



## CLOSED CASE SUMMARY

ISSUED DATE:      OCTOBER 10, 2021

FROM:                DIRECTOR ANDREW MYERBERG  
                             OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER:      2020OPA-0582 Amended

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

| Allegation(s): |   | Director’s Findings               |
|----------------|---|-----------------------------------|
| # 1            | 5.001 - Standards and Duties 6. Employees May Use Discretion  | Sustained                         |
| # 2            | 6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights   | Not Sustained (Unfounded)         |
| # 3            | 6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest                  | Not Sustained (Lawful and Proper) |
| # 4            | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional  | Allegation Removed                |
| # 5            | 8.200 - Using Force 1. Use of Force: When Authorized  | Not Sustained (Unfounded)         |
| # 6            | 8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation | Allegation Removed                |
| # 7            | 16.130 - POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid                                 | Not Sustained (Lawful and Proper) |

**Imposed Discipline**

|                |
|----------------|
| Oral Reprimand |
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**Named Employee #2**

| Allegation(s): |   | Director’s Findings       |
|----------------|---|---------------------------|
| # 1            | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional                          | Not Sustained (Unfounded) |
| # 2            | 16.130 - POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid | Sustained                 |

**Imposed Discipline**

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| Oral Reprimand |
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***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:**

It was alleged that the Complainant was subjected to excessive force and that officers failed to provide the Complainant with timely medical attention.



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**ADMINISTRATIVE NOTE:**

OPA initially recommended that both Named Employees receive sustained findings for failing to provide medical assistance to the Complainant. Fundamental to OPA's determination was that, even though the Complainant told Named Employee #1 to stop and to not touch them, Named Employee #1 and, later, Named Employee #2 still should have provided the Complainant with medical assistance.

After this finding was issued and the discipline meeting took place, OPA was notified by the Department's EMT coordinators that, based on internal training and legal guidance, SPD EMTs were instructed not to provide medical treatment to individuals who verbally declined. In such situations, SPD EMTs were told to monitor the individual but to summon the Seattle Fire Department to the scene. Based on this new information, OPA determined that a Sustained finding against Named Employee #1 was no longer supported by the evidence. As such, this finding is changed below. OPA's conclusions surrounding Named Employee #2 did not change as there was no evidence that she was aware of the Complainant's refusal of treatment and she did not raise this defense during OPA's investigation.

**SUMMARY OF INVESTIGATION:**

This case arises out of the protests that occurred in Seattle in the aftermath of George Floyd's killing by a Minneapolis police officer. The incident in question took place on September 7, 2020, which was several months after the protests began but on the same date as a significant demonstration that took place at the headquarters of the Seattle Police Officers' Guild. This demonstration involved significant violence against officers and multiple incidences of force used by officers against demonstrators. There were a number of crowd dispersals from various areas of the city, as well as numerous pushes of the crowd back by officers.

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were assigned as EMTs on the date in question. Their primary responsibilities were to provide medical assistance to officers and demonstrators as needed. At one point during the evening, NE#1 set up police tape to block off an area. He and other officers ordered a group of demonstrators to go behind the tape. An individual – who is referred to here as the Complainant – followed NE#1 while yelling: "Don't touch me, don't touch me." At one point, NE#1 pushed the Complainant back from the taped-off area with an open palm. The Complainant began yelling at NE#1 and then tore down a section of the police tape. NE#1 began to chase the Complainant, who was running away, and yelled: "You're under arrest" and "get back here." Ultimately, the Complainant fled from the scene. NE#1 interacted with other demonstrators at that location who were angry about his attempts to arrest the Complainant. He told them that the Complainant had engaged in obstruction.

At a later point, NE#1 and other officers were in the vicinity of the West Precinct. A crowd had gathered there. NE#1 saw the Complainant in the crowd and discussed arresting them with other officers. The officers created a plan to grab the Complainant. While the Complainant was at the rear of the crowd, NE#1 said to another officer: "do it." The Complainant began to back away and NE#1 and other officers began chasing them. NE#1 yelled: "You're under arrest" and "stop, police." While this was occurring, someone in the crowd could be heard yelling, referring to the Complainant: "He's going to fucking trip."

As NE#1 approached the Complainant, the Complainant fell to the ground striking their head. NE#1 ran by the Complainant and then turned back, coming to where the Complainant was situated. The Complainant stated: "Hospital. Hospital. My back. My back. I need to go to the hospital. I'm bleeding." Another officer – referred to here as Witness Officer #1 (WO#1) – tried to move the Complainant onto their back and the Complainant said: "stop" and "don't touch me." WO#1 stated that he needed to remove the Complainant's mask to inspect their head and the



Complainant did not prevent this from occurring. NE#1 was told by an officer to call for the Seattle Fire Department (SFD). Officers began to try to move the Complainant from the area to another location where SFD could access them. The Complainant told the officers: "Please don't move me. I don't trust you, let fire touch me." After further discussing this with the Complainant, officers raised the concern that SFD would be unable to come there because of hostility from the crowd. The Complainant told the crowd to calm down. The Complainant criticized NE#1's decision to chase them over a "misdemeanor." NE#1 said that it was for obstruction and referenced the Complainant running. The Complainant responded: "Over some tape?"

NE#2 came over to where the Complainant was situated. NE#2 inspected the Complainant's injury and spoke to the Complainant to keep the Complainant conscious. NE#2 did not provide the Complainant with medical attention. NE#2 explained to OPA that she did not have medical supplies with her at the time. She stated that this was the case because she knew NE#1 had been with the Complainant and had not treated them medically. She accordingly assumed that there was not a significant injury that required exigent treatment. Once she saw the extent of the wound, she remained with the Complainant to monitor them and did not leave to get medical supplies. She explained that this was because she knew that SFD was on the way.

NE#2 stated that she was not involved in NE#1's decision to chase and then arrest the Complainant. She recalled that NE#1 raised making the arrest with her and she advised him that they should not do so because they were assigned to EMT roles. She cautioned NE#1 to seek the approval of a Sergeant before moving forward with any arrest plan. She said that she discussed with NE#1 locating and identifying the Complainant but not chasing them if they ran away. However, NE#1 chased after the Complainant anyway.

The Complainant was later treated at a hospital. The Complainant received 14 sutures for the laceration to their head. The Complainant also had lacerations on their arms that were glued closed. Lastly, the Complainant was diagnosed with a concussion.

### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

OPA classified this allegation for investigation to determine whether NE#1's decision-making, including choosing to arrest the Complainant when he was assigned to EMT duties, when he chose to try to arrest the Complainant when at the West Precinct and amongst a crowd, when he initiated the foot chase that ended with the Complainant striking their head on the ground and suffering a significant injury, violated policy. Ultimately, OPA finds that it did.

In reaching this finding, OPA believes NE#1's role and NE#2's testimony concerning the significance of that role to be compelling. As NE#2 explained, both she and NE#1 were assigned as EMTs. In that capacity, their role was to provide medical attention to officers and demonstrators. As NE#2 explained and as makes logical sense, it was not their function to make arrests and, particularly, to chase subjects. There were multiple other officers who were assigned to



work in those roles. Moreover, doing so would take them out of the function of imminently providing medical assistance where needed. If a use of force or injury occurred, like here, it would also remove them from their EMT responsibilities for a substantial period of time, if not the remainder of their shift. While it would have been understandable for NE#1 to have made an arrest for an ongoing crime in his presence, it made significantly less sense for him to do so well after the fact.

OPA also finds that NE#1 exercised poor decision-making when he chose to make the arrest of the Complainant at the West Precinct and to begin chasing them. The Complainant committed a misdemeanor crime; however, NE#1 chose to pursue them through a large and often hostile crowd at the West Precinct. While NE#1 could not have predicted that the Complainant would suffer a serious head laceration, he could have foreseen that his and the Complainant's actions would negatively escalate the crowd. Indeed, this was made more likely by the Complainant's role as one of the main organizers of this and other demonstrations, a fact that the officers knew. Moreover, he also could have foreseen that the foot chase and resulting arrest might have resulted in a use of force and/or injury. This is particularly the case as NE#1, himself, identified the Complainant as being combative at various times during the demonstration. Again, OPA is not saying that NE#1 lacked a legal basis to arrest the Complainant or that the arrest was improper, it is just the fact that the decision to do so then and there was misguided.

As discussed in SPD Policy 5.001-POL-6, officers are entrusted with a significant amount of discretion, including the decisions to arrest and use force. Here, NE#1 failed to appropriately exercise that discretion. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

##### ***6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights***

SPD Policy 6.010-POL-3 requires that arrestees be read their Miranda warnings "as soon as practical" after being taken into custody.

NE#1 admittedly did not Mirandize the Complainant. He asserted his belief that another officer did so. OPA confirmed that this was the case.

In evaluating NE#1's compliance with this allegation, OPA recognizes that there were a number of other officers interacting with the Complainant at the time and that the Complainant had just suffered a head injury. As such, OPA does not believe that it violated policy for NE#1 to have not immediately read the Complainant Miranda warnings. Moreover, once the Complainant was stabilized, another officer did so.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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



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**Named Employee #1 - Allegation #3**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

As discussed more fully above, OPA finds that NE#1 made a poor decision when he chose to chase after the Complainant and that this constituted an abuse of his discretion. However, that he should not have chased the Complainant at the time and place he chose to do so does not dictate the finding concerning whether probable cause existed to make the arrest. Indeed, the evidence clearly indicates that there was a lawful basis to arrest the Complainant. Specifically, BWV conclusively showed that the Complainant ripped down police tape. This tape was put up for a lawful reason and the Complainant had no legal right to rip it down. When the Complainant did so, they committed a crime for which the Complainant could be arrested.

Accordingly, while OPA has serious concerns with NE#1's decision-making, the arrest was supported by law. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #1 - Allegation #4**

***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.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)

This allegation was classified to encompass NE#1's decision to arrest the Complainant at the time and place he chose, the injury that resulted from them running away and being chased by NE#1, NE#1's failure to provide the Complainant with medical treatment, and the resultant impact to public trust those actions had. However, OPA finds that this conduct is fully subsumed in the other allegations in this case. Accordingly, OPA concludes that the professionalism allegation is duplicative and recommends that it be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #5**

***8.200 - Using Force 1. Use of Force: When Authorized***

The Complainant and others alleged that NE#1 pushed the Complainant while chasing them, causing them to fall to the ground and suffer a head injury. It was alleged that this force was excessive.



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As part of its investigation, OPA reviewed the BWV. The video showed the inception of the foot chase and then depicted the instant that the Complainant fell to the ground. In OPA's estimation, the video clearly establishes that the Complainant tripped causing them to fall down, not that they were pushed. Accordingly, the video confirms that no force was actually used on the Complainant by NE#1 or, for that matter, by any other officer.

OPA showed this video to the Complainant and, while the Complainant recognized that it did not show physical contact being made with them by an officer, the Complainant maintained their belief that they were pushed. This is certainly the Complainant's prerogative, but the video dictates a contrary finding.

As OPA finds that no force was used, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #6**

***8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation***

NE#1's decision-making, including the choice to chase the Complainant, is already fully addressed in the context of Allegation #1. As such, OPA finds that this allegation is duplicative and recommends that it be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #7**

***16.130 - POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid***

SPD Policy 16.130-POL-2(1) concerns the provision of medical aid by officers. The policy specifically provides the following instruction: "Recognizing the urgency of providing medical aid and the importance of preserving human life, officers will request medical aid, if needed, and render appropriate medical aid within their training as soon as reasonably possible."

The BWV indicated that officers timely called for SFD to respond to the scene. The BWV also showed that officers took steps to inspect the Complainant's injury and to make sure that the Complainant was conscious and in the recovery position. While NE#1 was assigned to EMT duties during this incident, he did not provide the Complainant with any medical assistance. NE#2 also responded to where the Complainant was situated and, while remaining with the Complainant and inspecting their head injury, NE#2 also did not provide any medical assistance.

At his OPA interview, NE#1 acknowledged that the Complainant was bleeding heavily at the time of the injury and that they were asking for medical attention. However, NE#1 pointed out that, when he first tried to assist the Complainant, they told him not to touch them and to stop. He said that this is why he did not actively treat their injuries and instead waited for SFD to respond. OPA asked NE#1 whether the Complainant's statement to not touch them and to stop could have been referring to not wanting to be moved because of their head injury. NE#1 said that he did not consider this.



At their interview, the Complainant, to the contrary, said that they obviously wanted medical attention as they continually complained about their injury and asked referenced the hospital. The Complainant felt that their words, along with their obvious physical condition, should have made clear that they needed the officers' help.

OPA initially recommended that this allegation be Sustained against NE#1, reasoning that the Complainant's condition and their repeated requests for help and a hospital should have caused NE#1 to treat them or at least tried to do so. OPA opined that, had he taken those steps and had the Complainant still refused to allow NE#1 to touch them, he would have at least complied with the expectations of this policy.

After OPA issued this finding, OPA was contacted by SPD's EMT coordinator who expressed concern with this conclusion. He noted that EMTs are trained that when someone refuses treatment, they are required to comply with this request. The EMT coordinator stated that, given this, even had NE#1 wanted to treat the Complainant, he would have been prohibited from doing so.

Based on this new information, OPA's initial determination that NE#1 violated policy by failing to provide medical treatment to the Complainant was in error. Indeed, per the EMT coordinator, NE#1 acted consistent with his training in this situation and, if he had treated the Complainant contrary to their refusal, would have acted improperly. Accordingly, OPA changes its finding from Sustained to Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

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

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

OPA's investigation concluded that NE#2 was not involved in the decision to arrest or chase the Complainant. Indeed, NE#2 advised against doing so. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

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

***16.130 - POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid***

At her interview, NE#2 said that she came to where the Complainant was situated after NE#1 had already been with them. She did not bring her medical supplies with her because she did not believe that it was exigent as NE#1 had not treated the Complainant. When she saw the Complainant, she realized that the Complainant had a significant head laceration. NE#2 acknowledged that her BWV indicated that the Complainant asked for a hospital at that time. NE#2 stated that she did not go get her medical supplies because she believed that SFD was on the way. However, SFD did not arrive until around 15 minutes later. During that time, NE#2 remained with the Complainant, spoke with them, and ensued that they were in the recovery position.

OPA notes that, unlike with NE#1, there is no indication in the record that NE#2 was ever aware that the Complainant had refused treatment and the Complainant did not state this to NE#2. NE#1 did not convey this information to NE#2 and NE#2 did not reference this at her OPA interview. Given that NE#2 was not aware of the refusal of treatment and



because the Complainant did not tell NE#2 that they did not want treatment, NE#2 was still obligated as an EMT to assess and treat the Complainant's injuries. NE#2 did not do so here.

Moreover, while OPA understands why NE#2 may not have originally had her medical supplies when she walked over to the Complainant, it does not explain why she did not go get them and treat the Complainant in the 15 minutes it took for SFD to arrive. Again, the Complainant suffered a serious head laceration, not minor abrasions. NE#2 should have timely treated these injuries, especially given her duties as an EMT.

Accordingly, OPA maintains its recommendation that this allegation be Sustained.

Recommended Finding: **Sustained**