

## ***Fire Dep't v. Johnson***

OATH Index No. 1147/18 (May 3, 2018), *aff'd*, NYC Civ. Serv. Comm'n  
Case No. 2018-0645 (Nov. 23, 2018), **appended**

Evidence established that emergency medical technician made contact with a patient but failed to complete a patient care report or document the patient's refusal of medical attention. Petitioner further established that respondent made false statements during an MEO 16 interview. 40-day suspension without pay recommended.

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### **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**FIRE DEPARTMENT**  
*Petitioner*  
*- against -*  
**RONALD JOHNSON**  
*Respondent*

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### **REPORT AND RECOMMENDATION**

**ASTRID B. GLOADE**, *Administrative Law Judge*

Petitioner, the Fire Department ("Department"), brought this employee disciplinary proceeding under section 75 of the Civil Service Law against respondent, emergency medical technician ("EMT") Ronald Johnson. Petitioner alleges that respondent failed to generate a patient care report ("PCR") after coming into contact with a patient who refused medical attention and made false statements during an investigative interview regarding his encounter with the patient, in violation of the Department's Emergency Medical Services Operating Guide Procedures ("OGP") (ALJ Ex. 1).

At a two-day trial conducted by this tribunal, petitioner relied upon documentary evidence and the testimony of five witnesses. Respondent presented documentary evidence, testified on his own behalf, and presented the testimony of his partner.

For the reasons below, I find that the charges have been sustained and recommend that respondent be suspended without pay for 40 days.

### ANALYSIS

On October 16, 2016, respondent, who was assigned to a mobile Emergency Medical Services (“EMS”) unit (also referred to as an ambulance), responded to a call about an injured male at the Postgraduate Center for Mental Health (“PGMH”) in New York, New York.

EMTs in the field usually receive their assignments through a mobile dispatch terminal, also referred to as a computer-aided dispatch (“CAD”), which is located in the ambulance. The terminal displays information about the nature of the call and its location. The information on the terminal reflects entries made by an operator or dispatcher who receives a call requesting emergency services. In addition, when an ambulance is dispatched in response to a call, information such as the time the ambulance received the call, the time it arrived at the facility, and the nature of the emergency, is included in the record of the call, which is referred to as the call or complaint history (Acevedo: Tr. 51-52, 54; Valdez: Tr. 161-62, 177-78, 184; Resp.: Tr. 265; Pet. Ex. 4).

When two EMTs are assigned to an ambulance, one serves as the driver while the other is the technician. Typically, the driver operates the vehicle and is responsible for hands-on interaction with the patient, while the technician obtains the patient’s medical information and completes documentation of the interaction with the patient, such as a patient care report (Acevedo: Tr. 56-57; Peguero: Tr. 261-62). Once at the location to which they were dispatched, the EMTs identify the patient, perform a general medical assessment, and interview the patient (Valdez: Tr. 156-57; Resp.: Tr. 264-66).

Chief Valdez, who has worked for the Department since 1996, starting as an EMT and advancing to the rank of deputy chief, testified that he is familiar with the Department’s guidelines relating to refusal of medical aid (Tr. 150-53, 158). According to Valdez, the Department requires that a patient who indicates that he or she does not want to be treated by the EMTs have decisional capacity. This means that EMTs must question the patient about his or her understanding of the consequences of refusing medical attention. If the EMTs remain concerned after assessing the patient’s decisional capacity, they can have the patient speak to a doctor, who may decide to involve the police in an involuntary transfer of the patient to the hospital (Tr. 156, 193). The EMTs must record the patient’s refusal of medical attention on a PCR form, which documents their interaction with the patient (Tr. 157). If the EMTs are aware

that the patient may have been assaulted, they must assess the patient and, if the patient refuses medical care, they must still complete a PCR (Tr. 158).

On October 16, 2016, respondent was assigned to unit 08A3 with EMT Peguero. Respondent was the driver, while Peguero served as the technician (Tr. 262, 286-87; Pet Ex. 4). At about 21:48 (9:48 p.m.), they were assigned to respond to a call regarding an injured man. The call history report indicates that the call was logged in as involving a “non-critical injury” and an address was provided, in addition to the assailant’s name and location within the facility (Pet. Ex. 4). Included in the call history report is the following information:

21:47:39 - supplement – PD . . . aided has cuts on his face and a broken nose . . . .  
21:47:53 - . . . nose bleed . . . was strike [sic] to face. . . fell . . .  
21:48:04 - assigned . . . 08A3 #2417 Johnson EMT, Ronald . . . #1366 Peguero  
EMT, Chris

(Pet. Ex. 4). According to Valdez, the description of the incident and the patient’s injuries on the call history report was available to respondent and his partner before they arrived at the location (Tr. 164-65, 179).

The incident occurred at PGMH, a residential facility consisting of single room occupancy units for people with a history of mental illness and substance abuse issues. Mr. Brown, the facility’s Program Director, manages day-to-day operations, including its security staff. According to the PGMH’s protocol, if there is an altercation between residents, staff is required to call 911, write an incident report, and notify Mr. Brown. If Mr. Brown is not at the facility when the incident occurs, the staff notifies him and he reviews the incident report and the facility’s surveillance video to determine what happened (Tr. 20-22, 36, 40-42).

According to an incident report prepared by a facility employee who was on duty at the front desk when the incident occurred, at approximately 9:45 p.m. on October 16, 2016, a fight occurred between two residents. The counselor was looking at the surveillance cameras when he observed the fight. The incident report states that one of the men involved in the fight “came to the office for assistance due to him sustaining an injury to his left eye and wait for EMS and NYPD to arrive. NYPD arrived on site at 9:56 pm and went to [the alleged assailant’s] apartment, while EMT went to [the victim]. . . .[the victim] refused medical attention. NYPD and EMS were off site at 10:10 pm.” (Tr. 34-35; Pet. Ex. 2).

Mr. Brown reviewed video from the facility’s surveillance cameras, which captured the altercation between the two residents. In keeping with standard procedure, the facility retained

video footage of the altercation, which Mr. Brown provided to the Department's investigator, Mr. Correa (Tr. 21-24, 43; Pet. Ex. 1).

Investigator Correa has worked in the Department's Confidential Complaint Unit in the Bureau of Investigation and Trials for five years (Tr. 71). On October 17, 2016, he initiated an investigation after he received an unusual occurrence report regarding respondent's conduct on October 16 at PGMH (Tr. 72-75). As part of his investigation, Mr. Correa obtained copies of video surveillance footage of respondent and his partner responding to the facility on October 16 (Tr. 77-79).

The videos, which do not include sound, were taken from different cameras in a hallway on the third floor at PGMH and capture the incident from different perspectives. Most probative is video from camera channels 17 and 18, which show the encounter between the patient and his assailant, and the arrival of respondent, his partner, and several police officers (Pet. Ex. 1).

Channel 17 is positioned in a hallway facing an elevator. Video segment 214235<sup>1</sup> shows a man and a woman exit an elevator and walk down a hallway leading away from the elevator, out of camera range at about 9:43:10. A man in a bright blue shirt (referred to hereafter as the victim) enters the frame from under the camera and heads down the hallway where the man and woman walked. He says something and the man who had exited the elevator walks into the frame and attacks the victim. Some of the altercation takes place out of view of the camera. The video captures the assailant as he strikes the victim several times in his face. The assailant leaves and the victim walks out of the frame of the camera. At 9:44:46, the victim reenters the frame with his head down, facing away from the camera, and walks to the elevator. He presses the elevator call button then walks away from the elevator and out of range of the camera. When he returns, he is carrying what appears to be a piece of cloth in his left hand (9:45:43). He enters the elevator and the doors close.

Channel 18, segment 214235, shows the same events, but from a different angle. Camera 18 is positioned opposite the front door to the victim's apartment. It captures him exiting his apartment and being assaulted in the hallway. The video adds critical detail as it shows the victim's behavior immediately after he is struck by his attacker. At 9:44:18, as the assailant flees the area, the victim puts his hands up to his face and moves back towards his door. He bends

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<sup>1</sup> All the video segments have a 20161016 prefix, but the last six digits vary. The video segments will be referenced only by the last six digits.

forward at the waist so that only the top of his head is visible on the camera, with his hands still covering his face. He then removes both hands from his face and shakes them as if trying to remove something (9:44:36). He remains bent over at the waist, shakes his hands again then stands a bit more erect as he walks towards the elevator. He presses the call button and walks back into his apartment. When he exits his apartment, he has a cloth in his left hand, which he holds as he enters the elevator.

Video of the incident continues on channel 17, segment 215259, which shows the victim exiting the elevator at 9:54:03. He is still holding a cloth in his hand, this time, his right. He walks towards his apartment, turns away from the camera, and puts his right hand on the wall. The cloth in his right hand appears white with dark red and brownish colors that are consistent with blood stains.

Four police officers arrive on the scene at approximately 9:56:52.<sup>2</sup> They are seen on channel 17, segment 215259 hesitantly walking out of the elevator, while looking down on the floor as if trying to avoid something there. Officer Ryan, one of the responding officers, testified that the officers were there on a call about an assault in progress at the location (Tr. 203-04). According to Officer Ryan, upon exiting the elevator, he saw drops of blood on the floor leading from the elevator to the victim's apartment (Tr. 208, 217).

Respondent and his partner, Mr. Peguero, are recorded as arriving on the scene at 9:58:13. Video from channel 17, segment 215259, and channel 18, 215258, show respondent and his partner looking down on the floor as they exit the elevator. They look in the direction of the police officers, who had walked down the hallway away from the elevators. An officer joins respondent and Mr. Peguero and they all look at the victim's door. Respondent's partner approaches the victim's door and knocks. Two other officers enter the hallway area near the victim's door. The victim exits his apartment at about 9:59:55 and walks towards the officers and Mr. Peguero. The victim points down the hallway leading away from the elevator and the officers direct him back into his apartment, where Mr. Peguero follows him (10:00:02).

The video from channels 17 and 18, both segments numbered 220000, show respondent waiting in the hallway alone. Mr. Peguero exits the victim's apartment at 10:01:08 and talks with respondent in the hallway near the elevator. The elevator opens at 10:02:12, and two

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<sup>2</sup> In reviewing the videos, it appeared that the images freeze at various intervals, including between 9:54:29 and 9:56:52 on Channel 17, segment 215259. This did not impair review the video and although it was noted on the record that the videos froze, the parties did not raise issues regarding their completeness (Tr. 221, 223).

additional police officers step off the elevator into the hallway. As the first officer does so, respondent points out something on the floor to the officer (channel 18, segment 220000). The two officers enter the victim's apartment, followed by a third officer. At about 10:03:28, respondent walks to the victim's apartment, taking a big step to avoid something on the floor in front of the door. While respondent is with the victim, the assailant is taken in handcuffs to the elevator by several officers. Respondent exits the victim's apartment at 10:04:14, talks to Mr. Peguero, and they leave with their equipment at 10:05:33.

According to Officer Ryan, the assailant was arrested for assault in the third degree, a charge based on a visible injury or a complaint of pain from the victim that gives probable cause to believe that an assault occurred (Tr. 210). His partner, who was the arresting officer, prepared an arrest report, a complaint report, and an aided report, which must be prepared when someone is arrested for assault because it documents the victim's injury (Tr. 204, 217; Pet. Exs. 15, 16, 17). The details of the arrest in the arrest report indicate that the complaining victim stated that the assailant "did punch [complaining victim] in face with closed fist causing laceration and bleeding to [the complaining victim's] nose/cheek" (Pet. Ex. 15). The narrative portion of the complaint report and the aided report are consistent with the details provided in the arrest report, but also include notations that the complaining victim "RMA [refused medical attention] at scene" (Pet. Exs. 16, 17). A Criminal Court affidavit dated October 17, 2016, signed by the arresting officer, states as a factual basis for the charges that the assailant struck the victim "in the face with a closed fist, causing a laceration, bleeding, and substantial pain" (Resp. Ex. B).

A second ambulance was dispatched to PGMH a few hours after respondent and his partner left. EMT Acevedo, who has worked as an FDNY EMT for 24 years, responded to a call at 12:56 a.m. on October 17. The caller requested assistance for a male who had been assaulted earlier in the evening. When the ambulance arrived, Mr. Acevedo observed a male patient who had a fractured nose, a black eye, and a laceration on the bridge of his nose. The patient informed Mr. Acevedo that he had called an ambulance earlier, but had refused medical treatment (Tr. 47-48, 50, 53-54; Pet. Ex. 6).

Mr. Acevedo, who was serving as the technician on the ambulance, was responsible for completing documentation relating to the unit's calls during that tour, while his partner drove the ambulance (Tr. 56). He completed a prehospital care report in which he documented the patient's medical history, condition, and the treatment rendered to the patient (Tr. 47-48, 50, 57;

Pet. Ex. 6). The report indicates that the patient had complained of being assaulted earlier, that he suffered from a possible fractured nose, fractured bone around his left eye, and two lacerations to the nose and face that required stitches (Tr. 57-58; Pet. Ex. 14). Mr. Acevedo and his partner transported the patient to Bellevue Hospital for treatment (Tr. 58).

Mr. Acevedo identified the patient from photographs that petitioner produced. He testified that the photographs, which are close up images of a male face with two cuts to the left side of the nose, on the bridge of the nose and under the eye, and blood trickling from the cuts down the left side of the patient's face. The photographs show a blackened left eye (Tr. 60-61; Pet. Exs. 19, 20, 21). In Mr. Acevedo's experience, a cut to the nose such as the one in the photographs, would have required suturing to stop the bleeding (Tr. 62).

Mr. Correa interviewed the victim of the attack on March 1, 2017. The interview, which was recorded, was conducted over the telephone after Mr. Correa called the victim at the phone number that was provided in the unusual occurrence report (Tr. 80-81; Pet. Exs. 8, 9).<sup>3</sup>

Respondent objected to admission of the recorded interview, on hearsay grounds, contending that the victim was not produced to testify and be subject to cross examination and that his unsworn statements are unreliable because he has a history of substance abuse. After considering the parties' oral and written arguments, I admitted the interview into evidence over respondent's objection (Tr. 86-96; 139-40).<sup>4</sup>

Hearsay evidence is admissible in administrative proceedings and, if sufficiently reliable, may sustain an agency's burden of proof in administrative cases. *See* Charter § 1046(c)(1) (Lexis 2018); 48 RCNY § 1-46(a) (Lexis 2018); *Gray v. Adduci*, 73 N.Y.2d 741, 742 (1988); *People ex. rel. Vega v. Smith*, 66 N.Y.2d 130 (1985); *S & S Pub, Inc. v. NYS Liquor Auth.*, 49 A.D.3d 654 (2d Dep't 2008). The hearsay must, however, be found to be sufficiently probative and bear some indicia of reliability before it may be afforded any significant weight. *See Human Resources Admin. v. Muniz*, OATH Index No. 445/88 at 2-3 (Nov. 17, 1988); *Dep't of Transportation v. Brown*, OATH Index No. 432/85 at 7 (Jan. 15, 1986).

Courts rely on a number of factors to assess the reliability and probative value of hearsay evidence, including the identity of the hearsay declarant, the availability of the declarant to

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<sup>3</sup> A copy of the transcript of the interview was admitted into evidence with the audio recording of the interview (Pet. Ex. 9). The transcript is hereby designated as Petitioner's Exhibit 9C. In addition, transcripts of the interviews of respondent and Mr. Peguero are hereby designated as Petitioner's Exhibits 9A and 9B, respectively.

<sup>4</sup> The parties' written submissions are included in the record as ALJ Exhibits 2 and 3.

testify, declarant's personal knowledge of the facts, the independence or bias of the declarant, the detail and range of the hearsay, the degree to which it is corroborated, the centrality of the hearsay evidence to the agency's case and the magnitude of the administrative burden should the hearsay be excluded. *See Calhoun v. Bailar*, 626 F.2d 145, 149 (9th Cir. 1980), *cert. den.*, 452 U.S. 906 (1981); *Richardson v. Perales*, 402 U.S. 389 (1971); *Dep't of Environmental Protection v. Cortese*, OATH Index No. 1613/06 at 7 (Sept. 12, 2006); *Dep't of Correction v. Jackson*, OATH Index No. 134/04 at 5 (May 5, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 05-67-SA (Sept. 14, 2005).

Application of these factors to the hearsay evidence presented by the Department supports a determination that the Department's recorded interview of the victim was reliable and probative. The victim provided specific information of the incident that was not generally available, including a detailed account of the altercation and his medical information. Many of his statements were corroborated by documentary and video evidence. Further, the victim's credibility is enhanced by his ready admission that during his encounter with respondent and his partner he had refused medical treatment, an admission that is arguably counter to the victim's interests. In addition, there was no discernible bias, as the victim was unaware for most of the interview that it was being conducted because of allegations that respondent engaged in misconduct. Finally, the victim's stated desire to not get anyone in trouble suggests a lack of bias against respondent (Pet. Ex. 9C at 28).

During the interview, the victim recalled that he was stabbed in the face by another resident of the facility.<sup>5</sup> He stated that the facility's staff called EMS, who responded to the scene, as did police. The victim stated that he was in his apartment with his wife, who was lying in the bed, when the EMTs asked him if he wanted to go to the hospital "to close [his] face up," he declined (Pet. Ex. 9C at 8, 16). The patient told Mr. Correa that although he had refused medical care, he later realized that something was still dripping from his face and looked in a mirror. He noticed a "hole" in his face and bruising under his eye, so he asked the facility's staff to call a second ambulance (Tr. 125-26; Pet. Ex. 9C at 4). The victim further claimed that he had not been in his right state of mind when he declined medical assistance from respondent and his

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<sup>5</sup> Although the victim maintained that he was stabbed, Officer Ryan testified that his assailant was arrested for assault in the third degree, a charge that presumes no weapon was used in the attack (Tr. 229). However, the video evidence supports the victim's account. Channel 19, segment 214234, which captures the assault from down the hallway leading towards from the elevator, shows the assailant with what appears to be a shiny object in his hand as he hits the victim at 9:43:58. The assailant then appears to put the object in his pocket (Pet. Ex. 1).

partner because he had been assaulted and had a concussion. He believed that “if they would have looked at my face and seen the hole in my nose” they would have known that he needed medical attention (Tr. 126; Pet. Ex. 9C at 17, 18).

Respondent, who has been an EMT for 28 years, did not deny that he failed to complete a patient care report after he responded to the location on October 16, 2016. However, respondent maintained that under the circumstances here, there was no need for him to do so (Tr. 279, 307-08).

Respondent testified when he and his partner exited the elevator on the third floor at the location, he observed police officers talking to a man at the end of the hallway. After being told that the man was not the patient, respondent told Mr. Peguero to knock on the doors in the hallway. Respondent looked for letters or numbers that designated the apartments because he thought the information they had received about the location of the call included an apartment number (Tr. 281-82).

Someone opened one of the doors, pushed Mr. Peguero to the side or walked around him, pointed down the hallway to the man being interviewed by the police, and demanded that he be arrested (Tr. 282). Respondent was unable to see the individual. Mr. Peguero talked to the man, who walked back into his apartment and Mr. Peguero followed him and the door closed. Mr. Peguero exited the apartment and told respondent there was someone else in the room and that the man did not want “anything to do with” them (Tr. 283).

After Mr. Peguero reported that the man did not want their assistance, respondent, accompanied by an officer, went into the apartment. He stood about an arm’s length away from the man, who repeatedly stated that he was fine and just wanted to be left alone (Tr. 284). There were lights on in the apartment and respondent could see the man’s face. Respondent saw no signs of bleeding on the man’s face or clothing, nor were there any indicia that he was incapacitated or had a concussion (Tr. 285). Even though there was no visible signs of injury, respondent asked the man if he wanted to go to the hospital just to make sure he was okay (Tr. 295-96).

When respondent exited the man’s apartment, several police officers were in the hallway. He and Mr. Peguero stated that the man did not want anything to do with them and the officers told them they could leave (Tr. 289).

Respondent testified that he called in a 10-91 disposition code to the dispatcher and characterized the incident as “PMO dispute,” which means “police matter only” (Tr. 188-90, 291-92; Pet. Ex. 4). Although respondent maintained that he gave the dispatcher the 10-91 disposition code, the call history indicates that at 22:13:39, the incident was closed with a 10-90 disposition code. He believes the dispatcher made an error (Tr. 291-92; Pet. Ex. 4). The 10-90 code signifies that the call was unfounded and no patient had been located, while the 10-91 code is used when EMS is called but there is no need for the responding unit to initiate patient contact (Tr. 180-83, 187-90, 194; Pet. Ex. 4; Resp. Ex. A).

With respect to responsibility for documenting the call, respondent testified that he generally deferred to the technician about whether it was necessary to write a PCR. However, if he disagreed with the technician’s assessment, he can write the PCR himself. Here, however, there was no discrepancy in their assessment (Tr. 290). He and his partner spoke to the man in the apartment and determined that he had no medical complaints. In addition, the man did not tell respondent or his partner that he was victim of the alleged assault referenced in the call. Therefore, they decided it was not necessary to complete a PCR (Tr. 298).

Mr. Peguero, who had been respondent’s partner intermittently over the course of seven years, testified that he and his partner were aware that there had been a fight at the location when they responded to the call (Tr. 252). Mr. Peguero further testified that he was aware that someone called about a man at the location with cuts to his face and a broken nose (Tr. 268). When they arrived on the third floor of the premises, police officers were already on the scene and were interviewing someone in the hallway. The man who was being interviewed did not appear to have any injuries, and declined assistance when Mr. Peguero asked if he needed help (Tr. 252). Mr. Peguero and respondent then began knocking on doors to see if anyone needed assistance. According to Mr. Peguero, when he knocked on one of the doors, a shirtless man stormed out of an apartment and yelled that the officers should arrest the man who was being interviewed by the police (Tr. 252-53). Mr. Peguero did not observe any injuries on the man. He told the man to calm down and walked him back to the apartment and entered with him. Respondent remained outside while Mr. Peguero spoke with the man inside his apartment (Tr. 257). Inside the apartment, the man insisted that he was not hurt and did not want medical attention, but continued to demand that the other man be arrested (Tr. 254-55). As he spoke to the man, Mr. Peguero was able to see his face and observed no injuries or blood on his face or

body (Tr. 255). Mr. Peguero saw movement in the bed and he backed out of the apartment for his safety. He was in the apartment for two to three minutes (Tr. 256).

As the technician on the call, Mr. Peguero was responsible for writing a report after their interaction with the victim. However, he and respondent determined that there was no patient about whom to write a report because the man with whom they spoke did not present as a patient, was not claiming that he was injured, and had asked to be left alone (Tr. 261-63). In addition, no one at the location presented with the injuries described in the call history. Respondent transmitted the 10-90 disposition code as they left the building (Tr. 270-71).

Petitioner alleges that respondent made contact with a patient, but failed to generate a report or document the patient's refusal of medical attention in violation of OGP 102-15, section 4.2 (obligation to generate a PCR when patient contact is made), OGP 106-04, section 4.12 (obligation to complete a PCR for every patient contact), and OGP 101-01, section 4.1.1 (obligation to perform all duties as directed). It is further alleged that during an investigative interview respondent falsely stated that he did not observe injuries to the patient, in violation of OGP 101-01, section 4.1.48 (prohibiting falsifying official statements, records, or reports) (ALJ Ex. 1).

*Failure to Generate Report or Document Refusal of Medical Attention*

Section 4.12 of the Department's guidelines, OGP 106-04, provides that EMS personnel must complete a PCR for every patient contact. "Patient Contact" is defined as "[a]ny instance in which an emergency medical provider has initiated an assessment or treatment of a patient." See OGP 106-04 § 3.2.1. Further, "[e]very RMA situation requires the completion of a PCR, including instances where the patient refuses to cooperate with a physical assessment or respond to questions from EMS personnel." A patient is defined as "[a]ny individual for whom an ambulance has been requested for provision of emergency medical treatment and/or transport." See OGP 106-04 § 3.2.

Critical to respondent's defense is his testimony that he did not locate a patient because the victim of the assault did not identify himself as the person for whom the ambulance had been called and did have any visible injuries (Tr. 285, 298). Respondent's contention, however, is hampered by his less than credible testimony.

In assessing credibility, this tribunal may consider such factors as witness demeanor; consistency of witness' testimony; supporting or corroborating evidence; witness motivation,

bias, or prejudice; and the degree to which a witness' testimony comports with common sense and human experience. *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2 (Feb. 5, 1998), *aff'd*, NYC Civ. Serv. Comm'n, Item No. CD 98-101-A (Sept. 9, 1998). Neither respondent nor his witness was credible.

Respondent maintains that he did not know for whom the ambulance had been called and that there were no visible signs of injury to the victim. He equivocated about whether he saw blood on the floor in the hallway in front of the victim's apartment door (Tr. 302). Yet, the video establishes that the victim was bleeding in the hallway, leaving evidence that an injury had occurred. Respondent's conduct as captured on the video, such as looking down at the floor and alerting the arriving police officers that there was something on the floor, is further evidence that there was blood visible on the floor. Respondent's explanation that he has a tendency to look down (Tr. 302-03) is simply incredible. Further, Officer Ryan, a disinterested witness, testified that there was a trail of blood drops leading to the victim's apartment (Tr. 208). Respondent's far from believable testimony that he did not see blood on the floor outside the victim's apartment makes his testimony that he did not observe injuries to the victim highly unreliable.

Similarly, there are problems with Mr. Peguero's account. Foremost, his account is contradicted by video evidence. Most telling, Mr. Peguero testified that he did not recall seeing blood on the floor (Tr. 274), even though like respondent, he is seen on the video looking down on the floor, stepping as if to avoid something on the floor, and cautioning others to do the same. Mr. Peguero's claim that he may have been looking down on the floor because there was a lot of gum there is not believable (Tr. 274-75). Similarly, Mr. Peguero testified that the victim was shirtless when he first exited his apartment (Tr. 252), but the video shows that the victim was wearing a shirt. Further compromising Mr. Peguero's credibility is his admission on cross examination that he violated the Department's regulations and resigned in the face of disciplinary charges for calling in sick at the Department while he worked at a private hospital (Tr. 267). *See Dep't of Sanitation v. Palmisano*, OATH Index No. 2032/01 at 20 n.9 (Mar. 14, 2002) (respondent's guilty plea in disciplinary case considered as it might impact his credibility); *cf.*, *Police Dep't v. Zisel*, OATH Index No. 389/97 at 4 (Mar. 7, 1997), *modified on penalty*, Comm'r Dec. (Sept. 17, 1997) (noting that under the New York Civil Practice Law and Rules the "conviction of any crime may be used to impeach the credibility of a witness at a civil trial"); *Dep't of Correction v. Galarza*, OATH Index No. 348/90 & 433/90 mem. dec. at 3 (Mar. 7,

1990) (“it is undisputed that a witness’s criminal convictions are potentially relevant to the witness’s credibility.”).

In an attempt to account for the documented injuries to the victim, respondent’s attorney posited that the victim may have sustained his injuries in the three hours that elapsed after respondent left the scene and before the second ambulance was summoned. He notes that at specific instances on the video, the victim does not appear to have any visible blood on his face or shirt (Tr. 311-15). This argument is unpersuasive.

The quality of the video is not clear and the victim did not directly face the camera, so it is difficult to discern from his appearance on the video whether he sustained any injuries. However, his actions are consistent with those of someone who was injured and bleeding. First, the victim immediately put his hands to his face after he was hit in the face and doubled over, as would someone in pain. Second, after he had been bent over with his hands to his face, he shook his hands as if trying to dislodge something. Further, it is notable that before the attack, the floor directly in front of the victim’s apartment, which looks to be a black and white patterned tile, did not appear to show any visible discoloration. After the victim had been in that area bent over at the waist with his hands to his face, however, a dark spot appeared where the victim stood, suggesting that the victim sustained an injury to his face that bled as he was bent over and the blood collected on the floor.

As for the lack of evidence of blood on the victim on the video, the quality of the video and the angles from which the cameras recorded make it difficult to clearly see the victim’s face. However, the camera does capture the victim holding a piece of cloth or rag as he enters the elevator before respondent arrives. When he returns to the third floor and exits the elevator, that piece of cloth or rag appears bloody. It is more likely than not that the victim used this cloth to wipe his face after he entered the elevator, removing blood from his face. Thus, the lack of visible blood on the victim’s face on the video is not proof that he had no discernible injury when respondent arrived on the scene.

In addition, the documentary evidence establishes that the victim sustained injuries to the face after an altercation that occurred on October 16 at about 9:45 p.m. The facility’s incident report, completed by the staff member who was on duty that evening, identifies the time of the incident as 9:45 p.m. It goes on to describe the victim as having sustained injury to his left eye and notes that EMS arrived at 9:56 p.m. and was offsite at 10:10 p.m. (Pet. Ex. 2). Similarly, the

police reports describe the incident as having occurred at 21:46 (9:46 p.m.) and describes the victim's injury as laceration and bleeding from a punch to the face (Pet. Exs. 15, 16, 17). This is consistent with the video evidence, bearing a time and date stamp that correlates with those reflected on the various reports. Thus, the credible evidence establishes that the victim sustained injuries to his face before respondent arrived.

Moreover, there was other credible evidence of an injury. Officer Ryan testified that there was blood in the hallway leading to the victim's apartment, creating the strong inference that someone in that apartment had been injured. In addition, the victim told Investigator Correa that the first EMTs who responded to the scene, respondent and Mr. Peguero, asked him if he wanted to go to the hospital to close his face up, compelling evidence that the victim had visible injuries to his face.

Finally, respondent's claim that he did not regard the victim as a patient is inconsistent with his conduct. After his partner spoke to the victim, who refused medical care, respondent interviewed the victim and asked him if he wanted to be taken to the hospital. Had respondent concluded that the victim was not the person for whom the ambulance had been called, it makes no sense for him to have gone to the victim's apartment and asked him if he wanted to be transported to the hospital. Respondent's claim that he asks everyone he encounters in the course of his work if they want to go to the hospital seems highly unlikely. Indeed, although he and Mr. Peguero asked the assailant if he required medical assistance, when he declined, no one asked him if he wanted to go to the hospital (Tr. 296-98). It is more likely that although respondent may not have been aware of the extent of the victim's injuries, he knew that the victim had been injured in an altercation and he went into the apartment to make sure that the patient was refusing to be treated. Thus, respondent identified the victim as the patient, yet failed to complete the required report to document that the patient refused medical assistance.

That the primary responsibility for documenting the interaction with the patient fell on respondent's partner, who was the technician on the call, is no excuse. Respondent had an independent duty to complete the PCR, which he failed to carry out. *See* OGP 102-15, § 5.4 (while the technician is primarily responsible for the accuracy of the PCR, "both crewmembers are responsible for the completion of the PCR").

In sum, petitioner established that respondent failed to complete a PCR and document that the victim of an assault had refused medical treatment, in violation of the Department's rules.

*MEO 16 Interview*

Investigator Correa interviewed respondent pursuant to MEO 16 on March 1, 2017. During that sworn interview, respondent maintained that he did not encounter anyone with visible injuries on the scene. At the interview, respondent stated that after he and Mr. Peguero arrived on the third floor, a shirtless man came out of his apartment, pushed his partner aside and demanded that another gentleman who was already in the hallway be arrested (Pet. Ex. 9A at 20). Respondent stated that there were no visible injuries on the shirtless man, “[n]ot even a scratch” (Pet. Ex. 9A at 21, 22). He further stated that when he entered the man's apartment, he stood three to five feet away from the man who again refused medical care, stating that if he needed to go to the hospital, he would go on his own later on (Pet. Ex. 9A, at 23-24). When asked if he saw “any drips of blood on the floor, any blood in the hallway, anything like that?”, respondent answered that he had not seen any (Pet. Ex. 9 at 25). He denied having seen anyone at the location who appeared to require medical attention and denied having seen any injuries, cuts, or abrasions on anyone during the incident (Pet. Ex. 9A at 25-26, 39-40).

Petitioner contends that respondent made false statements during his sworn interview when he denied having seen injuries to the patient. In determining whether responses at an MEO 16 interview subjects a respondent to sanctions for false or misleading statements, this tribunal considers whether the statements are material and whether they show intentional deception or lack of concern for the truth, rather than inadvertent error. *See Dep't of Correction v. Jackson*, OATH Index Nos. 2927/10, 2929/10, 2930/10, & 2931/10 at 16 (Apr. 7, 2011); *Dep't of Correction v. Centeno*, OATH Index No. 2031/04 at 4 (Mar. 16, 2005).

Respondent's statements during the investigative interview that the victim had no visible injuries and no one was identified to him as the patient for whom medical care had been summoned are false. The counselor who summoned the police after the victim went down to the lobby of the building for assistance noted that the victim suffered an eye injury (Pet. Ex. 2). The arresting officer indicated in documents relating to the assailant's arrest that the victim had suffered a laceration and bleeding. In an interview with the Department's investigator, the victim stated that the EMTs asked him if he wanted to go to the hospital to “close [his] face up,”

which indicates that respondent and his partner appreciated that the victim had sustained an injury to his face. Moreover, if the victim had no visible injuries, it makes no sense that respondent would persist in asking the victim if he wanted to go to the hospital after he declined medical attention from respondent's partner. That respondent went into the victim's apartment and asked him if he wanted to go to the hospital after the victim had already refused medical attention creates a strong inference that respondent observed injuries on the victim. In addition, respondent's denial of having seen drops of blood in the hallway is unbelievable. As described above, there was ample evidence of blood visible in the hallway near the victim's apartment.

Respondent's statements during the investigative interview are material as they go to the central issue of whether respondent failed to follow the Department's procedures. Moreover, respondent engaged in willful deception as his statements were designed to obfuscate the truth – he sought to evade responsibility for not having properly handled his interaction with an injured person who suffered lacerations to the face and other serious injuries.

In sum, petitioner established that respondent made false statements during his MEO 16 interview when he denied having observed injury to the victim of an assault.

### **FINDINGS AND CONCLUSIONS**

1. Charges 1 through 3 should be sustained in that on October 16, 2016, respondent failed to generate a patient care report reflecting that a patient had refused medical attention, in violation of OGP 102-15, section 4.2, OGP 106-04, section 4.12, and OGP 101-01, section 4.1.1.
2. Charge 4 should be sustained in that respondent made false statements during an investigative interview under oath on March 1, 2017, when he denied having observed injuries to a patient who sustained lacerations during an assault, in violation of OGP 101-01, section 4.2.48.

### **RECOMMENDATION**

Having made these findings, I requested and reviewed respondent's personnel record. Respondent has worked for the Department since January 1990. In terms of formal discipline, respondent was reprimanded in March 2000 and was placed on probation for one year for excessive lateness. In December 2002, he was penalized five days' pay and ten days annual leave, for a total penalty of 15 days, for violations that included failure to complete

documentation and sending a false or improper signal. In January 2012, he forfeited one day of annual leave and was placed on probation for one year for excessive lateness. In May 2015, he was fined five days' pay and placed on probation for six months for conduct that included failure to thoroughly evaluate a patient.

Because of the present charges, respondent was placed on restricted duty and did not receive ratings in his 2017 annual performance evaluations. His overall performance ratings for calendar years 2013 to 2016 ranged between "good" and "very good." In addition, he received 18 letters of recognition during his 28-year tenure with the Department and in 1994 he received a meritorious service award.

The Department seeks termination of respondent's employment. Although the proven charges of failing to document interaction with a patient who refused medical care and making false statements about that interaction under oath merit a serious penalty, I find termination to be excessive.

In determining the appropriate penalty, several factors are considered, including: the seriousness of the misconduct; the employee's length of service, disciplinary history, and performance evaluations; the impact of the misconduct on the agency's mission; the penalty imposed on others for similar misconduct; facts in mitigation; and the adequacy of the penalty to deter similar misconduct by the employee or others. *See Fire Dep't v. Serrano*, OATH Index No. 584/18 at 11 (Mar. 21, 2018). This tribunal has recommended termination of employment for employees who make false statements where that misconduct is coupled with other serious misconduct, the employee has a significant disciplinary record, or other aggravating factors exist. *See Fire Dep't v. Prosper*, OATH Index No. 2885/10 at 13 (Dec. 16, 2010), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD-11-52-A (Aug. 9, 2011) (termination of employment for EMT with "extremely poor disciplinary record" who refused to obey multiple orders and falsely reported that he had not made patient contact); *Fire Dep't v. Loscuito*, OATH Index No. 509/06 (June 14, 2006), *adopted*, Comm'r Dec. (June 28, 2006), *aff'd*, 50 A.D.3d 905 (2d Dep't 2008), *motion for lv to appeal den.*, 13 N.Y.3d 716 (2010) (termination of employment for fire fighter with a significant disciplinary history who gave false testimony in MEO 16 interview and allowed a visitor to remain in the firehouse after hours).

In mitigation of the penalty are respondent's 28-year tenure with the Department, his overall favorable performance evaluations, and the numerous accolades that he received, many from members of the public who praised respondent for the care and compassion that he displayed in his interactions with them and their loved ones.

Respondent relies on several decisions issued by this tribunal where the administrative law judge recommended dismissal of the charges or a penalty well short of termination (Tr. 322). Specifically, respondent cited *Fire Dep't v. Brown*, OATH Index No. 1423/08 (June 6, 2008), *modified on penalty*, NYC Civ. Serv. Comm'n Item No. CD09-31-M (July 24, 2009) and *Fire Dep't v. Hodge*, OATH Index No. 574/06 (May 18, 2006). These cases are readily distinguishable. In *Brown*, the respondent was insubordinate and falsified a form documenting that an ambulance had been inspected and was ready for use when he had not in fact inspected the ambulance, which was unclean and lacked supplies. Considering the respondent's 25-year tenure and minimal recent disciplinary record, which amounted to forfeiting one annual leave day, the Civil Service Commission imposed a penalty of 15 days' suspension without pay. Here, in contrast, respondent's recent disciplinary history involves a five-day pay fine and a six-month probation for failing to thoroughly evaluate a patient, very similar to the type of misconduct underlying the charges in this case. In addition, he was dishonest under oath when questioned at the MEO 16 interview.

As for *Fire Dep't v. Hodge*, this tribunal recommended that charges be dismissed because petitioner failed to establish that the respondent make mistakes in completing various reports and a log entry and the proven mistakes were *de minimis*. To the contrary here, failure to document contact with a patient and that patient's refusal of medical care and making false statements about contact with a patient are not *de minimis* mistakes, but manifest a troubling lack of diligence and honesty.

There is some suggestion in respondent's investigative interview as to why he and his partner may have mishandled this call. According to respondent, they encountered the victim when they were at the end of their shift. He insisted that although it was their last job, he had no problem with transporting the victim to the hospital if that was what the victim wanted to do (Pet. Ex. 9A at 24). Yet, respondent appears to have cut corners in handling the patient and documenting their interaction, which occurred at the end of his shift. He compounded his

misconduct by falsely stating during an investigative interview that he had not observed injuries to the patient.

Accordingly, I recommend that, for the misconduct found here, respondent be suspended without pay for 40 days.

Astrid B. Gloade  
Administrative Law Judge

May 3, 2018

SUBMITTED TO:

**DANIEL A. NIGRO**  
*Commissioner*

APPEARANCES:

**JOSEPH PALAZZOLO, ESQ.**  
**STANISLAV SKARBO, ESQ.**  
*Attorneys for Petitioner*

**DISTRICT COUNSEL 37**  
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By: **AARON S. AMARAL, ESQ.**

**THE CITY OF NEW YORK  
CITY CIVIL SERVICE COMMISSION**

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*In the Matter of the Appeal of*

**RONALD JOHNSON**

*Appellant*

*-against-*

**FIRE DEPARTMENT**

*Respondent*

*Pursuant to Section 76 of the New York  
State Civil Service Law*

CSC Index No: 2018-0645

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**DECISION**

**RONALD JOHNSON** (“Appellant”) appealed from a determination of the Fire Department (“FDNY”) finding Appellant guilty of incompetency and/or misconduct and imposing a penalty of suspension following disciplinary proceedings conducted pursuant to Civil Service Law Section 75.

The Civil Service Commission (“Commission”) heard arguments from the parties on November 8, 2018.

The Commission has considered the arguments presented on this appeal, and reviewed the record of the disciplinary proceeding. Based on this review, the Commission concludes that there is sufficient evidence in the record to support the findings of fact and the conclusions of law, and that the penalty is appropriate.

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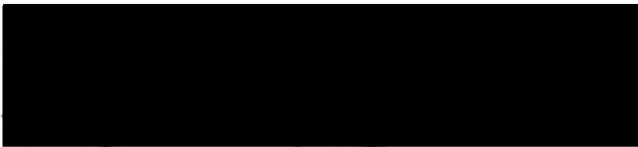
Therefore, the final decision and penalty imposed are hereby affirmed.



Rudy Washington, Commissioner  
Vice Chair



Charles D. McFaul, Commissioner



Larry Dais, Commissioner

\*Commissioner Nancy G. Chaffetz was not present at this hearing and took no part in this decision.

Dated: 11/23/18