



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 28, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0418

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics	Sustained
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

#### **Imposed Discipline**

Written Reprimand

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

***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 Employees may have subjected the Complainant to excessive force. It was further alleged that Named Employee #1 may have failed to de-escalate and may have engaged in unprofessional conduct.

### **SUMMARY OF INVESTIGATION:**

Officers, including the Named Employees, were dispatched to a call concerning an "unruly" subject who was refusing to leave a hospital. When they arrived, they spoke with hospital security who reiterated that the subject was causing a disturbance and that they wanted him to leave. The officers observed the subject yelling at a security guard who was telling him that he needed to leave the hospital. The officers made contact with the subject – who they later identified as the Complainant, identified themselves as SPD officers, and said that they would speak with him outside.

While outside, the Complainant told the officers that he had been in a car accident and said that he needed a ride home. Named Employee #2 (NE#2) stepped away to call his supervisor to clear a courtesy ride for the Complainant. At that time, the situation between the Complainant and Named Employee #1 (NE#1) escalated significantly.



Body Worn Video (BWV) showed the full interaction between the Complainant and NE#1. The Complainant began telling her about what had occurred in the hospital. She interrupted him and asked if he needed a ride home and he said yes. The Complainant said to NE#1: "I'm not getting hostile with you. I promise I'm not." He then asked NE#1 to "listen to his testimony." NE#1 kept referencing the ride. The Complainant and NE#1 spoke over each other, with NE#1 ultimately stating: "Are you going to keep interrupting me? Because I'm not going to give you a ride if you keep acting like this." This caused the Complainant to grow frustrated. He turned around and exclaimed that no one was trying to hear and understand what had happened to him.

The Complainant began talking to hospital staff and complained about how he was mistreated that evening. NE#1 interjected: "If you're going to act like this..." The Complainant turned around and faced her. He said: "Wow, just take me home, just take me home. I'm done, I'm done, I'm done talking." NE#1 replied: "We don't have to give you a ride if you're going to be rude." The Complainant took a step towards her and said: "Ma'am, you don't give a fuck what I have to say." He pointed towards the hospital and began to speak. NE#1 pushed his hand away and said: "Get your fucking hand down." The Complainant paused and said: "Don't touch me for one." He then took a step towards the hospital. NE#1 said: "You're going to leave the property. We're not giving you a ride home because you're not being...get the fuck off the property."

The Complainant turned to face NE#1. He asked her: "Do you not understand what I'm saying?" NE#1 again told him to leave. He asked NE#1 what was "wrong" with her. She again told him to leave and when he would not do so, she grabbed hold of his arm to turn him away from the hospital. The Complainant pushed her hand away. NE#1 and NE#2, who had come back over at that point, both grabbed the Complainant's arms. NE#1 called for a backing unit. Both NE#1 and NE#2 pulled the Complainant down to the ground where he was handcuffed. No further force was used.

OPA later commenced an investigation into this incident. OPA classified allegations of excessive force against both NE#1 and NE#2, as well as alleged failure to de-escalate and unprofessionalism against NE#1. OPA lastly alleged professionalism allegations against two other officers. One of those allegations was returned to the chain of command for handling as a Supervisor Action, the other is still under investigation and will be issued findings in a separate DCM.

## **ANALYSIS AND CONCLUSIONS:**

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

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

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*) These mental and behavioral factors should be



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balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

From OPA’s review of the BWV, it is clear that NE#1’s words and conduct unduly escalated this matter and, as such, violated policy. First, NE#1 repeatedly interrupted the Complainant, which caused him to become increasingly frustrated. It appeared that he wanted to simply explain to her what occurred to him earlier. While the Complainant appeared intoxicated and while it may not have changed NE#1’s decision that he needed to leave the hospital, she should have taken a few extra seconds to hear him out before cutting him off. Second, NE#1’s demeanor towards the Complainant was, in OPA’s estimation, aggressive and impatient from the outset. This further contributed to the escalation of the incident. Third, NE#1’s use of profanity towards the Complainant was unnecessary under the circumstances and served no purpose other than to increase the tension between her and the Complainant. Fourth and last, NE#1’s pushing of the Complainant’s hand away, coupled with her profanity and other behavior, was also escalating in OPA’s opinion.

The totality of NE#1’s conduct and statements served to escalate the situation. This did not have to happen and was inconsistent with the Department’s expectations of her conduct. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

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

While OPA believes that NE#1 failed to de-escalate, this does not mandate that OPA also find that the force used was excessive. In some situations (for example, where the failure to de-escalate is the but for cause of the force), such a finding will be required; however, OPA does not believe that this was the case here. The BWV indicated that NE#1 gave the Complainant several orders to leave the property. While he may not have agreed with those orders, he was required to comply. When he did not do so and when he moved back towards the hospital, NE#1 took hold of his arm to direct him away. He then slapped her hand from his arm.

At that point and independent of everything that had transpired earlier, NE#1 and NE#2 were permitted to use an appropriate level of force to prevent him from again slapping her hand away or further escalating his behavior, as well as to take him into custody. The force they used, control holds and a controlled takedown to the ground, was reasonable, necessary, and proportional under the circumstances. The officers did not use any other force and modulated their actions once the Complainant was secured on the ground.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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



**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 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.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

OPA believes that NE#1’s conduct and demeanor towards the Complainant were unprofessional. OPA reaches this conclusion primarily based on NE#1’s unnecessary escalation of this incident. However, this conduct is fully subsumed in Allegation #1 and, as such, OPA does not see the need to also sustain this allegation. Instead, OPA issues NE#1 the below Training Referral.

- **Training Referral:** NE#1’s chain of command should debrief this incident with NE#1, including her aggressive approach towards the Complainant, her constant interruptions, and her use of profanity. NE#1 should be provided with retraining on both de-escalation and professionalism and should be advised that future similar conduct will result in progressive discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

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

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

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

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