

**Nassau County
Office of the Comptroller
Field Audit Bureau**



**Examination of
Nassau County Correctional Center's
Administration of Work Related Injury Leave**

HOWARD S. WEITZMAN
Comptroller

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NASSAU COUNTY
OFFICE OF THE COMPTROLLER

HOWARD S. WEITZMAN
Comptroller

Jane R. Levine
Chief Deputy Comptroller

Manuel Mosquera
*Deputy Comptroller
for Audits and Special Projects*

Susan D. Wagner
*Deputy Comptroller
for Operations*

Randy Ghisone
*Deputy Comptroller
for Accounting*

Allen M. Morrison
Director of Communications

Bruce G. Kubart
Deputy Field Audit Director

Audit Staff

JoAnn Greene
Field Audit Supervisor

Douglas Hutter
Field Audit Supervisor

Susan Cohen
Field Auditor

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Background

Section 207-c of the New York State General Municipal Law ('G.M.L.') requires that a county pay "any sheriff, undersheriff, deputy sheriff or corrections officer . . ." the full amount of his or her regular wages if he or she is injured or suffers from an illness as a direct result of performing his or her duties, until the disability ceases.¹ The county employer is also responsible for all medical and hospital expenses incurred as a result of the injury or illness.² The county is liable for the officer's salary and wages, and medical expenses, even if a third party causes the injury or illness.³ Therefore, in New York, a local corrections officer who suffers an injury on the job receives full pay rather than the lesser amount s/he would be entitled to receive under the state workers compensation law.

The Nassau County Comptroller's Office issued a report on the Nassau County Correctional Center's (the "department") administration of 207-c benefits in June 1998. That report raised serious concerns about the department's monitoring of and control practices related to 207-c leave. Because of these concerns and the significant costs of 207-c benefits, we conducted a follow-up audit covering the period of 2002 through early 2004. The new audit examines the extent to which the department has addressed the problems revealed by the previous audit, as well as its compliance with relevant sections of labor agreements.

Pursuant to 207-c, the county may appoint a physician to determine whether an officer previously found entitled to 207-c benefits by the undersheriff has recovered and is physically able to perform regular duties. If the physician concludes that the officer has recovered and can perform regular duties, the county is not liable for wages or medical expenses as of the date of recovery certified by the physician.⁴ If the officer refuses medical treatment or inspections from the county-appointed physician, he or she waives the right to recover wages and expenses as of the date of refusal.⁵

The county may discontinue payments if the correction officer is granted an accidental disability retirement allowance by the New York State and Local Retirement System, but the county remains liable for the costs of the "medical treatment and hospital care necessitated by reason of such injury or illness."⁶ If the retirement allowance is not granted, and a physician determines that the officer may perform light duties, the county may discontinue payments if the officer refuses light duty.⁷ In addition, if the officer consents, he/she may be transferred to another agency or department within the county

¹ N.Y. Gen. Mun. Law § 207-c (1) (McKinney 2004).

² Id.

³ Id. at § 207-c (6).

⁴ Id.

⁵ Id.

⁶ N.Y. Gen. Mun. Law § 207-c (2) (5) (McKinney 2004).

⁷ Id. at § 207-c (3).

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for which he/she is qualified under civil service rules.⁸ Where an accidental disability retirement allowance has been denied, the county may discontinue payments once the officer attains the mandatory retirement age or has performed the “period of service specified by applicable law for the termination of his service.” If the officer is transferred, he or she will continue to be entitled to medical expenses related to the work-related injury.⁹ Once an officer is retired, in addition to any pension to which he or she is entitled, GML 207-c requires that the county continue to pay the officer’s medical expenses concerning the work-related injury.

In 1999, the New York Court of Appeals held that an injury incurred in the line of duty that is not a result of law enforcement duties is covered by New York’s Workers’ Compensation Law.¹⁰ The Court held further that in order for the individual to collect under Section 207-c, s/he would have to prove that the injury was sustained in the line of law enforcement duties under a “heightened risk” standard (meaning that the duties involved a greater chance of injury incurring).¹¹ However, in 2003, the Court reviewed its previous decision and the statute, and concluded that “in order to be eligible for [S]ection 207-c benefits, a covered municipal employee need only prove a ‘direct causal relationship between the job duties and the resulting illness or injury.’ The word ‘duties’ in section 207-c encompasses the full range of a covered employee’s job duties.”¹² Therefore, municipalities are now liable to all covered employees under Section 207-c if the injury or illness was incurred as a result of *any* job-related duty.

Audit Scope, Objective and Methodology

This is a follow-up audit to an audit conducted in 1998. We examined the department’s policies and controls for the period beginning in January 2002 and ending in March 2004 to ascertain whether the department had addressed the procedural weaknesses observed in the 1998 audit. We sought to determine whether the department’s procedures were in compliance with the Sheriff Officers’ Association (‘ShOA’) and the Civil Service Employees Association, Inc. (‘CSEA’) Agreements and the Memorandum of Agreement dated August 2001.

Our audit included:

- a review of medical and personnel files;

⁸ Id. at § 207-c (4).

⁹ Id. at § 207-c (5).

¹⁰ Balcerak v. County of Nassau, 94 N.Y.2d 253, 260 (1999) (holding that a municipality may determine whether an injury suffered by a corrections officer in a car accident was sustained “in the line of duty”).

¹¹ Id.

¹² Theroux v. Reilly, 1 N.Y.3d 232, 243-44 (2003) (quoting White v. County of Cortland, 97 N.Y.2d 336 [2002], which rejected the heightened standard of proof requirement for section 207-c benefits).

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- interviews with department personnel; and
- inquiries with members of the New York State Management Group who prepared a report on the administration of Workers' Compensation Leave ("A Report by the New York State Office of the State Comptroller – Department of Correctional Services Administration of Workers' Compensation Leave 2002-S-35") and a compensation investigator from the Suffolk County Department of Civil Service/Human Resources Division of Employee Services.

This audit was conducted in accordance with generally accepted auditing standards. These standards require that the audit be planned and performed to obtain reasonable assurance that the audited information is free of material misstatements. An audit includes examining documents and other available evidence that would substantiate the accuracy of the information tested, including all relevant records and contracts. It includes testing for compliance with applicable laws and regulations, and any other auditing procedures necessary to complete the examination. We believe that the audit provides a reasonable basis for the audit findings and recommendations.

Summary of Significant Findings

At the time of our prior audit, the Sheriff's Department estimated that 207-c costs were about \$3.5 million a year. The department now estimates that its costs were approximately \$3.8 million in 2002 and approximately \$3.4 million in 2003. These costs represent salary payments, exclusive of fringe benefits and overtime. The 2003 salary component represents 3% of the department's 2003 total budget. The county is also responsible for all medical and hospital expenses incurred as a result of the injury or illness; however, the department did not provide an estimate of these costs. Knowledge of these costs would aid the County in tracking total expenses for 207-c for both budgetary and fiscal oversight purposes.

We determined that many of the same control weaknesses identified in the Comptroller's prior audit report continued to exist through the end of the audit period. In its written response to our findings, however, the department has informed us that in 2004 after we concluded our audit field work, it began to take significant actions to remedy the control weaknesses we have identified, including putting in place a plan to accumulate, monitor, report and control costs. We expect that in the department's corrective action plan, which should be submitted to us within 90 days of its receipt of this audit report, the department will more specifically delineate the steps it has taken and the progress it has made in responding to the deficiencies noted in this audit.

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As the county moves forward in its efforts to reform its administration of 207-c benefits, it should address the following findings:

- **Independent Medical Examinations** ('IMEs') - allow the county to confirm with an independent physician the nature and extent of the disability claimed by the officer's physician. As such, they represent an important tool by which the department can verify a claimant's eligibility for benefits. We found that the department had not conducted IMEs in a timely manner. The department's long-term disabled list of February 2004 included 46 long-term claimants. Of these, 23 were on the list for at least two years. An analysis of IMEs conducted on these 23 long-term claimants disclosed that five claimants, or 22%, did not undergo an IME in either 2002 or 2003. In 2003, no IMEs were scheduled or conducted for seventeen, or approximately 74 percent, of these claimants.
- **Failure to Appear for Required Medical Examinations** – We determined that some claimants failed to appear for medical examinations necessary to ascertain continued eligibility to receive 207-c benefits. We also found that a claimant cancelled and then failed to re-schedule appointments in 2002 and 2003 with the New York State Retirement System ('NYSRS'). Although the law¹³ states that if a claimant refuses to permit medical inspections, he "...shall be deemed to have waived his right under this section in respect to expenses for medical treatment or hospital care rendered and for salary or wages payable after such refusal," the department has not implemented the remedies afforded by this section of the law.
- **Compliance Monitoring** – The department's Medical Investigation Unit ('MIU') uses home visits as its primary monitoring technique to identify 207-c abusers. In a random sample of 13 long-term claimants out of a total of 46 cases two surveillances were performed in 2002 and one in 2003: home visits were conducted sporadically. At the time of our audit, investigators were not authorized to conduct other surveillances on weekends, or after 8 p.m. The department does not have written policies and procedures regarding how cases are selected for monitoring or for methodologies to be employed. The department lacks the necessary personnel to conduct such investigations effectively. Investigators are required to perform clerical duties taking time away from investigative duties. Investigators have not been provided with the audio/visual equipment needed to document their observations.
- **Sheriff's Department Surgeons** – The department's surgeons did not examine claimants assigned to restricted duty every 30 days, as required. As discerned by the forms required to document the surgeons' determinations, the examinations conducted appeared to be insufficient to establish fitness for duty. According to MIU employees, the equipment available to the surgeons was an examining table

¹³ Id. at § 207-c (1)

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and an x-ray light to review x-rays. After the end of the audit period, however, the department entered into an Interdepartmental Service Agreement with the Police Department (2/10/04) to have its surgeons provide return-to-work determinations.

- **Physician's Appointments** – The department routinely permits claimants to take up to four hours to obtain medical treatment. Department officials cite a County Attorney's inter-departmental memorandum dated October 12, 1983, as the basis for authorizing this time off. However, the language of the memorandum permits reasonable leave to be taken for medical treatment and uses four hours as an example.
- **Equipment Allowance** – All employees with Correctional Center or Deputy Sheriff titles are entitled to receive an annual equipment allowance of \$525 under Section 50-3 of the Agreement between the County and the Civil Service Employees' Association, Inc. As the State Comptroller implicitly found, providing an equipment allowance to employees who are out on 207-c leave for all or most of a year does not make sense. However this payment is made to long-term claimants who have worked minimal hours or not at all
- **Establishment of a Liaison Position** – a Police Department employee has been functioning as the "Police Department Liaison to the County Attorney and the Workers' Compensation Division" for the past nine years. This employee is responsible for providing oversight for all 207-c and workers' compensation cases from their inception. The Sheriff's Department does not employ anyone in a similar capacity.
- **Documenting 207-c Decisions** – During the audit period, there were three instances where the department failed to document its 207-c decisions and decision-making processes and the basis for granting such benefits. In those instances, benefits were denied, then subsequently granted, to claimants, with no documentation explaining the reversal. We also found cases in which the department did not consider results from independent medical examinations in granting the continuation of 207-c benefits.

The matters covered in this report have been discussed with officials of the department during the audit. On November 12, 2004, we submitted a draft report to department officials with a request for comments. The department provided a summary response, included as an appendix, and individual responses to each finding, included in the body of the report.

Auditor's follow-up responses are included within and following the department's comments.

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Department's Response:

The Nassau County Sheriff's Department implemented its 207-c Management Program in February 2004, as soon as permitted under the collective bargaining agreement between the County and the Sheriff Officers Association. The Program has been a success in resolving the issues identified by the Comptroller in the draft audit including timely and frequent medical evaluations so that officers on 207-c leave either return to work or retire due to their disability. The 207-c Management Program is explained in detail in the Department's Response appended to this audit.

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Findings and Recommendations

Failure to Contain 207-c Costs

Audit Finding (1):

Under Section 207-c of the New York State General Municipal Law ('G.M.L. '), correctional officers ('COs') injured in the line of duty are eligible to receive their regular salary until the disability ceases. The statute also provides that the municipal employer is responsible for all medical and hospital expenses incurred as a result of the injury or illness. As a result of this state statutory mandate, in New York, a local corrections officer receives full pay rather than the lesser amount allowable under the workers compensation law when he or she suffers an injury on the job. Nassau County pays injured COs' salaries over extended periods during which the officers may have worked little or no time. Additionally, because the department must keep the officers' positions open, the department may incur overtime, as the substitute officer often must work a regularly scheduled shift in addition to the shift of the injured officer. The department estimates that costs arising from 207-c were approximately \$3.8 million in 2002 and \$3.4 million in 2003 for salary payments, exclusive of fringe benefits and overtime. This figure also does not include related medical costs.

Because of the large costs to the county resulting from this statutory mandate, it is important that the department carefully evaluates officers' initial and continuing eligibility for 207-c benefits, and monitor carefully 207-c leave taken. For the audit period we found that the department had not developed adequate cost containment controls within the constraints of the statutory framework, and had not instituted an effective plan to accumulate, monitor and report these costs. Although a sergeant developed a computer program in 2002 called "MIU Sick Leave Abuse Tracking," to be used by the department's Medical Investigation Unit ('MIU') for accumulating data to assist in attendance control, a comprehensive program had not been developed that would enable adequate management reporting and tracking of 207-c costs.

Additionally, the department did not have operating or performance goals to reduce the substantial 207-c costs incurred. The major portion of these costs relates to long-term claimants who have been out more than 30 consecutive calendar days and are therefore assigned to the department's "30 Day Disabled List." Records maintained by MIU indicate that the annualized number of staff members assigned to the disabled list in 2000 and 2001 was 46; in 2002 it was 50 and in 2003 it was 53.

The department's disabled list of February 2004 included 46 long-term claimants. Of these, 23 were on the list for at least two years. The breakdown is as follows:

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| <u># of COs</u> | <u># of Years on the List</u> |
|-----------------|-------------------------------|
| 1 | 8 |
| 1 | 7 |
| 3 | 5 |
| 5 | 4 |
| 6 | 3 |
| 7 | 2 |

According to an investigator from MIU, the department usually files a disability retirement application on behalf of the claimant if the claimant has been out for more than one year. Applications are filed with the New York State Retirement System ('NYSRS'). The department did not provide the auditors with a written policy or procedure for determining when to proceed with such a filing.

In three instances, the department failed to properly document the undersheriff's basis for granting 207-c benefits. Of the 23 long-term claimants, we found three cases in which 207-c benefits were initially denied, and then subsequently approved. In one case, an officer slipped in the parking lot on July 19, 2001, when he was leaving to go home, re-injuring an old back injury sustained 10 years prior. On August 23, 2001, he was notified by an undersheriff "...that it has been determined that the facts and circumstances specific to your case fail to meet the statutory requirements to receive said [G.M.L. 207-c] benefits." In another case, an officer alleged that on April 20, 2001, while assigned to a visiting trailer, he experienced dizziness and palpitations. On his way out of the trailer, he lost his balance and fell down the steps, which exacerbated injuries previously sustained on December 6, 2000. In both cases, the officer was subsequently notified two weeks later via an inter-departmental memorandum that the undersheriff had reversed his decision. No explanation was provided by the undersheriff as the basis for the reversal.

In another case, a maintenance supervisor claimed that on November 21, 2000, he injured his left elbow, upper back and left arm as a result of an inmate opening a door that he was about to open. The supervising officer of MIU initially denied the employee's application for 207-c benefits. Approval was subsequently granted; however, there is no documentation in the case file showing the basis for the department's reversal, nor any as to who approved it. The employee was placed on the 30-day disabled list on March 13, 2003.

For the purpose of continuing an employee on 207c status the employee is sent for an independent medical examination ('IME') which is performed by independent medical consultants. These examinations provide confirmation regarding the legitimacy of the claimant's disability or a determination that the employee can be returned to duty (either full or light). The results of these IMEs are documented by the medical consultants in a formal report. Failure to consider IME results may have resulted in granting inappropriate extended 207-c benefits to claimants. As an example,

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- A consultant's report on one officer noted that, according to an IME conducted on January 2, 2002, "he is capable of doing sedentary work and should be protected from any confrontation. Regarding his overall condition, I feel it is materially and substantially affected by his overweight status." At the time of the IME, the 6'3" officer was 325 pounds at this point he was not returned to light duty work. In the following year, no IMEs were conducted, nor were any exams administered by the department's surgeons. Although, the State Retirement System ultimately found this officer to be disabled, during the period when the department's surgeon found him fit to work, it did not require him to do so nor did it require that he undergo a medical review during 2002.
- A corporal sustained shoulder, neck and back injuries on August 18, 2000, while trying to break-up a fight between inmates, and was granted 207-c benefits. Subsequently, the officer filed for injuries sustained on November 6, 2001, when he slipped in his driveway as he was leaving for physical therapy. 207-c benefits were denied. Additionally, a medical consultant's report of an IME conducted in 2002 states:

Based on the patient's history, his present management is not related to his fall and is unrelated to a work-related injury. His present treatment, therefore, should not be part of his case. [I]t would appear that he would have reached maximum benefit prior to this fall. I feel that further treatment is not indicated for his work-related injury. In addition, I feel he would be able to work at an administrative or supervisory capacity if it were not for his new injury which is not work-related.

The corporal did not undergo any subsequent IMEs in 2003, nor did he undergo any examinations by the department's surgeons in 2003. This Corporal has been on the 30-day disabled list since September 18, 2000, and has not returned to work.

- An officer on the disabled list since March 1995 with a 207-c injury consisting of a pinched nerve in the neck and numbness in the hand was found fit to return to full duty after an IME held January 22, 2002. The report of this examination states,

There is no objective evidence of a causally related disability. The claimant is presently not disabled, and is capable of working full duty at his usual occupation. There is no need for orthopedic treatment. There is no need for left knee arthroscopic surgery. There is no need for physical therapy. No further testing is necessary. There is no need for medical equipment....

Although the State Retirement System ultimately found this officer to be disabled, during the period when the department's surgeon found him fit to work, it did not require him to do so and nor did it require that he undergo an IME or a departmental surgeon's examination in 2003.

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Audit Recommendations:

The department should:

- a. formulate, document and implement administrative controls necessary to contain 207-c costs effectively. Operating goals should be established and performance should be periodically measured against these goals to determine the need for corrective actions. Such a program should also enable the department to generate monthly statistical reports, as well as to compile comprehensive historical information pertaining to both long-term and sporadic 207-c claimants. This would enable the department to improve the tracking and monitoring of all cases. Management should review reports generated by this system in a timely manner to determine what policies or procedures might need to be changed or if additional resources should be dedicated.
- b. document all approvals and denials of 207-c benefits. The signature of the official authorizing these benefits should be affixed to the document(s) providing the basis for such decisions.
- c. consider IME results in determining whether to continue an officer's 207-c benefits and whether to require the officer to return to work. The length and number of long-term absences could also be reduced if the department required timely medical exams to determine whether an officer is able to return to work.
- d. consider ways of seeking the public's assistance in identifying possible fraud and abuse of 207-c and worker's compensation benefits.

Department's Response:

Response to Recommendation "a"

The Department agrees with the Comptroller's Office that monitoring 207-c cases, statistical reporting and review of those reports by management is vital. The Department has implemented these steps as part of the 207-c Management Program supplementing the reporting and monitoring of 207-c cases that the Department performed during the audit period.

In addition to the Department's internal monitoring and reporting, the Department has worked with the Administration-wide Countystat program to monitor 207-c expense and set performance goals. Countystat staff have assisted the Department in analyzing costs and Countystat meetings, where the Sheriff reports regularly on 207-c usage, has been important to implementing the Administration's policy on controlling 207-c expense.

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Demonstrating the success of the Department's reporting and monitoring program, the amount spent on 207-c leave has been reduced even as the number of 207-c leave recipients increased because of a change in law loosening the eligibility standard:

| 207-c Expense | |
|---------------|---------------|
| 2002 | \$3.8 million |
| 2003 | \$3.4 million |

(2004 data awaiting information compiled by IT)

| Long Term 207-c Recipients (on leave for 30 days or longer) | |
|---|----|
| 2002 | 53 |
| 2003 | 47 |
| 2004 | 36 |

As part of the 207-c Management Program, the Department will continue to monitor and report on all aspects of 207-c usage, in order to achieve the overriding goal of ensuring that the cost of the program be brought to the minimum level permitted by law.

Response to Recommendation "b"

The Department agrees with the Comptroller's Office that all 207-c approvals or denials should be documented without exception. Department policy requires that all decisions on 207-c applications be documented in the applicant's personnel file. The Department deplores the three instances identified by the Comptroller in which 207-c determinations were altered to grant benefits without explanation. The three instances identified by the Comptroller occurred in 2000 and 2001. Procedures have been tightened and there have been no further instances of this occurring.

Response to Recommendation "c"

The Department agrees that medical evaluations are critical to determining whether an employee is eligible to receive or retain 207-c benefits and that its previous practice of referring employees for 207-c review to two part-time doctors did not provide an adequate number of reviews. As part of the 207-c Management Program, the Department has contracted with the Police Surgeon to perform medical reviews. Instead of a few appointments a month under the old system, the Police Surgeon provided an appointment a day for 207-c evaluations. In 2004, over 60 officers had 82 examinations. 41 officers were returned to work and 22 were submitted for disability retirement.

Response to Recommendation "d"

The Department has referred appropriate cases of abuse of the 207-c program to the District Attorney's Office. The District Attorney's Office accepted one case for prosecution. Other cases have led to Departmental discipline. The Bureau with primary 207-c oversight responsibilities, MIU, took disciplinary action 45 times in 2002 and 42 times between January 1 and December 1, 2004. Additional disciplinary actions for violations of 207-c and sick leave policies were taken by the Bureau of Investigation and the Human Resources Unit.

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Auditor's Follow-Up Response:

The department has informed us that in 2004 after we concluded our audit field work, it began to take significant actions to remedy the control weaknesses we have identified, including putting in place a plan to accumulate, monitor, report and control costs. We expect that in the department's corrective action plan, which should be submitted to us within 90 days of its receipt of this audit report, the department will more specifically delineate the steps it has taken and the progress it has made in responding to the deficiencies noted in this audit. In particular, we expect that the corrective action plan will include how the department is addressing the need to prepare a plan of action to control overtime costs.

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Independent Medical Exams

Audit Finding (2):

Independent Medical Exams ('IMEs') are an important tool by which the department can verify a claimant's eligibility for 207-c benefits. These examinations are necessary to confirm the nature and extent of the disability claimed by the officer's physician. Without the medical consultants' reports of these examinations, there is no documentation to support challenges to a claimant's absence from work, or to support decisions to require the claimant to return to full duty (or light duty in the absence of a full recovery).

During the audit period we did not find departmental procedures which clearly stated a time frame to perform initial and follow-up IMEs. As a result, claimants were not being properly monitored to determine their entitlement to benefits.

An analysis of IMEs conducted on the 23 out of 46 long-term 207-c claimants determined that five claimants did not undergo an IME in either 2002 or 2003. IMEs were not being performed on a timely and regular basis. A review of claimants' case files disclosed the following:

In 2002 -

- no IMEs were scheduled or conducted for six, or approximately 26 percent, of the 23 long-term claimants sampled;
- six claimants of the 23 sampled, for whom a 2002 IME report indicated a capability to return to work on either full-duty or light/restricted duty, did not undergo any follow-up IMEs in 2003;
- one of the claimants did not appear for two IMEs, scheduled for 1/18/02 and 2/17/02, respectively. However, the next IME was not scheduled and held until 6/4/02; and at this point he should have been removed from 207-c status.

In 2003 -

- no IMEs were scheduled or conducted for 17 of the 23 sampled;
- seven claimants (including some of the aforementioned) did not undergo either an IME or a Sheriff Department surgeon's exam in 2003;

Audit Recommendations:

- a. The department, in conjunction with the WCB, should establish specific guidelines for IMEs. IMEs should be regularly scheduled so that all appropriate

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defenses can be raised and all issues litigated. This would allow the department to stop benefits if no disability is found. Additionally, authorizations for medical treatments may be withdrawn, or treatment levels reduced, if such treatments are deemed medically unnecessary, or if maximum medical improvement has been reached.

- b. The department should be more proactive in requesting that IMEs be performed on a timely basis. As stated in procedure VII of the Sheriff's policy number CD 03-01-10, effective January 1, 1991, "The Attendance Control Officer may confer with the County physician and/or the County Attorney's Office as to the condition of the Correction Officer's injury, and if said injury warrants further evaluation by a physician." In instances in which medical reports do not support alleged injuries or further medical treatment, the department could initiate steps to require a claimant to return to work. Additionally, IME results could be useful in determining whether to file for disability retirement on behalf of the officer.
- c. The 1991 policy was revised effective February 17, 2004. Procedure II. J. now reads "Human Resources or Attendance Control may confer with the designated physician and/or the Department's assigned General Counsel or Legal Unit as to the condition of the Correction Officer's Injury, and if said injury warrants further evaluation by another physician." This procedure should be further amended to also direct the Human Resources or Attendance Control personnel to confer with the County Attorney's Office, since that office is instrumental in setting up IMEs.
- d. The department should work with the WCB to develop a software control system that records the types of medical tests performed, "no-shows" and reasons thereto, and receipt dates of IME reports. The Bureau should be provided with the ability to scan tests results and examination reports, in order to expedite the transmittal of information to the department.

Department's Response:

The Department concurs with the Comptroller that medical evaluations are critical to determining whether an employee is eligible to receive or retain 207-c benefits. The Department also agrees that its previous practice of referring employees for 207-c review to two part-time doctors did not provide an adequate number of medical reviews.

As part of the 207-c Management Program, the Sheriff entered into an inter-agency agreement with the Police Department in January 2004 allowing the Department to refer officers to the Police Surgeon for evaluation for eligibility for 207-c benefits. The Police Surgeon provides one examination slot a day for Sheriff Department employees, greatly expanding the number of medical evaluations that can be performed. Since the 207-c Management Program started in 2004, the Police Surgeon performed 82 medical examinations for the Sheriff's Department. After evaluation by the Police Surgeon, 41

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officers who were receiving 207-c benefits have been returned to work and one officer's employment has been terminated. Further, as part of the 207-c Management Program, the Sheriff's Department's Policy and Procedures relating to 207-c were revised and reissued in February 2004.

Auditor's Follow-up Response:

We are encouraged by the department's initiatives in addressing eligibility for 207-c benefits. We encourage the department to take a more proactive approach and work in conjunction with the WCB to ensure that claimants undergo timely medical evaluations.

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Compliance Monitoring

Audit Finding (3):

The department's Medical Investigation Unit ('MIU') uses home visits as its primary monitoring device to identify 207-c abusers. Home visits are made to claimants currently on the 30-day disabled list as well as sporadic 207-c users and sick leave abusers. In a random sample of 13 long-term claimants out of 46, only two surveillances were performed in 2002, one of which was a "drive by," in which a team of investigators drive past a claimant's residence. In 2003, only one surveillance/drive-by was performed. At the time of the audit, investigators were not authorized to conduct surveillances on the weekends, or after 8 p.m.

The MIU maintains records of the monitoring conducted that note the claimant's name, the type of monitoring, and the name of the investigator(s). Monitoring may include home visits; surveillances/drive-bys; telephone calls to NYSRS to monitor the progress of retirement applications; phone calls and office visits to physicians and physical therapists to inquire on claimant's medical status; and phone conversations and meetings with claimants.

MIU records examined for the 13 long-term claimants sampled disclosed that in 2002 the number of compliance checks conducted per claimant ranged from one to nine. In 2003, the number of checks per claimant ranged from two to twelve. One claimant was monitored once every couple of months, while another claimant was monitored twice in one month and then not at all for the remainder of the year. A large percentage of these compliance checks consisted entirely of phone calls. Records for one claimant indicated that nine compliance checks were performed in 2003: five were telephone calls and four were home visits. For another claimant, 12 checks were performed: five were phone calls; four were home visits; one was for a 'drive by'; one was office visits with two physicians; and one involved a meeting with a claimant at the MIU office.

Our audit found that the department had no written policies and procedures relating to compliance checks and/or investigations for:

- selecting cases or determining investigative priorities;
- minimum number/frequency;
- types to be conducted; or
- methodologies to be employed.

In our opinion, the reports documenting the results of monitoring were cursory. Preprinted report forms are used to note the time and type of the compliance checks

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conducted; the claimant's name and his/her date of injury; and the claimant's title, address and phone number. There is also a space that allows for brief comments to be entered. Generally speaking, we found that the case management system was not designed to result in producing files which contain detailed documentation which could ultimately aid the department in requiring an officer to return to work.

During the audit period there were seven investigators assigned to MIU, two were assigned to 207-c and five were assigned to absence control. The two investigators assigned to 207-c worked rotating shifts Monday-Friday from 8 a.m. to 4 p.m. and 12 p.m. to 8 p.m., they were responsible for monitoring these 46 long-term cases. They obtained and processed all doctors' notes from any member who was out sick, not just those on 207-c. The investigators had also been responsible for taking claimants to appointments with police surgeons, subject to the agreement with the Police Department to utilize its surgeons to provide return-to-work determinations. During the audit period, an Accounting Assistant who was responsible for entering the times of voice mail calls received into the daily attendance logs and doctors' notes provided into the computer was on medical leave for several months, and the investigators had to assume some of these duties. The short-staffing necessitated these investigators to work overtime to enter doctors' notes.

Due to inadequate clerical staffing, the investigators had to perform extensive photocopying, e.g. of voluminous documentation required along with claimants' NYS Disability Retirement applications, and of entire files when the claimant is to be examined by the Police Department's surgeons. In early 2004, a medical technician was assigned to MIU to provide assistance with some of the aforementioned clerical duties. However, there is still extensive photocopying that is required.

Investigators have not been provided with the proper equipment, i.e. cameras or video equipment, to properly document their observations. Not all investigators assigned to this unit have received specialized training.

The Correctional Center indicated three time and leave cases have been referred to the District Attorney's Office, some of which involve 207-c issues.

Audit Recommendations:

- a. The department should conduct those home visits and surveillances which are necessary to provide adequate monitoring of 207-c claimants. Investigators should also be authorized to conduct surveillance on the weekend and after 8 p.m. Without effective monitoring to determine claimants' entitlements to benefits and their compliance with departmental requirements, abusers and fraudulent claims may remain undetected.
- b. The department should devote more resources to investigations to minimize days lost and to reduce costs. In conjunction with hiring additional investigators,

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- clerical staff should be hired to enable the investigators to spend more time performing their investigative duties.
- c. Written policies and procedures should be established by the department to require:
- a procedural outline/description of the types of investigations required;
 - minimum standards as to how often each type of investigation is to be conducted or which type should be utilized to produce the maximum benefit;
 - minimum standards relating to the reporting of investigations, i.e., forms to be used and the documentation required to substantiate observations and determinations. These standards should also address the type of documentation to be included if legal or personnel actions need to be initiated; and
 - that investigators maintain logs detailing time spent on investigations and taking claimants to police surgeon appointments.
- d. Management should document the nature and frequency of investigations, and analyze the sufficiency of the data accumulated.
- e. Investigators should receive extra training. Topics should include “red flag” awareness (potential risk factors); requirements for denying a case; and what constitutes sufficient medical documentation. (NY State’s investigative unit uses New York City Transit [MTA] Law Department’s “Workers’ Compensation No-Fault Division Claims Examiner Manual” to assist it in reviewing claims).
- f. To reduce time spent photocopying, MIU should be provided with scanning equipment.

Department's Response:

With the 207-c Management Program, the Medical Investigation Unit (“MIU”) which oversees 207-c leave was reorganized. The group was consolidated and now consists of two corporals, three correction officers and a medical technician. The MIU now reports directly to the Lieutenant in charge of all Correction Department investigative units. In addition, the Department is hiring civilians, and will consider assigning some new hires to MIU as well. MIU also works closely with Attendance Control, which performs some related functions. In addition, MIU has access to some of the equipment recommended by the audit team, and the Department will seek budget authority to provide more equipment.

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The Department is developing written procedures for MIU as the audit team recommends. MIU already has procedures for reporting investigations and maintains logs of investigations and will provide those to the Comptroller.

The Department's home visit and surveillance policies are adequate to protect against 207-c leave abuse, although such investigative work can always benefit from additional resources as the Comptroller notes. The Department monitors all employees on long term 207-c leave to ensure that they are at home during their 9-5 tour. Monitoring can include home visits, which are either random for general compliance or directed when there is reason to be concerned about whether an employee is complying with the home stay requirements. Home visit resources are assigned so that employees who are always in compliance with the 207-c program are subjected to fewer checks over time than employees who present compliance issues.

Investigations, which can include surveillance, are commenced when MIU has received information or uncovered evidence that indicates that an employee may be violating policies concerning 207-c leave, feigning an injury, forging medical documentation or working a second job. MIU has conducted investigations in the following sample cases during 2003 and 2004:

- An officer on sporadic 207-c leave submitted apparently forged medical documentation. An investigation was opened on December 31, 2003 and the information was referred to the District Attorney's Office. The officer was arrested on May 12, 2004 and pled guilty to a misdemeanor on July 21 2004. He resigned the same date.
- An officer was reported to be operating a business. Surveillance was conducted for one month between August and September 2004. He was not observed engaging in a business or otherwise acting inconsistent with his injury. The case was closed.
- An officer was reported to leave home between 9-5 without authorization. During surveillance in October – November 2003, the officer was observed walking dogs in a park. The officer was brought up on charges.
- An officer was reported to leave home between 9-5 without authorization. During two weeks of surveillance in June 2004, the officer was not seen leaving his premises. The investigation was closed.

Auditor's Follow-up Response

We concur with the corrective action being taken by the department. However, the department does not address our recommendation relative to the lack of night and weekend surveillance.

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Sheriff Department's Surgeons

Audit Finding (4):

Procedure #7 from the Sheriff Department's Policy Number CD 02-05-11, entitled "Sheriff's Department Surgeons" (effective May 9, 2000), requires that "Any member of the Department assigned to restricted duty shall be examined by the Sheriff's Surgeon every thirty (30) days, or as directed by MIU, until such member's condition warrants the return to normal duty." This is reiterated in procedure #8 of the February 6, 2004, the revised version of this policy, with the exception that Human Resources is to direct such an examination. A review of MIU's "Surgeon Schedules" with respect to the 23 long-term 207-c claimants out of the 46 long term claimants on the department's February 2004 disabled list, determined that the examinations were conducted on an irregular basis for the two years covering 2002 through 2003, as follows:

- eight claimants had only one exam;
- three claimants had four exams;
- one claimant had five exams;
- one claimant had six exams; and
- the balance of claimants had either two or three exams.

The two surgeons utilized by the department during our audit period of 2002-2003 are part-time county employees paid at an hourly wage rate. According to the "Surgeon Schedules" only one surgeon performed medical evaluations on behalf of the department in 2002, and no evaluations were performed after June 2003.

For each examination the surgeons were required to complete a two page "Sheriff's Surgeon Exam" form. Although the form used is brief, the surgeons failed to provide all of the information required, i.e., the "nature of injury," "normal working status," and/or current status. Also, as discerned from the forms and confirmed by members of MIU, *the exams do not appear to have allowed for substantive medical determinations* by the surgeons to establish fitness for duty. No blood pressure was taken; nor were urine and blood tests administered. According to MIU employees, the equipment available to the surgeons was an examining table and an x-ray light.

An examination of the long-term claimants' medical files disclosed that some were private patients of the Sheriff's surgeons. This presents a potential conflict of interest and violates Section 300.2 of the Workers' Compensation Law, which states "A physician or other health care consultant who has previously treated or examined the claimant or consulted with the attending physician at the claimant's request concerning

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the case, shall not be designated by the employer or carrier, for the purposes of such examination.”

Audit Recommendations:

- a. The department’s revised policy CD 02-05-11 and the Interdepartmental Service Agreement with the Police Department,¹⁴ requires that members of the department on restricted duty be examined every 30 days, or as determined by MIU. Regular police surgeon’s examinations should be scheduled in accordance with the revised policy and the PD agreement to enable timely return-to-work determinations.
- b. Procedure #5 of this policy states, “The designated physicians shall maintain records, prepare reports of examination, and testify at administrative hearings.” However, this procedure does not specify the level of detail to be provided, nor does it offer any minimum standards of documentation. This should be put into writing by the department to ensure that sufficient medical documentation is established should a dispute arise regarding the continuation of 207-c benefits or a fitness-for-duty determination.
- c. The original and revised “Sheriff’s Department Surgeons” policies both state, “It is understood that no doctor-patient relationship exists, or is implied by the surgeons’ medical examinations.” The department should ensure that it complies with this policy to avoid possible conflicts of interest concerning medical determinations.

Department's Response:

Under the 207-c Management Program, the Sheriff and the Police Commissioner have agreed to refer 207-c cases to the Police Surgeon. Over 60 officers have had 82 medical examinations. As a result, 41 officers who were receiving 207-c benefits have been returned to work. Thus, Police Surgeon referrals have been successfully scheduled for both examination and re-examination with none of the problems identified by the Comptroller as occurring in the past when the Department was exclusively dependent on two part-time contract doctors who provided approximately one hour a week for 207-c examinations.

Auditor's Follow-up Response:

We concur with the corrective actions being taken by the department to refer cases to the Police Surgeon.

We reiterate our recommendations that:

¹⁴ Interdepartmental Service Agreement between the Sheriff’s Department and the Police Department , (Feb. 10, 2004)

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- *the departmental procedures specify minimum standards of documentation to be provided by police surgeons; and*
- *the department ensure that police surgeons do not have a doctor/patient relationship with the claimant.*

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Physician's Appointments

Audit Finding (5):

Claimants on the 30-day-disabled list and receiving 207-c benefits are normally required to stay home during their assigned duty hours of 9 a.m. to 5 p.m. We found that the department permits them to leave for up to four hours, in order to obtain medical treatment and/or prescribed medication. Currently there is no formal written departmental policy that permits this practice. MIU maintains attendance diaries to record time taken to receive medical treatment. When we examined four days from the 2002 and 2003 attendance diaries at random, we found notations indicating that two claimants had left their residence for more than five hours for doctor's appointments.

Department officials cite a County Attorney's memorandum dated October 12, 1983, as the basis for authorizing the four hours off. However, the four hours referred to in this memorandum are by way of example. The memorandum, entitled "Leave Policy for Correction Officers with Workers' Compensation Case," states in part, "...as a result of an examination by one of the County's medical consultants with the understanding that ongoing medical treatment is required, the officer will not be charged for reasonable leave taken to obtain that medical treatment. Reasonableness will be determined by the type of treatment being obtained. For example, a maximum of four hours for a doctor or physical therapist visit will be considered reasonable."

Officials of Suffolk County's Department of Civil Service/Human Resources Department informed us that their members who receive 207-c benefits are required to schedule their medical appointments during their off-duty hours whenever possible. When not possible, the time for which claimants may absent themselves from work is limited to the actual time spent receiving treatment and travel time. Approval for such time is contingent upon the employee providing a completed Sheriff's Department form (entitled "Verification of Attendance/Treatment") from the medical provider, which includes the times of arrival and departure, and the signature of both the provider and the employee. The amount of time is evaluated on a case-by-case basis, including the commutation time involved.

Audit Recommendations:

The department should:

- a. re-evaluate the practice of granting up to four hours for all medical treatment received. The allotted time should be based, as originally intended, on the type of treatment obtained, and reasonableness should be determined on a case-by-case basis. The department should formalize this in a written policy.

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- b. not allow claimants on the disabled list to exceed the maximum number of hours allowed for medical treatments without sufficient justification. Any additional time taken should be charged to leave entitlements.
- c. consider developing and implementing a form similar to the one used by the Suffolk County Sheriff's Department in verifying its employees' receipt of medical treatment during work hours.

Department's Response:

The Department will consult with the Office of Labor Relations and the County Attorney to determine whether it can change policy concerning allowing up to four hours off for doctors appointments for those employees who are working but had previously suffered a 207-c injury as recommended by the Comptroller.

The Sheriff promulgated a policy on July 28, 2004 which provides that all employees are required to provide notice of a work related medical appointment at least 72 hours before the visit, and must supply a medical certification to the MIU upon return to duty. Because the revised policy has been promulgated, the draft audit recommendation to revise the policy is out of date.

Auditor's Follow-up Response:

We reiterate our recommendation that the department revise its policy regarding time off for medical appointments. The department's response indicates that they limit 207-c recipients who are back to work to four hours for a medical visit. We believe that those recipients who are not working should be subject to the same limitations. Moreover, we would like to reiterate that our primary concern is not the amount of time offered recipients to receive treatment. Our concern is the lack of monitoring procedures in place to evaluate the reasonableness of the amount of time taken to obtain the medical treatment on a case by case basis. The department should maintain a policy that allows recipients sufficient latitude to obtain medical treatment while proactively addressing any potential abusive and wasteful practices. Not having such a policy in place undermines the requirement that the claimant's remain at home during their assigned duty hours of 9 a.m. to 5p.m. We concur with the department's policy to require notification of medical visits and to supply certifications as to those visits. We recommended that the medical certification, similar to the one used by Suffolk County, be completed by the medical provider detailing the times of arrival and departure and contain the signature of both the provider and the employee. The department does not currently have this requirement in place.

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Failure to Appear for Required Medical Examinations

Audit Finding (6):

A review of the case files of the 23 long-term 207-c claimants sampled, showed instances in which claimants failed to appear for required medical examinations. These cases include:

- a claimant who did not appear for scheduled exams with the Sheriff's surgeons in both 2002 and 2003; and
- a claimant who failed to undergo two consecutively scheduled independent medical examinations in 2002.

Another claimant cancelled, and then failed to reschedule, an appointment with the NYS Retirement System for a medical examination in 2002 and 2003, which would have enabled the processing of the claimant's disability retirement application. The application was deemed abandoned and withdrawn. Subsequently, the department filed on the claimant's behalf in early 2004.

Section 207-c (1) requires that a claimant allow medical examinations to ascertain continued disability.¹⁵ If he/she refuses

to accept medical treatment or hospital care or shall refuse to permit medical inspections as herein authorized...(he) shall be deemed to have waived his rights under this section in respect to expenses for medical treatment or hospital care rendered and for salary or wages payable after such refusal.¹⁶

Audit Recommendations:

During the course of our examination, a new policy was instituted by the Sheriff (CD 03-01-10 Procedure # IV. E., effective February 17, 2004) to reiterate this section of the law. Pursuant to this policy, the department also has the right to compel the claimant to appear for medical examinations related to applications for disability retirement. To ensure that the officers comply with departmental orders to appear for medical examinations and to receive medical treatment,

- records should be maintained that document the reason a medical examination was missed;
- the department should utilize the remedies available to them and deny salary and medical payments to those claimants who refuse medical treatment and/or examinations; and

¹⁵ N.Y. Gen. Mun. Law § 207-c (1) (McKinney 2004).

¹⁶ Id.

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- prompt rescheduling of the missed exams should be required and performed.

Department's Response:

The Department is in complete agreement with the Comptroller concerning the importance of compelling attendance at medical examinations. As part of the 207-c Management Program, the Department's form letters have been changed to include language reminding employees they are required to appear at medical examination and advising employees of the consequence of failure to appear for scheduled exams or treatment. Department Procedures similarly compel compliance with medical examinations and treatment. However, in two out of the three cases cited as lacking an explanation of why an employee did not appear for medical examination, Department records do include an appropriate explanation.

Auditor's Follow-up Response:

We concur with the corrective actions being taken by the department.

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CSEA Employee Improperly Granted the Equivalent of 207-c Benefits

Audit Finding (7):

We reviewed long-term claimants' files and questioned whether a maintenance supervisor belonging to the Civil Service Employees Association ('CSEA') was properly granted the equivalent of 207-c benefits.

Pursuant to the CSEA Contracts (1/1/98-12/31/02 and 1/1/03-12/31/07),

employees including but limited to Deputy Sheriffs, Correction Personnel...shall receive additional leave for all days that such individuals are unable to work because of an injury inflicted directly upon them by a prisoner, including a detainee, provided that said prisoner/detainee-inflict injury was the sole cause of the inability of such employee to perform the employee's duty as an employee of the County.¹⁷

These employees also receive their full salary during the period of leave relating to their injury. In the 52 weeks prior to the injury, the claimant had earned more than \$73,000 (including overtime).

The maintenance supervisor claimed an injury to his left elbow, upper back and left arm as a result of an inmate opening a door that he was about to open. The injury, which occurred on November 21, 2000, does not appear to meet the eligibility criteria established by the Contract, which requires that the injury *be directly inflicted* by an inmate. This employee's filing was initially denied as non-qualifying on December 12, 2000, but was subsequently approved. There is no documentation in the case file explaining the basis for the department's reversal, or who approved it. The employee also failed to provide required medical documentation from the family physician that provided initial treatment on the date the alleged injury was sustained. We also note that this claimant had reported 14 injuries to the Sheriff's Department since the commencement of employment with the department on June 1982. Although minimal time was lost for these injuries, this amounted to almost one injury every year and a half.

Although the employee used a total of 216 207-c days in 2002 and 2003, only one independent medical examination ('IME') was conducted in June 2002 and the Sheriff's Surgeon performed one examination in March 2003. The physician's report of the IME states, "I can see no indication for further neurological treatment. I find no disability at this time. The claimant can work at his usual job without limitations." The Police Department Surgeon examined the claimant in March 2004 and determined that the claimant, effective April 1, 2004, should be ordered to return to light duty four hours per

¹⁷ Agreement between County of Nassau and the Civ. Serv. Employees' Ass'n. Inc. Nassau Local 830, Local 1000, AFSCME AFL-CIO, at § 39-5.1 (Jan. 1, 1998-Dec. 31, 2002) (extended through Dec. 31, 2007, by Mem. of Agreement between County of Nassau and the Civ. Serv. Employees' Ass'n, Local 1000, AFSME AFL-CIO, at 1 [Jan. 1, 2003]).

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day. We note, however, that despite the department's findings, in connection with his Workers Compensation application, this employee was found disabled and the department has referred this case to the State Retirement System

Audit Recommendations:

The department should:

- a. confer with the county attorney as to whether injured CSEA employees are entitled to receive the equivalent of 207-c benefits pursuant to the terms of the contract and document all decisions;
- b. enforce the Police Surgeons' determinations and order claimants back to work in either a full or light-duty capacity. Failure to do so may diminish the credibility of the surgeons' professional opinions and hinder the department's ability to return claimants to work in a timely manner.

Department's Response:

The Department completely agrees that it should only grant 207-c benefits to eligible employees. The particular employee discussed in this finding has been medically reviewed annually and was found unfit for duty. Therefore, it is appropriate that he retire and his application has been submitted to the State Retirement System.

Auditor's Follow-up Response:

The Police Department Surgeon determined that the claimant was not disabled and could return to work. The department should enforce Police Surgeon's determinations and order claimants back to work until an appropriate authority makes a contradictory finding.

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Establishment of a Liaison Position

Audit Finding (8):

Although a Police Department employee has been functioning as the liaison to the County Attorney's Workers' Compensation Bureau ('WCB') for 207-c and workers' compensation matters for the past nine years, the Sheriff's Department does not employ anyone in a similar capacity. The police employee, working at the WCB, oversees all police 207-c and worker's compensation cases from their inception. In this full-time position, the employee has direct access to claimants' files, medical reports, claims for compensation benefits and medical treatments, Workers' Compensation Board hearing determinations and has direct interaction with the staff from the WCB.

This liaison is responsible for all cases filed by any of the 5,000 employees of the Police Department. Duties performed by this liaison include:

1. writing up authorizations for all medical tests and examinations and forwarding them directly to the Bureau Chief of the WCB for approval. If approved, the liaison sets up the related test and examination appointments;
2. forwarding medical test results and any other relevant information to the Police Department's surgeons;
3. shared responsibility for typing up Police Surgeons' reports with a Police Department employee (Clerk III) who is assigned to work directly with the surgeons. These reports are maintained in the case files. The liaison reviews them to determine if the surgeon has indicated that the injury has not made the officer incapable of performing regular duties ("Line of Duty Denied");
4. monitoring files to ascertain that all documentation requested has been received and is in order;
5. reviewing medical bills to determine their accuracy; whether the maximum number of treatments has been provided; whether claimant has reached maximum medical improvement; and whether bills are for injuries claimed. (Per the liaison, if a bill is paid for an injury unrelated to those claimed on the C-2, it is considered as having been "accepted," and the WCB will be liable for all subsequent medical bills related to this injury.)

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Audit Recommendation:

The Sheriff's department should employ someone in a similar capacity. This would facilitate the scheduling of independent medical exams, which are critical to determine whether and what type of medical treatment should be provided, as well as fitness to return to duty. Employing such an individual would expedite these determinations by ensuring prompt delivery of the consultants' medical reports of these exams to the Correctional Center. In addition, this individual could assist in managing workers' compensation costs by reviewing medical claims to ascertain whether the services provided were necessary and appropriate.

Department's Response:

The Department will consider whether it is necessary to assign an employee to act as liaison to the County Attorney's Workers Compensation Bureau now that the County has contracted with a third party administrator, Triad, to manage the County's workers compensation program. Because Triad has case management and reporting software, the Department has found that inter-agency communication has improved.

Auditor's Follow-up Response:

We concur with the corrective action being taken by the department. The department should consult with the Police Department to determine if the need for a liaison would change as a result of hiring a third party administrator.

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Record Keeping

Audit Finding (9):

I. Attendance Control Records

Correction Officers ('COs') are required to report leave taken to the attendance control desk, which is responsible for preparing absentee records. These records are then sent daily via facsimile to the Medical Investigation Unit ('MIU') to be used as the basis for establishing the 30-day disabled list.

Once assigned to the 30-day disabled list, COs are required (by policy Number CD 03-01-10, Section IX) to call into MIU's voice mail system on a daily basis between the hours of 7 and 9 a.m. MIU documents these calls and any leave entitlements manually, using a preprinted form containing the names of those on the disabled list. The names of the officers and the times of their calls are also manually entered into an "attendance diary," which is maintained on a daily basis. In accordance with this policy, the CO will be permitted to leave his/her residence to obtain treatment and/or prescribed medication. However, before leaving his/her residence, he/she must call and report the following information:

1. time he/she will be leaving his/her residence;
2. name, address and telephone number of the physician, treatment center or pharmacy to which he/she is going;
3. upon return to his/her residence he/she is to call into voice mail.

The above information is manually entered into the diary.

Our audit found that the department did not have a written policy regarding penalties for the failure to comply with these stipulated procedures.

Audit Recommendations:

- a. The process used to establish the 30-day disabled list and record calls from the voicemail system is time-consuming. The department should computerize attendance records to facilitate the recording and accumulating of time and leave data.
- b. The return times after seeking medical treatment should be called in as required by departmental policy and procedures. Penalties for noncompliance should be incorporated into this policy.

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Department's Response

The Department agrees with the Comptroller that corrective action should have been taken in the one instance identified by the Comptroller of an employee who failed to log back in after a medical visit. It is Department policy to impose discipline for any violation of Department policy. MIU took disciplinary action 45 times in 2003 and 42 times between January 1 and December 1, 2004. Additional disciplinary actions for violations of the Department's 207-c and sick leave policies were taken by both the Department's Bureau of Investigation and the Human Resources Unit.

II. Log of Doctors' Notes Received

MIU manually logs claimants' 207-c time used and related documents in claimants' medical files. A review of these logs disclosed that the logs were as much as six months behind. MIU offered the following explanations:

- Staff members do not always provide MIU with doctors' notes in a timely manner.
- Time entered into NUHRS (the Nassau County Unified Human Resource System), which is used to obtain the 207-c time, is not always posted in a timely manner.
- Due to understaffing, MIU investigators have been assigned the task of entering the receipt of doctor's notes into the computer tracking system, in addition to their regular responsibilities. As a result, these notes are not always entered in a timely manner. A Clerk Typist II then manually enters the dates of the notes received into the logs contained in the claimant's medical file.
- Where the 207-c status is disputed by the department, NUHRS entries cannot be done in a timely manner.

The clerk typist who prepares these logs also utilizes the 207-c time obtained from NUHRS to prepare a C-11 form, entitled "Employer's Report of Injured Employee's Change in Employment Status Resulting from Injury." As the first \$400 of the claimant's 207-c salary benefits are considered workers' compensation benefits, this form is submitted by the claimant's department to the Workers' Compensation Bureau to enable the filing of reimbursement requests for cases in which the county has paid sick leave to the employee. The failure to post to NUHRS in a timely manner also hinders the preparation of these requests.

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Audit Recommendations:

- a. Leave taken should be entered into NUHRS promptly to enable timely filings of reimbursement requests. This would ensure that the county is reimbursed for the workers' compensation benefit to which the claimant is entitled and that the claimant's leave balance is properly restored.
- b. The recording of 207-c leave time and the provision of doctors' notes into this log is duplicative and inefficient. This process should be discontinued. The information should be obtained directly from NUHRS' printouts and from MIU's computer system.

Department's Response:

The Department concurs with the Comptroller that NUHRS entries should be made contemporaneously when possible.

Auditor's Follow-up Response:

The department's response notes that disciplinary actions are taken. The department should address our recommendation that it promulgate written policies stipulating the penalties for non-compliance. The department should address our findings that claimants sometimes did not call in after returning from medical treatment or that the logs and NUHRS records were not maintained on an up-to-date basis.

Additionally, the department did not respond to our recommendations to revise their process to allow for a more efficient system of recording 207-c leave time.

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Equipment Allowance

Audit Finding (10):

The CSEA contract¹⁸ provides that all employees with Correctional Center or Deputy Sheriff titles shall receive an annual equipment allowance of \$525. Our audit examination found that this payment is made to long-term 207-c claimants who have either worked a minimal amount of time throughout the year or who have not worked at all.

In 2003, the 23 long-term claimants, who have been on the 30-day disabled list for more than two years, each received an equipment allowance of \$525. The cost to the county was \$12,075. There are also claimants who, though not on the disabled list, may have been out for the majority of the year. These claimants are those who may have repeatedly taken weeks at a time, or whose sporadic absences may not have extended to 30 consecutive days. Equipment allowances received by these claimants should also be considered in determining the actual cost to the county of this provision.

The State Comptroller, in addressing the provision of a uniform allowance for disabled officers, noted, “The collective bargaining agreement should not therefore be construed to implicitly expand whatever compensation rights are provided petitioners under the statute. Any additional benefits must be expressly provided for in the agreement....”¹⁹ The Opinion of the State Comptroller provides that “...unless the parties to this agreement determine that the quoted provision was intended to apply to disabled policeman [correction officers]...such individuals would not be entitled to a benefit under the provision in question.”

Audit Recommendation:

As the State Comptroller implicitly found, providing an equipment allowance to employees who are out on 207-c leave for all or most of a year does not make sense. The county attorney should review the collective bargaining agreement, along with the labor relations director, to determine whether the department must provide this benefit to employees receiving 207-c benefits.

¹⁸ Agreement between County of Nassau and the Civ. Serv. Employees’ Ass’n. Inc. Nassau Local 830, Local 1000, AFSCME AFL-CIO, at § 50-3 (Jan. 1, 1998-Dec. 31, 2002) (extended through Dec. 31, 2007, by Mem. of Agreement between County of Nassau and the Civ. Serv. Employees’ Ass’n, Local 1000, AFSME AFL-CIO, at 1 [Jan. 1, 2003]).

¹⁹ Op. N.Y. state Compt. No. 82-352 (Dec. 16, 1982) (quoting Chalachan v. Binghampton, 55 N.Y. 2d 989, 990 [1982], which held the rights provided under G.M.L. § 207-c are limited to “regular salary and wages”).

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Department's Response:

The Department will consult with the Office of Labor Relations and the County Attorney to determine whether it can change policy concerning equipment allowances, which are governed by the ShOA collective bargaining agreement.

Auditor's Follow-up Response:

We concur with the departments actions to consult with the County Attorney and Office of Labor Relations.

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Physicians' Notes

Audit Finding (11):

County policy (Procedure V. of Policy Number CD 03-01-10, effective January 1, 1991) provides,

“Every absence based on General Municipal Law 207C may require documentation by a Physician’s note, at the direction of the Attendance Control Unit or Personnel. Officers who fail to provide a physician’s note will have their accumulated sick leave charged.”

This policy was subsequently updated on February 17, 2004, to formalize the requirement that “the physician’s note will include the date of injury, a diagnosis and prognosis relative to the injury, and work status....”

Employees assigned to the disabled list are required to submit an updated physician’s note every 30 days. Our audit disclosed, however, that the MIU accepted notes:

- covering 207-c leave days prior to the actual examination date;
- covering periods of time between examinations longer than the 30 days required by departmental policy;
- that did not include the period of time for which the claimant was unable to return to work;
- that did not contain the date of injury.

In addition, a review of the case files for the 23 long term claimants sampled showed that, in some instances, notes were not provided for 207-c time taken. These claimants did not have their sick leave charged.

Audit Recommendations:

- a. Physician’s notes should cover only a 30-day period of disability subsequent to the related medical examination. To ensure that the notes do not exceed the 30-day requirement, claimants should arrange for follow-up appointments at the completion of their current medical examinations.
- b. Policy requirements should be strictly enforced and claimants’ accumulated sick leave should be charged for failure to provide proper medical documentation.

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Department's Response:

The Department agrees that medical notes must be updated at routine intervals. The relevant policy will be changed to reflect the possibility that the treating physician or Police Surgeon advises that the officer should be re-examined at an interval greater than four weeks. The Department will confer with the Office of Labor Relations and the County Attorney to determine whether it is permissible to charge a claimant's sick leave for failure to provide proper medical documentation.

Auditor's Follow-up Response:

We concur with the department's proposals to change the policy and to confer with the Office of Labor Relations on whether a claimant's sick leave can be charged. The department should also address our recommendation that the physician's notes cover the period of absence subsequent to the examination.

Appendix

Department's Response to 207-C Audit

Successful Implementation of the Correctional Center's 207-c Reform Program

The Nassau County Sheriff's Department ("the Department") implemented its new 207-c Management Program in February 2004. The program has been a success in its first year and the Department invites the Comptroller to review the current program.

The successes of the program are readily measurable. In 2004 since the start of the program, over 60 officers have had 82 independent medical examinations by the Police Surgeon, 41 officers who were receiving 207-c benefits have been returned to work, 22 officers have applied for or received State disability retirement and one officer has been terminated from employment. The Department expects similar strong results in the years ahead. Thanks to the program, we are now successfully managing 207-c eligibility and costs

The Correctional Center, with the support of the County administration, has devoted substantial time and resources to creating the "207-c Management Program." The Program was implemented as soon as permitted under the collective bargaining agreement between the County and the Sheriff Officers Association ("ShOA"). The 207-c Management Program successfully resolves the many problems in 207-c management identified by previous Comptrollers' audits and the draft audit of the period prior to the start of the 207-c Management Program.

Overview of 207-c

The State mandates that the County provide benefits to Corrections Officers disabled while performing their job pursuant to General Municipal Law §207-c. Standards and procedures governing eligibility for 207-c benefits are different than those that apply to workers compensation benefits. Officers on 207-c leave receive full pay pursuant to statute and accumulate vacation and sick leave credit while they are out recovering pursuant to a binding determination by PERB. The scope of the County's right to determine 207-c eligibility when eligibility is in dispute and the procedures for resolving disputes are defined in the collective bargaining agreement between the County and ShOA.

The initial step in changing the Department's 207-c program occurred when the ShOA collective bargaining agreement was approved on August 14, 2001. The agreement included procedures for resolving disputes over 207-c eligibility for a new injury, for a recurring injury and to determine when officers on 207-c leave were capable of returning

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to work.²⁰ Those provisions superseded the statutory procedures, which had provided for appeals to a hearing officer appointed by the Department, with review in an Article 78 proceeding.

Although the collective bargaining agreement was approved in August 2001, the dispute resolution processes set out in the collective bargaining agreement could not be immediately put into place. Instead, they were all contingent on selection of a mutually agreed upon independent medical consulting firm. The parties could not agree on which independent medical consulting service to hire, and the ShOA collective bargaining agreement provided that the issue was subject to arbitration.

The arbitrator issued an award selecting Rehabilitation Medicine Associates (“RMA”) as the independent medical consultant in December 2002. The County and RMA negotiated a contract after RMA was selected during 2003. The contract was finally approved in November 2003. The 207-c Management Program was put into place immediately thereafter and quickly produced results.

The 2001 – 2003 Period When No 207-c Cases Could Be Finally Decided

The Comptroller’s draft audit rightfully points out defects in the treatment of 207-c issues before the 207-c Management Program was put into place. While there are errors in the draft audit, and those errors will be discussed below, there is no question that it took a long time before the Sheriff could take full advantage of the 207-c management process laid out in the ShOA collective bargaining agreement. The length of the process reflects the difficulty of putting many pieces into place; the Department was fully committed to the turnaround and the County has devoted resources to making the new Program work.

Auditor’s Follow-up Response: The department’s summary response does not disclose any errors contained in the audit. We stand by the findings contained in the report.

²⁰ The ShOA collective bargaining agreement provided in substance:

New Injury: If the Department denies eligibility, the officer can appeal to either an arbitrator or a hearing officer. Either side can send the officer for evaluation to a mutually agreed upon independent medical consulting firm.

Recurring Injury: If the Department denied eligibility, the officer can appeal to either a hearing officer or the mutually agreed upon independent medical consulting firm.

Fitness to Return to Duty Officers on 207-c leave are sent for medical review by the Department. If the reviewing doctor determines the officer is fit to return to duty, the officer may appeal to a hearing officer or the mutually agreed upon independent medical consulting firm.

The choice of dispute resolution procedure under the collective bargaining agreement is left to the officer.

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The draft audit looks at the unique period of time when the Department was precluded from finally resolving any disputed 207-c cases. With the signing of the collective bargaining agreement in August 2001, the statutory procedure was superseded. Instead, the agreement provided that ShOA members could elect a hearing officer, arbitration or an independent medical consultant. No ShOA members elected to bring their case to a hearing officer; every employee selected the alternative dispute resolution methodology of an independent medical consultant (for recurring injuries or return to work decisions) or arbitration, at which either party has the right to submit evidence from the independent medical review consultant. Therefore, during the entire audit period, from August 2001 through November 2003, the County had no ability to resolve disputes over 207-c eligibility because the independent medical consultant had not been selected and put under contract.

Auditor's Follow-up Response: The Department acknowledges that there was a period between 2001 and 2003 when no 207-c cases could be decided. The collective bargaining agreement was signed in August 2001, however delays occurred because mutual agreement with ShOA on an independent medical consultant was not reached until December 2002, 16 months later. Further delays occurred because the contract was not approved for another 11 months (in November 2003). The department's response then indicates that the first arbitration hearing was held in May 2004, or approximately three months after all necessary components (hearing officer; arbitrator; and independent medical consulting service) were in place. We believe that after the long delay in achieving a mechanism to resolve disputes, hearings should have been held as soon as possible.

We reiterate our recommendation that the Correctional Center (and the Labor Relations Director) ensure that interim remedies are available to be used when the terms of agreements such as this one will not take effect immediately.

The 207-c Management Program

The 207-c Management Program required Departmental change. The Medical Investigation Unit (“MIU”) which oversees 207-c leave was reorganized. The group was consolidated and now consists of two corporals, three correction officers and a medical technician. The MIU now reports directly to the Lieutenant in charge of all Correction Department investigative units. The Comptroller’s audit staff had noted problems in the past with staffing of MIU and resolution of this issue was important to effective management of 207-c leaves.

Further, as part of the 207-c Management Program, the Sheriff’s Department Correction Policy and Procedures relating to 207-c were revised and reissued in February 2004. These new Procedures resolve many of the deficiencies previously identified by the Comptroller’s audit staff.

The key to the 207-c Management Program is the implementation of the dispute resolution procedure:

Nassau County Correctional Center
Administration of Work Related Injury Leave

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1. The initial eligibility determination

When an officer has a 207-c work related injury, he or she must provide an incident report and medical documentation.²¹ Eligibility for 207-c benefits may be obvious from the face of the incident report and doctor's note (for example an officer whose finger was broken subduing an inmate and the doctor's note states that the officer can return to work in 6 weeks). In those cases, officer need not be referred immediately for medical evaluation by the Police Surgeon or the independent medical consulting service.

In other cases the officer's eligibility for 207-c benefits is not obvious from the face of the incident report and doctor's note (for example, there is no incident report and the doctor's note states the officer suffers from stress and contains no projected return to work date). In those cases, 207-c benefits will be denied. The employee can then elect a mode of dispute resolution and the Department will refer the employee to the Police Surgeon or RMA for medical evaluation. In other cases, the officer may need to be referred to the Police Surgeon or RMA after the passage of time; for example, if the doctor's note said that the officer could return to work after January 10, but the officer failed to return to work on that date and claims a continuing injury.

The Department's review process is routinely completed within the time period laid out in the ShOA collective bargaining agreement (30 days from date of application).

The number of applicants for 207-c leave is heavily influenced by the judicial opinions interpreting the standards for eligibility. Both applications for benefits and Department determinations of eligibility fell between 2000 and 2003, while the restrictive eligibility standard established in Balcerak v. County of Nassau, 94 N.Y.2d 253 (1999), was in effect. The Balcerak opinion held that 207-c benefits apply only if an injury was sustained performing duties involving "heightened risk". In 2004 the Court of Appeals changed course and held that 207-c benefits apply any time the officer is injured in the performance of his or her duties, regardless of whether the particular duty involved heightened risks. Theroux v. County of Nassau, 1 N.Y.3d 232 (2003). As the statistics bear out, the Sheriff's Department stringently applied the Balcerak standard until it was overturned.

As a result of the Theroux decision, applications and awards rose in 2004 and are likely to continue to increase in the future:

| | 207-c Injury Claimed | 207-c Benefits Granted |
|------|----------------------|------------------------|
| 2000 | 268 | 135 |
| 2001 | 220 | 122 |
| 2002 | 179 | 99 |
| 2003 | 111 | 75 |
| 2004 | 190 | 137 |

²¹ See Policy and Procedures CD 03-01-10. This revised 207-c procedure was adopted in February 2004, as part of the 207-c Management Program.

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Therefore, the County can anticipate increased 207-c costs due to the increased number of eligible officers unless the legal standard for eligibility changes again. Because the controlling precedent was set forth by the New York Court of Appeals, which is the highest court in New York State, it will require state legislation to change the governing legal standard.

(Auditor's Follow-up: We recommend that the department encourage the Administration to lobby for the necessary legislative changes.)

2. Medical Evaluation

The Department may determine an officer's eligibility for 207-c leave based on information provided by the officer's doctor, or may refer the officer for medical evaluation in order to obtain more information to assist in making the eligibility determination. Such examinations are also important to the Department in determining whether officers on 207-c leave are still suffering from the injury after the passage of a certain amount of time.

In the past, the Department had funding for two part-time physicians who performed approximately one brief examination a week. This was insufficient. The part-time physicians often relied on the documentation provided by the employee's personal physicians and were not helpful in returning healthy employees to work.

As part of the new 207-c Management Program, the Department brought the issue to the Administration, and a solution was found. The Sheriff entered into an inter-agency agreement with the Police Department in January 2004 allowing referrals to the Police Surgeon. The Police Surgeon provides one examination slot a day for the Sheriff's Department, greatly expanding the number of medical evaluations that can be performed. Between approximately February 24 and November 30, 2004, 82 medical evaluations were completed for the Sheriff's Department.

Simply having frequent medical referral slots available has had a beneficial effect on 207-c leave usage. Some officers return to work voluntarily, and more officers are examined more frequently, and more follow up examinations are conducted than was possible under the old system.

3. Dispute Resolution under the Collective Bargaining Agreement

If the officer and the Department dispute the officer's eligibility for 207-c leave after a new injury, the collective bargaining agreement provides for arbitration. Prior to the arbitration, either side can refer the officer to RMA for evaluation and the RMA evaluation can be used as evidence before the arbitrator.

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Because the RMA findings are key evidentiary testimony for the arbitration proceeding, the arbitration hearings started only after RMA was finally selected and under contract with the County. The first arbitration hearing was held in May 2004

Alternative Dispute Resolution Procedure

RMA also plays a key role in resolving disputes concerning a recurring injury, or if the parties dispute whether the officer can return to work. The collective bargaining agreement provided for a decision on the application by RMA. The recommendation of RMA is final and binding in the case of a claim of recurring injury and in determining fitness to return to duty. The use of binding medical review has been a critical element in resolving the long term 207-c cases which previously dragged on for years.

Long Term 207-c Leave

The 207-c Management Program has continued the Department's focus on the employees out on long term 207-c status. These are employees who remain on 207-c leave status without returning to work and without filing for disability retirement. It is in the County's interest that this number remain as low as possible.

As part of the 207-c Management Program, the Department has moved aggressively to ensure the employees who are unfortunately permanently disabled and can never return to work retire on a disability pension. In 2004, there were 24 employees once on 207-c leave who filed or received disability retirement.

The Department oversight of disability retirement starts when the Department is advised by the Police Surgeon, RMA or the employee's own doctor that an employee is permanently disabled. The Department calls the employee and informs him or her that the Department will file an application for disability retirement on the employee's behalf. Many employees state that they prefer to file for retirement on their own. The Department follows up with the State Retirement System to ensure that those employees actually file for retirement.

The numbers show that long term 207-c employees (on 207-c leave for 30 days or longer) have declined, even as the number of 207-c leave recipients increased in 2004:

Employees on Long Term 207-c Status

| | |
|------|----|
| 2002 | 53 |
| 2003 | 47 |
| 2004 | 36 |

The numbers prove the success of the 207-c Management Program. Officers no longer remain out on leave with no medical appointments scheduled, and no review of their status. The Department has returned those officers capable of working to work status,

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and those officers who are unfortunately permanently disabled have either retired or have retirement applications pending.

The Department welcomes the input of the Comptroller to improve further the new and successful 207-c Management Program.