



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 19, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0036

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 2	5.170 - Alcohol and Substance Use 7. No Employee Shall Use or Possess any Controlled Substance, Except at the Direction of a Medical Authority	Sustained
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 4	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Sustained
<b>Imposed Discipline</b>		
Retired in Lieu of Termination		

***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 Named Employee may have improperly and illegally purchased and used narcotics, as well as that the Named Employee may have been dishonest with OPA in a prior investigation. The totality of the Named Employee’s conduct was alleged to have been unprofessional.

### SUMMARY OF INVESTIGATION:

On January 3, 2020, OPA was contacted by personnel assigned to the internal affairs unit for the Pierce County Sheriff’s Office (PCSO). OPA was informed by the PCSO that a juvenile witness (referred to here as the “daughter”) in another ongoing criminal investigation disclosed that two SPD officers may have purchased controlled substances – Oxycodone – from her mother on multiple occasions. One of these officers – Named Employee #1 (NE#1) – was identified by the PCSO by name. The mother was the subject of the other PCSO criminal investigation, which involved her purchasing marijuana that she provided to the daughter.

After OPA learned this information, it initiated an intake. However, OPA did not conduct any investigation as the case was being investigated by an outside criminal agency – PCSO – and the contractual 180-day timeline was accordingly tolled. In addition, no contractual notifications were sent as there was a pending criminal investigation into potentially ongoing conduct. The PCSO continued its investigation.



In the Spring of 2020, the PCSO notified OPA that its criminal investigation was nearing its conclusion. On March 27, 2020, OPA spoke with the PCSO and was given consent to conduct an interview of the daughter. OPA spoke with her via a videocall on April 1, 2020. At the time, the daughter was living in Florida with her father and stepmother. The father was present for the videocall. The daughter told OPA that she observed the mother sell Oxycodone to a man who she believed was an SPD officer on approximately two occasions in or around October 2019. The transactions occurred in a parking lot at the Southcenter Mall. The Oxycodone was prescribed to the mother. She explained to OPA that the mother told her that the man was an SPD officer and provided her with the man's first name, which matched NE#1's first name. The daughter said that her mother met NE#1 through another officer – referred to here as Witness Officer #1 (WO#1) – who was friends with their family. The daughter also provided a description of NE#1's car that he drove to the Southcenter Mall on both occasions. During the videocall, OPA conducted a virtual photo montage of six photographs. The montage included NE#1. During her first pass at the photographs, the daughter reacted to NE#1's picture and said: "That kind of, like, when it popped up kind of like took me back and kind of looks like him, but I can't say for sure because I don't remember exactly what his face looks like." The daughter asked to see NE#1's photograph again. She stated to OPA: "Yeah, I want to look at that one please just for—okay. I'm like—like I really, I really feel like that's what he looked like, but I really don't want to say that because I don't remember exactly what his face looks like." The daughter did not describe any narcotics transactions involving WO#1.

On April 29, 2020, the PCSO provided its completed investigation file to OPA. PCSO personnel informed OPA that the case would not be accepted for filing by the prosecuting attorney's office and was, thus, not referred.

On May 11, 2020, OPA issued a subpoena to Verizon to obtain the mother's telephone records. After reviewing those records, OPA determined that the mother and a phone number associated with NE#1 exchanged 736 texts during the more than a year that ran from April 1, 2019 to May 8, 2020. There was also evidence of six phone calls and 4 MMS messages sent between the two phone numbers. The first of the text messages appeared to be sent on October 14, 2019 and they continued through May 8, 2020. OPA found no evidence of text or phone communications with WO#1.

OPA conducted an interview of the mother at the mother's home on May 22, 2020. At that time, the mother admitted selling and/or providing Oxycodone to NE#1 on at least ten occasions. She corroborated the daughter's account that two of those sales occurred at the Southcenter Mall, as well as provided a similar description to the daughter of the vehicle driven by NE#1. She stated that, as of the time of the interview, NE#1 continued to contact her seeking additional Oxycodone. She did not identify WO#1 as also being involved in the narcotics transactions.

Based on the phone records and the statement provided by the mother, OPA made another criminal referral on May 26, 2020. The criminal investigation was conducted by the King County Sheriff's Office (KCSO). The case was returned to OPA by the KCSO on August 13, 2020. From a review of the one-page report completed by the KCSO, it does not appear that they did any actual investigation and, instead, they simply cited to the work that the PCSO did and that agency's earlier conclusion that no charges would be filed and, as such, that a referral to a prosecutor was not appropriate. There was no indication that the KCSO screened this decision with a prosecutor.

OPA recommenced its investigation, including providing contractual notice to NE#1. OPA alleged that NE#1's conduct may have been contrary to law (SPD Policy 5.001-POL-2), unprofessional as it violated public trust and confidence in him and the Department (SPD Policy 5.001-POL-10), and violative of SPD's policy concerning the possession and use of controlled substances (SPD Policy 5.170-POL-7). OPA also alleged that NE#1's statements to OPA in a past investigation may have been dishonest, thus violating SPD Policy 5.001-POL-11. In that case – 2019OPA-0407, it was



alleged that NE#1 may have been under the influence of a controlled substance at work. Witness officers reported that NE#1 seemed “high” and “messed up.” NE#1 asserted to OPA that his condition was based on side-effects of prescribed medications and was not related to his use of controlled substances while at work. OPA spoke to NE#1’s doctor who confirmed that the medications could have negative side-effects and who said that NE#1 was otherwise using his medication as prescribed and was a responsible patient. Crediting NE#1’s account that he was not using controlled substances and his denial that he suffered from any addiction to narcotics, OPA did not sustain the allegation. However, the evidence obtained by OPA during its investigation here suggested that NE#1’s prior statements could have been knowingly false or misleading.

Shortly after OPA restarted its investigation, NE#1 informed OPA that he was taking extended medical leave. The 180-day timeline was again tolled via agreement with the Guild as of August 23, 2020. NE#1 returned to duty on November 5, 2020 and informed OPA. The investigation again moved forward with the interview of NE#1.

NE#1 stated that he met the mother at a function at WO#1’s house. He said that he learned that she had access to Oxycodone through a prescription. It was NE#1’s understanding that the mother was prescribed Oxycodone as she was suffering from cancer. He subsequently met the mother twice in her driveway to buy Oxycodone, as well as engaged in several purchases of Oxycodone from the mother at the Southcenter Mall. He did not recall the amount of Oxycodone he purchased, how much money he paid the mother, or the milligram amount of each pill. He confirmed that the Oxycodone was for personal use given his addiction to the narcotic. He did not resell any of the Oxycodone. He told OPA that he would generally use the Oxycodone at night before going to sleep and that he did not do so prior to work. He did not recall the dosages and, as such, could not foreclose being under the influence of Oxycodone when he woke in the morning and went into work.

NE#1 acknowledged that he violated the law and SPD’s policy concerning the use of controlled substance, as well as that the totality of his conduct was unprofessional. He told OPA that he was in pain and severely addicted and, while he wanted to do the right thing, he simply could not at the time. He stated that, since this incident, he went to treatment for his addiction. He felt significantly better but knew that there would be professional and disciplinary consequences for his actions.

With regard to whether he was dishonest during his interview in 2019OPA-0407, NE#1 said that it was possible. NE#1 said that he had been addicted to Oxycodone for between two to three years, which would have overlapped with his interview in the prior case. He said, however, that he may not have been using Oxycodone at the specific time of his past interview.

#### **ANALYSIS AND CONCLUSIONS:**

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

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. Included under the ambit of this policy are those criminal laws prohibiting the illegal purchase and use of narcotics, such as Oxycodone.



Here, NE#1 admitted violating the law on multiple occasions by illegally purchasing and then using Oxycodone without a prescription. NE#1 explained that he was suffering from addiction at the time and, while not an excuse, it informed his actions and decision-making.

OPA recognizes that NE#1 chose to seek extensive counseling and rehabilitation and is glad to know that, according to NE#1, he feels “99%” better. However, as NE#1 realized at his interview, there are consequences for his choices, even if they were driven by addiction. The illegal buying and selling of narcotics are, as NE#1 knows, incompatible with the oath of office taken as a Seattle Police officer to uphold the law. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***5.170 - Alcohol and Substance Use 7. No Employee Shall Use or Possess any Controlled Substance, Except at the Direction of a Medical Authority***

SPD Policy 5.170-POL-7 prohibits Department employees from using or possessing any controlled substance, except at the direction of a medical professional.

NE#1 admitted using and possessing Oxycodone, to which he was not prescribed, on numerous occasions over a two to three-year period. This conduct clearly violated SPD policy and, accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***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 illegal purchase and use of narcotics by an SPD employee represent, in OPA’s opinion, a clear breach of community trust. Moreover, such conduct serves to undermine public confidence not only in NE#1, but also in the Department overall. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. At issue here is whether NE#1 was dishonest during his prior interview in 2019OPA-0407, which occurred on August 28, 2019. In that case, the primary question was whether NE#1 was abusing a controlled substance and was negatively affected at work by that substance. During the interview, NE#1 was asked by OPA: “Okay. Are you or were you addicted to any medication, prescription or otherwise?” He responded: “No.”



At his OPA interview in the present case, NE#1 said that he was not sure whether he was dishonest to OPA. He confirmed that his addiction had been ongoing for around two to three years. Given that the interview in which he disclosed the extent and length of his addiction took place on November 28, 2020, OPA extrapolates that NE#1 was suffering from an Oxycodone addiction at least as far back as November 28, 2018. This was well before his interview in 2019OPA-0407 where he denied that this was the case.

OPA notes that whether or not NE#1 was suffering from an Oxycodone addiction was a material fact to the disposition of 2019OPA-0407. His knowing failure to provide this information at his interview stymied OPA's attempts to reach accurate findings. Indeed, had OPA known about the addiction, it likely would have caused OPA to recommend that the allegations in that prior case be Sustained.

For these reasons, OPA finds that NE#1 violated the Department's policy concerning honesty and recommends that this allegation be Sustained.

Recommended Finding: **Sustained**