



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 8, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2019OPA-0710

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 (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 3	5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain	Not Sustained (Unfounded)
# 4	5.020 - Gifts and Gratuities 1. Department employees shall not accept any gift or other item if it appears that the person offering the gift is trying to influence the employee	Not Sustained (Unfounded)

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 may have violated the law, acted unprofessionally, used his position for personal gain, and accepted gifts intended to influence the Named Employee in connection with the Named Employee's position as the president of a nonprofit organization.

SUMMARY OF INVESTIGATION:

OPA received a complaint from a non-profit organization concerning Named Employee #1 (NE#1). The complaint stated that, until July 2019, NE#1 served as president of the non-profit, the mission of which is to "enhance the resilience" of first responders. During his time as president of the non-profit, the complaint alleged that NE#1: (i) forged the signature of the non-profit's secretary on two checks, (ii) made "inappropriate and unapproved charges" on the non-profit's credit card, and (iii) may have accepted compensation for recommending a specific treatment center in favor of others.

Because the allegations in the complaint raised criminal allegations, the complaint was referred to the Investigation Bureau of the Seattle Police Department. The complaint was subsequently returned to OPA after the criminal investigation was closed without criminal charges. OPA commenced this investigation.

OPA reviewed the SPD Investigation Report, text messages of NE#1, as well as financial documents, organizing documents, and board minutes from the non-profit organization. OPA also conducted recorded interviews with



NE#1, a non-party witness, as well as the non-profit's secretary, present director of operations, and a board member.

The SPD Investigation Report was written in the form of a memorandum to the Assistant Chief of the Investigations Bureau (Investigation Report). According to the Investigation Report, NE#1 founded the non-profit organization in 2013 and has served as the non-profit's president since that time. The non-profit provides services for public safety employees in crisis, including by providing financial assistance for clients to seek treatment. In late 2018, NE#1 received treatment for himself from a 3rd party vendor (Vendor). However, the relationship between NE#1 and members of the non-profit's board of directors became strained and, on June 27, 2019, the board of director's suspended NE#1 from his position as president and took control of the finances from him. After a review of the non-profit's finances, the board of directors filed a complaint with OPA. The complaint alleged that NE#1 wrote two unauthorized checks in the spring of 2019 to rehab facilities and, in doing so, forged the signature of the non-profit's secretary. The complaint also alleged that NE#1 made unauthorized purchases with the non-profit's credit card and that NE#1 was engaged in a "kickback scheme" with the Vendor, in which NE#1 would refer patients to the Vendor in return for compensation.

In her recorded interview, the non-profit's secretary explained that the non-profit is separate from SPD and staffed entirely by volunteers. As part of its mission, the non-profit would screen clients and discuss possible referrals to treatment facilities. If a client needed financial assistance for treatment, the non-profit would provide "scholarships" approved by the board. The secretary stated that the non-profit's board had been "very reliant" on NE#1 and did not supervise the bank statements. Instead, NE#1 was responsible for all financial matters, including the credit card and checking account, although the secretary maintained physical control of checkbook and the non-profit's bylaws required two signatures on every check. After the board suspended NE#1 from his position and assumed control of the non-profit's finances, the secretary stated that the board noticed "some alarming charges" to the credit card as well as two checks made out to treatment facilities that appeared to have the secretary's forged signature. The secretary was not aware of any proof that NE#1 accepted any kind of "kickback" from the Vendor, but she explained that the board had concerns because NE#1 appeared to have a strong relationship with the Vendor and recommended the Vendor almost exclusively.

Other recorded interviews largely corroborated the statements of the secretary. The non-profit's director of operations (an SPD employee) stated that the usual practice at the non-profit was that the board approved any scholarships and that two signatures were required on every check. However, the director of operations confirmed that NE#1 had complete financial control of the credit card because the card was in NE#1's name. Similarly, the board member (also an SPD employee) confirmed that NE#1 opened both the credit card and checking accounts and had control of both. Finally, a recorded statement from a non-party witness—a former employee of the Vendor—revealed no direct evidence that the Vendor paid "kickbacks" to NE#1. However, the non-party witness stated that there were "rumors" that the Vendor offered to make a large donation to the non-profit, but that this donation never actually materialized.

At his recorded interview, NE#1 stated that he was the SPD Safety Officer for the previous seven years. Although the Safety Officer position was technically separate from SPD Peer Support, NE#1 stated that he was frequently brought in to handle Peer Support issues because of his expertise. In 2013, NE#1 helped found the non-profit. Although a board of directors was formed shortly before the non-profit started operations, the board was not involved in the day-to-day operations of the non-profit as its meetings were quarterly and typically held by conference call. NE#1 drafted the non-profit bylaws, took most of the calls, and opened both the credit card and



checking accounts. NE#1 stated that he was the only authorized signature for the checking account. Although the non-profit's bylaws required checks to have two signatures, the bank did not require any signature besides NE#1 because the secretary's name was not on the account. NE#1 confirmed that his signature appeared on both of the checks at issue, but denied any recollection of how the secretary's allegedly forged signature came to appear on the checks. NE#1 further described a lax system in which the secretary would occasionally pre-sign a series of checks and leave them for NE#1, as well as time sensitive situations in which NE#1 would sign the checks and alert the board after the fact. But, in any event, NE#1 denied forging the secretary's signature and stated that there would have been no logical reason for him to do so as her signature was not even required. Both checks were for client "scholarships." Similarly, NE#1 stated that there were no conditions on his use of the credit card in the non-profit bylaws. In any event, NE#1 claimed that the board told him to use the credit card for charges related to the non-profits business and never asked him about any of the allegedly improper charges.

NE#1 denied receiving any "kickbacks" from the Vendor. NE#1 stated that the only thing he may have received from the Vendor was a t-shirt, but that he never received any money in connection with making referrals. Instead, NE#1 explained that his preference for referring clients to the Vendor was related to his own experience there as a client and the Vendor's unique licensing and insurance situation which permitted the Vendor to treat trauma in the absence of other issues, such as addiction.

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.

The Complainant alleged that NE#1 engaged in conduct that violated the law as well as City and Department policy. This section analyzes potential legal violations. Other potential violations of City and Department policies are set forth specifically in the immediately following sections.

As an initial matter, NE#1's actions related to this complaint were investigated by the SPD Investigation Bureau and reviewed by the King County Prosecuting Attorney's Office (KCPAO). No charges were filed against NE#1. In reviewing potential violations of this policy, OPA is not bound by the conclusions of SPD or KCPAO, nor do OPA's findings require the same burden of proof. However, the preponderance of the evidence does not demonstrate that NE#1 violated the law in this case.

Regarding the credit card purchases, NE#1 was the signatory and only authorized user of the credit card account. Moreover, the non-profit did not have a written policy limiting NE#1's use of the credit card and, instead, the non-profit's bylaws gave NE#1 broad authority regarding day-to-day purchases. Accordingly, NE#1's credit card purchases were not illegal, even if the board of directors later regarded some expenditures as inappropriate.

Regarding the two allegedly forged checks, NE#1 denied any recollection of how the secretary's name was signed on either, nor does any evidence affirmatively establish that NE#1 wrote the secretary's name on the checks. Even if NE#1 had written the secretary's name on either of the checks, the preponderance of the evidence does not point to any deceitful intent. To the contrary, the way the secretary's name was written on both checks lacked any effort to duplicate the secretary's signature. Additionally, the purchases made with both checks were the sort of purchases



the non-profit regularly made and, in one instance, the non-profit's director of operations was aware of the expenditure. NE#1 also set up and maintained the non-profit's checking account and was the only required signatory on the account. Although the non-profit's bylaws required that two signatures appear on each check, in practice, NE#1's signature was the only one actually required.

Finally, no evidence shows that NE#1 solicited or accepted any compensation from the Vendor in exchange for referring clients. Rather, NE#1 denied receiving any kickbacks for the referrals and explained that his preference for the Vendor stemmed, instead, from his personal experience as a client and the Vendor's unique ability to treat trauma patients without coexistent addiction issues.

Accordingly, OPA recommends a finding of "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." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (SPD Policy 5.001-POL-10.)

The allegations in the complaint do not concern NE#1's behavior while on duty or as an SPD employee. However, to the extent a complaint alleges that a named employee committed crimes involving deceit—such a forgery—such behavior, if established, would undermine "public trust" in both the named employee and the Department. Here, as discussed above, the preponderance of the evidence does not demonstrate that NE#1 forged the secretary's signature. Even if he had, it does not appear to have been done with any deceitful intent. Relatedly, there was no evidence that NE#1 accepted or solicited a kickback from the Vendor.

Whether making unauthorized purchases on a non-profit credit card, if established, would even qualify as behavior that would undermine the "public trust" presents a closer call. However, OPA need not resolve that issue here as the evidence does not show, by the requisite burden of proof, that the purchases made by NE#1 were unauthorized.

Accordingly, OPA recommends a finding of "Not Sustained (Inconclusive)."

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain

SPD employees are prohibited from using their position or authority for personal gain. (SPD Policy 5.001-POL-13.)

The allegations in the complaint do not concern NE#1's behavior while on duty or in connection with NE#1's position or authority. Instead, the allegations against NE#1 were made by board members of a non-profit solely in connection with NE#1's behavior as the non-profit's president. The non-profit was tangentially related to NE#1's position as a police officer in that the non-profit's mission was directed towards first responders, the non-profit



operated out of a police union office, and because NE#1, several volunteers, and clients were SPD employees. Additionally, NE#1 was involved in making referrals when he was consulted by Peer Support, but this was due to his involvement with the non-profit, not his position as Safety Officer. SPD Policy 5.001-POL clearly prefaces that employees should only be disciplined under the policy where “there is a connection between the conduct and the duties, rank, assignment, or responsibilities of the employee.” Here, the “personal gain” NE#1 was alleged to have flowed directly from his position and authority as the volunteer president of the non-profit, not his employment with SPD or his position as SPD Safety Officer.

However, even if this policy did apply to the alleged behavior, the preponderance of the evidence does not show that NE#1 derived any personal gain from the use of the non-profit’s credit cards or checks. NE#1 stated that all of the credit card charges were for non-profit business and the board of directors did not contemporaneously discuss these charges with NE#1. Although the board later called the propriety of some charges into question, the evidence does not show, by the requisite burden of proof, that these charges were made for NE#1’s personal gain instead of in connection with non-profit business. Similarly, regardless of whether the secretary’s signature was forged on either check at issue, it was undisputed—and non-party witnesses corroborated—that these checks paid for client treatment in line with the non-profit’s mission. Finally, no evidence showed that NE#1 ever solicited, or that the Vendor ever paid, “kickbacks.”

Accordingly, OPA recommends a finding of “Not Sustained (Unfounded).”

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

Named Employee #1 - Allegation #4

5.020 - Gifts and Gratuities 1. Department employees shall not accept any gift or other item if it appears that the person offering the gift is trying to influence the employee

SPD Employees are prohibited from soliciting or accepting “any item of value” in the course of their duties if it would appear to a reasonable person that the intent of the item was to “influence the employee.” (SPD Policy 5.020-POL-1.)

The Complainant alleged that NE#1 either solicited or received “kickbacks” from the Vendor in exchange for using his position as president of the non-profit to refer clients to the Vendor for treatment. As discussed at length above, it does not appear that any such kickback was alleged to have occurred in the course of NE#1’s duties, nor does it appear that any such kickback would have been intended to influence NE#1 in his position as a police officer or SPD Safety Officer. Instead, the kickbacks were allegedly meant to influence NE#1 in his volunteer position as president of the non-profit. As SPD Policy 5.020-POL applies only to items received by an employee “in the course of their duties,” this section does not apply to the behavior alleged.

However, even if this policy did apply to the alleged behavior, there is no evidence that NE#1 ever solicited or received any such kickback. Instead, this allegation rests only on NE#1’s apparently strong relationship with the Vendor, the regularity with which NE#1 referred clients to the Vendor, a single occasion in which NE#1 wore the Vendor’s tee shirt while volunteering at the Vendor’s conference booth, and unsubstantiated “rumors” that the Vendor was going to make a donation to the non-profit which never materialized. There is no direct evidence—and NE#1 denies—that NE#1 ever solicited or received any item of value from the Vendor.



Accordingly, OPA recommends a finding of “Not Sustained (Unfounded).”

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