CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Team:	CCRB Case #:	☐ Force ☐ Discourt. ☐ U.S.
Arthur Albano	Team # 3	201311487	☑ Abuse ☐ O.L. ☐ Injury

Incident Date(s)	Location of Incident:	Precinct:	18 Mo. SOL	EO SOL
Friday, 12/06/2013 12:30 PM	Staten Island University Hospital - South Campus	123	6/6/2015	6/6/2015

Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time Received at CCRB
Mon, 12/09/2013 9:56 AM	CCRB	Phone	Mon, 12/09/2013 9:56 AM

Complainant/Victim	Type	Home Address
[redacted]	[redacted]	[redacted]

Witness(es)	Home Address
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Subject Officer(s)	Shield	TaxID	Command
1. POM Pedro Teco	06038	937614	HWY 05

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Gendyliss Nevarez	10207	952050	123 PCT
2. POF Samantha Surat	28654	953457	123 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Pedro Teco	Abuse of Authority: PO Pedro Teco threatened to arrest § 87(2)(b) [redacted].	A . § 87(2)(g) [redacted]
B . POM Pedro Teco	Other: PO Pedro Teco intentionally provided a false official statement to the CCRB.	B . § 87(2)(g) [redacted]

Case Summary

§ 87(2)(b) filed this complaint via telephone with the CCRB on December 9, 2013. On December 6, 2013, at approximately 12:30 p.m. § 87(2)(b) was working § 87(2)(b) , where PO Pedro Teco of Highway District 5 had responded in regards to a civilian under arrest for driving while intoxicated. The following allegation resulted from PO Teco's actions.

Allegation A – Abuse of Authority: PO Pedro Teco threatened to arrest § 87(2)(b) § 87(2)(g)

The investigator offered mediation to § 87(2)(b) on December 18, 2013. § 87(2)(b) rejected mediation at that time because she did not want to see PO Teco again.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

Statement for Staten Island University Hospital Investigation

On December 9, 2013, § 87(2)(b) submitted a statement via e-mail to § 87(2)(b) . § 87(2)(b) provided a copy to the investigator (encl. B-11), and § 87(2)(b) provided one as well (encl. C-8), after being subpoenaed. § 87(2)(b) s e-mail states that when she explained the hospital's policy that required patient consent to draw the arrestee's blood PO Teco became very upset. When she told him that she was going to call the legal department and his sergeant, he said, "You're not going to call anyone because I am going to arrest you." He then followed her into her office and would not leave.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on January 2, 2014 (encl. B-5-B-12). § 87(2)(g) . Her testimony is summarized below.

On December 6, 2013, at approximately 12:30 p.m., § 87(2)(b) was working as § 87(2) A nurse, § 87(2)(b) approached § 87(2)(b) and asked her to come speak to PO Pedro Teco, of Highway District 5, who was directing her to draw blood from a patient. § 87(2) later learned that the patient, identified by the investigation as § 87(2)(b) , was suspected of drunk driving, but she was not sure if § 87(2)(b) was under arrest. § 87(2)(b) went to the private room where PO Teco, as well as two officers, identified by the investigation as PO Gendyliss Nevarez and PO Samantha Surat of the 123rd Precinct, were located with the patient, and she asked to speak to PO Teco in the hallway.

In the hallway, § 87(2)(b) explained her understanding of the hospital's policy to require consent when drawing blood and said she would call the Legal Department to confirm. PO Teco told § 87(2)(b) that they did not need consent to draw blood. § 87(2)(b) explained that she would call the Legal Department, and PO Teco stepped towards her so that he was between six inches and one foot away, and said, "You get them down here right now," as he pointed to the ground. His demeanor was agitated and demanding, whereas § 87(2)(b) s demeanor was respectful. When § 87(2)(b) explained that the Legal Department was located in another building, PO Teco stepped closer to her again. § 87(2)(b) then said, "I can't talk to you anymore. Your behavior is inappropriate. I'm going to call Legal and your sergeant." § 87(2) turned and began to walk away. PO Teco followed her, walking quickly, and responded, "You're not going to call anyone because I'm going to arrest you for obstruction." He may have threatened to arrest her one more time in the hallway. § 87(2)(b) and PO Teco passed the nurses' station, and there were many witnesses.

When § 87(2)(b) reached her office, she instructed PO Teco to wait outside. He said, "I don't have to because I'm going to arrest you," and followed her into her office. PO Teco stood in front of § 87(2)(b) s door, while she tried to call the Legal Department. § 87(2)(b) instructed him to leave her office three times. PO Teco did not respond to these statements. By the third time she told PO Teco to leave her office, § 87(2)(b) had raised her voice. She and PO Teco were speaking in a similar loud volume, but they were not yelling at one another. PO Teco's hands were shaking. When PO Teco threatened to arrest § 87(2)(b) again, she said, "Go ahead." At this point, the hospital's security officer, § 87(2)(b) entered § 87(2)(b) s office and suggested that PO Teco leave. PO Teco complied. Staff from the hospital could hear the conversation from outside of the office including, § 87(2)(b) and § 87(2)(b)

Once PO Teco left her office, § 87(2)(b) confirmed with the Legal Department, that hospital staff could not draw blood without the patient's consent. She printed the policy and gave it to § 87(2)(b) . He met with PO Teco alone in § 87(2)(b) s office and explained the policy to him. PO Teco left § 87(2)(b) s office, said that it was § 87(2) s fault that they could not get a blood sample, and then left the hospital through the ambulance entrance.

§ 87(2)(b) called PO Teco's command and made a complaint with his sergeant. Sgt. Drone came to visit her a couple days later at work to apologize. She informed him that she had filed a complaint with the CCRB. At the time of the interview, § 87(2)(b) provided statements written by § 87(2)(b) and herself for the hospital's investigation of the incident.

Witness: § 87(2)(b)

- § 87(2)(b)
- § 87(2)(b)

CCRB Testimony

On January 28, 2014, § 87(2)(b) provided an initial telephone statement (encl. C-3) to the undersigned investigator. On January 29, 2014, the investigator conducted an interview over the telephone with § 87(2)(b) (encl. C-4-C-6) and mailed her a verification form and confidential witness information sheet. § 87(2)(b) had her verification form notarized on June 19, 2014, and it was received at the CCRB on June 26, 2014. § 87(2)(g) Her testimony is summarized as follows.

On December 6, 2013, at approximately, § 87(2)(b) was § 87(2)(b) about to go to lunch with § 87(2)(b)

§ 87(2)(b) As § 87(2)(b) and § 87(2)(b) passed an observation room, § 87(2)(b) noted that she needed to speak to an officer there. § 87(2)(b) asked PO Teco to step out of the patient's room into the hallway so that they could speak.

In the hallway, § 87(2)(b) calmly explained to PO Teco that they needed formal consent to draw the patient's blood to test for blood alcohol content. PO Teco responded that they had obtained verbal consent from the patient. § 87(2)(b) explained that the hospital's policy was to require formal, written consent from the patient in order to draw blood, but that she would check with the legal department to confirm the policy. PO Teco, who had initially been polite, became agitated by raising his voice and pointing his finger at § 87(2)(b) She also explained that if they took the patient's blood in violation of the protocol, it would be thrown out in court. PO Teco continued to be agitated and said, "I'm going to arrest you for obstruction of justice," because we will be past the time period by which we need to take the patient's blood. § 87(2)(b) took two steps back and told PO Teco that he was being inappropriate. As she turned away, she told PO Teco she would call the legal department and his sergeant. PO Teco replied, "You can call whoever you want, because you're still going to jail." PO Teco followed § 87(2)(b) down the hall and into her office, even though she had told him to wait outside.

A nurse came over to § 87(2)(b) to tell her that § 87(2)(b) could not get PO Teco out of her office. § 87(2)(b) walked to § 87(2)(b) s officer where she found the security officer, § 87(2)(b), standing in between PO Teco and § 87(2)(b) heard § 87(2)(b) tell PO Teco to get out of her office at least three times. PO Teco said, "You're going to jail." § 87(2)(b) said, "Go ahead." § 87(2)(b) reasoned with PO Teco to leave the office, but it took several minutes. § 87(2)(b) was agitated and nervous in her office. She was speaking in a raised voice and her hands were shaking.

§ 87(2)(b) pulled up the policy regarding consent and asked § 87(2)(b) to leave her office. § 87(2)(b) gave the policy to § 87(2)(b) who explained the policy to PO Teco. When PO Teco walked out, § 87(2)(b) asked him if he had everything he needed. PO Teco then said it was § 87(2)(b) s fault that the patient was not going to jail and left the hospital.

Attempts to Contact Civilians

- On January 21, 2014, § 87(2)(b) provided a telephone statement to the undersigned investigator (encl. C-1). § 87(2)(b) observed an officer, identified by the investigation as PO Teco, following § 87(2)(b) down the hallway, while speaking in a loud tone of voice. § 87(2)(b) s demeanor was calm, while PO Teco was agitated. PO Teco followed § 87(2)(b) behind the nurses' station, where non-staff are not permitted. § 87(2)(b) said she had to call the legal department. PO Teco said, "You better hurry up." At some point, PO Teco said to § 87(2)(b) "You could be arrested for this," but did not explain why. PO Teco then followed § 87(2)(b) into her office.
- On January 21, 2014 § 87(2)(b) provided a telephone statement to the undersigned investigator (encl. C-2). § 87(2)(b) § 87(2)(b) began to witness this incident before an officer, identified by the investigation as PO Teco, had entered § 87(2)(b) s office. At that time, PO Teco was perturbed because of the hospital's policy. He was loud and demanding for someone from the legal department to come down right away. When PO Teco was told that the legal department was housed in another building, he was annoyed. § 87(2)(b) did not recall if PO Teco suggested that § 87(2)(b) could be in legal trouble. PO Teco would not leave § 87(2)(b) s office. § 87(2)(b) calmed PO Teco down by asking him to step out of the office so they could come up with a reasonable solution. At that time, § 87(2)(b) identified himself as a retired police officer, and PO Teco complied. § 87(2)(b) s demeanor was calm and professional.

NYPD Statements:

Subject Officer: PO PEDRO TECO

- *PO Pedro Teco is a white man who was* § 87(2)(b) *old at the time of the incident. He is 5'9" tall, weighs 180 pounds, and has black hair and brown eyes.*
- *On December 6, 2013, PO Teco was assigned to patrol alone as part of the Highway 5 command from 6 a.m. to 2:35 p.m. He was dressed in uniform and driving marked RMP, no. 2913.*

Memo Book

On the date of the incident, PO Teco's memo book (encl. D-2-D-4) notes verbatim, "11:00 IDTU 123/Staten Island University Hospital South. 12:40- refused. § 87(2)(b) refused to take blood, wanted a warrant."

CCRB Testimony

PO Teco was interviewed at the CCRB on April 2, 2014 (encl. D-1-D-6). His testimony is summarized below.

On December 6, 2013, PO Teco went to Staten Island University Hospital for a "blood job" for a civilian, identified by the investigation as § 87(2)(b), who was arrested for driving under the influence. The NYPD conducts blood jobs when an arrestee cannot go to where the breathalyzer is located because they need medical treatment. When PO Teco arrived at the hospital, the arresting officer, identified by the investigation as PO Nevarez explained the situation to him. PO Teco did not observe § 87(2)(b) to have any injuries and did not know the specific reason he was at the hospital. § 87(2)(b) seemed high, not intoxicated.

PO Teco explained to § 87(2)(b) who he was and why he was there. PO Teco asked § 87(2)(b) if he consented to a blood test, and § 87(2)(b) provided affirmative consent. No medical personnel were present at that time. PO Teco then told PO Nevarez he would go find a nurse to draw § 87(2)(b) blood. PO Teco explained that they had an arrestee who had consented to a blood test and requested assistance. The unidentified nurse said, "Okay, give us a couple minutes." After waiting ten to fifteen minutes, PO Teco told another unidentified nurse that § 87(2)(b) had consented to a blood test and requested assistance. That nurse told PO Teco she would find someone to do the test right away.

§ 87(2)(b) came to the room where PO Teco was with § 87(2)(b) and asked him to step out of the room. § 87(2)(b) asked PO Teco, "Do you want to take blood from this prisoner?" § 87(2)(b) s demeanor was firm and "to the point." PO Teco's demeanor was similar, calm and collected. PO Teco only raised his voice slightly once. PO Teco said both that § 87(2)(b) s demeanor remained the same throughout the incident, and also that she began yelling later. PO Teco confirmed that he wanted § 87(2)(b) blood to be drawn. § 87(2)(b) said, "Officer, you need a warrant for that." PO Teco said he did not need a warrant, and § 87(2)(b) repeated that he did need one. § 87(2)(b) never mentioned requiring written consent at any point, and § 87(2)(b) had not provided written consent because it had not gotten to that point yet. § 87(2)(b) then said she was going to call an administrator to find the paperwork that explained PO Teco needed a warrant. As § 87(2)(b) turned to walk away, PO Teco said, "I just want you to know, if you don't take blood, I can actually arrest you." § 87(2)(b) said, "Are you threatening me? PO Teco said, "I'm not threatening you. I'm just telling you what could be done." PO Teco had no intention of arresting § 87(2)(b) PO Teco never told § 87(2)(b) that he was going to arrest her. PO Teco told § 87(2)(b) he could arrest her once. PO Teco never specified to § 87(2)(b) what she could be arrested for, but he could

have arrested her for obstruction of governmental administration (OGA). § 87(2)(b) could be arrested for OGA because she was preventing officers from finding out if § 87(2)(b) was under the influence and what he was under the influence of.

§ 87(2)(b) said, "You're threatening me," and walked away. PO Teco followed her down the hallway. Instead of calling an administrator to move the process along, § 87(2)(b) stopped at the nurses' station to tell other staff, "He threatened to arrest me." PO Teco slightly raised the volume of his voice and said, "What are you doing? Aren't you going to call an administrator?"

PO Teco followed § 87(2)(b) into her office so he could hear what the administrator said. She told him to leave three times. PO Teco does not think he told § 87(2)(b) she could be arrested while in her office. Then a security officer came and told him to leave. At that point, PO Teco realized that he had "gone overboard." PO Teco called his command and spoke to PO Moane. He told PO Moane, "The nurse won't draw blood. What should I do?" PO Moane replied, "Didn't you get the memo?" PO Teco asked which memo, because he had just returned to work two days prior after his wife had a baby. PO Moane replied, "Whatever you do, don't threaten anybody with arrest." PO Teco replied, "I didn't know. I just did that ten minutes ago."

PO Teco then spoke with the administrator who read the hospital policy to him. The administrator told PO Teco that the policy stated that if NYPD personnel request blood be drawn, medical personnel is supposed to draw blood. The administrator looked surprised and then read from another page that said the same thing. The administrator then told PO Teco, "If you want her to take blood, she'll take the blood." At that point, however, it did not make a difference because PO Nevarez told PO Teco that § 87(2)(b) had rescinded his consent. PO Teco walked out, and as he was leaving § 87(2)(b) was yelling, "I was right! I was right!"

PO Teco did not have a specific recollection of requesting blood be drawn from an arrestee at Staten Island University Hospital in the past. In general terms, the protocol is for an officer to tell the arrestee why they are there and then ask the arrestee if they will consent to having their blood drawn. If the patient provides consent, officers find a medical professional who will confirm consent with the patient. If the patient confirms consent, the medical personnel draws the blood and fills out the paperwork. If an arrestee provides consent, the police do not need a warrant to obtain a blood sample from him or her.

Witness Officer: PO SAMANTHA SURAT

- *PO Samantha Surat is a white woman who was § 87(2)(b) old at the time of the incident. She is 5'7" tall, weighs 190 pounds, and has brown hair and eyes.*
- *On December 6, 2013, PO Surat was assigned to Sector Patro in the 123rd Precinct and RMP no. 384 from 7:05 a.m. to 3:40 p.m. with PO Nevarez. She was dressed in uniform*

Memo Book

On the date of the incident, PO Surat's memo book (encl. D-8-D-10) states verbatim, "11:20 - 84 SIUHS. 12:00 -Sgt. Cornejo visited. 14:10 - Sector A pick up at SIUHS to 120 pct."

CCRB Testimony

PO Samantha Surat was interviewed at the CCRB on April 7, 2014 (encl. D-7-D-11). Her testimony is summarized below.

At 11:20 a.m. on December 6, 2013, PO Surat was at Staten Island University Hospital watching an arrestee, identified by the investigation as § 87(2)(b), who had been transported to the hospital following his arrest for driving while intoxicated. PO Surat was focused on the arrestee as he was very intoxicated. PO Surat did not know the reason the arrestee was taken to the hospital rather than the precinct stationhouse. A member of the hospital's personnel came into the room to

take the arrestee's vitals, but PO Surat did not interact with any hospital staff. PO Surat did not leave the room where the arrestee was located for the entire time she was at the hospital.

A highway patrol officer, identified by the investigation as PO Teco, came with a blood kit that he was preparing. PO Surat did not recall if anyone asked the arrestee whether or not he provided consent for his blood to be drawn. PO Surat did not recall if the arrestee provided consent for his blood to be drawn, but blood was not drawn from the arrestee while PO Surat was in the room. PO Surat did not recall if the arrestee ever withdrew consent for his blood to be drawn.

PO Teco interacted with a member of hospital personnel outside the door. The door was closed, and PO Surat could not hear any of the statements that were made. PO Surat never heard PO Teco tell any hospital staff that he would arrest them. PO Teco came back later and said, "We're not doing blood. Refused." PO Surat could not remember how the incident ended or whether or not there was discussion of a warrant being needed to draw the arrestee's blood.

PO Nevarez was in the room with PO Surat for about ten minutes, processing arrest paperwork. Sgt. Kema Cornejo came to check on PO Surat.

Witness Officer: PO GENDYLISS NEVAREZ

- *PO Nevarez is a Hispanic female who was* § 87(2)(b) *old at the time of the incident. She is 5' tall, weighs 117 pounds, and has black hair and brown eyes.*
- *On December 6, 2013, PO Nevarez was assigned to patrol in the 123rd Precinct, from 7:05 a.m. to 3:35 a.m. She was partnered with PO Surat, dressed in uniform, and assigned to RMP no. 3884.*

Memo Book

On the date and time of occurrence, PO Nevarez's memo book (encl. D-13-D-15) states verbatim, "10:30 - 54 at Arthur Kill and Lee Avenue. 10:40 a.m.- 84. 10:55 a.m. – 1 under. § 87(2)(b) . DOB § 87(2)(b) At the time and place of occurrence, EMS personnel § 87(2)(b) (shield # § 87(2) and § 87(2)(b) (shield # § 87(2) did obseve the defendant behind the wheel of a blue § 87(2)(b) While speaking with the defendant, the arresting officer could smell the odor of alcohol on his breath and speech was slurred, eyes blood shot. IDTU officer attempted to conduct test. § 87(2)(b) refused. No blood test taken on arrival to hospital. 4:26 p.m. – 61 to 130 Stuyvesant Avenue to draw up case."

Arrest Report

PO Nevarez was the arresting officer for arrest no. § 87(2)(b) In the arrest report (encl. E-1-E-3), she wrote, "At time, place [sic] occurrence, EMS Personnel § 87(2)(b) Shield # § 87(2) and § 87(2)(b) Shield # § 87(2) did observe defendant behind the wheel of a blue § 87(2) , while speaking with defendant, arresting officer could smell the odor of alcohol on his breath and speech slurred. Defendant eyes blood shot. IDTU Officer attempted to conduct test. § 87(2)(b) [sic]"

CCRB Testimony

PO Nevarez was interviewed at the CCRB on April 23, 2014 (encl. D-12-D-16). Her testimony is summarized below.

After being placed under arrest, § 87(2)(b) was transported to the hospital because EMS was on the scene, and they were concerned that § 87(2)(b) was suffering from alcohol poisoning. § 87(2)(b) was incapable of walking. PO Nevarez recognized § 87(2)(b) from the

hospital. PO Nevarez observed § 87(2)(b) in an office. She did not interact with her and did not observe the highway patrol officer, identified by the investigation as PO Teco, interact with her.

At Staten Island University Hospital, PO Nevarez could not leave the room where § 87(2) was situated. PO Surat was also in the room with her for some time, but also went back to the stationhouse to prepare arrest paperwork. PO Teco arrived in order to have § 87(2)(b) blood drawn and processed. The highway patrol officer asked § 87(2)(b) if he was willing to provide a blood sample. § 87(2)(b) verbally stated his consent. PO Nevarez was present at this time, but did not remember who else was present.

PO Nevarez did not interact with any hospital personnel, and she did not observe PO Teco interact with any hospital personnel. The highway patrol officer was periodically in and out of § 87(2) room. PO Nevarez did not observe any hospital personnel ask to speak to PO Teco in the hallway. PO Nevarez never heard any hospital personnel refuse to draw § 87(2)(b) blood. PO Nevarez did not remember hearing § 87(2)(b) withdraw his consent to have his blood drawn. PO Nevarez never heard PO Teco threaten to arrest any hospital personnel. In her observation of PO Teco, his demeanor was professional.

PO Teco was out of § 87(2)(b) room for about forty-five minutes. When he came back, he told PO Nevarez they would not be drawing § 87(2)(b) blood because the nurse had refused. He did not elaborate on the reasoning and then left the hospital. No officer informed PO Nevarez of a dispute regarding drawing § 87(2)(b) blood.

PO Nevarez has never gone to Staten Island University Hospital with a civilian arrested for DUI before. To her knowledge, written consent is not required as part of police department protocol for having an arrestee's blood drawn. The protocol for a DUI arrest when the arrestee needs medical attention is for the civilian to be brought to the hospital, where a highway patrol officer will come and order a blood sample.

NYPD Documents

Highway District 5 Roll Call

The Highway District 5 Roll Call for Tour 2 (encl. E-4-E-8) from December 6, 2013 indicates that PO Teco worked by himself from 6 a.m. to 2:35 p.m.

123rd Precinct Roll Call

The 123rd Precinct Roll Call for Tour 2 (encl. E-9-E-15) from December 6, 2013 indicates that PO Nevarez and PO Surat worked together from 7:05 a.m. to 3:28 p.m.

Other Evidence

On January 22, 2014, the undersigned investigator subpoenaed all official documentation pertaining to the incident from Staten Island University Hospital. The investigator received a Confidential Incident Report (encl. C-6-C-7) and statements from hospital staff (encl. C-8-C-11) that were collected by the security team.

Confidential Incident Report

§ 87(2)(b) at Staten Island University Hospital prepared the Confidential Incident Report. In it, he stated that an officer from Highway 5 wanted medical staff to draw blood from a patient, but maintained that the patient did not need to sign a medical release form. When § 87(2)(b) informed him that the hospital could not draw blood without a signed release, the officer told § 87(2) that he would, "lock her up for refusing to get him the patient's blood."

The documentation from Staten Island University Hospital also included the written statements from hospital staff, including § 87(2)(b) . (encl. C-10), § 87(2)(b) (encl. C-11), and § 87(2)(b) (encl. C-9) § 87(2)(g)

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of June 6, 2014, which is three months past the filing deadline (encl. H-8). An updated inquiry for a Notice of Claim was submitted to the New York City Comptroller's Office on July 29, 2014. There has been no response to this request as of the date of this report.

Civilian Criminal History

- As of August 6, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) (encl. F-1-F-5)

Civilian CCRB History

- § 87(2)(b) has filed the following CCRB complaints (encl. A-15):
  - § 87(2)(b)

Subject Officer CCRB History

- PO Teco has been a member of the service for nine years, and this is the first CCRB complaint against him (encl. A-14).

Conclusion

Identification of Subject Officer

§ 87(2)(b) learned PO Teco's name from § 87(2)(b) who read it from his nameplate during the incident. The pedigree description she provided also closely matched PO Teco's physical appearance. PO Teco acknowledged interacting with § 87(2)(b) at the hospital and telling her that she could be arrested. As a result, **Allegations A and B** are being pled against him.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Pedro Teco threatened to arrest § 87(2)(b)

It is undisputed that § 87(2)(b) never signed a release form authorizing the hospital to draw blood for an NYPD investigation. It is undisputed that § 87(2)(b) blood was never drawn at Staten Island University Hospital and that § 87(2)(b) in her capacity as § 87(2)(b) in the Emergency Department, did not allow hospital personnel to draw § 87(2)(b) blood. It is disputed whether or not § 87(2)(b) provided verbal consent to have his blood drawn. While § 87(2)(b) testified that PO Teco claimed not to need consent for the hospital to draw § 87(2)(b) blood, PO Teco maintained that § 87(2)(b) was demanding a warrant in order to draw § 87(2)(b) blood. According to § 87(2)(b) s testimony, § 87(2)(b) told PO Teco that the hospital required written consent and that PO Teco stated that verbal consent was sufficient for the hospital to draw blood. It is disputed whether or not PO Teco told § 87(2)(b) that he "was going to" or "could" arrest her for obstruction of governmental administration, but it is undisputed that PO Teco made statements to § 87(2)(b) about arresting her for not authorizing § 87(2)(b) blood test.

An individual is guilty of obstructing governmental administration when they intentionally obstruct or impair the administration of law by preventing a police officer from performing an official function, whether it is by force, other means of interference, or intimidation. Criminal Procedure Law, §195.05 (encl. A-1)

§ 87(2)(g)

Allegation B- Other Misconduct: PO Pedro Teco intentionally provided a false official statement to the CCRB.

During his CCRB interview PO Teco stated that when he spoke with the hospital administrator, he was read the hospital's policy regarding blood work and patient consent. PO Teco stated:

"The [hospital] administrator comes down, calls me in the room. He has two papers in his hand. He starts reading from the paper, he says 'If there is an NYPD officer there, and they ask you to take blood, you are to take the blood' PO Teco stated that he was not providing exact wording of the policy, and was just providing the substance of the policy. PO Teco then continued, "then he reads again… 'If they [NYPD] has a prisoner, and the prisoner consents to giving blood, the nurse is supposed to take the blood.' And he [the hospital administrator] looks at me, like speechless, and he goes, 'If you want her to take the blood, she'll take the blood.'" PO Teco then claimed that he was subsequently informed by PO Nevarez that the patient rescinded his consent to the test, rendering him unable to draw the patient's blood.

The Staten Island University Hospital's policy in regards to Persons in Law Enforcement Officer Custody states:

"Any operator of a motor vehicle in NY State is deemed by law to give consent to a testing for blood alcohol or drug levels. The test must be administered at the discretion of a police officer. The patient/operator must be under arrest or the police officer must have probable cause that the patient was driving under the influence of alcohol or drugs. It is the responsibility of the arresting officer to determine probable cause. Conscious patients must sign a consent form. If the patient refuses to sign the consent form for alcohol or drug screening, the police must obtain a court order to proceed with the testing. Unconscious operators of a motor vehicle brought to the hospital by the police department are deemed to give implied consent to chemical testing. Therefore testing can be done without the patient's direct consent. Police do not have the authority to order that passengers be tested." (encl. A-2 – A-12)

Patrol Guide Procedure 203-08 prohibits officers from intentionally making false official statements to the CCRB (encl. A-13)

§ 87(2)(g)

§ 87(2)(g) [redacted]

Team: _____

Investigator: _____ _____ _____
Signature Print Date

Supervisor: _____ _____ _____
Title/Signature Print Date

Reviewer: _____ _____ _____
Title/Signature Print Date

Reviewer: _____ _____ _____
Title/Signature Print Date

North Shore – LIJ Health System, Inc.
Staten Island University Hospital

POLICY TITLE: INFORMED CONSENT AND MEDICAL DECISION MAKING FOR PATIENTS WHO LACK CAPACITY	**ADMINISTRATIVE POLICY AND PROCEDURE MANUAL** **Section: Provision of Care**
POLICY #: ADM III B 15.0 **System #100.23**	**DEPARTMENT: Administration**
Approval Date: 11/15/2012 **Effective Date:3/1/14 (modified)**	**Last Revised/Reviewed:** January 2007; January 2008; March 2008; February 2011;
Prepared by: **A. Trinkoff, Sr. Legal Counsel**	**Superseded Policy(s)/#:** **ADMIII; B15.0; XIII-13**

GENERAL STATEMENT of PURPOSE

This policy is intended to ensure that every patient, health care agent or surrogate is afforded an appropriate explanation of all proposed treatments and procedures, and is provided with a meaningful opportunity to consent to or refuse specific treatment.

POLICY

Patients have the right to make informed choices regarding their health care. A patient must give informed consent before undergoing any non-emergent procedure or treatment that presents a risk to the patient's health or safety. This requires that the patient, health care agent or surrogate understand the risks, benefits and alternatives of the proposed intervention. It is the responsibility of the Responsible Practitioner to provide the necessary information and assure all consent forms are signed.

SCOPE

This policy applies to all members of the North Shore – LIJ Health System workforce including, but not limited to, employees, medical staff, volunteers, students, physician office staff, and other persons performing work for or at North Shore – LIJ Health System.

DEFINITIONS

Responsible Practitioner: The "Responsible Practitioner" is defined as the Attending Physician or an individual who is appropriately credentialed to perform the procedure, intervention or professional treatment and who understands the risks, benefits and alternatives of the proposed treatment/procedure.

Attending Physician means a physician, selected by or assigned to the patient, who has primary

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responsibility for the patient's care and treatment. Where more than one physician shares this responsibility, or where a physician is acting on the attending physician's behalf, any such physician can act as the attending physician to carry out responsibilities under this policy.

Capacity means the ability to understand and appreciate the risks, benefits, alternatives and consequences of proposed healthcare decisions, and to reach an informed decision.

Close Friend means any person 18 years of age or older who is a close friend of the patient, or relative of the patient (other than a parent, spouse or sibling or adult child) who has maintained such regular contact with the patient so as to be familiar with the patient's activities, health, and religious or moral beliefs, and who presents a signed statement to that effect to the attending physician.

Developmental Disability means a disability (attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, autism, or other similar condition) diagnosed before the age of 22 years and is a substantial handicap to the person's ability to function normally.

Domestic Partner means a person who meets any one of the following standards: (a) is formally in a domestic partnership or other relationship with the patient that is legally recognized in the United States, or is listed as the patient's domestic partner in any registry maintained by the patient's or partner's employer, or any state, municipal or foreign jurisdiction; or (b) is formally recognized as a beneficiary or covered person under the patient's employment benefits or health insurance, or the patient is a beneficiary under such benefits of the potential surrogate; or (c) the patient and the potential surrogate are mutually interdependent for support, as shown by or demonstrated by common ownership or leasing of a home or personal property, common house holding, shared income or expenses, children in common, intention to marry or the length of the personal relationship.

Emancipated Minor means a minor who is the parent of a child or who is 16 years or older and living independently from his or her parents or guardian.

Emergency means a medical situation in which consent may be waived, as conditions exists which are threatening to life, limb or sensory function and there is insufficient time to obtain consent.

Health Care Agent or Agent means anyone appointed as Health Care Agent or proxy can only make healthcare decisions for someone if that someone is **unable to make these decisions for themselves.**

Health or Social Work Practitioner means a registered professional nurse, nurse practitioner, physician assistant, psychologist or licensed clinical social worker credentialed to perform Capacity determination.

Major Medical Treatment means a treatment, service or procedure that involves greater than minimum risk or any significant invasion of bodily integrity requiring an incision, producing

substantial pain or discomfort or debilitation: or which involves the use of physical restraints; or which involves the use of psychoactive medications for a period of less than 48 hours.

Routine Medical Treatment means all low risk treatments and procedures performed once a patient has presented for treatment at the hospital.

Surrogate means the person selected to make health care decisions for a patient who lacks Capacity and who has not been appointed a Health Care Agent which includes in order of priority: (a) legal guardian; (b) spouse (if not separated) or Domestic Partner; (c) adult child: (d) parent: (e) adult sibling or (f) Close Friend or relative not listed above.

PROCEDURE/GUIDELINES

1.0 CONSENT FORM

1.1 **General Consent:** The patient (or his Agent or Surrogate) must sign a consent form upon admission to the Hospital and prior to all procedures which bear risk to life or health. The general admission consent covers all routine diagnostic and therapeutic procedures and treatments. No patient may alter the consent form. The patient retains the right to refuse consent to specific procedures and treatments. All consent forms must be witnessed and signed.

1.2 **Specific Consent**: The Responsible Practitioner performing Major Medical Treatment must disclose the purpose for such treatment, the reasonably foreseeable risks and benefits, and the alternatives that a reasonably prudent person in the patient's position would need to know to be informed. Such information should include, but not be limited to the following:

a. Procedure to be performed which should be explained in simple language, understandable by a layperson and documented on the consent form. The description should include any attendant procedures, e.g., anesthesia, blood transfusion.

b. The practitioner(s) performing important aspects of the procedure.

c. Description of the reasonably significant and probable discomforts and risks, and possible consequences of the procedure and any attendant procedures, including potential problems related to recuperation.

d. A description of the benefits to be expected, including care, treatment and service goals.

e. A disclosure of any appropriate alternative procedure(s) for the principal procedure and any attendant procedures and attendant risks of each alternative including no treatment and attendant risks.

The Responsible Practitioner should ask the patient if he/she has any questions concerning the procedure and respond to any inquiries concerning the procedure. The Responsible Practitioner should document the informed consent discussion in the medical record and sign a certification on the consent form. Except in an emergency, the consent form should be signed and annexed to the patient's chart prior to proceeding with the prescribed procedure.

1.3 Facsimile consents are acceptable as long as they are properly witnessed.

2.0 FOREIGN LANGUAGE

If the patient (Agent or Surrogate) is not fluent in English, the informed consent process should be conducted in the language of the person participating in the communication. When the Responsible Practitioner utilizes an interpreter, the name and ID of the interpreter should be documented on the consent form. *(Refer to Administrative Policy #100.27 - Limited English Proficient Patients to obtain interpreter services; Refer to Administrative Policy #100.88 - People Who are Deaf or Hearing Impaired to obtain sign language services).*

3.0 PATIENTS WITH DISABILITIES

If a sign language interpreter is utilized to obtain the consent of a deaf or hearing-impaired patient, or an individual reads the consent form to a blind person, the sign language interpreter/reader, in addition to the witness, should sign the consent form.

4.0 PERSONS IN LAW ENFORCEMENT OFFICER CUSTODY

Any operator of a motor vehicle in NY State is deemed by law to give consent to a testing for blood alcohol or drug levels. The test must be administered at the direction of a police officer. The patient/operator must be under arrest or the police officer must have probable cause that the patient was driving under the influence of alcohol or drugs. It is the responsibility of the arresting officer to determine probable cause. Conscious patients must sign a consent form. If the patient refuses to sign the consent form for alcohol or drug screening, the police must obtain a court order in order to proceed with the testing. Unconscious operators of a motor vehicle brought to the hospital by the police department are deemed to give implied consent to chemical testing. Therefore testing can be done without the patient's direct consent. Police do not have the authority to order that passengers be tested.

5.0 ORAL CONSENT

5.1 Oral consent may be obtained in instances where the patient lacks the physical capacity, or due to religious reasons is unable or unwilling to sign the consent form. Two individuals must witness the oral consent (one of whom can be the person obtaining the informed consent). The oral consent should be documented on the

consent form, signed by both witnesses and the reason for the oral consent documented.

5.2 Consent may be given orally either in person or over the telephone, if written consent is not obtainable. If consent is obtained by telephone, written confirmation of the verbal consent should be obtained as soon as possible.

6.0 WITNESSING CONSENTS

Any competent person eighteen (18) years of age or older may witness the signing of a consent form by the patient. The witness must personally see the actual signing of the consent form. In signing the consent form as a witness, the witness is only asserting that he/she saw the form being signed. Operative/procedure consent forms are not required to be signed at the hospital but should be signed in the presence of appropriate witnesses. If the person signing the form raises objections and questions concerning the proposed procedure the employee should not witness the form and should instead refer the matter to the Responsible Practitioner.

7.0 PERSONS QUALIFIED TO GIVE CONSENT

7.1 **Adults and Emancipated Minors with Capacity**. An adult or Emancipated Minor with Capacity may consent to treatment.

7.2 **Adults Who Lack Capacity**

a. **Capacity Determination:**

1. A determination that an adult patient lacks Capacity must be made by the physician. The determination of incapacity and cause must be documented including the nature, cause, extent and probable duration.

2. Notification of incapacity shall be shared with the patient if the patient can comprehend the information. Findings of incapacity shall be communicated to the Agent or Surrogate

3. Concurring determination of incapacity is required by:

a. Another physician or Health or Social Service Practitioner for patients who lack capacity for medical reasons.
b. A physician or clinical psychologist with specialized training in treating and/or working with patients with developmental disabilities for patients who lack capacity due to developmental disability.
c. A psychiatrist or neurologist for patients who lack capacity due to mental illness.

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7.3 **Patient without Capacity with Health Care Agent:** The Health Care Agent may make any health care decision the patient could have made if the patient had Capacity including a decision to withhold/withdraw life sustaining treatment, subject to any limitations listed on a Health Care Proxy Form and/or Living Will.

7.4 **Patient without Capacity with a Surrogate:** If possible, one person from the list highest in priority is responsible for health care decisions for patients who lack Capacity and who lack a Health Care Agent. The person highest in priority can defer to someone lower on the list to act as the identified surrogate. People who may act as surrogates in order of priority are:

i. Legal Guardian
ii. Spouse (if not legally separated) or Domestic Partner
iii. Adult Child (any)
iv. Parent
v. Adult Sibling
vi. Close Friend

A Surrogate may consent to routine or Major Medical Treatment or to withhold/withdraw life sustaining treatment (including DNR). For decisions to withhold or withdraw life sustaining treatment see Administrative Policy #100.24 Withholding and Withdrawing Life Sustaining Treatment Including DNR Orders.

7.5 **Patient without Surrogate:** If it is determined, after reasonable investigation, that the patient does not have a Surrogate, the Attending may authorize routine medical care. In addition, an Attending can authorize Major Medical Treatment after consultation and concurrence with the patient's health care team and an independent physician not involved with the patient's care concurs with the treatment. In the alternative, the Attending may request that the Hospital obtain guardianship or a treatment order prior to proceeding with non-emergency Major Medical Treatment. For decisions regarding withholding and withdrawing life sustaining treatment, please see Administrative Policy #100.24 Withholding and Withdrawing Life Sustaining Treatment Including DNR Orders.

7.6 **Patient with Developmental Disabilities (DD):** For patients with DD, informed consent must be obtained for all medical, dental, surgical or diagnostic interventions or procedures in which a general anesthetic is used or which involves a significant invasion of bodily integrity requirement an incision or producing substantial pain, discomfort, debilitation or having a significant recovery period, or any professional diagnosis or treatment to which informed consent is required by law. Informed consent is not required for medical treatment which does not meet this definition or for emergencies.

a. An adult patient with DD may be able to consent on his or her own behalf and the patient should be evaluated to determine if he or she has Capacity.

b. If the patient with DD does not have capacity the following individuals (in order of priority) can consent to treatment:

- Legal Guardian with health care decision authority
- Actively involved spouse
- Actively involved parent
- Actively involve adult child
- Actively involved adult sibling
- Actively involved adult family member
- The Consumer Advisory Board for the Willowbrook Class
- A Surrogate decision-making committee or court. Contact social work if a surrogate decision-making committee is required.

c. Prior to issuing an order to withhold or withdraw life sustaining treatment (including DNR), MHLS must be notified as well as the Director of the patients licensed residence or program. Please contact social work to facilitate compliance with all notification procedures. For decisions regarding withholding and withdrawing life sustaining treatment, please see Administrative Policy #100.24 Withholding and Withdrawing Life Sustaining Treatment Including DNR Orders.

7.7 **Minors**. The following persons may consent for minors:

a. Either parent, even if the parent is under eighteen (18) years of age, may consent to treatment. Although generally the consent of one parent is sufficient, if the physician is aware that the parents disagree as to the treatment for the minor, Administration should be notified.

b. Licensed adoption agencies, or other appropriate social service agencies, may consent for a minor who has been placed for adoption provided the agency has obtained surrender from the natural parents.

c. If a child is placed for foster care but is not freed for adoption, consent may be obtained from the natural parents or from the Commissioner of Social Services. A copy of the document should be attached to the consent. In general, consent may not be obtained from the foster parent.

d. Step-parent if child is legally adopted by that step-parent.

e. Legal guardian may consent upon proof of his/her guardianship. A copy of the court order appointing the guardian should be attached to the signed consent.

f. A minor can consent to his or her own health care without parental consent if:

1. The minor is Emancipated.

2. The minor is seeking medical care for contraception (except sterilization) treatment for venereal disease or abortion, obstetrical care or delivery or HIV antibody test and who has the capacity to make health care decisions may give consent to treatment.

3. The minor is seventeen (17) and donating blood.

4. The minor is consenting for outpatient mental health assessment and the minor is: a) knowingly and voluntarily seeking the services, b) service is necessary and clinically indicated, and c) the parent/guardian is not reasonably available; or requiring parental involvement would be detrimental to the course of treatment.

5. The minor may be admitted for inpatient, residential or outpatient alcohol and substance abuse treatment without the consent of a parent or guardian if in the judgment of the physician, the involvement of a parent or guardian would have a detrimental effect on the course of treatment of the minor who is voluntarily seeking treatment or if the parent or guardian refuses to consent to treatment and the physician believes that such treatment is necessary for the best interest of the child.

8.0 THE EMERGENCY DOCTRINE

8.1 Emergency medical services may be rendered to persons of any age without the consent when, in the Responsible Practitioner's judgment, an emergency exists. Basic elements, which evidence an emergency, include:

a. The person is in immediate need of medical attention.
b. An attempt to secure express consent would result in delay of treatment.
c. Delay of treatment would increase risk to the person's life or health.

8.2 When the emergency exception is relied upon, it is the Responsible Practitioner's responsibility to fully document the nature of the emergency and the increased risks from the delay in obtaining consent for treatment.

8.3 The emergency doctrine may not be used to override a valid refusal of treatment.

9.0 IMPLIED CONSENT

9.1 When written consent is not required by this policy, consent is deemed to be implied when the patient voluntarily submits himself/herself to medical care.

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9.2 If the patient or his representative expressly objects to treatment, consent to treatment cannot be implied.

9.3 When in the course of an operation, previously consented to, the surgeon discovers an unanticipated condition, which requires a procedure in addition to that which the patient had earlier expressly consented, and the situation qualifies as an emergency, the additional procedure may be undertaken immediately.

If the situation does not qualify as an emergency, the surgery should be postponed until express consent of the patient or his representative is obtained. If, however, performing a second separate surgical procedure at another time involves medical risks and if, in the sound medical judgment of the surgeon, there is no reason to believe that the patient would disapprove, the surgeon may proceed with the additional surgery, with the consent of an agent/next-of-kin/guardian, if obtainable.

9.4 The form of the anesthetic or the form of the specific procedure should not be changed between the time of consent and the time of surgery without a new disclosure and a revised consent by the patient or his representative.

10.0 SPECIAL CONSENT REQUIREMENTS

10.1 **Sterilization.** In addition to the hospital informed consent (VD005 - Sterilization Consent), patients in New York City facilities and hospital clinics must sign the 3134 - Sterilization Consent Form. In many cases (including for patients in New York City facilities and all clinics), there is a 30 day waiting period before signing the informed consent and doing the procedure. Check with Department Administration prior to scheduling the procedure.

10.2 **Abortion.** The patient must sign the "Consent for Induced Termination of Pregnancy" form. Patients under the age of eighteen (18) may give consent for an abortion. The Responsible Practitioner must document in the patient's record that the patient has been counseled and advised of all aspects of the abortion both physical and psychological.

10.3 **HIV Antibody Testing.** Informed consent is required for the administration of any HIV related test. For HIV testing please refer to Policy #100.92 (HIV Testing and Management); and consent form (VD014 - Offer and Consent of HIV Testing).

10.4 **Genetic Testing.** Genetic testing requires written, informed consent in a manner prescribed in Article 7, Section 79.1 of the New York State Civil Rights Laws. Exceptions to written consent are provided for any testing of newborns required by the Public Health Law or genetic testing to determine paternity performed in accordance with Article 25 of the Public Health Law. Genetic testing may be performed on specimens from deceased persons if informed consent is provided by the next-of-kin in accordance with Article 7, Section 79.1 (c).

10.5 **Blood Therapy:** Separate Consent should be obtained for blood therapy if possible and if patient refuses blood or blood products.

10.6 **Treatment of Psychiatric Patients Over Objection.** Except if the patient's condition is considered life-threatening, or the patient is presently considered a danger to himself or others, treatment shall not be instituted over the objection of a psychiatric patient in the absence of a court order.

11.0 CONSENT FOR PARTICIPATING IN RESEARCH PROTOCOLS

A Principal Investigator who wishes to prescribe or administer treatment pursuant to a research protocol must (i) obtain the approval of his Department Chairman; (ii) obtain the approval of the Hospital's Institutional Review Board (IRB); and (iii) obtain the informed consent of the patient for such treatment in conformity with the provisions of the Hospital's research protocols and the requirements of the IRB and on a consent form approved by the IRB.

12.0 CHILD ABUSE OR NEGLECT

12.1 When the Responsible Practitioner cannot obtain the consent of the parents for a minor and the Responsible Practitioner suspects the minor has been abused or neglected, the Responsible Practitioner will: document the suspected abuse/neglect; document attempts to obtain the consent of the parent(s); notify, and document notification to the appropriate state and/or local agency. In an emergency situation the Responsible Practitioner can apply the emergency doctrine and treat the minor without parental consent.

12.2 Foster parents and/or the assigned ACS caseworker for a foster child, do not have the right to consent for the medical care and treatment for the child, unless there is a court order authorizing such. In instances when consent is required, the ACS caseworker is responsible for contacting the foster child's parent(s) to effectuate consent. If the ACS caseworker cannot locate the parent(s) or the parent(s) refuse to consent for treatment, the Local Commissioner of Social Services or Health may give effective consent for medical, dental health and hospital services. (Social Services Law §383-b).

13.0 DURATION OF CONSENT

13.1 Generally, consent given for a particular procedure is valid for the entire course of the treatment for that ailment unless the patient revokes the consent (either verbally or in writing). If new risks, benefits or alternatives arise during the course of treatment, consent for the particular procedure must be renewed.

13.2 In accordance with hospital policy, operative/invasive procedure/treatment consent shall remain valid whether obtained in the hospital or in the Responsible Practitioner's office for ninety (90) days after execution of the consent form by the

patient PROVIDED no changes in condition or diagnosis have occurred which would require renewed consent and the patient has not withdrawn consent.

13.3 General admission consent shall remain valid for the entire period of hospitalization.

REFERENCES to REGULATIONS and/or OTHER RELATED POLICIES

Administrative Policy #100.24 Withholding and Withdrawing Life Sustaining Treatment Including DNR Orders

Administrative Policy #100.27 - Limited English Proficient Patients

Administrative Policy #100.88 - People Who are Deaf or Hearing Impaired

Administrative Policy #100.92 - HIV Testing and Management

New York Public Health Law §2994 (Family Health Care Decisions Act)

Health Care Proxy Law Article 29–G New York Public Health Law

Health Care Choices: Who Can Decide?
NYS Office for People with Developmental Disabilities
July 2010 – Governor David A. Paterson; Acting Commissioner Max E. Chmura

CLINICAL REFERENCES

FORMS:

VD005 - Sterilization Consent
VD010 – Consent to Operative/Invasive/Diagnostic Procedures, Anesthesia/Sedation/Analgesia
VD010A – Reconsideration of DNR Orders for Surgery or Invasive Procedrues
VD014 - Offer and Consent of HIV Testing
NYC 3134 - Sterilization Consent Form

APPROVAL:	
System P&P Committee	2/08/11; 10/25/12:
System PICG Committee	2/24/11; 11/15/12; 2/6/14
SIUH MEC	10/1/01; 12/3//12; 3/1/14 (modified)

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