED] then remained in [REDACTED] motorized wheelchair until the team of Emergency Medical Technicians arrived on the scene.

[REDACTED], contacted the Police Accountability Board on August 21, 2023 to report this incident. [REDACTED] alleges that [REDACTED] was in the hallway for the duration of these events, however, a thorough review of Officer [REDACTED] and Officer [REDACTED] body camera footage, reveals that all events took place in [REDACTED] apartment and [REDACTED] does not appear anywhere in the footage.

INVOLVED OFFICERS

Officer Name	Officer Rank	Badge/Employee #	Date of Appointment	Sex	Race/Ethnicity
██████████ ██████████	██████████	██████████	██████████	██████████	██████████
██████████ ██████████	██████████	██████████	██████████	██████████	██████████

INVOLVED INDIVIDUALS

Name	Age	Sex	Race/ Ethnicity
██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████

ALLEGATIONS

1	Officer ██████████ ██████████	General Order 560 (Psychiatric Crisis Intervention): Officer ██████████ improperly conducted a mental hygiene detention.
2	Officer ██████████ ██████████	General Order 337 (Use of Force): Officer ██████████ used an inappropriate amount of force in the detention of ██████████
3	Officer ██████████ ██████████	General Order 560 (Psychiatric Crisis Intervention): Officer ██████████ improperly conducted a mental hygiene detention.
4	Officer ██████████ ██████████	General Order 337 (Use of Force): Officer ██████████ used an inappropriate amount of force in the detention of ██████████

INVESTIGATION

Reporter ██████████ filed a complaint with the Police Accountability Board on August 21, 2023, via phone.

██████████ met with the Police Accountability Board on September 8, 2023 and provided a detailed written statement.

Security footage was obtained from ██████████, the location of the incident on September 14, 2023.

The Police Accountability Board notified the Rochester Police Department of its investigation and requested corresponding documents on October 6, 2023.

The Rochester Police Department responded to the request on November 1, 2023, and provided the Police Accountability Board with five audio files from Police Dispatch.

The Police Accountability Board sent a second request on November 7, 2023, seeking written reports and body camera footage.

The Rochester Police Department responded to the Police Accountability Board's second request on November 7, 2023 submitting a computer aided dispatch report as well as body camera footage.

EVIDENCE PROVIDED

Evidence	Description	Provided by	Filename
Intake Report	██████████ ██████	██████████	i-Sight Case 2023-0165 (1).pdf
Supplemental Response	██████████ ██████████ ██████████	██████████	██████████ written statement to CCFCS (1).pdf
Video Footage	Security camera footage of the apartment building elevator and hallway area	██████████	PAB Reports - Surveillance Video ██████████ ██████████ All Documents (sharepoint.com)
Information Request	First Source of Information Request to the Rochester Police Department	Police Accountability Board	S-SharePoint File Transfer - InitialNotification 2023-0165 RPD response 10-9-23.pdf - All Documents

Evidence	Description	Provided by	Filename
Information Request Response	Five audio files containing police dispatch/ radio traffic	Rochester Police Department	PAB Reports - July 7th, 2023 - All Documents (sharepoint.com)
Information Request	Second Source of Information Request to the Rochester Police Department	Police Accountability Board	S-SharePoint File Transfer - SOI 2023-0165-02 RPD Response 11-7-23.pdf - All Documents
Information Request Response	Computer aided dispatch report	Rochester Police Department	S-SharePoint File Transfer - CAD - All Documents
Information Request Response	Four audio visual files containing body camera footage	Rochester Police Department	S-SharePoint File Transfer - BWC - All Documents

EVIDENCE DENIED

Evidence	Description	Reason declined
Personnel Records of the Officers involved	Request from the Police Accountability Board to the Rochester Police Department	No response given.
911 calls	Request from the Police Accountability Board to the Rochester Police Department	The Rochester Police Department has stated that this information must be obtained from the Emergency Communications Department.
Formal Officer Statement	Request from the Police Accountability Board to the Rochester Police Department	Compelled police officer statements are in direct conflict with the collective bargaining agreement.

APPLICABLE RULES & LAWS

Rochester Police Department General Orders

337(Use of Force)¹

I. PURPOSE

The purpose of this General Order is to set forth the Rochester Police Department's (RPD) policy on use of force, which establishes when and how a Member may respond to a person exhibiting resistance to

¹ The use of force policy has been condensed for purposes of this document. The entirety of which may be viewed using the following link. [GO 337 Use of Force | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](#).

commands and/or threatening a Member or another. This policy provides further guidance as to when certain force options may or may not be used. Regardless of the type of force or weapon used, a Member's use of force must be reasonable, necessary, and proportionate.

III. POLICY

A. RPD recognizes and respects the value and sanctity of all human life. Members are expected to carry out their duties and act with the highest regard for the preservation of human life and the safety of all persons involved.

B. RPD's goal is to gain voluntary compliance of persons without resorting to the use of force. Though Members are authorized to use reasonable force when necessary, Members should attempt to resolve situations without using force whenever possible.

C. Members are only authorized to use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to effect a lawful purpose, including to ensure the safety of a Member or third person, stop an attack, make an arrest, control a person evading a Member's lawful commands, or prevent escape.

D. Members shall use the least amount of force necessary based on the totality of circumstances and shall cease using any force once a person becomes compliant.

E. Members using force must continually assess the situation and adjust the use of force as necessary. As a person's resistance decreases, Members shall decrease their use of force accordingly.

F. Whenever safe and feasible to do so, prior to using force, Members should provide verbal commands. Members should defer using force for an objectively reasonable amount of time to allow the person to comply with the command.

G. Members must act with due regard for the safety of all persons during any use of force.

H. Members shall use de-escalation techniques and tactics, when it is safe and feasible to do so, to prevent and minimize the need to use force and to increase the likelihood of securing a person's voluntary compliance with police instructions. Members should refer to RPD's De-Escalation policy, G.O. 575.

I. Members have an affirmative duty to intervene to prevent or stop any Member from using unreasonable force or otherwise acting contrary to law or RPD policy. Members should refer to RPD's Duty to Intervene policy, G.O. 336.

J. After a use of force, Members shall render medical assistance consistent with their training as follows:

1. When safe and feasible to do so, Members shall immediately evaluate the need for medical attention for the person upon whom force was used. Members shall request medical assistance without delay for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, is suicidal or encountering a mental health crisis, or who was rendered unconscious.

2. Any person who is exposed to a Conducted Electrical Weapon (“CEW”) application and has apparent injuries or complains of injury, or is unconscious or semi-conscious due to alcohol or drug consumption must be transported to a hospital to be seen by a medical professional for treatment.
3. Members are expected to document whether they render aid to any individual in a Subject Resistance Report. Members are required to follow RPD’s Subject Resistance Report policy, G.O. 335.

IV. PROHIBITED USES OF FORCE

Members will not use force in any of the following situations:

- A. Against persons who are handcuffed or restrained except to prevent injury; escape; or otherwise overcome resistance posed by the person;
 1. Members shall not position a restrained person face-down for a prolonged period of time as it may cause positional asphyxia, or on their back as it may cause radial nerve damage to the wrist and forearm area. Restrained persons should be seated or placed on their side, as soon as safe and practical.
- B. To coerce a confession;
- C. As punishment or retaliation (e.g., force used to punish or retaliate against an individual for fleeing, resisting arrest or insulting a Member);
- D. To respond to those engaged in the lawful exercise of First Amendment protected activity, including peaceful protest, the right to assemble, and recording police activity (unless a person’s doing so impedes a Member’s legitimate law enforcement function);
- E. Based on bias against the person’s race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, immigration status, or any other protected characteristic;
- F. To obtain blood, saliva, urine or other bodily fluid or cells, from an individual for the purpose of scientific testing in lieu of a court order where required; or
- G. To extract an item from inside the body of a person, except where exigent circumstances are present;
- H. To stop a person from swallowing a substance that is already in their mouth. A Member may, however, use reasonable force to prevent a suspect from putting a substance in their mouth.

560 (Psychiatric Crisis Intervention)²

II. POLICY

² The psychiatric crisis intervention policy has been condensed for purposes of this document. The entirety of which may be viewed using the following link. [GO 560 Psychiatric Crisis Intervention | Rochester, NY Police Department Open Data Portal \(arcgis.com\)](https://arcgis.com).

A. Members of the Rochester Police Department (RPD), when dealing with persons during contacts on the street as well as during interviews and interrogations, will be understanding of and attentive to the problems of persons experiencing mental or emotional difficulties and who may require police assistance and community mental health resources.

B. Members of the RPD will use judgment based on training, experience and discretion when exercising their powers to detain under the New York State Mental Hygiene Law (NYSMHL) without compromising member, patient and/or public safety.

C. Members of the RPD making a mental hygiene detention or returning individuals to a mental health facility pursuant to the NYSMHL will share all potentially relevant information surrounding the individual's conduct and/or detention with Emergency Medical Services/ambulance personnel/hospital personnel involved in the evaluation of the person.

D. Members of the RPD will respond to an individual who is or is reported to be in crisis and assess each situation with the safety and health of the member, the individual in crisis and the public, as a priority. Additionally, members will immediately request medical attention, when necessary.

E. Members of the RPD will emphasize providing additional assistance and resources to individuals in crisis, when it is appropriate, safe and feasible to do so.

F. Members of the RPD will understand that a Mental Hygiene Detention is not a criminal arrest and should not be called or described as such. All documentation will use the phrase "Mental Hygiene Detention (MHD)."

III. PROCEDURES

A. Evaluation by Police

Section 9.41 of the NYSMHL allows a police officer to take into custody any individual for evaluation if the person appears to be mentally ill and is conducting themselves in a manner which is likely to result in serious harm to themselves or others when there is substantial risk of physical harm to:

1. Themselves as manifested by threats of or attempts of suicide or serious bodily harm or other conduct demonstrating that they are dangerous to themselves, such as, the person's refusal or inability to meet their essential needs for food, shelter, clothing or health care, provided that such refusal or inability is likely to result in serious harm if there is not immediate hospitalization; or
2. Other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.
3. There is reasonable suspicion that an individual's behavior, whether or not criminal in nature, is secondary to a mental health issue.

4. Members should assess the need for additional assistance from a mental health clinician to complete an evaluation. If additional resources are needed for an evaluation, the following options should be considered:
 - a) City of Rochester Person in Crisis Team (PIC)
 - b) Monroe County Forensic Intervention Team (FIT)

These resources can assist with de-escalating behavioral crisis situations and provide appropriate referrals, especially when a MHD is not required. Members can request PIC or FIT via the Emergency Communications Department on the east/west administrative channels.

If PIC/FIT are dispatched, members will assess the situation in regards to safety. If the situation is determined to be safe, members will stand by and assist PIC/FIT, while they complete their evaluation/assessment, as necessary. If a transport is required, members and PIC/FIT will coordinate the transport of the individual to the appropriate facility.

B. Response

1. Assess the situation
 - a) Safety – presence of weapons, other individuals on scene, location (bridge, river, etc.).
2. Establish communication with the individual.
3. Use appropriate de-escalation tools, if possible.
4. Be truthful with the individual, family and other involved persons.
 - a) Explain RPD procedures, as appropriate
 - b) Offer available resources or request PIC, FACIT, FIT, to respond.

STANDARD OF PROOF

The Police Accountability Board is tasked with determining whether or not sworn Rochester Police Department Officers have committed any actions in violation of department policies, order, or training. In order for a finding of misconduct to be considered sustained, the Police Accountability Board is authorized to use a “substantial evidence” standard of proof. See City of Rochester Charter § 18-5(I)(10).

Substantial evidence “is that which a reasonable mind might accept as adequate to support a conclusion”. NLRB v. Int’l Bhd. of Elec. Workers, Local 48, 345 F.3d 1049, 1054 (9th Cir. 2003). This standard is met when there is enough relevant and credible evidence in the record as a whole that a reasonable person could support the conclusion made. See 4 CFR § 28.61(d).

Even though authorized, the Police Accountability Board of Rochester, New York, utilizes the much higher standard of proof, which is a preponderance of evidence. When utilizing the standard of a preponderance of the evidence “the relevant facts must be shown to be more likely true than not” [true].

United States v. Montano, 250 F.3d 709 (9th Cir. 2001). This is commonly understood to mean that there is at least a 51% chance that the allegations made are in fact true.

ANALYSIS

The following findings are made based on the above standards:

Allegation 1: Officer ██████ inappropriately conducted a mental hygiene detention.
Allegation 3: Officer ██████ inappropriately conducted a mental hygiene detention.³

The Rochester Police Department's General Order 560 gives Officers the authority to take an individual into custody if they appear to be mentally ill and is conducting themselves in a manner which is likely to result in serious harm to either themselves or others.

Officer ██████ and Officer ██████ responded to the home of ██████ after receiving notification that ██████ was attempting to harm ██████. Once contact was made with ██████, ██████ confirmed to both officers that he wanted to die. Both Officers then observed ██████ pick up several tools for no legitimate purpose and the Officers both instructed ██████ to put the tools down. The Officers then observe ██████ wrap a strap around ██████ neck in an effort to choke ██████. Officer ██████ quickly removed the strap from ██████ neck and both Officers then worked together to place ██████ in handcuffs. Both Officers then explained to ██████ that ██████ was being placed in handcuffs due to his failure to obey officer commands and for ██████ personal safety. Medical personnel was notified and ██████ was then taken to the hospital. The Officers acted within their authority and for the protection of ██████.

Allegation 1 against Officer ██████ ██████ is exonerated.

Allegation 3 against Officer ██████ ██████ is exonerated.

Allegation 2: Officer ██████ used an inappropriate amount of force in the detention of ██████ ██████.
Allegation 4: Officer ██████ used an inappropriate amount of force in the detention of ██████ ██████.

The Rochester Police Department's General Order 337 states that an Officer's use of force must be objectively reasonable, necessary and proportionate. Officers are further instructed to use the least amount of force necessary and to cease the use of force in its entirety once the subject becomes compliant. Furthermore, Officers are instructed to use verbal commands prior to using force in all situations which are safe and feasible to do so.

Officer ██████ and Officer ██████ made physical contact with ██████ in an effort to place ██████ in handcuffs. Verbal commands were given from both Officers for ██████ to place ██████ hands behind ██████ back and ██████ did not comply. Both Officers then grabbed ██████ about ██████ arm and hands and placed them behind ██████ back. After being placed in handcuffs, ██████ complained of hand and shoulder pain. Neither Officer applied force in a manner which would have been likely to cause injury.

³ Officer ██████ and Officer ██████ acted in tandem and with the exact same culpability at all times relevant to this complaint. Therefore, the actions of Officer ██████ and Officer ██████ will be analyzed concurrently.

Both Officers handled [REDACTED] with care and were able to successfully place [REDACTED] in handcuffs without removing [REDACTED] from [REDACTED] motorized wheelchair.

Allegation 2 against Officer [REDACTED] [REDACTED] is exonerated.

Allegation 4 against Officer [REDACTED] [REDACTED] is exonerated.

RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	Officer [REDACTED] [REDACTED]	General Order 560 (Psychiatric Crisis Intervention): Officer [REDACTED] improperly conducted a mental hygiene detention.	Exonerated
2	Officer [REDACTED] [REDACTED]	General Order 337 (Use of Force): Officer [REDACTED] used an inappropriate amount of force in the detention of [REDACTED] [REDACTED]	Exonerated
3	Officer [REDACTED] [REDACTED]	General Order 560 (Psychiatric Crisis Intervention): Officer [REDACTED] improperly conducted a mental hygiene detention.	Exonerated
4	Officer [REDACTED] [REDACTED]	General Order 337 (Use of Force): Officer [REDACTED] used an inappropriate amount of force in the detention of [REDACTED] [REDACTED]	Exonerated