

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF POLICE COMPLAINTS**

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	19-0291
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer, Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Harassment by Failure to Provide Necessary Medical Care
<b>Complaint Examiner:</b>	Meaghan Hannan Davant
<b>Merits Determination Date:</b>	June 8, 2020

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (OPC) has the sole authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by § 5-1107(a). This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

**I. SUMMARY OF COMPLAINT ALLEGATIONS**

The complainant, COMPLAINANT, filed a complaint with the Office of Police Complaints (OPC) on February 21, 2019 alleging that, on December 30, 2018, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, harassed him. Specifically, complainant alleged that SUBJECT OFFICER failed to provide necessary medical services and evaluation at the scene, where complainant was under arrest, despite complainant's repeated statements that he was epileptic, felt ill and needed his medication.<sup>1</sup>

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<sup>1</sup> Complainant also alleged that WITNESS OFFICER #1 used unnecessary or excessive force when he dragged the complainant while handcuffed on the ground, and that the handcuffs were too tight, resulting in medical injuries. Complainant further alleged that WITNESS OFFICER #1 harassed him by unlawfully stopping the complainant, and that WITNESS OFFICER #1 and WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #4, WITNESS OFFICER #5 and WITNESS OFFICER #6 harassed him by searching his vehicle unlawfully. Finally, complainant alleged that WITNESS OFFICER #1 used language or engaged in conduct toward him that was insulting, demeaning, or humiliating, by being overly aggressive and causing complainant's buttocks to be exposed when he was dragged on the ground. Pursuant to D.C. Code § 5-1108 (1), on April 3, 2020, a member of the Police

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and all exhibits, the objections submitted by the subject officers on April 28, 2020, and OPC's response to the objections, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

## **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation and all exhibits, the objections submitted by the subject officers, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On December 30, 2018 COMPLAINANT was handcuffed and placed under arrest by MPD Police officers.
2. SUBJECT OFFICER was the responding official on the scene of the incident and, by his own acknowledgement in his statement to OPC, the official responsible for ensuring that the complainant received medical treatment while under police detention or arrest.
3. Body worn camera (BWC) footage of the incident clearly shows that, several minutes after being placed in handcuffs, COMPLAINANT told the arresting officers that he had epilepsy and repeatedly stated that he couldn't breathe. In a later statement to OPC, COMPLAINANT described his physical state during the arrest: "I was...loosing air, getting dizzy as if I was going to pass out and die."
4. Nearly half an hour later, as MPD Officers WITNESS OFFICER #7 and WITNESS OFFICER #8 were preparing COMPLAINANT to be transported in a police car to the local MPD DISTRICT STATION cell block, complainant can again be clearly heard on BWC footage stating that he had epilepsy and needed his medication.
5. The BWC footage also shows that complainant was shivering, to which WITNESS OFFICER #8 responded that complainant was "shaking because [he was] cold." COMPLAINANT responded that he was shaking because he had epilepsy and because he had not taken his medication.

6. WITNESS OFFICER #7 proceeded to search the complainant, during which time COMPLAINANT repeatedly stated that he needed his medicine, that he was going to have a seizure if he didn't get his medication. COMPLAINANT's repeated requests can be clearly heard on the BWC footage of several of the officers on the scene.
7. SUBJECT OFFICER approached COMPLAINANT and, overhearing his requests for medication, told complainant he would "take care of that." COMPLAINANT responded that he took a medication called "Keppra...1,000 milligrams a day" and that the medication was located in his car, parked a short distance from the scene.
8. As he placed complainant in the transport vehicle, WITNESS OFFICER #7 questioned COMPLAINANT as to where, in his car, the medication was located. WITNESS OFFICER #7 then placed a seatbelt on complainant and stated he would "take care of it." Based on these actions, complainant reasonably believed that WITNESS OFFICER #7, or another officer at the scene, would retrieve his medication from his car.
9. Complainant was subsequently transported to AN MPD DISTRICT HEADQUARTERS where, in the course of being processed, complainant told WITNESS OFFICER #9 that he had epilepsy and had been "shaking" and needed his medicine. WITNESS OFFICER #9 asked complainant whether he needed to go to the hospital to which COMPLAINANT responded that he "need[ed] his meds" so that he wouldn't "have a seizure" in the cell block. WITNESS OFFICER #9 then proceeded to fill out a "PD 313 Form," documenting that COMPLAINANT had complained of illness or injury and needed medical care.
10. In a later interview with OPC, SUBJECT OFFICER confirmed that he heard COMPLAINANT's statement that he had epilepsy, as well as his repeated requests for his medication, and that the subject officer had assured COMPLAINANT that the appropriate steps would be taken to get him medical care. However, SUBJECT OFFICER clarified that it was his intention at the time to fill out any necessary paperwork for medical care, and not to retrieve complainant's medication or ensure that it was delivered to him.
11. SUBJECT OFFICER also told OPC that he had witnessed other people having seizures and that, although he did observe COMPLAINANT "sweating" and "shaking," he did not believe that complainant was in a state of seizure at the time of the arrest.
12. SUBJECT OFFICER also stated that the D.C. Fire and Emergency Medical Services (FEMS) was not called to the scene because COMPLAINANT was "walking and talking."
13. Neither SUBJECT OFFICER, nor any of his reporting officers at the scene, filled out a PD 313 Form.

#### IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority to adjudicate “a citizen complaint against a member or members of the MPD . . . that alleges abuse or misuse of police powers by such member or members, including “(1) harassment; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating; (4) discriminatory treatment based upon a person’s race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; (5) retaliation against a person for filing a complaint pursuant to [the Act]; or (6) failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.”

##### A. ***SUBJECT OFFICER Harassed Complainant by Failing to Provide Necessary Medical Care During the Course of his Arrest.***

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 as “words, conduct, gestures, or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD, so as to: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity.”

The regulations governing OPC define harassment as “conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD . . . so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD . . . the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs. tit. 6A, § 2199.1.

MPD General Order 502.07, *Medical Treatment and Hospitalization of Prisoners*, states that MPD officers “shall transport prisoners who complain of illness or injury to a hospital in accordance with the procedures outlined in this order,” and requires that officers complete a “PD Form 313 (Arrestee’s Injury/ Illness Report) as soon as possible after a prisoner complains of illness or injury (emphasis added). The Order further states that officers, “shall not delay

transporting a prisoner to a hospital in order to complete a PD Form 313... An official shall respond to all scenes or to a station cellblock to interview prisoners *that are complaining of injury and/or illness* or who have visible injuries” (emphasis added). “If life threatening conditions exist, D.C. Fire and Emergency Medical Services (FEMS) shall be notified immediately and requested to respond to the location or the station cellblock.”

As clearly shown from the BWC footage of the incident, COMPLAINANT repeatedly “complain[ed] of injury and/or illness” at the scene of his arrest, stating multiple times that he had epilepsy—a life threatening illness—that he was having trouble breathing, and that he was likely to have a seizure if he did not take his medicine in a timely manner. COMPLAINANT first informed the officers of his medical condition within *minutes* of being placed in handcuffs. Complainant also exhibited physical signs of distress, including labored breathing, sweating and shaking, which several of the officers at the scene noted, but summarily dismissed.

COMPLAINANT pled with officers to retrieve his medication from his car, parked nearby, and—at WITNESS OFFICER #7’s specific behest—provided detailed instructions on where to locate the medication within the car. Both SUBJECT OFFICER #7 and his superior at the scene, SUBJECT OFFICER, verbally assured complainant that they would “take care” of his medical needs. Despite these assurances, neither SUBJECT OFFICER, nor any of the officers reporting to him at the scene, filled out the required PD Form 313, called FEMS to respond to what could have been a life-threatening emergency, or otherwise made any attempts to provide complainant with the medical care he requested and which they were required to provide by law. Complainant would wait more than *three hours* before he was eventually transferred to a hospital to receive his medication.

SUBJECT OFFICER’s failure to respond to complainant’s repeated requests for medical attention while in police custody deprived COMPLAINANT of one of his most basic personal rights of health and well-being and could have threatened his life.

Based on the totality of the circumstances, SUBJECT OFFICER’s failure to provide necessary medical care to complainant during the course of his arrest was unlawful and unreasonable, and thereby harassed the complainant in violation of D.C. Code§ 5-1107(a) and MPD General Order 120.25.

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**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1:</b> Harassment by Failure to Provide Necessary Medical Care	Sustained
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Submitted on June 8, 2020

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Meaghan Hannan Davant  
Complaint Examiner