



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 25, 2022

FROM: DIRECTOR GINO BETTS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0201

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	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 Named Employee #1 (NE#1) was unprofessional when he asked a reported sexual assault victim whether the act was consensual.

ADMINISTRATIVE NOTE:

During the Office of Inspector General's (OIG) review of this OPA investigation, OIG noted Witness Officer #1 (WO#1), NE#1's partner, "used profanity at least twice during their first interaction with an individual in crisis." OIG also determined, "[d]uring transit to the hospital [WO#1] did not provide the individual with their badge number in a manner that was clear and easy to hear." Further, OIG found NE#1 did not mention the patient's sexual assault allegation in a report. Although NE#1 told OPA the attending nurse prematurely stopped his interview with the patient, and suggested the Patient later decide whether he wanted to make a police report, OIG concluded the information NE#1 gathered should have been documented in a report. OPA returned those allegations to NE#1's chain of command for Supervisor Action.

SUMMARY OF INVESTIGATION:

The Complainant, a hospital social worker, stated NE#1 and WO#1 brought someone (the Patient) to the hospital on June 27, 2022, for admission under the Involuntary Treatment Act (ITA). The Complainant stated the Patient claimed he was "repeatedly sexually assaulted by multiple men immediately prior to contact with SPD." The Complainant alleged NE#1 interrupted the Patient to ask, "Well, did you say no?" The Complainant alleged NE#1's question was unprofessional, inappropriate, and offensive.

OPA opened an investigation. During its investigation, OPA reviewed the complaint, incident report, Body Worn Video (BWV), and King County Prosecuting Attorney's Office (KCPAO) Sexual Assault Guidelines. OPA also interviewed the Complainant, WO#1, and NE#1.



Neither NE#1 nor WO#1 activated their BWVs inside the hospital when NE#1 allegedly asked the question. See SPD Policy 16.090-POL-1(5)(d) (“Employees will not record in . . . the interiors of medical . . . facilities unless for a direct law enforcement purpose.”). For that reason, there is no video of the interaction.

a. OPA Interview - Complainant

On July 18, 2022, OPA interviewed the Complainant. The Complainant stated NE#1 and WO#1 brought the Patient to her hospital for an evaluation under ITA. The Complainant stated, during the assessment, the Patient reported he was sexually assaulted by two males prior to his contact with police. The Complainant stated NE#1 asked the Patient, “did you say no?” The Complainant felt that question was unprofessional and inappropriate. The Complainant stated NE#1 should have taken the report and remained objective. The Complainant stated she interrupted and told the patient he needed treatment and could make a police report when he felt better. The Complainant stated WO#1 was not present during those parts of the conversation.

b. OPA Interview – Witness Officer #1

On August 16, 2022, OPA interviewed WO#1. WO#1 stated he and NE#1 responded to a call concerning a naked person in a vehicle. WO#1 said, on scene they found the Patient in the back of a vehicle only wearing boxer briefs. WO#1 stated, after speaking with the Patient, he and NE#1 determined the Patient was in crisis. WO#1 recalled the Patient spoke in third person and appeared dissociated from reality. WO#1 said a sergeant approved his and NE#1’s request to transport the Patient to a hospital under ITA. WO#1 stated he and NE#1 brought the Patient to the hospital and briefed staff on the situation. WO#1 said he returned to his patrol vehicle to complete paperwork. WO#1 recalled later reentering the hospital, where NE#1 told him to turn off his BWV because the Patient was reporting a sexual assault. See SPD Policy 16.090-POL-1(5)(f) (lists sexual assault interviews as a circumstance when employees may deactivate BWV). WO#1 denied hearing NE#1 ask the Patient whether the reported sexual assault was consensual. WO#1 said the Complainant interrupted NE#1’s investigation and told them the hospital would call police later if the Patient wanted the allegations investigated. WO#1 said the Patient agreed to the Complainant’s suggestion.

c. OPA Interview – Named Employee #1

On October 19, 2022, OPA interviewed NE#1. NE#1’s account was consistent with WO#1’s. NE#1 said, after WO#1 left the hospital to complete paperwork, the Patient alleged he was sexually assaulted. NE#1 said he asked whether the Patient wanted to file a report, the Patient agreed. NE#1 said he asked investigative questions about the sexual assault. NE#1 recalled his initial questions concerned whether there was consent, forcible compulsion, and whether the Patient knew the suspect. NE#1 admitted asking whether the Patient said “no.” NE#1 explained he asked the question because the Patient mentioned his participation in other consensual sexual activity that same weekend, so NE#1 attempted to clarify whether the reported activity was consensual. NE#1 said the Patient hesitated when he asked the question. NE#1 said the Complainant asked the Patient to stop and whether he wanted to make a report later. NE#1 said the Patient agreed to make a report later. NE#1 said he provided the Patient with information to later file a report. NE#1 also emphasized “lack of consent” is an element of the reported crime and therefore an essential aspect of the investigation.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 was unprofessional because he asked the Patient, who reported being sexually assaulted, “did you say no?”

SPD Policy 5.001-POL-10 requires employees “strive to be professional.” The policy further instructs, “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.

Without question, sexual assault investigations are inherently sensitive. Accordingly, Washington State law requires officers “assigned to regularly investigate” sex crimes undergo “specialized, intensive, and integrated training . . . based on a victim-centered, trauma-informed approach” including “content on the neurobiology of trauma and trauma-informed interviewing, counseling, and investigative techniques.” RCW 43.101.272. Here, the Patient reported a recent sexual assault in NE#1’s presence. SPD policy permitted NE#1—a patrol officer—to interview the Patient “to establish the elements of the offense and capture the victim’s initial account of the event.” SPD Policy 15.370-POL-2; *see also* SPD Policy 15.370-TSK-1.

Admittedly, NE#1 asked the Patient, “did you say no?” The Complainant interpreted that question as “unprofessional, completely inappropriate, and incredibly offensive, invalidating, and harmful to a person reporting sexual assault.” Conversely, NE#1 characterized the inquiry as an essential clarifying question aimed at establishing an element of the reported crime. NE#1 recounted:

[The Patient stated] he was conducting sexual acts with the subjects and I was just trying to make it clear if, at any point, if he told anyone to stop or if he wasn’t okay with it. I asked that question. It’s a hard question to ask. It’s a hard question to answer. For a subject being asked that questions. And he . . . took him a little while to answer the question.

OPA understands why the Complainant, without context, found NE#1’s question inartful or even distasteful. However, OPA also acknowledges NE#1 was a patrolman, not an officer “assigned to regularly investigate” sex crimes. Moreover, without additional evidence, like video, OPA cannot assess the tone, inflection, or non-verbal cues contained within NE#1’s question.

Overall, the evidence suggests NE#1 more likely than not asked the question for a valid investigatory purpose. NE#1’s question was relevant and probative to establish lack of consent during the primary investigation for potential Rape in the Third Degree charges. *See* KCPAO Sexual Assault Guidelines, Section 6: Sexual Assault, B.1.c. Rape in the Third Degree (“the State still needs to prove a lack of consent”); SPD Policy 15.370-TSK-1(12) (requiring the patrol officer to establish elements of the crime).

Further, NE#1’s stated investigatory purpose for the question was supported by the KCPAO charging guidelines, which specifically reference the need to prove a lack of consent. Based on the available evidence, OPA finds more likely than not NE#1’s comment did not violate SPD’s professionalism policy.



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

Recommended Finding: **Not Sustained - Unfounded**