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In the Matter of the Inquiry of [REDACTED]
In her official Supervisory Capacity for the
Suffolk County [REDACTED]
[REDACTED]

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NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL. Applications requesting its modification, clarification, or withdrawal must be made in accordance with Suffolk County Board of Ethics rules unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Nothing shall prohibit the Suffolk County Board of Ethics, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time.

CLARIFICATION

1. The Board received this request for clarification from the requestor on [REDACTED]. (SCBE - Exhibit #1).

2. The Board finds that under the information presented, the ongoing conduct of the employee filming the [REDACTED] is in conflict with § 77-3 (B), and the [REDACTED] interviews are in conflict with § 77-3 (B), § 77-3 (C) and § 77-3 (D).

3. The Board recommends the following steps to mitigate conflicts regarding confidential information being released by a County employee:

1. Recording devices be County issued and be maintained on County property
2. Flash Drives be County issued and be maintained on County property
3. Remote computer access monitoring by County Information Technology

4. As to the definition of “confidential information” which shall not be disclosed, the Board holds it is inclusive of any information obtained through official job duties which is not otherwise available through a public FOIL and available to the public at the time of disclosure. The Board finds documents in draft format, statistical data, and descriptions of events without identifiers are included in confidential information which cannot be discussed (*see* Freedom of Information Law § 87(2)(g)(iii) which exempts from disclosure “inter-agency or intra-agency materials which are not . . . final agency policy or determinations”¹).

¹ COIB Public Warning re: William F. Kuntz, III Case No. 2008-227

5. Although the Suffolk County Board of Ethics advisory opinion authority is referenced in the Suffolk County Standard Operating Procedure A-15, this authority does not supersede the Department's regulation of the SOP. As such, the Department has broader discretion to assess employees prohibited outside employment which would "conflict, *appear* to conflict or potentially conflict" with the proper performance of their official duties. The Board's conclusion that the ██████████'s ██████████ interferes with the proper discharge of duties is based on the County's outside employment denial and leave of absence denial. Accordingly, the Board must defer application of this finding to the County in regulating employee compliance with the SOP. The Board does not have authority to advise the County Departments regarding the regulation of the SOP or employee discipline.

6. Suffolk County Code § 77-9(B), "Penalties For Offenses" states "upon a determination by the Board that a violation of § 77-2, 77-3, 77-7 or 77-8 of this article has occurred, the Board shall have the authority to impose fines up to \$10,000 and to recommend to the hiring authority suspension or removal of the public servant from office or employment. (*emphasis added*)." This statutory option for the Board to recommend suspension or removal of an employee commences after a Board hearing and determination that a violation occurred. As

SUMMARY: A Board Member of the New York City Civilian Complaint Review Board released to a member of the public two draft letters which the Board Member had a reasonable belief that they were not confidential because the information in the letters had been discussed in public at prior CCRB meetings or was otherwise available to the public. COIB determined this was still confidential information referencing the Freedom of Information Law § 87(2)(g)(iii) which exempts from disclosure "inter-agency or intra-agency materials which are not . . . final agency policy or determinations".

In The Matter Of Tsering Choden Coib Case No. 2013-124

SUMMARY: A City Research Scientist in the Bureau of STD Prevention and Control who, as part of her official DOHMH duties, had access to two confidential DOHMH databases that receive, track, and store data concerning STD infections from medical providers and clinical laboratories in New York City. Employee admitted to downloading confidential medical records from EMR onto a personal storage device and then used the information to complete an assignment in furtherance of my graduate studies at State University of New York . She did not disclose any confidential information from these records. For this violation, the City Research Scientist agreed to pay a \$750 fine to the Board and a \$750 fine to DOHMH, for a total financial penalty of \$1,500. *COIB v. Choden*, COIB Case No. 2013-124 (2013).

such, the Board cannot make recommendations on employee discipline matters in an Advisory Opinion. With respect to reviews other than Advisory Opinions, SCAC § A30-6(B) requires the Board to refer matters where reasonable cause remains to the appropriate agency if a public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings. Such referrals are made timely pursuant to the statute upon receiving an employee's response to a reasonable cause finding.

7. The forgoing is the modification of the Board.

Dated: Great River, New York

4/20/2016

Linda A. Spahr, Esq., Chair