



Cpl. Meister:

Your supervisor, Chief Brian Carlson, has alleged violations of the General Orders Manual by you related to incidents during which he believes you endangered citizen safety. An internal investigation into those incidents was completed by Sgt. Joshua Knapp, who found the allegations had a basis in fact. Following procedure, Chief Carlson then recommended discipline for those violations and provided you notice of his recommendations. At that point you chose not to accept the recommended discipline. You elected instead to exercise your right to proceed with a pre-disciplinary conference, per the Village Personnel Policy Manual.

Your pre-disciplinary conference was held on Friday, August 3, 2018 before Chief Donald (Randy) Person (Xenia Police Department), a mutually-agreed upon third party. Your attorney, David Duwel, presented your case before Chief Person, who has provided me with his written report and findings. The ten (10) day time frame to complete the report was waived by you at the close of the pre-disciplinary conference. The report presented by Chief Person finds that there are grounds to impose discipline. Chief Person also made recommendations regarding his view on the appropriate discipline that should be imposed on you. Since the role of the hearing officer in a pre-disciplinary conference is to serve as a fact-finder, I have not considered Chief Person's recommendations as to discipline and have only considered his findings as to whether or not the alleged misconduct occurred.

In addition, you and Mr. Duwel were provided a copy of Chief Person's report for the purpose of providing you with the opportunity to comment on the findings. I received and considered the comments from Mr. Duwel on your behalf before issuing this decision.

In preparing this decision, I reviewed the following:

- Both internal investigations into the alleged violations;
- All videos associated with the alleged violations;
- Chief Carlson's recommendations of discipline;
- Chief Person's pre-disciplinary conference report; and
- Your personnel file.

The violations pertain to three incidents involving individuals who were operating vehicles under the influence of alcohol or drugs of abuse, and one incident involving juveniles (each with no valid operator's license) who were in possession of marijuana.

### **FIRST INCIDENT MARCH 14<sup>TH</sup>**

The first incident that came to Chief Carlson's attention occurred on March 14. While on routine patrol you were following a motor vehicle driven by a female driver who attempted to elude you for then-unknown reasons. The driver unsuccessfully attempted to hide in a local apartment building parking lot. Upon approaching the vehicle and engaging in conversation with the driver, you concluded there was substantial evidence the driver was intoxicated. You also determined she was driving under suspension for a prior OVI conviction.

You cited the female for operating the vehicle while under suspension, had the vehicle towed and transported the female and her passenger to a private residence within the Village. It should be noted that you wrote a report indicating that this person was highly intoxicated and had a previous OVI conviction, but you did not investigate further as to whether or not she should be charged with a second OVI offense. Policy dictates this be done. It would still have been within your discretion, after further investigating, to resolve the situation as you did, based on the evidence, but you did not follow established written procedure. (G.O. 4.4 (C)1-6, General Orders Manual.)<sup>1</sup> Had this incident stood alone in your violations, a counseling letter to adhere to policy would have been sufficient as a resolution. Unfortunately, it does not.

I note that Chief Person found you violated established policy during this incident.

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<sup>1</sup> Yellow Springs Police Department Policy Manual, G.O. 4.4 "Traffic Practices and Techniques" / Section C, sub-sections 1 through 6 state:

#### **C. OVI Countermeasures**

1. Drivers who are impaired by alcohol and/or drugs represent a serious threat to the life and safety of persons using the streets and highways of this state. Consequently, a comprehensive coordinated counter measure program involving education, enforcement, adjudication, treatment, and public support is essential if the agency is to have long term success in combating the OVI problem.
2. Enforcement is a key element in the OVI countermeasure program. Officers must detect and apprehend impaired drivers.
3. Officers must be alert for signs of alcohol and/or drug impairment in all contacts with motorists.
4. Officers must make an arrest of an impaired driver when probable cause to arrest is present; however, incarceration is not always a requirement.
5. Officers must incarcerate a felony OVI violator unless a medical condition results in the violator's admission to a hospital or medical facility.
6. Officers may release a misdemeanor OVI violator by arranging for other transportation as an alternative to incarceration. Officers must make their decision to incarcerate or release the violator based upon:
  - a. Whether there is a need for medical attention.
  - b. The location and availability of a responsible party to assume custody of the violator.

## **SECOND INCIDENT MARCH 7<sup>TH</sup>**

The second incident occurred on March 7, 2018, and came to the Chief's attention after the first incident summarized above. This incident again involved an intoxicated subject who was driving while dark in the early morning hours without lights, driving over curbs and obviously failing to control the vehicle. In this instance, you stopped the individual and, according to the synopsis of your interview with Sgt. Knapp, determined he was, in fact, highly intoxicated, exhibiting slurred speech, unsteadiness on his feet and other indicators of intoxication. In fact, you specifically noted that you were concerned enough that you did not feel comfortable letting him drive. In addition, there were unopened beer cans in the passenger compartment. You parked the car and told the individual to pick the keys up at the Police Department in the morning. On the video, this individual is heard slurring words and is seen falling into the side of the vehicle while you were securing it. You then allowed the individual to walk home.

Chief Carlson and I share the same concern here, in that you allowed a highly intoxicated individual to walk home, in the dark, in the very early morning hours. The subject offered to allow you to drive him home, but you told him he seemed able to walk okay. You did not insist on driving him home even after you watched the individual fall into the side of his vehicle. Additionally, you never ran the subject's driving record, which would have been standard procedure for anyone stopped for a driving offense, especially someone driving under the influence. If you had done so, you would have discovered that he was under a Non-compliance suspension and had a previous OVI conviction in 2016, which appears on his driving record and to which he admitted on the video of the stop. Under these circumstances, you would have towed the vehicle as required by law, similar to the above-noted incident, as the circumstances were the same. You could have then driven him home safely. This incident was the primary catalyst for Chief Carlson's concern that you did not ensure public safety.

I note that Chief Person found you violated established policy during this incident.

## **THIRD INCIDENT APRIL 25<sup>TH</sup>**

The third incident occurred on April 25, 2018. This situation involved two juveniles who were sitting in a parked car at the Yellow Springs Water Treatment Plant during the early morning hours. Neither juvenile had a valid driver's license, nor did either juvenile have permission from the registered owner of the vehicle to be driving it. In this case, you allowed one of the juveniles to drive the vehicle home (even though neither juvenile was legally allowed to drive since neither was a licensed driver) instead of insisting that the owner or another licensed driver come to get the vehicle. You also did not follow up with the registered owner of the vehicle to see if he (1) had gotten his vehicle back or (2) wanted to pursue charges.

In addition, the juveniles had a small quantity of marijuana in their possession. As you allowed them to dispose of the marijuana by dumping it on the ground, you violated Village of Yellow Springs General Orders in regard to the collection and disposal of evidence. Even though you were not issuing charges, you were still required to collect the marijuana and submit it for destruction. At that time, you were serving as a Field Training Officer for a new officer and this would have been a perfect opportunity to teach him the proper procedure. While this allegation was found to have a factual basis, Chief Carlson

has withdrawn this charge, as he prefers to resolve it through counseling. I am not considering this incident in my decision to impose discipline.

#### **FOURTH INCIDENT MAY 22<sup>ND</sup>**

The fourth incident occurred on May 22, 2018. This incident began when dispatch received a call from the on-duty personnel of the Miami Township Fire Department reporting a highly intoxicated individual on a bicycle near the bike path behind the Fire and Rescue Station on Corry Street. This intoxicated individual was verbally assaulting people on the bike path and acting in a disorderly manner.

You located the individual, who you found to be, in fact, highly intoxicated, as reported to dispatch. Your decision in this case was to instruct him to walk his bicycle home. Even though he denied had been drinking and taking medications that interact strongly with alcohol, your training as an EMT should have made it readily apparent to you that this individual was impaired to a great extent due to some additional influence. In fact, he later admitted to you that he had been taking Gabapentin and you found empty liquor bottles in his pack. You then talked with the complainant at the Fire Station. The intoxicated individual, who lives in the immediate vicinity of the Fire Station, walked a short distance, decided to ride his bicycle and, in the end, injured himself by crashing his bicycle on the roadway on Fairfield Pike at Winter Street, quite a distance from his home. His crash necessitated that the medical unit from Miami Township Rescue be called and the subject was transported to the hospital for treatment, including stitches to his face. In fact, when this individual was later interviewed about the incident, he did not remember anything about what had happened. In this instance, simply putting the bicycle in the trunk of the vehicle and driving the individual home would have been a better choice than letting him ride off.

Chief Person found that you erred in your judgment but the incident, standing alone, warrants something other than formal discipline. I accept this factual finding and with this decision I am instructing the Chief to address this situation in the context of your meetings with him.

I want to make clear that it is the paramount duty of every officer who works in the Village that decisions at all times must ensure the safety of the public. This means both individual safety and the safety of the public as a whole. The failure to protect the public constitutes not only a violation of the General Orders Manual, but also of the Guidelines for Village Policing, which specifically state:

***Safety-Centered: Safety is the primary need identified by Yellow Springs Community members with regard to police services. Most community members feel that Yellow Springs is a safe community, which is facilitated by cooperation among residents, officers and other community members. The Yellow Springs Police Department (YSPD) supports safety in our Village by being proactive and ensuring that – as much as possible – unsafe situations do not occur.***

The Yellow Springs Police Department Code of Ethics also states, among other things, that it is every officer's responsibility:

- (1) to safeguard lives and property,
- (2) to perform his or her duties impartially, never allowing personal feelings to influence decisions, and
- (3) to have consistent and wise use of discretion within the law.

Sometimes the use of discretion means making sure that individuals are able to arrive safely at their destination by an appropriate means other than allowing them to take themselves. You did so on March 14, 2018, but in three other instances, all of which occurred within a two and one-half month time period, you failed to ensure public safety.

I am concerned that the incidents for which I will be imposing discipline occurred within such a short time period and that they all indicate an inability, on your part, to determine the best way to ensure the public's safety. The primary issue is not your decision whether to charge, arrest and cite the individuals to court. The primary issue is that you did not ensure individual and public safety. Additionally, you have put the Village and yourself in a position of responsibility and potential liability for harm or injury these individuals may have caused to themselves and/or others. Finally, the facts show you failed to follow long established policy that pre-dates your promotion to corporal.

Both Chief Carlson and I acknowledge the challenges police officers face when exercising the powers of law enforcement. I also note that in your interviews conducted in the internal investigations, you stated that you have difficulty making enforcement decisions when they involve Village residents with whom you are familiar. This difficulty stems, in part, because you live in the Village. However, it is imperative that you not let your familiarity with an individual impact his or her safety or the safety of others. Letting impaired individuals go without ensuring a responsible party assumes responsibility for the impaired person creates liability exposure to the Village and the potential for harm to others. I also note that you admitted in your statements that you could have and, perhaps, should have made different decisions in these instances. I agree with your assessment.

I next note there are inconsistencies between what your written report says and what you said during the course of the investigation and the pre-disciplinary conference. For instance, both on the video and in your report for the March 14<sup>th</sup> incident, you state that the person was driving very slowly, was slow to respond to questions and had other indicators that she was under the influence of something. But when asked about this during your interview, you said you did not have enough evidence to say she was under the influence. Also, in the video of the March 7<sup>th</sup> incident, you are clearly heard saying, "The reason I'm pulling you over is because you don't have your lights on and you hit the curb when you were going around the corner there." However, in your statement during the interview, you stated that you did not see this, and that the driver got close to the curb while making his turn but did not drive over it. These inconsistencies concern me and I am directing Chief Carlson to address this as well.

As Chief Person wrote in his report: "Police Discretion is Not Absolute...[P]olice officers still have to follow codified rules and regulations for more serious incidents...[A]n officer must ensure both the safety of the community and the safety of the individuals detained when dealing with potentially intoxicated individuals." This does not mean you must arrest everyone for every charge. As an officer with the Yellow Springs Police Department, you may use your discretion, within reasonable limits. You noted during your

interviews that you did not feel you had appropriate indicators to perform Field Sobriety Tests on these individuals. However, in other, very similar situations with fewer indicators of inebriation, you have charged drivers with OVI. (See Traffic Stops 14-3320 and 14-2800.) The expectation is that you will enforce the law consistently and without favoritism.

Another thing you must consider when exercising your discretion is whether or not releasing the person without a citation is helpful or, potentially, harmful to them. As you well know, one function courts serve is to connect individuals who need help with those who can help them. In the March 7<sup>th</sup> and 14<sup>th</sup> and May 22<sup>nd</sup> incidents, there were previous violations involving the influence of alcohol or drugs. Would any of these individuals have benefited in some way from those professional substance abuse services? Were they willing to seek those services on their own? Did you ask them? Did you refer them to the Community Outreach Specialist for follow up? If you had cited them to court, is there a possibility that they would have been mandated treatment? Could you, as the citing officer, spoken to the prosecutor about that? Is that part of your mandate as an officer? I also note that, when considering the appropriateness of a referral to our Community Outreach Specialist, the exercise of discretion should take into account whether or not someone is a first time offender.

You have been verbally counseled on several occasions for your failure to follow policy in other situations. Your file reflects the following:

- One commendation for actively apprehending a suspect during the robbery at WesBanco.
- Two letters thanking you for assistance.
- One letter alleging you acted improperly on a traffic stop. (While considered founded in fact, no formal action was taken.)
- One letter of counseling for a minor policy violation.
- Two prior investigations into separate incidents of policy violations, resulting in a one-day suspension for each violation. (I note that, in both cases, you agreed that the discipline was appropriate and accepted it.)

I reference this prior discipline because it reflects the problem that needs to be addressed. An officer does have discretion to deviate from established policy if they can give adequate justification for their actions. You have not, in any of these instances, been able to provide that justification. You have, in fact, admitted that you did not have such justification.

I find that you have violated the General Orders Manual, the Guidelines for Village Policing, and the Yellow Springs Police Department Code of Ethics for Police Officers. You are currently in the middle of a one-year probationary period resulting from your promotion to the rank of Corporal. Mindful of your probationary status, in keeping with the policy of progressive discipline, and considering the serious nature of the failure to consider citizen safety, I find Chief Carlson's revised recommendation of discipline, which was issued the day after the original recommendation but not made public until now, to be appropriate in this instance. In general keeping with that recommendation:

1. You will be immediately reassigned to the rank of Road Patrol Officer and your pay will be reduced accordingly. Chief Carlson will provide your new duty assignment.

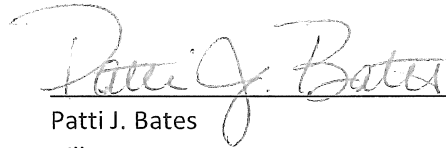
2. A Performance Improvement Period (PIP) will be instituted, during which you will attend training specifically chosen to address deficiencies noted in these incidents. You will also attend training with Chief Carlson in order that he be able to help you better understand the proper actions that ensure public safety while also adhering to the Guidelines for Village Policing established by Village Council and in the use of your discretion as an officer with the YSPD. This period shall extend for six (6) months from the date of issuance of this discipline or until completion of the necessary training courses, as necessitated by the training schedule at the Ohio Peace Officers Training Academy, and until said sessions with Chief Carlson have been completed to his satisfaction, whichever comes later. Chief Carlson will provide you with the details of your PIP.
3. In addition to the regular meetings with Chief Carlson, you shall have two reviews during this period. One review shall occur on or about the third month of the PIP. The second shall occur at the end of month 6 of the PIP and shall determine if all requirements have been met and performance improved, or if the PIP should be extended and under what circumstances.
4. This discipline will serve for all instances noted in this document and no further disciplinary action will be taken on those noted incidents. However, this discipline may be considered in any future disciplinary action for other violations not noted in this document.

While the General Orders Manual for the Police Department specifically notes that a one-year probationary period be instituted for any change in rank, including demotion, I suspend that requirement in this instance. You should be aware that any further violations of policy or failure to ensure the safety of citizens will result in further discipline. Such discipline can be of any level, up to and including termination. I encourage you or any officer, if in any doubt as to how to proceed, to contact a supervisor and ask the proper action under the particular circumstances that present themselves at any given time.

Officer Meister, you are a valued member of the Yellow Springs Police Department and the community, but you must improve the critical thinking used in your decision making. The Village is committed to working with you to make this happen.

Additionally, Chief Carlson spoke with me after the pre-disciplinary conference but prior to the issuance of the pre-disciplinary conference report. The position of Corporal will not be immediately reposted. Chief Carlson believes, and I agree, that you may want to consider reapplying when the posting does occur after the PIP has been completed and there have been no more instances of discipline.

Given the state of law enforcement and criminal justice on a national level, it is imperative that all of our officers exercise their discretion wisely, fairly and consistently, while adhering to existing laws and statutes.

 10-9-18

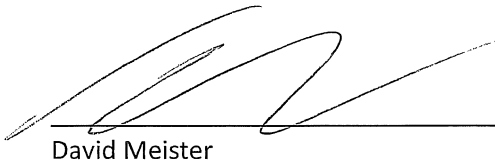
Patti J. Bates

Date

Village Manager

Village of Yellow Springs

Issued: August 27, 2018

 10/8/2018

David Meister

Date

MY SIGNING OF THIS DOCUMENT INDICATES THAT I HAVE RECEIVED IT,  
BUT NOT NECESSARILY INDICATES THAT I AGREE WITH THE STATEMENTS HEREIN.





Errata sheet for Disciplinary Letter dated August 27, 2018

Pg 2, first paragraph, 4th sentence:

"Upon approaching the vehicle and engaging in conversation with the driver, you concluded there was substantial evidence the driver was intoxicated."

I noted several cues to possible impairment. I would not categorize my few observations as substantial evidence the driver was intoxicated. After conversing with the driver outside of the car, I determined she was not under the influence of alcohol.

Pg. 2, second paragraph, 2nd sentence:

"It should be noted that you wrote a report indicating that this person was highly intoxicated and had a previous OVI conviction, but you did not investigate further as to whether or not she should be charged with a second OVI offense."

My written report does not indicate a highly intoxicated person. Several cues of possible impairment were noted in my written report. For me to describe a person as highly intoxicated, they must be showing signs such as unsteadiness on their feet, slurring their speech and showing a level of confusion well beyond what I observed with this driver.

Pg. 3, first paragraph, 2nd sentence:

"This incident again involved an intoxicated subject who was driving while dark in the early morning hours without lights, driving over curbs and obviously failing to control the vehicle."

I observed the driver make a tight right turn and bump the curb. I would not describe the observed driving behavior as "obviously failing to control the vehicle". On Page 5 in the fifth paragraph you quote me as saying "...you hit the curb..." not driving over curbs.

Pg. 3, first paragraph, 3rd sentence:

"In this instance, you stopped the individual and, according to the synopsis of your interview with Sgt. Knapp, determined he was, in fact, highly intoxicated, exhibiting slurred speech, unsteadiness on his feet and other indicators of intoxication."

I did not determine the driver was "highly intoxicated". Sgt. Knapp made the statements about observed slurred speech and being unsteady on his feet, from the video he watched. I did not observe the driver stumble into the car at the time it happened, but on review of the video I did see it. This was well after the incident had occurred.

Pg. 3, second paragraph, 3rd sentence:

"You did not insist on driving him home even after you watched the individual fall into the side of his vehicle."

After reviewing video of the traffic stop, prior to my interview with Sgt. Knapp, I observed the driver stumble and fall against the car. I did not observe that stumble on scene.

Pg. 3, second paragraph, 5th sentence:

"If you had done so, you would have discovered that he was under a Non-compliance suspension and had a previous OVI conviction in 2016, which appears on his driving record and to which he admitted on the video of the stop."

The driver does not have a prior OVI conviction on his record. The driver stated he had a prior OVI, but he was incorrect in that statement, his prior conviction was for Physical Control. It further states I should have towed the vehicle according to state law. There is no state law requiring the impoundment of the vehicle under the circumstances of this particular traffic stop.

Pg. 5, fourth paragraph, 6th sentence:

"I also note that you admitted in your statements that you could have and, perhaps, should have made different decisions in these instances."

It is always easier to make decisions in hindsight with the luxury of time to endlessly analyze a situation and determine different outcomes from the analysis.

Pg. 5, fifth paragraph, 4th sentence:

"Also, in the video of the March 7th incident, you are clearly heard saying, "The reason I'm pulling you over is because you don't have your lights on and you hit the curb when you were going around the corner there." "

The driver turned sharply bumping the curb, which is what I am quoted from the video. I have tried to make the distinction between what others have tried to interject as driving over curbs and what the driver actually did, which was merely bumping a tire into the curb.

Pg. 7, fourth paragraph, 1st sentence:

"While the General Orders Manual for the Police Department specifically notes that a one-year probationary period be instituted for any change in rank, including demotion, I suspend that requirement in this instance."

While it is appreciated the probationary period was waived, I am unable to find this particular policy in any of the YSPD General Orders. If a copy of this policy would be provided to myself and to Mr. Duwel, I would appreciate the chance to read this policy.

The only reference to probationary periods I could find is in the Village of Yellow Springs Personnel Policy Manual. Section 205 states that probationary periods are for newly hired, rehired, promoted or transferred employees. There is no reference to demotion in section 205.

Respectfully submitted,  
David Meister  
October 4, 2018





August 27<sup>th</sup>, 2018

To: David Meister

Per the disciplinary decision made by Village Manager Patti Bates, the commencement date of that order will be August 27<sup>th</sup>, 2018. On this date, you will be re-assigned to the rank of patrol officer and will be responsible for all duties and tasks of that rank, according to Yellow Springs Police Department's General Orders and any other directions given by your superior officers. Your badges and uniform insignia that were issued for the Corporal assignment need to be returned to a supervisor and/or Property Manager Ken Metz whereby you will be reissued the appropriate badges and insignia for an officer.

Respectfully,

A handwritten signature in dark ink, appearing to read "B. Carlson", written over a horizontal line.

Chief Brian Carlson



## VILLAGE OF YELLOW SPRINGS MEMORANDUM OF UNDERSTANDING WITH DAVID MEISTER

In an effort to improve upon your job performance as a peace officer with the Village of Yellow Springs Police Department and , this Memorandum of Understanding ("MOU") is intended to address the following aspects of your job performance that require immediate attention.

- Understanding of the Proper Course of Action with OVI Subjects while on Traffic Stops:  
Failure to follow General Orders regarding impaired drivers on multiple separate occasions allowing repeat offenders to receive improper correction and or the availability for help with substance abuse issues must be addressed. The goal is to obtain better decision making processes.
- Understanding in Decision Making with Arrest Discretion:  
The Village of Yellow Springs Police Department operates with the primary focus of public safety, the safety of every citizen we encounter and the safety of the officers. Your decision during OVI traffic stops where you released intoxicated subjects without assuring their safety is unacceptable. Your decisions put the safety of the subjects and the general public at risk. Resolution oriented policing and arrest discretion is permitted within my administration but with repeat OVI offenders your failure to follow protocol and use acceptable discretionary methods creates a present and future safety concern for the citizens involved and the general public and officers who may encounter these subjects in the future.

### GOALS

The Village of Yellow Springs Police Department has created the following goals in order to help you improve your job performance.

- Complete an additional OPOTA certified course in Alcohol Detection, Apprehension, and Prosecution of Impaired Drivers. (ADAP)
- Complete an OPOTA certified course in Advanced Roadside Impaired Driving Enforcement. (ARIDE)
- Complete an assessment of your understanding of the Village of Yellow Springs policy regarding OVI traffic stops.
- Work directly with the Chief of Police regarding the Village Guidelines, specifically the Police Departments approach to resolution oriented policing and arrest discretion.

- Work with the Chief of Police to foster and maintain professional respect and collegiality within the Department.

This MOU will be active for six (6) months, but may be extended if improvement is not recognized by the Chief of Police. You will meet with the Chief of Police once every thirty (30) days to discuss these MOU objectives, and your progress toward meeting the goals identified above.

The meetings with the Chief of Police will provide you with the opportunity to discuss any issues or problems you have in your progress toward reaching these goals. Every effort will be made to provide the support necessary for you to meet these goals and objectives.

- Failure to meet the goals set forth in this document during the specified timeframe may lead to termination of your employment. A decrease in performance after successfully completing the period contemplated in this memorandum may also result in termination of your employment without the issuance of a warning or an improvement plan. Nothing in this document represents a promise or contract of future employment or changes the at-will nature of your employment relationship. By signing this Memorandum of Understanding, the parties commit to moving forward in a positive and constructive manner.

### **ACKNOWLEDGEMENT SIGNATURES**

MY SIGNING OF THIS DOCUMENT INDICATES THAT I HAVE RECEIVED IT, BUT NOT NECESSARILY INDICATES THAT I AGREE WITH THE STATEMENTS HEREIN.

Employee Name: 

Date: 9/6/2018

Supervisor: 

Date: \_\_\_\_\_