



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 22, 2018

CASE NUMBER: 2018OPA-0422

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 8.400-TSK-9 Use of Force	Not Sustained (Training Referral)
# 2	8.400-POL-1 Use of Force – REPORTING AND INVESTIGATION 3. The Sergeant Will Review the Incident and Do One of the Following:	Sustained
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Lawful and Proper)
# 4	11.030 – Guarding Detainees at a Hospital 2. Hospitalized Detainees Arrested for a Felony, Felony Warrant, Repeat DUI Offense, or Domestic Violence Related Crime Require a Hospital Guard	Allegation Removed

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 Named Employee #1 failed to properly screen a potential Type III use of force, did not assign a hospital guard to watch the subject, and did not report potential misconduct. It was further alleged that Named Employee #2 may have used excessive force on the subject.

STATEMENT OF FACTS:

Officers, including Named Employee #2 (NE#2), responded to a crisis call. It was reported that the subject was inside of the resident lounge of an apartment building and was banging on the windows and yelling. When the officers arrived on scene, they spoke with employees of the building who indicated that the subject was likely in crisis. The officers went into the lounge and tried to engage with the subject. She first spoke with them calmly but then quickly leaped out of her chair, threw the chair across the room, and advanced towards the officers while yelling. NE#2



reached out, grabbed the subject's left arm, and pulled her down to the ground face first. The subject fell to the ground with her right arm under her face. Once on the ground, she calmed down and was crying. The officers noticed bleeding from her nose and, after handcuffing her, called for medical assistance and a supervisor. The officers determined that the subject was in crisis and made the decision to effectuate a detention under the Involuntary Treatment Act (ITA).

Named Employee #1 (NE#1) was the supervisor who came to the scene. Once there, he spoke with one of the witness officers who described what the subject had done and the takedown that was used by NE#2. He further told NE#1 that, as a result of the takedown, the subject's "nose was busted." NE#1 spoke with several of the officers, including NE#2, concerning the force used. NE#1 went into the ambulance where the subject was being held prior to transport to the hospital. He observed her injuries, took photographs, and asked whether she wanted to speak with him. She told NE#1 that the officers broke her nose and NE#1 repeated that statement. When NE#1 later tried to speak with her, the subject again stated that the officers "cracked" and "broke" her nose. NE#1 also asked the medics about the nature and extent of the injury and one of the medics stated: "we don't necessarily know that it's broken...she might just have a bloody nose."

NE#1 read the subject her Miranda warnings; however, she was not ultimately charged with a crime. In the General Offense Report authored by the officers, there was no mention of charges and instead the case was classified as "crisis."

After he screened the incident, NE#1 classified the force used as Type II and ordered the involved officers to complete the appropriate reports. He did not screen the incident with FIT.

The subject was transported to a hospital where she received medical attention. NE#1 did not assign a hospital guard to watch her. NE#1 further did not take any additional steps to learn the extent of the subject's injuries.

In her force review, the Watch Lieutenant identified that NE#1 had failed to screen the incident with FIT and to assign a hospital guard. The Lieutenant, with the concurrence of the Acting Captain, referred those issues to OPA. Both the Lieutenant and the Acting Captain approved NE#2's force as consistent with policy and praised all of the responding officers for how they handled a very difficult situation. This OPA investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.400 - Use of Force Reporting and Investigation 8.400-TSK-9 Use of Force

SPD Policy 8.400-TSK-9 sets forth the requirements for a Sergeant's handling of a Type III force investigation. Included among these requirements is that, where the subject has been transported to the hospital, the Sergeant "verifies that the subject has been identified and arranges for hospital guard, if necessary." (SPD Policy 8.400-TSK-9.)

NE#1 acknowledged that he did not assign a hospital guard. He explained to OPA that he did not believe it to be necessary. He contended that he believed this because the subject had not been arrested for any offense and no charges were being requested.



In her force review, NE#1's Lieutenant identified that NE#1 should have assigned a hospital guard. She reasoned that this would have allowed NE#1 to determine the extent of the injuries to the subject and, thus, could have provided NE#1 with conclusive information as to whether a FIT response was needed. I agree with the Lieutenant. As discussed below, given the nature of the injuries suffered by the subject and the information known at the time to NE#1, I believe that a hospital guard was contemplated by the policy. Had NE#1 taken this step, he would have learned that the subject's nose was not, in fact, broken and would have definitively determined that FIT did not need to be notified. This, in turn, would have almost certainly ensued that he was not the subject of an OPA complaint.

That being said, NE#1 could (and does) plausibly argue that, under the terms of SPD Policy 11.030-POL-2, a hospital guard was not required and whether one was assigned was within the discretion of NE#1 as the supervisor. As such, I do not believe that a Sustained finding is warranted. However, it certainly would have been best practice to do so given the circumstances of this case. For that reason, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1's chain of command should discuss with him the requirements of SPD Policies 8.400-POL-1(3), 8.400-TSK-9, and 11.030-POL-2. His chain of command should counsel him concerning this incident and provide him guidance on how he could have handled it more appropriately. NE#1's chain of command should specifically discuss his failure to screen this matter with FIT and his decision to not assign a hospital guard and instruct NE#1 on how he should deal with similar situations in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

8.400-POL-1 Use of Force – REPORTING AND INVESTIGATION 3. The Sergeant Will Review the Incident and Do One of the Following:

SPD Policy 8.400-POL-1(3) provides that, upon responding to a use of force, the Sergeant reviews the incident and classifies the force by type. The policy explains that force should be classified as Type III (the highest level) where it "results in, or could reasonably be expected to result in, great bodily harm...or substantial bodily harm..., to include broken bones and an admission to the hospital for treatment." (SPD Policy 8.400-POL-1(3).) In such cases, the Sergeant is required to screen the force with FIT in order to allow that unit to decide whether to respond to the scene and take over the investigation. (*Id.*)

Here, NE#1 was told by one of the witness officers that the force used caused the subject's nose to get "busted." He was further told by the subject multiple times that her nose was broken or "cracked." While the medics did not confirm the broken nose, they did not foreclose that such an injury had been suffered.

NE#1 asserted that he did not screen the force with FIT because: it did not appear to him that the subject's nose was broken; he did not notice and the subject did not complain of any other disfigurement; he viewed the video of NE#2's force and it appeared to him to be reasonable; and the description of the force sounded reasonable to NE#1. At his OPA interview, however, NE#1 recognized that he should have screened this matter with FIT and that his failure to do so was in error.



As discussed above, Department policy requires a FIT screening when there is a possibility of broken bones and where the subject later receives treatment at a hospital. Both occurred here. This policy requires such a screening for good reason – namely, to ensure that the most serious uses of force are investigated by FIT. Had NE#1 done so here, FIT would likely have conducted a preliminary review of the case, which would have included going to the hospital to check on the condition of the subject. FIT would have determined that the subject’s nose was not broken and would have sent the investigation back to NE#1 as a Type II. By failing to comply with the policy, even if not intentionally and in bad faith, NE#1 prevented this comprehensive and critical review from occurring. For these reasons, I agree with NE#1’s chain of command that he violated policy and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

The Complainant claimed that her nose had been broken and “cracked” by the officers. However, I do not construe this to constitute a claim of excessive force. Instead, it was a description of the injury that she suffered. Had the Complainant stated that the officers broke her nose and it was excessive, unreasonable, assaultive, or brutal, that would have risen to a possible allegation of serious misconduct. This did not occur here. As such, I find that it was appropriate for NE#1 to conduct a chain of command review of the force and to not make an OPA referral.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegations #4

11.030 – Guarding Detainees at a Hospital 2. Hospitalized Detainees Arrested for a Felony, Felony Warrant, Repeat DUI Offense, or Domestic Violence Related Crime Require a Hospital Guard

SPD Policy 11.030-POL-2 sets forth when a hospital guard must be assigned to watch a detainee. As discussed more fully above, given that I find that this incident should have been screened as a Type III use of force, NE#1 should have assigned a hospital guard pursuant to SPD Policy 8.400-TSK-9. This was the case even though the subject had not been arrested for a felony, felony warrant, DUI offense, or domestic violence crime (see SPD Policy 11.030-POL-2), and, in fact, had not been charged with any crime.

However, as I already recommend that NE#1 receive the above Training Referral (see Named Employee #1, Allegation #1), I find that this allegation is duplicative. Accordingly, I recommend that it be removed.



Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegations #1

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

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. 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 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

The force used by NE#2 was captured entirely on Body Worn Video. The video showed the subject throw her chair and then quickly advance towards the officers, screaming with her hand raised. NE#2 took hold of her arm and brought her down to the ground in a controlled takedown. The subject appeared to strike her face and nose on her right arm, causing her nose to bleed.

At his OPA interview (and in his force report), NE#2 stated that it appeared that the subject was going to strike one of the other officers. This is consistent with the video. Given this and given her volatility at that time, NE#2 believed that it was appropriate to use minor force to prevent her from doing so and to bring her to the ground and control her body. The force he used to effectuate this – a controlled takedown, was reasonable, necessary, and proportional under the circumstances of this case. While it was certainly unfortunate that the subject suffered a bloody nose, this was the result of an appropriate and lawful use of force.

In reaching my finding that the force was consistent with policy, I also considered the statements of two civilian witnesses to the incident. Both stated their belief that the officers acted reasonably and appropriately.

Based on my review of the record, I agree with NE#2’s chain of command that he handled himself appropriately and commendably in a very difficult situation. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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