



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2015-1859

Issued Date: 08/17/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) : De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force (Policy that was issued 09/01/2015)
OPA Finding	<b>Sustained</b>
Allegation #2	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued 09/01/2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #3	<u>Seattle Police Department Manual</u> 8.300-POL-3 (4): Use of Force – CEW/Conducted Energy Weapons (TASER) - Officers Shall Only Deploy CEW When Objectively Reasonable (Policy that was issued 09/01/2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #4	<u>Seattle Police Department Manual</u> 8.400-POL-1: Use of Force Reporting and Investigation: Officers Shall Report all Uses of Force Except De Minimis Force – Officers shall thoroughly document all reportable uses of force to the best of their ability, including a description of each force application (Policy that was issued 09/01/2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)

Allegation #5	<u>Seattle Police Department Manual</u> 5.001 (10) Employees Shall be Truthful and Complete In All Communication (Policy that was issued 04/01/2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Final Discipline	<b>1 day suspension (Under Appeal)</b>

### **INCIDENT SYNOPSIS**

Officers arrived at a hospital where a disturbance had taken place. The subject refused to leave and became aggressive with hospital security. The subject was brandishing a skateboard in a threatening manner, had a box cutter in his pocket (which he later took out and held in his hand) and made verbal threats to security. Several commands were given to the subject to relinquish the items to which he initially refused. Once the box cutter was removed from him, security let the subject check in with the triage nurse. Officers stood by to ensure there were no further problems and learned that the Department of Corrections (DOC) wanted the subject arrested. The officers were advised that the subject was going to be released from the hospital and they went to take the subject into custody.

### **COMPLAINT**

The complainant, the Force Review Board, alleged that the Named Employee "used an unreasonable level of force when he deployed his Taser against the subject." The complainant also alleged that the Named Employee "entered the exam room with his Taser drawn and did not attempt to use any de-escalation techniques" and that the Named Employee "failed to include a critical element in his use of force statement."

### **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Review of In-Car Video (ICV)
3. Review of 911 calls
4. Search for and review of all relevant records and other evidence
5. Interview of witnesses
6. Interview of SPD employees

### **ANALYSIS AND CONCLUSION**

The SPD Policy on De-Escalation clearly states officers are to take or attempt to take actions specifically designed to "minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." The policy recognizes it must be safe and

feasible for officers to use or attempt to use de-escalation tactics and that law enforcement priorities need not be compromised: “when safe and feasible under the totality of the circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” In this particular incident, the Named Employee had the opportunity to do this, yet made no attempt to slow things down so as to increase the options available to him and his cover officer. The two officers had learned that the Department of Corrections (DOC) sought to apprehend a person (the subject) the two officers had just encountered in the Emergency Department of a hospital. A DOC agent asked the officers to detain the subject until agents could arrive to take the subject into custody. During the officers’ previous interaction with the subject, they had observed him acting in a threatening and aggressive manner toward hospital security personnel. Inside the hospital, the subject had swung a skateboard above his head and displayed a box cutter by holding it out and acting in a menacing manner. The Named Employee and his cover officer were called to the hospital to help security deal with the aggressive and threatening subject and, upon their arrival, had successfully de-escalated the situation so the subject could be safely examined by medical personnel. Following the medical exam of the subject, the two officers were informed by hospital personnel the subject was going to be released. At the same time, the cover officer determined the subject was on active DOC supervision and got in contact with a DOC agent. The DOC agent asked the cover officer to detain the subject until DOC agents could arrive. The cover officer informed the Named Employee (who was primary officer for this call) of the DOC warrant for the subject. The Named Employee made the decision to enter the exam room where the subject was located and immediately take him into custody there. After advising the cover officer that he (the Named Employee) was going to “be Taser”, the two entered the room. The Named Employee had a Taser drawn and at a ready position. He immediately informed the subject he was being arrested in a calm and even voice. The subject, who was lying in a semi-reclined position on a hospital gurney, asked what he was being arrested for and the Named Employee repeated that the subject was being arrested and said, “you fight me I’m going to put 50,000 volts through your body.” The subject asked again why he was being arrested and the Named Employee said it was for a DOC warrant and repeated he would put 50,000 volts through the subject. The voices of both the Named Employee and the subject then began to rise and a few moments later the Named Employee deployed the Taser and struck the subject. The actual use of force will be evaluated below. There was no compelling reason why the subject had to be taken into custody at that moment inside the hospital exam room. The subject was calm and hospital personnel were safely entering and leaving the room. Given the subject’s prior threatening and disruptive behavior inside the hospital, there were good reasons to gain more time by enlisting the hospital’s cooperation in slowing down their process of discharging the subject until the DOC and additional SPD resources could arrive and be deployed at a location away from patients, staff and dangerous equipment so the subject could be safely arrested. Additional time (one of the elements of de-escalation cited in SPD policy) would have given the Named Employee the opportunity to develop a more comprehensive plan than he and his cover officer had when they walked into the exam room and told the subject he was being arrested. By entering the exam room and beginning the arrest process, the Named Employee unnecessarily and severely limited his options for de-escalation and significantly increased the likelihood that force would need to be used if the subject offered resistance.

The Named Employee used a Taser in direct response to the subject's decision to thrust his hand into his pocket and not remove it when ordered to do so. Given that the subject had previously been armed with a box cutter and had displayed it in a threatening manner, coupled with the fact the subject had been out of the officers' sight for at least 20 minutes and had not been searched for additional weapons, it was reasonable for the Named Employee to perceive the subject's actions as threatening and be concerned he might remove a weapon from his pocket. The use of less-lethal force at that moment given the totality of the circumstances, particularly the subject's past threatening behavior was reasonable, necessary and proportional.

The policy on the use of Tasers further requires that there be "an immediate threat of harm to the officers or others" or "when public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is likely to cause injury to the officer or to the subject if hands-on control tactics are used" in order to justify the use of a Taser. In this instance, the subject's decision to thrust his hand in his pocket and not remove it combined with the fact he had previously pulled a box cutter and displayed it in a threatening manner constituted an immediate threat of harm. Given the possibility the subject was armed, the particularly close quarters of the exam room and the near proximity of patients and hospital staff it was reasonable for the Named Employee to conclude at that moment that a Taser was a safer force option than hands-on tactics.

The use of force statement authored by the Named Employee and submitted to his supervisor failed to include a material piece of information, i.e., that the subject was lying on top of a hospital gurney in a semi-reclined position at the time the Named Employee deployed the Taser. Furthermore, the Named Employee used the following language in his force statement to describe the subject's behavior, "he again locked eyes with me and balled up his right hand to make a fist and started to lower it to his body as if to take a fighting stance." This omission of the fact the subject was lying on a gurney and the description of a "fighting stance" by the subject could lead a reasonable reader of the Named Employee's force statement to conclude that the subject was standing, more mobile than a person lying down on a bed and, therefore, a greater threat. Even though the Named Employee verbally informed his sergeant of the fact that the subject was lying down when he was Tased, the Named Employee's written statement needed to be thorough and complete and able to stand on its own when read and reviewed by the chain of command and other reviewers. It is fortunate that the screening sergeant, who had been told by the Named Employee that the subject was lying on the gurney at the time of the Taser deployment, included this information in his own summary of the incident. There is no evidence to support a conclusion the Named Employee intentionally omitted this information from his written use of force statement.

The use of force statement authored by the Named Employee and submitted to his supervisor failed to include a material piece of information, that the subject was laying on top of a hospital gurney in a semi-reclined position at the time the Named Employee deployed the Taser on the subject. There is no evidence to suggest this omission was intentional on the part of the Named Employee or that he was trying to hide this information from anyone. In fact, he told his sergeant that the subject was laying on the gurney when the Taser was deployed.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

The evidence supports that the Named Employee violated the policy. Therefore a Sustained was issued for *De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force.*

#### Allegation #2

The evidence showed that the Named Employee's use of less-lethal force at that moment given the totality of the circumstances, particularly the subject's past threatening behavior was reasonable, necessary and proportional. Therefore a finding of Not Sustained (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized.*

#### Allegation #3

The evidence showed that it was reasonable for the Named Employee to conclude at that moment that a Taser was a safer force option than hands-on tactics. Therefore a finding of Not Sustained (Lawful and Proper) was issued for *Use of Force – CEW/Conducted Energy Weapons (TASER) - Officers Shall Only Deploy CEW When Objectively Reasonable.*

#### Allegation #4

There is no evidence to support a conclusion the Named Employee intentionally omitted information from his written use of force statement. Therefore a finding of Not Sustained (Training Referral) was issued for *Use of Force Reporting and Investigation: Officers Shall Report all Uses of Force Except De Minimis Force – Officers shall thoroughly document all reportable uses of force to the best of their ability, including a description of each force application.*

#### Allegation #5

There is no evidence to suggest the omission of information was intentional on the part of the Named Employee or that he was trying to hide this information from anyone. Therefore a finding of Not Sustained (Unfounded) was issued for *Employees Shall be Truthful and Complete In All Communication.*

### **Discipline imposed: 1 day suspension (Under Appeal)**

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*