




CLOSED CASE SUMMARY

ISSUED DATE: APRIL 28, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0364

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.400-POL-1 Use of Force Reporting and Investigation, 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Not Sustained - Inconclusive
# 2	8.200 - Using Force (1) Use of Force: When Authorized	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 alleges that an officer—later identified as Named Employee #1 (NE#1)—unjustifiably pointed a firearm at Community Member #1 (CM#1).

ADMINISTRATIVE NOTE:

The Office of Inspector General certified this investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

The Complainant—a registered nurse at Hospital #1—submitted an online OPA complaint. It alleged that the Complainant and two officers escorted CM#1—an arrested patient—to a bathroom. The door was cracked as CM#1 occupied the bathroom alone. The Complainant heard something hit the floor. An officer—later identified as NE#1—looked inside the bathroom, opened the door, unholstered his gun, aimed it at CM#1, and said, “Don’t touch that.” The Complainant said CM#1 had hidden drug paraphernalia, including a lighter, in her vagina. The lighter fell into the toilet, and a glass device at CM#1’s feet. The Complainant assumed the items fell or were removed by CM#1. CM#1 repeatedly said, “I didn’t know it was in there,” but never tried to retrieve the items. The Complainant alleged NE#1 kept his gun aimed at CM#1 even after recognizing she only had drug paraphernalia. The Complainant represented that hospital staff questioned the appropriateness of pointing a gun at CM#1, who posed no threat, and whom officers and hospital staff searched before the incident.



Computer-aided dispatch (CAD)¹ and global positioning system (GPS)² data showed NE#1 and Witness Employee #1 (WE#1) guarded CM#1 at Hospital #1.

On December 9, 2022, OPA interviewed the Complainant at Hospital #1. The Complainant's interview was consistent with the complaint. Additionally, the Complainant noted NE#1 pointed his gun at CM#1 until she was handcuffed.

On January 20, 2023, OPA interviewed WE#1. WE#1 confirmed working hospital guard with NE#1 on the day in question. WE#1 said CM#1 was under hospital observation after she claimed to swallow narcotics. CM#1 was about to be discharged when she said she needed to use the bathroom. Due to her previously swallowing drugs, the Complainant took NE#1, CM#1, and WE#1 to a bathroom with a small window toward the top of the door. WE#1 said after the Complainant entered the bathroom, NE#1 apparently "saw something" inside the bathroom. WE#1 said NE#1 opened the bathroom door, had his gun "on the low ready," and told CM#1 to drop what was in her hands. WE#1 said CM#1 "dropped the crack pipe and a lighter." WE#1 said he allowed CM#1 to pull up her pants, grabbed her arm, and escorted her to a bed. WE#1 estimated the incident lasted up to fifteen seconds. WE#1 denied seeing NE#1 pointing a gun at CM#1. WE#1 also said had NE#1 pointed a gun at CM#1, it was reasonable, necessary, and proportional since they did not know what was in her hands.

On January 20, 2023, OPA interviewed NE#1. NE#1 confirmed he and WE#1 guarded CM#1 at Hospital #1. NE#1 said CM#1 asked to use the bathroom while preparing for discharge. NE#1 said she was unhandcuffed and taken to a bathroom with a small window toward the top of the door. NE#1 said after CM#1 entered the bathroom, he looked through the window and saw her with what "looked like a metal object. I thought it was, like, a knife or a screwdriver or something sharp in her hand." NE#1 said he entered the bathroom with his gun "kind of like a low ready" and ordered CM#1 to drop what she had. NE#1's union representative explained, "'low ready' is a training tactic that we use to draw our firearm if a threat presents itself, but we are not up on target and have made the determination to fire at said target. That's -- what [NE#1] described is a trained tactic to draw your firearm to the low-ready position so that you can safely have it out of your holster and accessible more quickly but not necessarily on target to handle that threat in that manner."

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.400-POL-1 Use of Force Reporting and Investigation, 1. Officers Will Document in a Use-of- Force Report All Uses of Force Except De Minimis Force.

NE#1 allegedly failed to document reportable force.

"The Seattle Police Department recognizes the magnitude of the responsibility that comes with the constitutional authority to use force. This responsibility includes maintaining vigorous and transparent oversight systems to ensure accountability to the community and maintain their trust. To ensure transparency and accountability, officers must clearly and reliably report and thoroughly document each time they use force defined as Type I, II, or III." SPD Policy 8.400-POL-1. All uses of force are reportable except *de minimis* force. *Id.*

¹ CAD showed NE#1, WE#1, and three other officers were logged to the related call. WE#1 cleared the call as "Assistance Rendered – Assisted with hospital guard and transported suspect to KCJ when she was discharged."

² GPS showed NE#1 and WE#1 were at Hospital #1 when the Complainant said the incident occurred.



Here, there is insufficient evidence that NE#1 pointed a gun at CM#1. NE#1 and WE#1 indicated NE#1's gun was in low ready, which is nonreportable *de minimis* force. Conversely, the Complainant, who was further back, believed NE#1's gun was aimed at CM#1. Without the benefit of body-worn video³ or the Complainant's account, OPA cannot determine which account more likely than not occurred. Had NE#1 aimed a gun at CM#1, that would have constituted Type I force, requiring reporting and documenting. However, no report or documentation was required if NE#1's gun stayed in low ready.⁴

Accordingly, OPA recommends this allegation be Not Sustained - Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #1 - Allegation #2

8.200 - Using Force (1) Use of Force: When Authorized

NE#1 allegedly used unauthorized force against CM#1.

An officer's use of force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." SPD Policy 8.050. The policy lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where "no reasonably effective alternative to the use of force appeared to exist" and "the amount of force used was reasonable to effect the lawful purpose intended." *Id.* Last, the force used must be proportional to the threat posed to the officer. *Id.* "Pointing of a firearm at a subject" is Type I force.

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

³ The officers were prohibited from video recording at Hospital #1. *See* 16.090-POL-1(5)(d) (Employees will not record in restrooms, jails, and ***the interiors of medical***, mental health, counseling, or therapeutic facilities unless for a direct law enforcement purpose [emphasis added].)

⁴ Simply displaying a weapon is not reportable force, nor is holding a firearm without aiming at a person, as with the sul and low ready positions, where the muzzle of the firearm is not pointed at any part of a person's body. SPD Policy 8.050.