



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 21, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0058

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties 10. Employees Shall Strive to Be Professional	Sustained
# 2	8.200 Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
Imposed Discipline		
Written Reprimand		

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 and her friend alleged that an unknown SPD officer pushed down an elderly man and that this constituted excessive force.

SUMMARY OF INVESTIGATION:

The Complainants, who are employed as AMR staff, initiated this complaint with OPA. They stated that they responded to an involuntary detention where Named Employee #1 (NE#1) was seeking to have a woman – referred to here as the Subject – transported to the hospital. The Complainants alleged that, during this incident, NE#1 was rude and aggressive towards Complainant #1. They also alleged that NE#1 used undue force to strap the Subject's legs to the gurney.

OPA initiated an investigation. As part of that investigation, OPA interviewed the Complainants and NE#1. OPA also reviewed the Body Worn Video (BWV), which fully captured what occurred, as well as reviewed the documentation generated by NE#1.

OPA determined that NE#1 initially responded to a trespass call. He identified that the Subject was, in fact, trespassing and took her into custody. The BWV indicated that the Subject complained of an injury to her foot and that NE#1 said that she was aware of the injury from prior interactions with her. Based on his observations of the injuries and his determination that the Subject was in crisis, NE#1 made the decision to involuntarily detain her for a mental health evaluation. NE#1's supervisor concurred with this determination. NE#1 explained to the Subject that she was being detained.

AMR staff arrived on scene. BWV showed that NE#1 briefed them as to what was occurring. One of the AMR staff spoke with the Subject and told her that the handcuffs would come off when she was on the gurney and that they



would use soft restraints at that time. This did not appear to placate the Subject. NE#1 asked AMR staff to move back so that officers could get the Subject onto the gurney. After trying to gain voluntary compliance, NE#1 and another officer seated the Subject onto the gurney. At this time, her legs were crossed at the ankles.

The BWV indicated that NE#1 lifted one of the Subject's feet, put it on the gurney, and began strapping it down. One of the AMR staff – Complainant #1 – who was observing NE#1's actions, told NE#1 to "relax" and also put his hand on the Subject's leg. NE#1 pushed Complainant #1's hand off of the Subject's leg and told Complainant #1 to "leave." NE#1 further stated that he would take care of securing the Subject to the gurney and said: "Don't ever tell me to relax, stud. You've done this not nearly as much as me. Okay?" NE#1 told Complainant: "Step back and get away from me, okay?" The BWV indicated that, at this point, NE#1 pushed Complainant #1 back from him. NE#1 further explained to the Complainant that securing that Subject to the gurney was a "police job" and was not Complainant #1's responsibility. Once NE#1 had finished securing the Subject to the gurney, he walked over to Complainant #1 and told him that he needed to understand what his role was at a police scene. The Subject was then transported from the scene. After she departed, NE#1 remarked to another officer that the AMR driver told him to be "calm" but that he was calm until the "child" told him that he was not. NE#1 then left the scene.

As part of its investigation, OPA interviewed NE#1. NE#1 told OPA that he instructed Complainant #1 to move back and pushed him away because of the belief that Complainant #1 was acting complacently and could be assaulted by the Subject. He recognized, after the fact, that the AMR staff could have applied the restraints but said that he did so to ensure that no one was assaulted. When asked about the comments he made to Complainant #1, NE#1 said that he wished that he could have "worded it differently." NE#1 said that he "lectured" Complainant #1 in order to educate him about the difference between responsibilities of police and AMR staff at scenes. NE#1 believed that he was professional during this incident but acknowledged that his words and tone of voice did not sound "kind" because he was "aggravated."

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.)

Based on a review of the video, OPA concludes that NE#1's statements and demeanor towards Complainant #1 were unprofessional in violation of SPD policy. Here, Complainant #1 expressed concern about the Subject and asked NE#1 to relax. However, this had the contrary effect, with NE#1 speaking rudely and dismissively to Complainant #1 and, further, physically pushing him away. Moreover, even though NE#1 denied that he acted aggressively towards Complainant #1, OPA disagrees and finds that he did do so. While NE#1 may have been correct that, as a police officer, he was in control of the scene, this did not justify the manner in which he interacted with Complainant #1. Notably, had NE#1 recognized in the moment that he overreacted and apologized to Complainant #1, OPA would not have recommended this allegation be Sustained. However, here, NE#1 did the contrary. He again lectured Complainant #1 after the incident and later complained to another officer about the "child" – Complainant #1 – telling him to calm down.



If NE#1 treated a fellow officer that way, OPA would have had no hesitation in finding that it was improper. This same conclusion is warranted, if not even more necessary, when the interaction is with a City partner, such as AMR. NE#1's conduct towards Complainant #1 clearly caused him and Complainant #2 to have a lack of confidence and trust in NE#1. Moreover, in OPA's perspective, it was simply inconsistent with the Department's and community's expectations of NE#1's 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

Contrary to the Complainants' allegations, OPA does not believe that NE#1's restraining of the Subject's leg constituted excessive force. NE#1 inarguably had a legal right to strap the Subject down and to uncross and situate the Subject's leg to do so. NE#1 did not slam the Subject's leg down or take any actions that appeared purposed to cause her pain or discomfort. To the contrary, NE#1 was mindful of the Subject's injury throughout the incident.

As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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