

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

## **DECISION OF THE PERSONNEL APPEALS BOARD**

**DEREK HOLSTON**

**V.**

**NEW HAMPSHIRE DEPARTMENT OF SAFETY – DIVISION OF STATE POLICE**

**PAB DOCKET # 2013-D-003**

**March 27, 2015**

**APPEARANCES:** Trooper Derek Holston, Appellant, represented by Attorney Thomas Gleason;  
New Hampshire Division of State Police, Respondent-Employer, represented by  
Attorney Marta Modigliani.

**WITNESSES:** Sergeant John Mullen, Compliance Officer;  
Major Russell Conte, Executive Officer and Operations Bureau Commander;  
Police Chief John Lelacheur, Field Area Commander;  
Captain Paul Hardcastle, Investigator, Professional Standards Unit;  
Colonel Robert Quinn, Director of State Police;  
Lieutenant Paul Hunt, Assistant Commander – Troop B;  
Captain Chris Wagner, Commander, Bureau of Support Services;  
Trooper Derek Holston, Appellant.

Appeal of Derek Holston  
Docket #2013-D-003  
Department of Safety  
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**ISSUES OF LAW:** Per 1002.04 – Written Warning

Per 1002.06 – Disciplinary Suspension Without Pay

Per 1002.08 - Dismissal

Professional Standards of Conduct – Chapter 41-GA – Pursuit Driving

RSA 265:8– Emergency Vehicles.

**NATURE OF DISCIPLINARY ACTION:** Suspension of five days without pay issued on October 3, 2012.

**APPEAL HEARING:** The Personnel Appeals Board opened the hearing on December 17, 2014 and recessed it to March 12, 2015. The Board reconvened and closed the record on March 12, 2015.

**APPEAL BOARD MEMBERS IN ATTENDANCE:** Joseph Casey, Chair; Norman Patenaude, Esq. vice-chair; Charla Stevens, Esq.; and David Goldstein.

### **BACKGROUND**

On May 16, 2012 Trooper Holston engaged in a high-speed pursuit in a residential section of Salem, NH. Senior officers at the NH Division of State Police conducted an investigation, concluded that the circumstances of the pursuit constituted a violation of the Division's policy on pursuits and recommended disciplinary action. On October 3, 2012 the chief senior officer, Colonel Quinn, imposed a suspension of five days without pay for engaging in a high-risk pursuit in violation of the policy. Trooper Holston did not dispute the facts in this case but he disagreed with the finding of a violation and the sanction that he received. He filed this appeal with a request for a hearing to adjudicate the issues on October 17, 2012 pursuant to RSA 21-I:58. The issues in this case are whether or not Trooper Holston violated a policy of the Division; and if it is found that he violated a policy, whether or not the facts warrant the discipline that was imposed.

### **FINDINGS OF FACT**

The record supports the following facts. On the morning of May 16, 2012 the Manchester police Department issued a broadcast that a red 2006 Jeep Liberty with a NH state license plate number 300-3654 was stolen from the parking lot of an auto dealership. The information was relayed to the troopers in the Troop B area as the vehicle was seen heading southbound on Interstate 93. Trooper Holston was on duty that morning at the truck weight and inspection station on the southbound side of Interstate 93 in Windham, NH. Trooper Holston was on the lookout for the stolen vehicle and saw a vehicle he suspected might be the stolen vehicle pass by the station. He got into his cruiser and soon caught up with the stolen vehicle on Interstate 93. He then activated his cruiser's emergency equipment but the perpetrator did not stop. The Jeep left Interstate 93 at Exit2 in Salem, NH, travelled briefly on State

Route 97 until it turned right to head south on Policy Road. At the intersection of Policy Road and Play Camp Road the Jeep failed to yield at an intersection and sideswiped another vehicle without stopping. The Jeep's right side tires struck a curb resulting in the blowout of the two tires on the right side. The pursuit continued through the intersection with Kelly Road and ended at the intersection with State Route 28 where an officer from the Salem Police Department was deploying spike mats. Before the vehicles reached the intersection the perpetrator applied the brakes and abruptly stopped the Jeep. Trooper Holston collided with the rear of the Jeep causing minor damage to both vehicles but no injury to either driver. The driver of the Jeep was taken into custody and charged with multiple crimes. The pursuit lasted less than three minutes. Both vehicles travelled at a high rate of speed on a two-lane street through a residential area that included a school zone at times crossing the solid yellow line and veering into oncoming traffic, veering into the breakdown lane, forcing other vehicles off the road, and passing through an intersection with a red light before the crash that ended the chase.

The Department has a policy on pursuit driving in *Chapter 41-GA of the Professional Standards of Conduct ("PSC")* (Exhibit 12). It states that while a trooper has the authority to attempt to stop a violator the decision should always be undertaken with an awareness of the degree of risk to which the trooper exposes himself or herself as well as others. The trooper must weigh the need to apprehend a violator against the duty to protect life and should terminate a pursuit if the potential danger to anyone outweighs the necessity for apprehension. Other applicable standards of conduct also appear in Chapter 1 of the PSC (Exhibit 13).

Sergeant John Mullen serves as the compliance officer for the Division of State Police. He played a recording at the hearing of the radio dispatch "chatter" that was broadcast to all patrol units on the morning of May 16, 2012 (Exhibit 1). The message reported a stolen vehicle with a description that included tinted windows as well as an identifiable plate number in the vicinity of Exit 9 on Interstate 93 in Manchester, NH. Several troopers in southern New Hampshire began to look for that vehicle and listened to updated communications on its location. The dispatch center alerts a supervisor who monitors the pursuit ("Code signal 1043") and assists with decision making. Trooper Holston observed the vehicle and followed it to Exit 2 in Salem, NH and continued to follow it on South Policy Street. Other police units joined the chase from different locations. The "chatter" makes no mention of speed but the video shows that it changes according to traffic conditions and according to the speed at which the perpetrator was travelling along the residential street, through a school zone and through at least two signalized intersections. The perpetrator engaged in evasive driving and the pursuit posed a risk of danger to the public. The pursuit ended with a minor crash of Trooper Holston's cruiser and the stolen vehicle and Trooper Holston was found to be at fault for the collision.

Sergeant Mullen travelled to the intersection where the pursuit ended and conducted an investigation of the incident (Exhibit 4). He delivered a written report to the Colonel which included a conclusion that Trooper Holston was partially at fault for the minor crash. The witness viewed the video (Exhibit 2) of the pursuit at a later date and observed that Trooper Holston drove in the breakdown lane several times during the pursuit which also included weaving through traffic from both directions of the undivided

two-way street in a residential area of town, crossing the solid yellow line, passing through a school zone and travelling through a signaled intersection until two tires on the stolen vehicle are blown and it finally came to a halt at the next intersection. The suspect was arrested for felonious theft and taken into custody. The witness testified that the video differed from the radio transmissions recorded during the pursuit and that, based on his viewing of the video, he had some concerns over public safety and would have ended the pursuit sooner than when Trooper Holston did. The witness disagreed with other agency personnel who initially commended Trooper Holston for completing a successful pursuit. He acknowledged that Trooper Holston did not have to disclose the fact that the pursuit included some travelling on the wrong side of the street and that by the very nature of the of the job division vehicles sustain damage on a regular basis. In the *Professional Standards of Conduct, Chapter 41-GA* lists certain guidelines concerning the initiation and termination of vehicular pursuits and the parties to this appeal dispute whether or not Trooper Holston adhered to those standards. The witness acknowledged that troopers enjoy a considerable amount of discretion since they are required to make judgment calls on the spot.

Major Russell Conte serves as the executive major to the Colonel at the Division of State Police and his duties include the oversight of field operations. He viewed the video of the pursuit, concluded that Trooper Holston engaged in egregious misconduct in violation of the Professional Standards of Conduct and recommended formal discipline to the professional standards unit ("PSU"). Formal discipline can vary from of a letter or warning to termination.

Beverly, MA Police Chief John LeLacheur was a state trooper in New Hampshire and a captain at Troop B at the time of the pursuit in question. Lieutenant Wagner showed him the video and the preliminary report. Chief LeLacheur conducted an onsite investigation, drove his vehicle on the streets of the pursuit and interviewed Trooper Holston. In his report to the Director (Exhibit 11) the Chief identified several policy violations including (1) certain words spoken to another motorist, (2) the speed of travel, (3) entering a signalized intersection with a red light, (4) driving on the wrong side of the road, (5) driving at a high rate of speed in a designated school zone and (6) physical impact with the stolen vehicle. The Chief calculated that the pursuit lasted for 2.6 miles but the total time that it lasted is unknown. Trooper Holston reported his average speed at 65 miles per hour whereas it was estimated to be closer to 85 miles an hour. Trooper Holston, who was familiar with the area as a resident of an adjacent town, later acknowledged that he should have terminated the chase before he actually did. The Chief testified that the pursuit should have been terminated on South Policy Road as the vehicles entered the residential area. All high-speed pursuits are required to be reviewed all the way up the chain of command. The Chief did not question Trooper Holston's veracity but he concluded that Trooper Holston violated Code Section 41-GA.2.2.A.7 by failing to terminate the pursuit in a densely populated area and creating a high risk of harm to the public that outweighed the need to apprehend the perpetrator. While RSA 265:8 may allow travel at high speeds in emergencies, he explained, troopers are bound by the internal policy that sets the parameters.

Captain Paul Hardcastle was a member of the PSU at the time of the high-speed pursuit. His duties include the investigation (Exhibit 7) of motor vehicle accidents that involve state vehicles and making determinations concerning fault. He explained that the PSU reviews all pursuits to ascertain whether or not they comply with the Division's policy and whether or not any modifications should be made to it. He attended the meeting at which Trooper Holston was notified that he was going to be disciplined with a suspension without pay for five days and recalled that Trooper Holston did not refute the underlying facts of the pursuit. Captain Hardcastle testified that the Division enforces its policies uniformly and explained that officers up the chain of command determined that a violation was committed and that it is the duty of the Division head, Colonel Quinn, to determine the appropriate sanction.

Colonel Robert Quinn is the head of the Division of State Police. He first learned of the pursuit in Salem from a message on his paging device. He later assigned a number to the case and reviewed the findings of the investigation with its conclusion that the pursuit posed a danger to Trooper Holston as well as to the public and that it was not justified under the applicable policy. He noted the Trooper Holston had a few years of experience as a state trooper and concluded that Trooper Holston had a duty to end the pursuit. Colonel Quinn explained that the circumstances in this case warranted a suspension of five days without pay and did not warrant a dismissal or other more severe discipline that would have disqualified Trooper Holston from promotional consideration for seven years. Colonel Quinn further explained that the key piece of evidence he considered in the disciplinary process was the video of the pursuit which convinced him that Trooper Holston conducted it in violation of the policy. Trooper Holston received the notice of suspension (Exhibit 16) one day before he met with the senior officers to discuss it.

In a signed incident report dated August 8, 2012 (Exhibit 10) Trooper Holston wrote that after he viewed the video several times he questioned his own judgment on the morning of the pursuit, acknowledged that he should have stopped for the red light at the intersection of Policy Street and Raymond Road before continuing the chase, stated that he never intended to put anyone in harm's way, that he always strove to do his best on the job and that he fully understood the concerns that were raised by senior officers. He reread the policy many times and concurred with their assessment that he should have terminated the pursuit at the first intersection when the violator drove onto the sidewalk and ran through the red light. He expressed his regrets over the incident.

On August 27, 2012 Capt. John LeLacheur, the field area commander, filed his investigative report (Exhibit 11) with the Director of State Police. Based on his viewing of the video he noted his observations and made several findings and reached several conclusions. In his opinion the reason for the pursuit and the start of the pursuit complied with Division policy. When the stolen vehicle failed to stop at the first right light at the Exit 2 off-ramp, however, the pursuit should have been terminated and a series of subsequent indicators such as wrong-way driving, near crashes, and the school zone speed should have led to the same conclusion. During the interview Trooper Holston acknowledged that he did not relay his speed or the road conditions to the dispatch center and conceded that he should have ended the pursuit for certain when the stolen vehicle travelled on the sidewalk to pass other vehicles. Capt. LeLacheur noted that Trooper Holston answered all the questions honestly and was visibly upset about

the recommendation for formal discipline for continuing the pursuit in a congested urban area and driving in an extremely dangerous manner.

Lt. Paul Hunt was the assistant commander for Troop B on May 16, 2012 and heard about the pursuit on the broadcast from the Manchester, NH Police Department. The communication described the stolen vehicle and its travel southbound along Interstate 93 to the split with NH Route 101 within the jurisdiction of the Manchester Police Department. Trooper Holston, identified in radio transmissions by his code number 714, reported that he spotted the stolen vehicle near Exit 2 off Interstate 93 in Salem, NH. Lt. Hunt could not tell from the initial transmissions whether or not Trooper Holston was following it or had stopped it. After the two vehicles entered S. Policy Street, however, Lt. Hunt heard the sirens and Trooper Holston's elevated voice in the transmissions and concluded that a pursuit was in progress. He got into a cruiser with Lt. Wagner at the Troop B barracks in Bedford, NH and drove to the location in Salem, NH where the pursuit had come to an end with the apprehension of the perpetrator. He observed that Trooper Holston's cruiser had made minor contact with the stolen vehicle at the scene. Based on what he knew at that time Lt. Hunt praised Trooper Holston for a job well done. Lt. Mullen took photographs of the scene and called a tow truck to impound the stolen vehicle as evidence. Lt. Hunt followed the truck to the Salem Police Department for custodial purposes.

At a later date when Lt. Wagner showed Lt. Hunt the video of the pursuit Lt. Hunt expressed shock, anger and disappointment as he watched the perpetrator engage in evasive driving and observed both drivers speed through a school zone, cross a solid yellow line, weave through traffic and go through signalized intersections. Lt. Hunt observed that the video revealed a lot more than what Trooper Holston had communicated over the radio. He changed his opinion about Trooper's Holston's performance that day and concluded that Trooper Holston had violated the policy on pursuits by failing to appropriately weigh the benefit of apprehension against the risk to public safety. Lt. Hunt stated that Trooper Holston was in control of the pursuit since no one else was aware of the details until the pursuit ended. According to the communication logs no one ordered Trooper Holston to end the pursuit because no one had information that was specific enough to make that determination. Lt. Hunt had additional concerns about the pursuit that included the travel in the breakdown lane on the Exit 2 off-ramp and cutting other vehicles off in the process. He referred to Section C of the Pursuit Review Policy and acknowledged that Trooper Holston provided some but not all of the recommended information especially concerning the speed of the vehicles, the nature of the area through which they travelled and the road conditions.

Captain Chris Wagner is the commander of the Bureau of Support Services. He was a lieutenant and the commander of Troop B on May 16, 2012. He recalled hearing the dispatch from the Manchester PD while he was in his office. He heard that a red Jeep Liberty had been stolen and was headed south on Interstate 93. He continued to listen to updates as he performed his bureau activities. When he heard that the vehicles were headed down S. Policy Street in Salem he concluded that a pursuit was in progress. He got into his cruiser and continued to monitor communications from the cruiser until he arrived at the scene where he spoke with Trooper Holston and initially commended him for a successful

pursuit. Captain Wagner remained on the scene to oversee the processing of the evidence. At a later date he viewed the dash video and issued a report (Exhibit 3) in which he concluded that Trooper Holston was at fault for the vehicle impact. He also expressed his disbelief when he observed the risks that Trooper Holston took during the pursuit and concluded that such conduct constituted a violation of the policy on pursuits.

Captain Wagner was remotely the person in "command and control" of the pursuit and had the ultimate authority to order its continuation or termination but he could only rely on the information that was conveyed to him by Trooper Holston to make such a decision. He explained that Trooper Holston was the first-line decision maker in this case. He acknowledged that a law enforcement officer's adrenaline rises in the "heat of battle" at which time quick judgment calls must be made. Under the circumstances of this case, he explained that there was no actual "command and control" that was communicated to Trooper Holston on whose radio transmissions he had to rely. Captain Wagner concluded that in this case Trooper Holston made a bad judgment call and violated the applicable policy (Exhibit 6). Captain Wagner explained that the policy on pursuits constitutes a directive in the PSC. In accordance with Section 41 GB and RSA 265:8 relative to "Emergency Driving" Captain Wagner explained that a trooper is not required to stop at a signalized intersection but that a trooper must enter and pass through such intersections in a safe manner.

Trooper Holston graduated from the NH Police Training and Standards Council in 2004 and worked for the Raymond, NH Police Department for two years before he joined the State Police in 2006 as a road trooper assigned to the truck enforcement unit with Troop G which conducts inspections of commercial trucks. His training included the operation of vehicles in emergencies but did not include any formal training on pursuits. He received the policy handbook upon hire and spent 35 days in field training. He was familiar with the policy on pursuits and testified that he made his best efforts to comply with it.

On May 16, 2012 Trooper Holston was working at the state inspection station on the southbound side of Interstate 93 in Salem. He heard the radio dispatch about the stolen vehicle in Manchester that was headed south on Interstate 93 and watched for a vehicle that matched the reported description. The theft of a vehicle constitutes a felony offense. Not long after receiving the information Trooper Holston saw a maroon Jeep Liberty go by the inspection station. He got into his cruiser and caught up to it on Interstate 93 southbound. He called in the plate number for verification of its accuracy and for the name of the actual owner. No one other than the dispatcher communicated with him during the pursuit. When he then turned the flashing lights on the cruiser the driver of the stolen vehicle increased his speed and attempted to get away from the cruiser. Trooper Holston then activated the siren and the dashboard camera and continued to follow the vehicle.

The vehicles left Interstate 93 at Exit 2 in Salem, travelled on State Route 97 briefly and turned southward on Policy Street. Trooper Holston was familiar with the area since he lived in a neighboring community. He believed that he could safely proceed down Policy Street. He focused on the pursuit so he would not have to use his right hand to manually hold the speaker during the pursuit. He slowed

down at the first signalized intersection with a red light at the ramp and determined that it was safe to cross it. The light was green at the second signalized intersection and he could visually see the crossing from all sides. At the red light in the school zone on Kelly Street the driver of the stolen vehicle failed to stop whereas Trooper Holston slowed down to look around before he continued to pursue the other vehicle. It was about 9:15 a.m. The elementary school is located down a side street and classes were in session. When the vehicles arrived near the intersection with State Route 28 the perpetrator tried to "jam" the cruiser that was following his by applying the brakes. Trooper Holston had no place to go but straight behind the stolen vehicle. He applied his brakes also but did not have time to come to a complete stop before his impact bumper hit the bumper of the stolen vehicle and caused minor damage to both vehicles.

Trooper Holston had been involved in pursuits before. He considered terminating this one more than once but the apprehension of a felon persuaded him to continue the pursuit. He did not dispute the facts in this case and he acknowledged his failure to communicate crucial facts in his transmissions. The speed of both vehicles in the residential area was estimated at between 65 and 85 miles per hour and the perpetrator was charged with reckless operation for engaging in that misconduct. Trooper Holston had a meeting with Col. Quinn where he had to opportunity to rebut the underlying facts. In his written response Trooper Holston acknowledged that he should have terminated the pursuit earlier and that his failure to do so created risks to himself and the public. He vowed not to repeat this type of pursuit in the future.

In its closing summation the Division of State Police referred to its mission statement and the video from the dashboard camera. It argued that Trooper Holston abused his discretion in this case and violated the policy on pursuits and that the suspension was accordingly warranted. While Trooper Holston was in pursuit of a felon who committed a property crime, the Division concluded that he still had the responsibility to weigh the risks associated with the facts in this case. The Division asked the Board to uphold its finding of a policy violation and its disciplinary action.

Trooper Holston, on the other hand, argued that the Division disciplined him for making a bad judgment call in the field and that such calls are part of the job. He worried that the discipline that was imposed would have a chilling effect on all state troopers who encounter similar circumstances. He noted that no finding was made concerning the words that he yelled at another motorist at one of the intersections. He argued that troopers have the discretion to pursue other vehicles anywhere and that his decision to continue this one did not rise to the level of a policy violation. He restated his earlier testimony that he proceeded safely through the intersections and assessed the road conditions. In his opinion, the real issue in this case is the speed at which both vehicles were travelling down Policy Street and for that he felt that the suspension was not warranted. He concluded that he did not violate the policy on pursuits and accordingly asked the Tribunal to negate that finding and to overturn the suspension.

#### **CONCLUSIONS OF LAW**

The first issue the Board must consider is whether or not Trooper Holston violated the policy on pursuits outlined in **Chapter 41-GA of the PSC (Exhibit 12)**. The preamble in **Section 1.0** attempts to strike a balance between safety considerations and enforcement of the law. It acknowledges that the decision to initiate a pursuit is among the most critical decisions that a member has to make because the member must make it quickly and often under difficult and unpredictable conditions. For these reasons no member shall be disciplined for opting not to initiate a pursuit or for terminating one because the conditions are unduly hazardous or unreasonable. The policy mandates that all members involved in a pursuit file a report for its review up the chain of command.

**Subsection 1.1.A** of the policy defines a high risk pursuit as one that involves “an attempt to apprehend a driver who is aware of the pursuit and who resists apprehension by increasing the speed of the vehicle or by ignoring the officer’s attempt to apprehend him” or her.

**Subsection 1.2.B** refers to the statutory authority of persons who drive emergency vehicles under RSA 265:8 “under certain conditions to (2) proceed through a stop sign or signal after slowing down as necessary for safe operation, (3) exceed the posted speed limit so long as life or property are not endangered, and (4) disregard the rules governing direction of movement or turning.”

**Subsection 1.2.C** also states, however, that these provisions “do not relieve the driver of an emergency vehicle from the duty to drive it with due regard for the safety of all persons” nor do they “protect the driver from the consequences of the reckless disregard for the safety of others.” “Regardless of the circumstances, the member has a duty to operate the vehicle in a manner that minimizes the risk of damage to property or injury or death to persons.”

**Section 2.1.B.3** refers to some factors that a member needs to weigh before the initiation of a pursuit for failure of another driver to stop. Those factors include among others “(a) volume, type, speed and direction of vehicle traffic, (b) nature of the area: residential, commercial, school zone, open highway; and (c) population density.”

**Section 2.2.A** refers to some factors that a member needs to weigh when a termination of the pursuit should be considered. Those factors include among others (7) (a) a balancing of the need to apprehend a felon versus the duty to protect life when the pursuit occurs in the vicinity of an elementary school during school hours.

**Section 2.3.C** requires the member who initiates a pursuit to provide certain known information to the communications center for broadcasting to law enforcement personnel. Those factors are (1) reason for the pursuit, (2) location and direction of travel, (3) identification of the vehicle, (4) number of vehicles, (5) speed of pursued vehicle and (6) any and all information deemed appropriate by the member to assist other units which may be in a position to render assistance.

**Section 2.4.A.6** forbids the conduct of pursuits through signalized intersections due to the risk of collision unless the member first reduces the speed and controls the vehicle so as to avoid collision with

pedestrians or other vehicles and determines that the intersection is clear before he cautiously proceeds through it.

In this case Trooper Holston initiated a pursuit to apprehend a felon who stole a vehicle that belonged to another person and drove on public roads. The felon was aware of the pursuit, increased his speed, ignored the directive to stop and tried to flee from the Trooper. The felon took evasive action on the exit ramp and sped through signalized intersections on State Route 97. The felon then veered southward on Policy Road which cuts through a residential area and an elementary school zone located on one of the side streets. The felon travelled at a high rate of speed at times jumping on the sidewalk, at times crossing the solid yellow line weaving through traffic from both directions and at times crossing signalized intersections without slowing down and in complete disregard for the safety of the public. In fact the felon sideswiped another vehicle in the process and blew two tires on the stolen vehicle when he jumped the curb. He only stopped when he saw another police officer lay down spike mats as he approached another intersection. The felon's conduct in this case was heinous and outrageous and he was headed for the center of town with its heavy concentration of pedestrian and vehicular traffic.

At all times during the pursuit Trooper Holston remained in control of his cruiser. He slowed down at the intersections to assure his own safe passage and that of the public. He also travelled at the same high rate of speed as the felon and followed him closely through a residential area and marked school zone. Both drivers engaged in conduct that posed a risk of harm to themselves as well as to the public when they travelled in the breakdown lane, then on the sidewalk, then on the other side of the yellow line with oncoming traffic. Trooper Holston remained in control of the pursuit as he only communicated minimal information through the dispatcher center. He did not communicate the fact that he was travelling at a high rate of speed in a residential zone and through a school zone and in a dangerous manner that posed a risk of injury to him as well as to others. Trooper Holston failed to adequately weigh the benefits of apprehension against the potential risk of injury.

The policy in question requires an administrative review of all pursuits for two reasons: (1) to determine whether the pursuit was conducted in accordance with the policy and (2) to determine whether the policy needs to be revised or clarified for future guidance. In this case officers from Troop B and headquarters in Concord, NH watched the dashboard video replay, interviewed Trooper Holston, recreated the route of the pursuit through an onsite rerun and unanimously concluded that Trooper Holston violated the policy by engaging in grossly negligent conduct. Their findings and conclusion provided the basis for the disciplinary action.

The Board concludes that Trooper Holston violated **Section 1.2.C** when he operated his cruiser in an unsafe manner on South Policy Road, **Section 2.1.B.3** when he failed to consider the true nature of the pursuit including speed, volume and direction of traffic and the character of the residential and school zone, **Section 2.2.A** when he failed to realize that the risk of injury outweighed the duty to apprehend the reckless driver, and **Section 2.3.C.5 and 6** when he failed to communicate his rate of speed and

other important details of the pursuit to the dispatcher so that his supervisors could assess the situation and render important advice. The Division carried its burden of proof on this issue.

The second issue that the Board must consider is whether or not the policy violation warrants the discipline that was imposed. The commanding authority imposed a suspension from duty for five days without pay. Trooper Holston viewed the video several times and reread the policy on pursuits. He was candid and truthful during the interviews. He did not dispute the facts but he argued that he simply got caught up in the moment and made a bad judgment call by continuing the pursuit that lasted for about two and one-half minutes. He later realized that he should have terminated the pursuit once the felon began to race down busy South Policy Road because at that point the risks outweighed the opportunity for apprehension.

Although the policy guidelines did not specifically require Trooper Holston to report certain details about the pursuit once it was in progress and although the guidelines allowed for considerable discretion and quick judgments it was evident from the video and the "chatter" that Trooper Holston failed to exercise sound discretion and judgment by continuing the pursuit down Policy Road and by not describing it in sufficient detail over the radio to allow for input from the chain of command. The evidence established that the speed was excessive for the conditions and surroundings and that driving on the wrong side of the road, weaving through traffic and hurrying through signalized intersections posed a risk of harm to the public and placed the Division at risk for potential liability. Trooper Holston had eight years of patrolling experience at the time of the pursuit and was familiar with the policy on pursuits. He made the right call to initiate the pursuit but he made the wrong call to continue it down Policy Road even if he was very familiar with that area. He actually considered ending the pursuit of the felon and should have trusted his instinct on that matter. Trooper Holston understands that his actions on May 16, 2012 posed a high risk to public safety and vowed in writing not to repeat that performance.

The Board listened to the broadcasts that were communicated through the dispatch center, viewed the dashboard video and listened attentively to all the witnesses. The Board found all the witnesses to be credible.

The officers who reviewed the evidence concluded that Trooper Holston violated the policy on pursuits and recommended disciplinary action. The Director as chief commanding officer accordingly invoked the authority granted in Per 1002.06 (a) (2) and sanctioned Trooper Holston with a suspension of five days without pay together with certain administrative improvement measures.

The Board also concluded that Trooper Holston violated the policy on pursuits and that some form of discipline was warranted. The Board accorded deference to the agency with its knowledge of law enforcement policies and procedures and found no sound reason to substitute its own judgment for that of the agency. The agency followed the procedural rules, correctly applied law and properly exercised its discretion. The preponderance of evidence supported the agency's finding of a policy

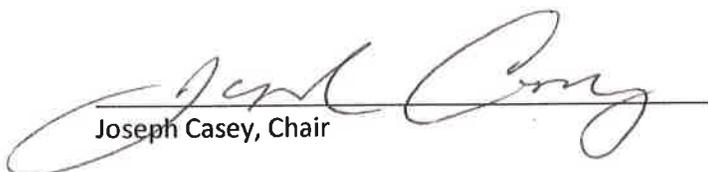
violation as well as its reasoning for imposing a suspension without pay. After a careful review of the evidence the Board concluded that the sanction was appropriate to the violation.

**DECISION**

**Based on the evidence of record the Board, by unanimous vote, upholds the Division's disciplinary suspension without pay.**

**Any motion for rehearing shall comply with the requirements of Per-A 208.03.**

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD

  
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Norman Patenaude, Vice-Chair

  
David Goldstein

  
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