

Colorado Department of Revenue

Specialized Business Group

2024

To: Michael Phibbs, Specialized Business Group Senior Director

From: Carolyn Berry, Office of Professional Standards Manager

Subject: 2023 Office of Professional Standards Annual Report

SUMMARY

In May 2019, the Office of Professional Standards was created to operate within the Specialized Business Group Senior Director's Office. The 2023 reporting cycle is the fourth year in which investigations were tracked and recorded by the Office of Professional Standards for all five Specialized Business Group divisions (Auto Industry, Division of Gaming, Liquor Enforcement Division, and Division of Racing Events), the Marijuana Enforcement Division (MED), the Motor Vehicle Investigation Unit (MVIU), the Lottery Division, and the Criminal Tax Enforcement Unit. Each investigation assigned to the Office of Professional Standards is assigned a tracking number and may include more than one administrative charge.

In 2023, the Office of Professional Standards assigned and tracked all complaints assigned to the division. It is important to note that not all complaints involving personnel with the Lottery, MVIU, MED, SBG, or the Criminal Tax Enforcement Unit were investigated by the Office of Professional Standards. Supervisors, Internal Audit, or Human Resources handled some investigations. A standard operating procedure was created and implemented in 2019, outlining different categories of complaints.

One complaint filed in 2023 is still open and expected to be closed, with a finding(s) in mid to late February 2024.

FINDINGS DEFINITIONS

In accordance with the Office of Professional Standards, standard operating procedure, the findings are defined as follows:

Exonerated: The incident occurred but was lawful and proper.

No Finding: When a use of force incident is reviewed to ensure excessive force was not used.

Not Sustained: There is insufficient evidence to prove or disprove the allegation occurred.

Sustained: The allegation is supported by sufficient evidence to justify a reasonable conclusion that the allegation is factual.

Unfounded: The allegation is unfounded in that it has been proven to be false or not factual.

DOR SBG 2023 COMPLAINT/ADMINISTRATIVE CHARGE DISPOSITIONS

Allegation	Finding	Count
Policy Violation		
Acceptable Use Policy (AUP) CISP-018	Not Sustained	1
Acceptable Use Policy (AUP) CISP-018	Unfounded	1
AOD-032 – State Fleet Vehicle	Not Sustained	1
DOR Code of Conduct	Sustained	2
DOR Code of Conduct	Not Sustained	2
DOR Code of Conduct	Unfounded	1
Conflicts of Interest/Code of Ethics - OHR - 055	Unfounded	1
DPA Board Rule 1-16	Sustained	1
DPA-UNV Sexual Harassment	Sustained	1
EDO-018 Acceptable Use of State Data and Resources	Unfounded	1
LED_ENF_19 Liquor Compliance Checks	Sustained	1
LED_ENF_22 Inspections Process	Not Sustained	2
Liquor Enforcement Division SOP - Tobacco Compliance Checks	Sustained	1
OHR-038 Disruptive Behavior in the Workplace	Sustained	1
OHR-043 Salary and Overtime Compensation	Sustained	2
Total number of sustained findings		10

Complaint source	Count
Employee	3
Citizen	3

2023 USE OF FORCE REPORTS ANNUAL ANALYSIS

The Office of Professional Standards (OPS) is the departmental repository for all use of force and show of force Reports as of May 2019. OPS is tasked with reviewing reports generated by department employees who have reported a use or show of force incident.

SBG has implemented a tracking system for all use of force and show of force incidents. Show of force is defined as any time a firearm or intermediate weapon is unholstered (removed from the approved secure carrying holster) but not used to gain compliance of a suspect failing to obey lawful orders. Use of force is defined as any time force other than soft empty-hand control techniques is used to gain compliance of a suspect failing to obey lawful orders. All reports are entered into the BlueTeam web application by the sworn peace officer who initiated the incident and approved by the chain of command.

2023 Use of Force and Show of Force Totals

Use of Force	2
Show of Force	2
Excessive Use of Force	0

2023 Use of Force Details

The two (2) use of force incidents were determined to be within policy.

The following synopses are based on the reports and evidence provided in the case file. It is intended as a basic accounting of the situation and is not intended to be an analysis of the evidence or a perspective reporting or examination of the incident.

#2023-015 – Use of Force – DOG

Two LED investigators were in traffic on Mississippi Avenue at Wadsworth Boulevard when they witnessed a vehicle crash. Investigator Maestas began diverting traffic while Investigator Kuchyt went to render aid. Investigator Kuchyt contacted the driver of one vehicle, Mr. Valdez. While Investigator Maestas was diverting traffic, she heard Investigator Kuchyt giving loud verbal commands to Mr. Valdez to sit down. Mr. Valdez walked past Investigator Kuchyt as if trying to leave the scene. Investigator Kuchyt then used an iron wrist lock takedown to get Mr. Valdez to comply. Another male on the scene aided Investigator Kuchyt in getting Mr. Valdez to the ground. Investigator Kuchyt was able to handcuff Mr. Valdez and kept him seated on the curb until the Lakewood Police Department arrived. Determined to be within policy.

#2023-016- Use of Force – DOG

The Ameristar Casino requested a DOG investigator regarding underage female gaming. Security for the Ameristar Casino escorted the underage gamer to the manager's office when the DOG investigator arrived. When the suspect was questioned about her ID and asked to log back into the MyColorado App, she attempted to flee the scene. The suspect used defensive resistance by physically thrashing around to break the grip of the DOG investigator. The DOG investigator used a joint lock control from the escort position. The suspect continued to resist commands and compliance techniques. The suspect was eventually handcuffed with no further incidents. Determined to be within policy.

2023 Show of Force Details

The two (2) show of force incidents were determined to be within policy.

The following synopses are based on the reports and evidence provided in the case file. It is intended as a basic accounting of the situation and is not intended to be an analysis of the evidence or a perspective reporting or examination of the incident.

#2023-019 – Show of Force incident – DOG

Two DOG investigators responded to an agency assist for Gilpin County regarding a domestic violence situation where a female was assaulted and locked in the bathroom. Gilpin County

requested assistance, and for those responding to do so, emergent due to the male party being known to Gilpin County as being known to have handguns and an AR-15 rifle, along with previous officer safety concerns. The DOG investigators arrived, and a male party exited the home. The DOG investigators took up a cover position and drew their handguns. The male party yelled, "Shoot me," and "I'll go in the house and get something to make you shoot me!" The Gilpin County Deputies verbally commanded the male and de-escalated the situation until the male party was taken into custody without further incident. One DOG investigator, both Gilpin County Deputies and a Parks and Wildlife officer, entered the home for a protective sweep. Determined to be within policy.

#2023-039 – Show of Force incident – DOG

Two DOG investigators responded to an agency assist call at the Golden Mountain Village Apartments after an alert tone was sent from dispatch. The call stated two male subjects armed with a rifle walking were walking around on the property. The Gilpin County Sheriff's Department located the subjects in a vehicle. Two DOG investigators backed up Gilpin County Sheriff's Department on the high-risk traffic stop, where the department gun was drawn to gain the subject's compliance. Determined to be within policy.

Training unit and use of force review board changes

In 2023, the senior director's office of the Specialized Business Group (SBG) created a training unit. The training unit comprises an office of professional standards and training manager, a peace officer training manager, one full-time internal affairs investigator, one training specialist, and three use of force/armorer/investigator training positions. The use of force trainer and use of force investigator positions are currently vacant but are expected to be filled in the first or second quarter of 2024.

All DOR POST-certified peace officers must comply with Colorado POST rule 28, which requires a minimum of 24 hours of training each year for all POST-certified peace officers. The training must be tracked and entered into the POST training portal. These duties are the responsibility of the training unit. The training unit has launched a 40-hour in-service for all DOR POST-certified peace officers to run the first half of the year, followed by an additional 10-hour day for low-light shooting and scenario exercises in the second half of the year. The training unit now develops and administers all POST and legislative training mandates. This will provide consistent training across all DOR divisions with POST-certified peace officers. The training specialist develops and releases additional training that can be administered remotely.

Active Bystandardship for Law Enforcement (ABLE) will be taught to all DOR POST-certified peace officers and select compliance investigators beginning in March 2024. The instruction is an eight-hour day taught from the curriculum provided by ABLE. All instructors for ABLE are

in-house. In addition to ABLE, we will offer optional training in Integrating Communications, Assessment, and Tactics (ICAT) and Ethical Decision Making Under Stress (EDMUS) to all DOR POST-certified peace officers in 2024 and 2025.

The use of force review board has been in place since January 1, 2022. The board has reviewed all use of force incidents for 2023. Additionally, the board has been requested to review all show of force incidents for input on policy and training recommendations. The use of force review board commonly recommended report writing classes for all DOR POST-certified members and better identification procedures. The report writing recommendation was implemented in 2023, and additional training is being provided during the 2024 in-service for all DOR POST-certified peace officers on report writing and the importance of identification.

Comparisons from 2019, 2020, 2021, 2022, and 2023

	2019	2020	2021	2022	2023
Number of investigations per year	12	0	2	5	7
Number of sustained allegations per year	3	0	8	9	10
Number of employees who resigned in lieu of termination	Unknown	0	1	0	0
Number of use of force incidents	2	1	5	8	2
Number of show of force incidents	Not tracked	2	5	5	2
Excessive use of force incidents	0	0	0	0	0