



## **CLOSED CASE SUMMARY**

ISSUED DATE: JUNE 1, 2019

CASE NUMBER: 2018OPA-1102

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant alleged that the Named Employee sexually assaulted her on multiple occasions.

### **ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

In a separate case (2018OPA-0874), the Complainant alleged that Named Employee #1 (NE#1) physically abused her and engaged in other conduct that violated the law and SPD policies. The Complainant’s allegations regarding NE#1’s criminal acts were referred for criminal investigation by SPD. During that criminal investigation, the Complainant told the assigned Detective that, from September 2017 through May 2018, NE#1 engaged in sexual acts with her while she was sleeping and/or unconscious and could not consent. She stated that she did not wake up for any of the sexual assaults as she was taking Ambien at the time. She stated that the Ambien was provided to her by NE#1. She indicated that she learned of the sexual assaults when NE#1 told her about what occurred after the fact.

Given that these acts occurred outside of Seattle, SPD did not have jurisdiction. Accordingly, SPD referred this matter to the Pierce County Sheriff’s Office (PCSO). The Complainant repeated her allegations to the PCSO Detective. However, she indicated that she did not know if she wanted to file a report at that time. The Complainant did not respond to a follow-up call from the PCSO Detective. A prosecutor later declined to file charges. The PCSO referred this matter back to OPA.

OPA then interviewed the Complainant. The Complainant again repeated her allegations that she was sexually assaulted on a number of occasions by NE#1. She further stated that she told at least one other person about the statements that NE#1 made to her about the sexual assaults. The Complainant recounted that the witness she told, who is a nurse, suggested that the Complainant lower the doses of Ambien that she was taking. The Complainant gave OPA the witness’s contact number but stated that the witness might not cooperate with OPA’s investigation as she was friends with NE#1.

OPA reviewed text messages from Facebook Messenger, emails, and a video provided by the Complainant. One text message sent by NE#1 to the Complainant read as follows: "Ambien not ready. They say come back in 20. I'll come back tomorrow. You can have mine tonight." In another text, NE#1 referenced the Complainant taking Ambien and melatonin tablets that were kept in the bedroom. In one last text, NE#1 referenced the Complainant virtually falling asleep at dinner – presumably due to Ambien – and he said that "getting [the Complainant] upstairs was a chore." He included a video of the Complainant, who was clearly incapacitated while sitting at the dinner table.

OPA further interviewed NE#1. He acknowledged that he was involved in a sexual relationship with the Complainant during the time frame she identified and that she would sleep at his residence. When asked whether he was aware of the Complainant taking any sleep medications at that time, he provided the following response: "She would take Benadryl sometimes." When asked whether she would take any other medications, he stated: "No. Not that I'm aware of." NE#1 denied that he ever sexually assaulted the Complainant, that he ever engaged in sexual activity with her while she was sleeping or unconscious, or that he ever had sex with her when she did not consent. He further denied that he ever told the Complainant that he had engaged in any of these activities. NE#1 told OPA that the Complainant was making these allegations to retaliate against him for various reasons.

OPA was able to locate and contact the witness identified by the Complainant. The witness recalled discussing the Complainant's Ambien use during a ski trip that she went on with both the Complainant and NE#1. She remembered telling the Complainant that she should consider reducing her dosage from 10 mg to 5 mg in order to lessen the impact that the drug had on her. The witness stated that this was the recommended dosage for a woman. The witness said that the conversation was "light" and stated that she did not recall the Complainant ever confiding in her that she had been sexually assaulted by NE#1. In response to follow up questions, the witness stated more definitively that the Complainant never told her that NE#1 engaged in sexual activity with NE#1 when she was sleeping or unconscious. The witness said that this was a "surprising accusation" to hear from the Complainant and she stated that the Complainant and NE#1 were getting along very well and were affectionate during the ski trip.

Given the witness's interview, OPA re-interviewed NE#1 regarding his knowledge of the Complainant's Ambien usage. OPA showed NE#1 the text message in which he referenced picking up Ambien and, as the prescription was not available, offered the Complainant one of his Ambien pills. NE#1 stated that, independent of reviewing the text message, he did not recall it or its content. He stated that he did not recall the Complainant having her own Ambien prescription or that he picked up her prescription from a pharmacy. He further did not recall, again independent of the text he was shown, ever offering the Complainant one of his Ambien pills. He stated that she may have used his Ambien pills in the past, but that she had access to a shared medicine cabinet in which the pills were kept. He confirmed that there were melatonin tablets in their bedroom as the texts indicated. NE#1 asserted at this second interview that the texts in question were doctored. In support of this, he contended that the picture next to his messages was of him and a new girlfriend, who he began dating well after the dates listed on the texts. This, in his belief, was evidence that the texts were false.

OPA researched NE#1's argument concerning the purported fake texts. OPA determined that, when a Facebook user changes a profile picture – such as NE#1 did here, it modifies the image on both new and old texts. As such, when the Complainant pulled old texts to provide them to OPA, it makes sense that the profile pictures on the texts were NE#1's current image, not the image he used when the texts were originally sent. Accordingly, OPA dismisses NE#1's assertion that the texts were doctored as unsupported by the evidence.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If NE#1 sexually assaulted the Complainant, he would have violated a number of laws and both City and SPD policies.

In 2018OPA-0834, OPA found that the evidence conclusively supported a finding that NE#1 physically assaulted the Complainant, used drugs, and engaged in biased policing. However, here, the evidence is insufficient to conclude that NE#1 engaged in criminal activity. The main difference between the two cases is that, in 2018OPA-0834, there were three witnesses (including the Complainant) to NE#1's conduct. For example, the Complainant's son and daughter both viewed aspects of the physical assaults. However, here, there are no witnesses to NE#1's alleged criminal activity. As stated by the Complainant, she was sleeping and/or unconscious at the time and only knew

about the conduct based on what NE#1 later told her. Moreover, the only witness identified by the Complainant denied that the Complainant ever reported that NE#1 had sexually assaulted her.

However, the lack of conclusive evidence is mitigated, at least in part, by the severity of the other conduct that OPA established that NE#1 engaged in. It is also mitigated by the lack of credibility NE#1 has in OPA's perspective. Indeed, OPA believes it possible that NE#1 lied during his first OPA interview when he initially told OPA that the only sleep aid the Complainant took was Benadryl and then when he later stated that he did not recall ever giving her Ambien and that she may have taken it from their shared medicine cabinet without his knowledge. Indeed, these assertions are directly contradicted by a text message that OPA believes is reliable evidence. If NE#1 lied about this, then what else did he lie about?

Even given the concerns identified above, OPA finds that the totality of the evidence is simply insufficient to prove that NE#1 sexually assaulted the Complainant. To be clear, this does not mean that OPA believes that NE#1 did not do so – OPA just cannot prove this one way or the other. As such and for the reasons set forth herein, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

### **Named Employee #1 - Allegation #2**

#### ***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

Had it been established that NE#1 sexually assaulted the Complainant, it would have been unprofessional in addition to a violation of law. However, for the same reasons as discussed above, whether NE#1 engaged in this behavior cannot be proved or disproved based on the available evidence. Accordingly, and as with the conclusion reached on Allegation #1, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**