



CLOSED CASE SUMMARY

ISSUED DATE: MAY 26, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0024

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	Not Sustained (Management Action)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
Imposed Discipline		
Suspension Without Pay – 1 Day		

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Management Action)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Management Action)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Unfounded)
# 2	1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command	Not Sustained (Unfounded)

Named Employee #5

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Management Action)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed



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 Named Employee #1 violated policy and the law when he did not wear a facemask into a hospital and when he failed to immediately place one on when asked to do so by hospital staff. It was further alleged that Named Employee #1's interactions with hospital staff were unprofessional. Lastly, it was alleged that the other Named Employees – a supervisor and patrol officers – failed to take appropriate action to stop, mitigate, and report Named Employee #1's policy violations.

SUMMARY OF INVESTIGATION:

A. Complaint and Overview of Incident

A nurse employed at a local Seattle hospital posted on Twitter about an interaction she had with an SPD officer – later identified as Named Employee #1 (NE#1). The nurse – referred to here as the Complainant – asserted that NE#1 was not wearing a facemask while within a hospital, which was greatly concerning to her given the ongoing pandemic. She stated that, when she approached NE#1 about doing so, he was rude and dismissive towards her. She contended that NE#1's conduct and demeanor towards her and others, as well as his decision to not wear a facemask in the hospital, were inappropriate. OPA viewed this social media post and initiated an investigation. Other community members also filed complaints with OPA.

B. Review of Body Worn Video

As part of its investigation, OPA reviewed NE#1's Body Worn Video (BWV), which documented his entire time in the hospital and his interaction with the nurse and other hospital staff. The BWV showed that NE#1 responded to the hospital to assist with a detainee being treated there who had been assaultive. The BWV confirmed that NE#1 was not wearing a facemask at the time. NE#1 entered the hospital and began speaking with other officers, all of whom were wearing facemasks. None of them referenced NE#1's failure to wear a facemask or asked him to put one on.

After a period of time, another nurse approached NE#1 and handed him a facemask. When she did so, she said: "Here you go man." He took it from her but did not put it on. He continued to confer with the other officers about their plan for dealing with the assaultive detainee. At that point, the Complainant came up to NE#1. She told NE#1 that he needed to wear a mask while in the hospital. NE#1 responded: "I hear that, I'm here doing a job I'm talking to my squad mate about what we got going on. You want me to wear a mask or whatever, we can entertain that idea later on, okay. I just wanna do my job right now, just like you." The Complainant told NE#1 that wearing a facemask was required for patient and staff safety. She informed NE#1 that she would discuss the matter with the charge nurse, and she walked away.

Shortly thereafter, the hospital security supervisor walked over to NE#1 and told him that the charge nurse wanted NE#1 to wear a facemask. NE#1 responded: "Is she all in a tizzy about it?" NE#1 further stated: "I hear what you're saying man, I do...but, however, I've got my things going on, my HR department knows about it, you guys want to take any further action, go ahead." The security supervisor said that he understood. NE#1 continued: "I'm just here to do a job, right? I didn't ask to come here. I was called here. I didn't choose to come here..." NE#1 said, concerning the



detainee: “That guy’s going to fight. I don’t want that on me [referring to the mask] when he’s going to fight.” NE#1 told the security supervisor: “If push comes to shove and she’s really hot and heavy about it, if we go over there to talk to him, I’ll entertain the idea of putting it on. You can tell her that I’m not unreasonable. But we’re here to do a job #1 first, not to make everybody feel [intelligible]...” NE#1 continued to speak to the security supervisor for a few minutes about the detainee’s conduct.

At that point, two additional nurses, both supervisors, walked down the corridor towards NE#1 and the security supervisor. NE#1 turned to face them. Nurse Supervisor #1 told NE#1 that she was a nursing supervisor and that she needed him to put the facemask on. NE#1 said that he heard what she was saying but told her: “I’m here to do a job first...you guys called me here...if this guy fights me, I don’t want this thing on my face at all.” He then stated: “I’ll make you a deal. I’ll wear it here, but when I go up to talk to him, this thing goes off.” Nurse Supervisor #1 responded: “That’s fair.” NE#1 continued, holding up the facemask: “I don’t want to be choked with this fucking thing.” NE#1 spoke briefly with both Nurse Supervisor #1 and Nurse Supervisor #2 concerning the detainee’s behavior. NE#1 then put on the facemask and they walked to where the detainee was situated. No force was ultimately used at that time.

NE#1 interacted with other officers by the entryway to the hospital. They discussed that a supervisor – Named Employee #4 (NE#4) – would be coming to the scene to screen how the detainee should be transported from the hospital. NE#1 then exited the hospital, walked to his patrol vehicle, and sat inside. He remained therein for a period of time. He eventually pulled his patrol vehicle up to the hospital entrance, parked, and exited. NE#1 spoke with other Named Employees and NE#4, who had since arrived at the hospital. Eventually, the detainee was brought outside of the hospital and was loaded into an ambulance by hospital staff. NE#1, who remained outside this entire time and did not re-enter the hospital, left the scene shortly thereafter. He had no other interactions with hospital staff.

C. OPA Investigation and Interviews

As part of its investigation, OPA reviewed the BWV, as detailed above. OPA also conducted interviews of NE#1, NE#3, NE#5, the Complainant, and additional hospital staff. OPA did not interview NE#2 as he left SPD shortly after this incident and was thus unavailable. Moreover, after conducting its investigation, OPA determined that NE#4 did not arrive at the hospital until after the interaction occurred and that he was not notified by the officers or hospital staff of NE#1’s failure to wear a facemask and his statements and demeanor towards hospital staff. Accordingly, OPA also did not interview NE#4.

1. Complainant

The Complainant observed NE#1 enter the hospital and she directed him to where the other officers were situated. She observed that he was not wearing a facemask and both she and another nurse asked him to do so. He refused and, from her perspective, she felt that he was engaging in a “power play” over wearing the facemask. She felt that his conduct was improper. With regard to a disposition, she felt that a suspension would be appropriate but did not think that NE#1 should be fired over this incident. She said that perhaps an apology would be sufficient, but then caveated that it might not be enough given how he acted.

2. Nurse Supervisor #1

Nurse Supervisor #1 recalled being notified that an officer was in the hospital and was refusing to wear a facemask. She located NE#1 and told him that he needed to put on a facemask. She stated that NE#1 was holding a facemask in



his hands. He told her that he would put the facemask on but that he would take it off when he had to interact with the detainee. She remembered that he expressed his concern that the detainee could choke him with the facemask.

Nurse Supervisor #1 was disappointed by NE#1's refusal to wear a facemask and his interactions with her staff. She was so concerned about what occurred that she thought about bringing a complaint to her supervisors. However, she learned that the Complainant had already made a complaint. She did not think that NE#1 should be fired for his actions but felt that he needed to be held accountable and to comply with the rules. She felt that NE#1 also needed some counseling.

3. Nurse Supervisor #2

Nurse Supervisor #2 recalled the incident similarly to Nurse Supervisor #1. She also felt that NE#1 would benefit from counseling regarding his behavior and decision-making.

4. Charge Nurse

The Charge Nurse was approached by another nurse who told her that NE#1 was not wearing a facemask. That nurse, who the Charge Nurse described as being very upset, said that NE#1 had "choice words" for her when she confronted him about the lack of a facemask. The Charge Nurse stated that another nurse also spoke to NE#1 about the lack of a facemask but was also dismissed by him.

The Charge Nurse believed that it would not be useful for her to also try to talk with NE#1, so she went to speak with another officer – whose name she did not know – to see whether that officer could assist in gaining compliance from NE#1. She said that the officer declined to assist. While she did not recall the officer's specific reason, she remembered the officer saying that he could not help. She found this, as well as the failure of other officers to assist and advocate for hospital staff, to be frustrating. The Charge Nurse ultimately asked Nurse Supervisor #1 for help, which worked.

The Charge Nurse noted that the facemask requirement was in place to protect both patients and staff. She noted that the hospital did not even let families into the hospital without facemasks, let alone into the emergency room, which is to ensure the safety of sick and vulnerable individuals.

She ultimately felt that NE#1 should be held accountable for being "very rude to the people, the very people who have been trying to take care of people in a way that's safe." She also felt that an apology was appropriate.

5. Security Supervisor

The Security Supervisor said that he saw NE#1 walk into the hospital without a facemask. He went over to the nurses' station and asked for a facemask that he could give to NE#1. One of the nurses got a facemask and walked it over to NE#1. Shortly thereafter, the Security Supervisor again saw NE#1 and noticed that he still was not wearing a facemask. The Security Supervisor walked over to NE#1 with a facemask after the Charge Nurse unsuccessfully asked another police officer to get NE#1 to comply. That officer told the Charge Nurse that he could not do so because NE#1 did not report to him.

When the Security Supervisor spoke with NE#1, he declined to wear a facemask. He recalled that NE#1 referenced "his thing" and that the "union knows about it." NE#1 also mentioned being called to come to the hospital to provide



them assistance, which the Security Supervisor perceived to be a veiled threat. The Security Supervisor did not push the issue because he needed the officers' assistance to deal with the detainee.

Soon after this, Nursing Supervisor #1 was able to convince NE#1 to wear a facemask. The Security Supervisor recalled NE#1 telling Nursing Supervisor #1 that he would wear a facemask but that he would take it off once he was in the detainee's presence because he did not want the detainee to be able to choke him with it. He felt that this was a bogus concern given how easily the hospital facemasks came apart.

Ultimately, the Security Supervisor felt that NE#1's chain of command should counsel him on how he behaved at the hospital and his refusal to wear a facemask. The Security Supervisor also opined that NE#1 should be told not to use the meritless excuse that he could be choked by the facemask.

6. Named Employee #1

NE#1 told OPA that he responded to the hospital based on a request by another officer – Named Employee #3 (NE#3). He was there in a backing officer role to help deal with a suspect who had assaulted nursing staff. He said that he did not wear a facemask when he entered the hospital because he had been granted an exemption from the Governor's order. He said that he sent a memorandum to SPD's Human Resources (HR) Lieutenant detailing the exemption and the HR Lieutenant informed him that the memorandum was received. NE#1 was not directed to cease patrol duties and, as such, he continued to do so.

NE#1 said that, when he arrived at the hospital, he did not see any signs directing facemask usage. A nurse directed him to where the other Named Employees were, and she did not ask him to wear a facemask. He then met up with other officers and they discussed the plan for dealing with the subject.

OPA showed NE#1 the portions of his BWV where he was provided facemasks on two separate occasions. He said that he did not accept anything from people while in uniform, including facemasks. He noted that he was wearing gloves that he had used during earlier calls, and it would have been unhygienic for him to then take hold of the facemask. He further stated that he did not feel comfortable putting the facemask on at that time because it increased his risk of infection due to his medical exemption. He also noted that the nurses did not give him time to explain why he was not wearing a facemask. When asked follow-up questions concerning this statement, he noted that, in his opinion, the nurses looked "busy" and walked off after handing him the facemasks.

OPA showed NE#1 the BWV of his later interaction with a nurse when he told her that he was not wearing a facemask because of his personal safety. OPA pointed out that he did not tell the nurse about his medical exemption at that time. NE#1 stated that his medical condition was covered by HIPAA and the ADA and he was not required to provide the nurse with information concerning it. When questioned about the discrepancy between this statement and his earlier contention that he did not relay the same information because the nurse appeared "busy," NE#1 stated that the interaction had become more contentious at that point, and he was less willing to provide the nurse with the information. He stated that, in hindsight, he should have taken time after the call was done to speak with the nurses and explain why he did not wear a facemask. He noted his belief that he currently suffered "discrimination" because he did not wear a facemask and that he could not go anywhere as a result.



NE#1 stated that he remained six feet away from people while in the hospital and that he did not approach anyone and was, instead, approached by hospital staff. NE#1 said that he was not aware of any risks associated with not wearing a facemask indoors.

NE#1 was asked about his conversation with the security supervisor. He explained that his use of the phrase “being in a tizzy” was meant to ask whether the nurse was upset about his not wearing a facemask. He acknowledged that this statement was not professional as he was making light of the nurse’s concerns.

When asked why he did not leave the hospital after being approached multiple times concerning the facemask and seeing that the nurses were concerned, he said that he did not have the discretion to do so. He said that he did not go over the radio to ask for a replacement because resources were limited. NE#1 denied that failing to leave the hospital constituted an abuse of his discretion.

OPA reviewed a number of other statements made by NE#1 to the security guard and to other nursing staff. NE#1 acknowledged that they were unprofessional. He further said that he understood the nurses’ perspective of his conduct and why they were concerned.

Lastly, NE#1 denied that he violated the Governor’s and Chief’s orders on facemasks. He said that he had an exemption as he submitted a memorandum to SPD. He stated that he did not provide SPD with medical evidence of his need for an exemption and explained that he was not asked to do so. NE#1 told OPA that the only mask that exacerbated his medical condition was a facemask. He confirmed that he wore gas masks during the demonstrations over the summer. NE#1 said that he had the exemption since the prior June, and he believed that all of the other officers who were at the hospital were aware of his exemption.

7. Named Employee #3

NE#3 observed NE#1 engaging in an animated discussion with a nurse. She stated that, from viewing NE#1’s hand motions, it appeared that he was trying to tell the nurse to calm down.

When asked about NE#1’s lack of a facemask, NE#3 said that she assumed that he had an exemption. However, she did not definitively know this to be the case and had not spoken to NE#1 about it. She further stated that the date of the incident was NE#1’s first day back at work after a long absence.

She said that she could not hear the specific substance of NE#1’s discussions with hospital staff. When asked why she did not intervene, she said that each individual was responsible for their own actions and it was not her place to do so. She noted that she did not discuss other officers’ political beliefs, religions, or medical conditions.

NE#3 did not think that NE#1’s failure to wear a facemask at the hospital would create an issue. She noted that she spoke with NE#1 after the incident and after he received a complaint to apologize for calling him to the hospital.

When asked why she did not report NE#1’s failure to wear a facemask to a supervisor, she said that she believed that he had an exemption and that there was no misconduct to report. She further indicated that she did not overhear the conversations between NE#1 and hospital staff and, thus, did not know of any unprofessional statements that NE#1 might have made that had to be reported.



8. Named Employee #5

NE#5, like NE#3, said that he assumed NE#1 was not wearing a facemask because of an exemption; however, NE#5 did not ask NE#1 whether this was the case. He said that the failure to wear a facemask created a number of problems when responding to calls, so he gave NE#1 the benefit of the doubt that he had a good reason to not do so. That being said, he believed that the hospital made a reasonable request when asking NE#1 to wear a facemask.

NE#5 stated that he heard some of the discussions between NE#1 and hospital staff concerning the wearing of a facemask. At one point, a nurse asked him for his assistance to get NE#1 to wear a facemask. However, she did not directly ask him to speak with NE#1 and NE#5 was unable to clarify the request as the nurse then walked away. When asked by OPA why he did not then go talk with NE#1, he stated that he did not know all of the facts and circumstances surrounding NE#1's not wearing a facemask and he felt that he would make the situation worse if he intervened with incomplete information. Ultimately, NE#5 told OPA that he was focused on the individual they were trying to remove from the hospital. The issue was later resolved when NE#1 put the facemask on.

NE#5 confirmed that he did not notify a supervisor of NE#1's failure to wear a facemask or of the conversations that both he and NE#1 had with hospital staff. He stated that, because he did not know for sure whether NE#1 had an exemption, he was unclear as to whether NE#1 engaged in a violation of policy.

9. Other Documentary Evidence

OPA further obtained a copy of a memorandum that NE#1 submitted to the HR Lieutenant on June 28, 2020. In that memorandum, he stated that he had a medical condition that prevented him from wearing facemasks and asserted that he was entitled to not do so by the Americans with Disabilities Act (ADA). He noted in the memorandum that wearing the facemask caused him mental and physical strain, as well as increased respiratory distress. He wrote that he tried using a variety of different facemasks but stopped doing so as they continued to cause him problems. He asserted that he was exempt from wearing a mask given this medical condition. He further asserted that doing so would subject him to a higher risk of infection and created an unsafe working requirement. He further noted that forcing him to wear a facemask unduly imposed on his civil liberties. In that same memorandum, he also sought an exemption from the general requirement that officers remain clean shaven. No medical information concerning the nature of the diagnosis was attached to the memorandum.

He subsequently received an email from the HR Lieutenant confirming that the state and city provided for medical exemptions. However, the HR Lieutenant did not expressly approve or deny NE#1's specific request for an exemption. The HR Lieutenant also confirmed that the requirement that officers be clean shaven was still in effect. The HR Lieutenant did not request evidence of the medical condition even though he was permitted to do so.

OPA requested that NE#1 provide medical records establishing the medical condition cited to in his memorandum. NE#1 did so. Two of NE#1's medical practitioners issued letters to SPD indicating that NE#1 had a dermatological condition in and around his face that was exacerbated by facemask wearing and shaving. Both medical practitioners supported NE#1's request that he be exempted from the shaving requirement and one of the medical practitioners expressly stated that NE#1's request to be exempted from wearing a facemask was medically warranted. Neither medical practitioner referenced facemasks causing NE#1 to have trouble breathing.

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. This includes the orders requiring facemasks issued by the Governor and the Chief of Police.

As a threshold matter, there is no argument that these orders were somehow invalid. Compelling facemask usage, particularly by government employees and first responders, is well within the purview of both the Governor and the Chief of Police and is a lawful exercise of their powers given the ongoing pandemic. NE#1 does not make this argument and any such assertion would be meritless.

NE#1 stated, however, that he had a medical condition that was exacerbated by wearing a facemask. He provided OPA with a memorandum that he submitted to the HR Lieutenant, as well as documents from his medical practitioners. From what NE#1 produced, it is clear that he sought an exemption and that the HR Lieutenant did not expressly deny it. As such, NE#1 was permitted to assume that it had been accepted. Moreover, while OPA cannot state with certainty whether NE#1's medical condition actually warranted not wearing a facemask, OPA presumes the statements of the medical practitioners to be valid. Accordingly, OPA lacks sufficient evidence to determine that, by not wearing a facemask, NE#1 violated the orders issued by the Governor and the Chief of Police.

This being said, this case clearly shows a significant gap in how medical exemptions from the facemask mandate are being evaluated, SPD's failure to seek evidence supporting the exemption, and risks posed to the community by allowing officers who do not wear facemasks to continue working on patrol and in close proximity to others. This is particularly the case when officers are in and around a hospital due to the relevance therein of patients with significant medical conditions and who are immuno-compromised. While SPD is required to approve exemptions when supported by evidence and when warranted, this does not mean that SPD must continue to allow officers to engage in duties where they have close contact with the public. SPD is only required to issue a reasonable accommodation to the officer that does not compromise the safety of others and Department interests. It is OPA's understanding that NE#1 is no longer actively on patrol; however, it should not have taken this case and all of the public concern surrounding it to get to that point.

For these reasons, OPA finds that this is a systemic issue that needs to be remedied and recommends that this allegation be Not Sustained – Management Action.

- **Management Action:** SPD HR should ensure that its policies and procedures surrounding medical exemptions, particularly in the context of facemasks, are sound and consistent with best practices. SPD should keep records of all SPD officers who have sought exemptions, when and why the exemptions were sought, whether they were granted, and the reason behind the Department's decision on each. In addition, SPD should require that, in all cases, officers provide support from a medical practitioner indicating what the underlying condition is and why the exemption is required. Lastly, where officers do receive an exemption, SPD should not permit them to continue to engage in duties where they will have close contact with community members and, particularly, those at high risk for COVID-19. Such reassignments to non-patrol duties should occur immediately upon the granting of the exemption.

Recommended Finding: **Not Sustained (Management Action)**



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.)

OPA finds that NE#1’s approach to this incident, his demeanor while inside of the hospital, and his interactions with hospital staff were collectively unprofessional. Most notably, NE#1 spoke rudely to hospital staff and was dismissive of their concerns. He recognized this after the fact during his OPA interview. Further, the information he provided hospital staff concerning his decision to not wear a facemask – namely, his fear that it could be used by the detainee to harm him – were inconsistent with the reasons he later used to justify the exemption in both his memorandum and at his OPA interview, as well as were not a basis to excuse him from compliance.

OPA also has significant concerns with his decision to not wear a facemask inside of the hospital, even with his exemption, and his lack of understanding concerning the risk that this placed on people within the hospital. NE#1 pointed to being six feet apart from others; however, BWV established that, on multiple occasions, he was well within six feet of officers and other individuals, and that he walked throughout the hospital without a facemask.

Lastly, the manner in which NE#1 handled this incident indisputably resulted in widespread public concern and consternation. It reflected negatively on NE#1 and on the Department as a whole and diminished public trust and confidence in both.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 6. Employees May Use Discretion

OPA finds that this allegation is duplicative of both Allegation #1 and Allegation #2, above. Accordingly, OPA recommends that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: “Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation.” (*Id.*)



This allegation was classified for investigation against NE#2, NE#3, and NE#5 due to their failure to intervene and to cause NE#1 to wear a facemask, as well as due to the fact that none of them notified a supervisor about NE#1's conduct after the fact. From OPA's review of BWV, all three were, at least at some points, within the vicinity of NE#1's discussions with hospital staff. They were also all well aware of the requirement that facemasks be worn and observed NE#1 not wearing a facemask in the hospital.

As discussed above, NE#2 left SPD and was not interviewed by OPA; however, both NE#3 and NE#5 asserted their belief that NE#1 had an exemption but acknowledged that they did not know this for a fact, and they did not ask NE#1 about it. Both stated that they did not report NE#1's conduct to their supervisor because of the possibility that he had an exemption, which in their opinion would indicate that NE#1 did not, in fact, engage in misconduct.

In some respects, these officers were placed in a difficult position. They assumed that NE#1 had an exemption but did not know it for a fact. Moreover, they perceived this to be sensitive medical information that would be inappropriate to ask about. However, OPA has concerns with NE#3's statement that she did not believe that NE#1 not wearing a facemask in the hospital would create an issue. OPA struggles to understand how she could possibly think this given the clear and unassailable science surrounding COVID-19, how it is transmitted, and the increased rates of infection and significant health effects on those who are immuno-compromised or who have underlying medical conditions – such as hospitalized individuals. In addition, OPA is also concerned with NE#5's failure to do anything in response to the nurse's direct request to him. Even had he raised the concerns with NE#1 unsuccessfully or tried to explain his position to the nurse, it would have been better than taking no action whatsoever.

Ultimately, OPA reaches two conclusions concerning the behavior of NE#2, NE#3, and NE#5. First, had SPD properly restricted an unmasked officer from conducting patrol duties and responding to a hospital, they would not have been put in this position. Second, given OPA's expectation that SPD will be ensuring that what happened here does not occur again by more comprehensively and critically assessing requests for exemptions and taking officers with exemptions out of close contact with the community, officers should be on notice that, moving forward, they must intervene where fellow officers are unmasked within sensitive areas. If this does not occur in the future, the failure to do so will be viewed by OPA as misconduct. Accordingly, OPA recommends that this allegation be Not Sustained – Management Action as against NE#2, NE#3, and NE#5.

- **Management Action:** In addition to the recommendations detailed above (see Named Employee #1 – Allegation #1), SPD should inform the Named Employees and all other officers of the modifications that will be put in place concerning facemask exemptions, including that officers with such exemption will no longer be on patrol, as well as that officers must intervene and/or report when they observe an officer not wearing a facemask in a sensitive area. This requirement should be put in place until the facemask mandates are lifted.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #2

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

The conduct underlying the professionalism is fully subsumed in Allegation #1. As such, this allegation is duplicative and OPA recommends that this allegation be removed as against NE#2, NE#3, and NE#5.

Recommended Finding: **Allegation Removed**



Named Employee #3 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

For the same reasons as stated above (see Named Employee #2 – Allegation #1), OPA recommends that this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #3 - Allegation #2

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

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #4 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

It was alleged that NE#4, a supervisor who responded to the scene, failed to take action to investigate, report, and/or mitigate NE#1's potential misconduct.

As discussed above, NE#4 did not respond to the scene until after the fact. Moreover, once he arrived, he was not informed by either the officers or hospital staff of any concerns with NE#1's conduct. In addition, he did not review the BWV of this incident and, indeed, would have had no reason to do so given that there was no use of force to investigate, and no complaint brought to his attention. Lastly, when he arrived, NE#1 was outside of the hospital and was not in violation of the facemask mandate.

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

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

Named Employee #4 - Allegation #2

1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command

SPD Policy 1.020-POL-7 requires that command employees take responsibility for every aspect of their command.

For the same reasons as discussed above (see Named Employee #4 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #5 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

For the same reasons as stated above (see Named Employee #2 – Allegation #1), OPA recommends that this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #5 - Allegation #2

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

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**