

**Nassau County
Office of the Comptroller**



**Limited Review
of the
Nassau County Police Department – General Municipal Law
Section 207-c Administration**

**HOWARD S. WEITZMAN
Comptroller**

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NASSAU COUNTY
OFFICE OF THE COMPTROLLER

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Executive Summary

Background

Under New York State General Municipal Law section 207-c (“207-c”), Nassau County (the “County”) police officers and advanced medical technicians (“AMTs”) who are injured in the line of duty receive full salary and benefits while they recover. Employees on 207-c leave continue to accrue sick, vacation, personal, and other types of leave. Their medical treatment and hospital care resulting from the injury or illness is paid for by the County. In addition, salary paid during 207-c leave is not subject to FICA.

The Nassau County Police Department administers 207-c leave for police officers and AMTs. It classifies the leave associated with these injuries as Line of Duty (“LOD”) leave.

The Police Department does not monitor the cost of overtime incurred as a result of 207-c leave. In the absence of information from the Police Department, we estimated overtime costs to the County based on the premise that every hour lost to 207-c leave is replaced through the use of officers working on an overtime basis. While this may somewhat overstate the overtime cost, replacement of injured officers will result in significant overtime costs.

The estimated annual salary and overtime costs to the County for Police Department 207-c leave is tabulated below. These figures do not include associated medical expense for 207-c injuries and illnesses. The costs are based on the Police Department’s list of occurrences of LOD leave and a County Information Technology report on the estimated salary expense associated with each LOD leave incident.

	No. of Days	Salary Cost	Overtime Cost¹	Total Cost
2005	7,597	\$2,678,272	\$4,209,677	\$6,887,949
2006	6,995	\$2,528,350	\$3,974,032	\$6,502,382
2007	7,124	\$2,648,890	\$4,179,508	\$6,828,398

¹ We calculated the Overtime Cost as follows:

- Annual salary cost of LOD leave divided by number of days of LOD leave equals average daily salary cost of LOD leave;
- Average daily salary cost of LOD leave multiplied by the number of working days in the year equals average annual salary cost per member;
- Average annual salary cost per member divided by 1985 (per “Arbitration Awards”) and multiplied by the OT factor of 1.5 equals average hourly overtime rate;
- Number of days of LOD leave multiplied by eight equals number of hours of LOD leave;
- Number of hours of LOD leave multiplied by average hourly overtime rate equals total annual overtime cost.

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Nassau County self-insures for medical costs under 207-c . Triad Group, LLC (“Triad”) is the third party administrator for the County’s 207-c and workers’ compensation programs. The County and Triad do not break out 207-c medical expenses separately from workers’ compensation expenses generally. The combined 207-c and workers’ compensation medical expense for the Police Department is presented below:

	<u>Medical Costs</u>
2005	\$1,936,180
2006	\$2,329,678
2007	\$3,072,437

Audit Scope, Objectives, and Methodology

The objective of our audit was to examine the adequacy and effectiveness of the Police Department’s policies, procedures, and practices for the administration of 207-c leave and the Police Department’s compliance with these policies and procedures. The audit included a review of medical and personnel files at the police precincts, at the Chief Surgeons Office (“CSO”), and in the Medical Administration Office (“MAO”). It also included interviews with department personnel. The period audited was the years 2004 through March 31, 2007.

The audit was planned and performed to obtain reasonable assurance that the audit 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 this audit provides a reasonable basis for the audit findings and recommendations.

Summary of Significant Findings

LOD Leave Granted Despite Denial by Chief Surgeon’s Office

A sample of 108 leave instances (out of 1,491 occurrences) found 27 instances where a member’s reported injury/illness was misclassified as LOD leave even though LOD leave had been denied by the CSO. These 27 instances were estimated to have cost the County \$84,346 in salary and overtime.

These LOD misclassifications resulted from procedural breakdowns such as:

- failure to notify the member of the denial of LOD leave;
- lack of follow up on those officers who failed to report to the CSO;
- failure to charge sick time to officers whose Medical Review determined that they were not entitled to 207-c; and
- reversal of the CSO’s decision without any documentation to support the reversal.

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Weaknesses in the Evaluation of Members' Fitness for Duty and LOD Injury Status

We found that the process of ascertaining fitness for duty and eligibility for LOD leave at the CSO was inherently weak because vital information was not obtained and reviewed. The CSO determines the member's fitness for duty; however it routinely makes these determinations without obtaining copies of the member's authorized medical test results, hospital records and completed *Police Department Pain Picture Forms* ("PDCN 429"). Instead, the CSO relied on member statements, without medical documentation.

All Injury Packages Examined Were Missing Required Forms but Were Approved by the Member's Commanding Officer and Division Chief

All six files reviewed had incomplete injury packages. Procedures to document injuries were not being followed; as a result, the files contained insufficient information to make accurate determinations regarding the injury and any associated LOD leave.

Missing information included witness statements, hospital reports, change in duty status forms, and PDCN 429 forms. However, all six incomplete injury packages were approved by the Commanding Officer and by the Division Chief.

Lack of Investigation of Initial Injuries by the Medical Administration Office

In most cases, the Medical Administration Office ("MAO") Supervisors were not investigating initial injuries, as required by their command procedures. The procedures require reviewing member history, injury documentation, medical reports, interviewing witnesses, incident location inspection, conferring with the CSO, tracking the members' future incidents, and if necessary, member surveillance.

Based on our review, the practice of the MAO has been only to perform the following: 1) review the injury package; 2) check to see that the injured member was on duty that day; and 3) make a determination if it was reasonable that the injury occurred as reported in the injury package. This lack of thorough investigations of initial injuries by the MAO Supervisors increased the likelihood of incorrectly identifying an injury as covered under 207-c.

Police Department Procedures Allow Members to Claim an LOD Injury Without Being Seen by the CSO When Leave is Not Taken

Our testing identified two instances out of 108 tested, where the injury package was approved by the MAO prior to the member being seen by the CSO. MAO policy requires that members be seen by the CSO prior to the approval of LOD leave.

Executive Summary

Inadequate Home Visit Monitoring of Members on LOD Leave by the MAO

We found a significant decrease in the number of home visits made by MAO during the audit period (from 145 visits in 2004 to 34 in 2006), even though the number of officers on the long term list remained relatively the same.

Six members (of 22 with LOD injuries) who were on the *Long Term Sick Leave* list for a collective total of 88 months as of 04/03/07, received a total of only four home visits. Of these four visits, two were made to the same member and three of the six members had no home visits at all during this period.

Weakness in the Administration of Recurrences of LOD Leave

Recurrence of symptoms from original injuries is a common cause of LOD leave. Eighty-one of the 108 occurrences we tested (75%) were due to recurrences. We found violations of Department procedures, including instances where police officers called in recurrences of injury and took 207-c leave or returned from 207-c leave and did not report to the CSO timely or at all.

Inadequate Management Oversight of Payroll Costs Associated with LOD Leave

The Police Department had not instituted an effective method to accumulate, monitor and report the salary and overtime costs associated with LOD leave.

Potential Conflict of Interest in the CSO

A physical therapist, paid as a consultant to the CSO, received 476 payments from the County (totaling \$109,831) to his physical therapy private practice from 2005 through 2007. The risk existed that the physical therapist could have personally benefited from his position in the CSO by sending patients to his private practice.

Weaknesses in the Process of Applying for Disability Retirement

The Police Department applies for disability retirement on behalf of police officers who have been on restricted assignment (RA) or extended leave due to an LOD injury for at least 18 months, if the members have not done so and do not anticipate returning to full duty in the near future. There were no written policies or procedures describing how the MAO should submit an application for disability retirement.

It has been the practice of the MAO to first apply for the more beneficial accidental disability retirement, and wait for the disposition of that application prior to applying for performance of duty disability retirement. Because the response to an application can take over two years, the practice of consecutive applications leaves disabled officers on the force for years and increases the likelihood that the disability retirement will be denied.

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A Memorandum of Understanding (“MOU”) Grants 207-c Benefits to Employees Who Would not be Entitled to 207-c Status Under the Law

An MOU entered into between the County and the PBA² in 1993, grants LOD benefits to employees who would not have been deemed 207-c eligible under the State law.

The MOU defines an LOD injury as one “received while the member was on duty...; or received while the member was acting pursuant to the duties and responsibilities of a Police Officer; or received while the member was acting in response to the direction of a Superior Officer.”

In contrast, under 207-c, it is not sufficient that the injury was caused while the employee was on duty, the injury must also have been caused by the employee performing his or her job responsibilities.

We were not able to determine what percentage of injuries or illnesses were granted LOD status that would *not* be eligible for 207-c status under the standard established by law.

The matters covered in this report have been discussed with the officials of Police Department during this audit and at exit conferences held on February 4, 2009 and July 7, 2009. On January 14, 2009, we submitted a draft report to the Police Department with a request for comments; this draft report was revised and resubmitted to the Police Department on May 20, 2009, with an additional request for revised comments. The Police Department’s comments to the initial draft audit report were received on April 23, 2009; these comments were revised by the Police Department and resubmitted to our Office on July 29, 2009. A subsequent revision to the audit report was communicated to the Police Department on August 25, 2009, and the Police Department’s responses were revised accordingly. The Police Department’s revised comments, and our responses to those comments, are included as an appendix to this report.

² Police Benevolent Association.

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Audit Findings and Recommendations

Audit Finding (1):

Twenty-seven Instances of LOD Leave Granted Despite Denial by Chief Surgeon's Office

When a police officer or AMT requests sick leave as a result of an LOD injury or illness, departmental procedures require the member³ to report to the Chief Surgeon's Office ("CSO"). The Police Surgeon examines the member and determines, based on the examination and any medical documentation provided, whether the member's current symptoms are the result of an LOD injury or illness.

If the CSO concludes that, the symptoms are not the result of an LOD injury or illness, the CSO recommends that the LOD leave be denied. If the member claims an initial LOD injury or illness, the CSO's determination is forwarded to the Medical Administration Office ("MAO"), which makes the final determination whether to grant or deny LOD status to the injury. If the member claims a recurrence of a previous LOD injury or illness, the CSO determination is considered to be final. The determination is forwarded to the MAO for communication to the member. In the case of a change in leave status, for example from LOD to sick leave, the CSO must also provide the MAO with a *Change of Status* Form ("PDCN 199").

Nassau County Police Procedure ADM 4125 requires that claimed LOD leave be entered as sick leave until the officer is granted LOD leave. Our review of normal practices with Police Department personnel determined that the police precincts did not comply with that procedure. An initial or recurring injury or illness is routinely initially designated as LOD leave, rather than as sick leave, at the precinct. The designation is entered into the time and leave sub-system of the Police Department's computer system known as "CHIEF," the Computerized History Information Enforcement File.

The determination by the Police Surgeon as a result of the member's visit and evaluation is entered into a database at the CSO. An entry into the CSO database does not change the member's status from LOD to sick leave in CHIEF.

The MAO is responsible for notifying members that there was a denial of LOD leave. Police officers have 30 days to request a Medical Review; AMTs may request a hearing established by GML §207-c. The Medical Review process for police officers was established by a Memorandum of Understanding between the County and the Police Benevolent Association ("PBA") in 1993, which was subsequently extended to all police unions (The MOU). The MOU provides that the police officer's time and leave records cannot be changed from LOD leave to sick leave, and the officer's leave balances cannot be charged for the period between an injury or illness until completion of the Medical Review.

³ "Member" refers to both police officer and AMT.

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If during the Medical Review the police officer's treating physician and the Police Surgeon cannot reach an agreement, the officer is entitled to an independent medical examination ("IME"). The IME determination is documented in an IME report and sent to the MAO, which notifies the member of the determination. Cases may subsequently be appealed in court.

We tested the accuracy of LOD leave designations during the audit period (January 1, 2004 – March 31, 2007). We did this by comparing a subset of data from the CSO Visit Report to a report of LOD leave that is available from CHIEF. The data from the CSO Visit Report that we reviewed included the records of only those members who had visited the CSO because they had taken LOD leave. This information was further filtered to only include visits to the CSO that resulted in LOD leave being denied to the member. This filtered CSO Visit Report was then compared to the CHIEF report that included *all* LOD leave taken for the audit period. In addition, we reviewed the *Change of Status* Form ("PDCN 199"), which should have been forwarded to the MAO by the CSO when a member was denied LOD leave.

Based on our comparison of the reports described above, we examined 108 out of 1,491 occurrences of LOD leave taken during the audit period and found 27 occurrences that were misclassified as LOD leave even though LOD leave had been denied by the CSO. These 27 occurrences covered approximately 89.375 leave days. Assuming that all 27 occurrences were misclassified, the estimated salary and overtime cost of these 89.375 days is \$84,346.47.

Of the 27 instances, 23 were claims of recurrences of prior LOD injuries or illnesses while four were claims of an initial LOD injury or illness.

We further reviewed the 27 occurrences of LOD leave taken incorrectly and found that in 15 out of the 27 instances, the MAO had not followed procedures. We found:

- eight instances where the MAO failed to notify the member of the denial of LOD leave, even though the MAO was notified by the CSO of the denial, which resulted in the member remaining on LOD leave incorrectly;
- two instances where the police officer violated departmental rules by failing to report to the CSO for a determination of whether or not they were entitled to LOD leave and the MAO failed to identify the violation and order the members to report to the CSO for examination;
- four instances where the police officer lost the Medical Review but was not charged sick time as the MAO did not update the member's time and leave records; and
- one instance where an initial CSO denial was reversed by the MAO without any documentation to support the decision.

At the time of the audit there was no methodology for monitoring the 30-day limit granted to members for requesting a Medical Review or 207-c hearing. In particular, in two of the four instances cited above where the member lost the Medical Review, the loss

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was by default because the 30-day limit expired and the MAO was unaware of this. Consequently the MAO failed to appropriately charge sick leave for the occurrences of leave in the members' time and leave records.

Our review of the 27 occurrences of LOD leave taken incorrectly also found that in twelve instances the CSO failed to send Form PDCN 199 to the MAO to communicate its determination that the member was not entitled to LOD leave.

Audit Recommendations:

The Police Department should:

- a) promulgate written procedures to ensure that denials of LOD leave by the CSO are properly recorded and implemented; and
- b) review its procedures to ensure that they:
 - consistently notify members of denials of LOD status;
 - update members' time and leave records to appropriately record sick leave based on the results of the Medical Review and/or IME;
 - include a methodology (for example, a tickler file) to monitor the 30-day limit for requesting a Medical Review; and
 - require retention of documentation when the CSO's determinations are reversed.

The Police Department should also review ADM 4125 (discussed in Audit Finding 7), which requires that members be recorded as on sick leave until LOD leave is granted, in light of the MOU and departmental practice, and either instruct the precincts to comply with ADM 4125 or amend the rule.

Audit Finding (2):

Weaknesses in the Evaluation of Members' Fitness for Duty and LOD Injury Status

Members, in compliance with departmental procedures, report to the CSO – whether for an initial injury or due to the recurrence of an injury – so that the Police Surgeon can make the determination as to the member's fitness for duty. This determination is based on the medical examination conducted by the Police Surgeon and consideration of the statements and attestations of the member, along with any medical documentation that the member provides.

The County must pay for medical treatment for an LOD illness or injury. Any medical tests for an LOD illness or injury prescribed by the member's treating physician require approval by the CSO during the first 90 days from the date of the initial injury. After 90 days, this approval must be obtained from the County's 207-c third party administrator, Triad. In either case, the results of these tests are not made available to the CSO unless the member chooses to provide them. We did not find evidence that it is the practice of

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the CSO to follow up and request the member to provide results of any of the tests that they had approved.

The member is required to complete a *Police Department Pain Picture* Form (“PDCN 429”) at every visit to the CSO. This form attests to the severity and location of the member’s pain and provides one basis for the examining surgeon to evaluate the member’s medical condition, fitness for duty, and injury status. We tested the files of seven members with a documented total of 121 visits to the CSO and found that, for 64 of the 121 visits, the PDCN 429 was missing.

In the case of an initial injury, where the member is transported to the hospital for care, departmental procedures require that the precinct obtain the hospital report. The hospital report is furnished to the CSO for review as part of the Police Surgeon’s determination of the member’s medical condition and whether or not that condition was a result of the LOD injury. We tested six injury packages and found the hospital records were missing for all four instances where the member was taken to the hospital. Conversations with MAO staff indicated that Investigating Supervisors at the precinct were not routinely obtaining hospital reports since they felt that it was a violation of the member’s privacy. We have been informed by MAO staff that, as a result of our audit, Investigating Supervisors are now required to obtain hospital reports.

If the CSO has access to copies of the member’s medical tests, hospital report and PDCN 429, the Police Surgeon is more likely to determine accurately eligibility for LOD leave based on whether the member’s current symptoms are the result of an LOD injury or illness and whether the member is fit to return to work. If the CSO lacks this medical documentation, it will be more difficult for the Police Department to defend its determinations in a medical review or statutory hearing. In addition, the lack of medical documentation might make it more likely that a member can successfully claim that injury symptoms are a recurrence of a prior LOD injury when review of the documentation would have shown the current symptoms to be unrelated to the original injury.

Our review found that the process of ascertaining fitness for duty and eligibility for LOD leave at the CSO is inherently weak due to the routine failure to obtain copies of the member’s authorized medical test results, hospital records and completed PDCN 429s, and, instead, relying on undocumented member statements.

Audit Recommendations:

The CSO should:

- a) require members to provide copies of the results of all authorized medical tests;
- b) make their determination of eligibility of an injury for coverage under 207-c based on a review of all medical documentation related to the treatment and diagnosis of the injury;
- c.) obtain copies of the hospital reports from the Investigating Supervisors at the precincts; and

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d.) ensure that members complete a PDCN 429 at every visit, which attests to the severity and specific location of the pain.

Audit Finding (3):

Six out of Six Injury Packages Examined Were Missing Required Forms but Were Approved by the Member's Commanding Officer and Division Chief

Departmental Procedure OPS 1111⁴ instructs personnel at the precincts/commands in the steps to be followed when a member sustains an LOD injury/illness. The steps vary depending on whether the injury is a recordable or non-recordable occupational injury.

A *recordable occupational injury*⁵ is defined by the Police Department as any work-related:

- fatality or illness; or
- injury which results in:
 - loss of consciousness;
 - lost work days;
 - transfer or termination of employment;
 - medical treatment beyond first aid; and
 - restriction of work or motion.

A *non-recordable occupational injury* is one that does not result in any of the factors listed above.

In the case of a *recordable occupational injury*, the Investigating Supervisor is required to interview the injured member and any available witnesses. After the investigation, a complete injury package is compiled. This package must include all required departmental forms and, when a member is transported to a hospital as a result of the injury, medical or hospital reports that specify the diagnosis and the doctor's name. The injury package is then reviewed and approved by the Commanding Officer at the precinct and the Division Chief prior to being sent to the MAO for their independent determination of eligibility under 207-c.

In the case of a *non-recordable occupational injury*,⁶ a supervisor at the precinct must prepare and fax internal correspondence to the MAO Commanding Officer requesting an entry be logged in the Police Department's records. This correspondence must include the circumstances and location of the incident, witness names, and supervisors'

⁴ Police Department Procedure OPS 1111, *Aided Case – Departmental Member*, Section A, no.10, effective 1/26/01.

⁵ Police Department Procedure OPS 7110, *Recordable Occupational Injuries and Illnesses*, page 1 of 3, effective 1/26/01.

⁶ Police Department Procedure OPS 1111, *Aided Case – Departmental Member*, Section A, no.3, effective 1/26/01.

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observations. (Note: If the injury becomes a *recordable occupational injury* at a later date, the steps mentioned above need to be followed.)

In order to determine compliance with departmental procedures, we selected and examined six injury packages from the 207-c claims during the audit period. In making our selection we used a report from Triad, which identified five types of injuries that resulted in the highest compensation costs to the County. We then randomly selected five members who had those five types of injuries and judgmentally selected one member whose original injury occurred two years prior to the latest occurrence of leave.

We found that two of the six injury packages were missing witness statements, three were missing the *Police Department Pain Picture Form* (“PDCN 429”), four were missing the form documenting a change in duty status from full duty to LOD leave (“Form 199”), and the packages for four members who were transported to hospitals were missing hospital reports, including the diagnosis of the examining doctor. In spite of the fact that all six injury packages were incomplete, all six were approved by the Commanding Officer at the precinct/command and the Division Chief; both of whom are required by departmental procedures to review and sign off their approval of the injury package.

In the case of the judgmentally selected member’s injury package whose original injury occurred two years prior to the latest occurrence of leave, the original injury was not properly documented as a *non-recordable occupational injury*. The circumstances surrounding this injury should have been more completely documented to the MAO by the member’s supervisor. Specifically, the supervisor at the precinct must prepare an internal correspondence and fax it to the MAO Commanding Officer requesting an entry be logged in the Police Department’s records. This correspondence must include the circumstances and location of the incident, witness names, and the supervisor’s observations.

The information gathered by the Investigating Supervisor provides a basis for the CSO and MAO to determine whether an injury or illness is eligible for 207-c benefits as a new injury or a recurrence of a previous 207-c injury, and whether the member is fit to return to duty. The prevalence of incomplete injury packages in our sample suggests that the MAO and the CSO lack sufficient information to make accurate determinations regarding the injury and any associated LOD leave.

Audit Recommendations:

The Police Department should require compliance with OPS 1111 by:

- a) ensuring that the injury package is complete prior to forwarding it to the MAO;
- b) obtaining all medical reports from the hospital (where applicable) including the diagnosis of the injury and the examining doctor’s name; and
- c) providing a timely notification of *non-recordable occupational injuries* to the MAO.

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Audit Finding (4):

Lack of Investigation of Initial Injuries by the Medical Administration Office

The MAO Supervisor decides whether an initial injury is covered under 207-c. Police Department Procedure OPS 1111⁷ states that the MAO Supervisor must determine if any further investigation is necessary concerning an injury's 207-c status. In addition, MAO Command Procedure No. 04-003⁸ advises the MAO Supervisors of the procedures necessary for the investigation of every injury package. These procedures include:

- reviewing current injury documentation and the member's history at the MAO;
- examining the CSO's files, including all prior injuries and accidents;
- interviewing all relevant witnesses and attempting to locate additional witnesses;
- visiting the location of the incident and taking photos if necessary;
- conferring with the Chief Surgeon, reviewing doctor's reports, hospital reports, and other medical documentation;
- conducting surveillance of the member, if necessary; and
- tracking the assigned member in all future encounters pertaining to the MAO.

Based on our review of the practice of the MAO, we determined that in most cases the MAO Supervisors were not investigating initial injuries, as required by their command procedures. In fact, the practice of the MAO has been to only do the following three things: 1) review the injury package; 2) check to see that the injured member was on duty that day; and 3) make a determination if it was reasonable that the injury occurred as reported in the injury package.

The MAO gave two primary reasons as to why there is a lack of further investigation conducted by their office:

- the MOU between the Commissioner of Police and the police unions stating that *all* injuries that occur while the member is on duty are compensable under 207-c; and
- their reliance on the approval of injury packages by the Commanding Officer of the precinct/command and the Division Chief made an investigation unnecessary.

The lack of thorough investigations of initial injuries by the MAO Supervisors increases the likelihood of incorrectly determining that the injury is covered under 207-c.

Audit Recommendation:

The Department should review the requirements for the MAO's investigations of initial injuries as provided in OPS 1111 and Command Procedure 04-003 and either require

⁷ Police Department Procedure OPS 1111, *Aided Case – Departmental Member*, Section D, nos. 6 and 7, effective 1/26/01.

⁸ MAO Command Procedure 04-003, *Investigation Relating to PDCN 206 Injury Packages*, effective 3/24/04.

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MAO compliance with the steps enumerated in their command procedures and educate MAO staff about their importance, or revise the procedures.

Audit Finding (5):

Police Department Procedures Allow Members to Claim an LOD Injury Without Being Seen by the CSO When Leave is Not Taken

In our testing we found two instances out of the 108 tested where the injury package was approved by the MAO prior to the member being seen by the CSO. In both of these instances the injury packages were approved because LOD leave was not taken immediately after the injury occurred.

The Police Department commits to the MAO the responsibility for the final determination regarding a member's entitlement to LOD status to an initial injury. As a component of this the Police Department requires that the MAO consult with the CSO prior to making the final determination on LOD injury status; however, Departmental procedures only require members to report to the CSO for examination if LOD leave is taken. In the case of a recurrence of a prior 207-c injury or illness, the CSO is required to make the final determination on the eligibility for LOD leave by the member. In the event that a claim for an LOD injury is not immediately followed by a request for the associated leave, the determination made by the MAO will not have included the analysis and opinion resulting from the examination by the CSO.

Audit Recommendations:

- a) Police Department procedures should require that all members claiming an LOD injury visit the CSO whether or not LOD leave time is taken immediately following the injury; and,
- b) The MAO should not determine that a member is entitled to LOD injury status until the member is examined by the Police Surgeon and the MAO has reviewed the CSO file on the member's medical status.

Audit Finding (6):

Inadequate Home Visit Monitoring of Members on LOD Leave by the MAO

The MAO places members who have been on sick leave (LOD leave or regular sick leave) for 30 or more consecutive calendar days on a *Long Term Sick Leave* list – a status report generated by the MAO and updated weekly.

Members on LOD leave or Restricted Assignment (“RA”) are required to report to the CSO at least every 30 days for reevaluation. The MAO's primary responsibility during

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this period is to conduct home visits, which are made to the member's physical location (usually their home).

The current MAO practice primarily selects members for visits based on their geographic location and notes those areas the MAO has previously visited. Additional consideration for visits is given to the availability of the MAO Supervisors since, according to procedure, two must be present at each visit to witness and corroborate the results of the visit.

The MAO documents, on a spreadsheet, the home visits they conducted and this report includes the following: rank of member; member name; member serial number; date/time of home visit; visit type; result of the home visit; last names of MAO Supervisors who conducted the home visit; remarks based on the observations of the MAO Supervisors.

Our audit found the following weaknesses in the MAO's practices and written procedures:

- a. visits are made to police officers on regular sick leave as well as to members on LOD leave without any consideration of the greater cost associated with those members who are on LOD leave or to the length of time that a member has been out on LOD leave;
- b. there is no specification of the methodology that should be used by MAO Supervisors to select members for home visits;
- c. a minimum number/frequency of home visits is not required;
- d. six members (out of 22 with LOD injuries) who were on the *Long Term Sick Leave* list as of 04/03/07 received a total of only four home visits. Collectively, these six members were on Long Term Sick Leave for a total of 88 months. Of these four visits, two were made to the same member and three of the six members had no home visits at all during this period; and
- e. in general, home visits have been steadily decreasing during the period 01/01/04 through 12/31/06 as illustrated in the chart below.

Fiscal Year	Home Visits	Members on Sick or LOD Leave Visited	Members on LOD leave
2004	145	120	285
2005	135	112	286
2006	34	32	288

Although the results of home visits are documented, the follow-up actions taken by the MAO as a result of the home visits are not consistently documented. The MAO did not retain a history of members previously on the *Long Term Sick Leave* List. In addition,

Audit Findings and Recommendations

the record of home visits kept by the MAO did not indicate whether the visit was to a police officer on regular sick leave or to a member on LOD leave. These three practices made it difficult to determine if home visits are an effective tool in deterring abuse of LOD leave.

Audit Recommendations:

The MAO should:

- a) prioritize visits by the cost of absences to the Police Department;
- b) update written procedures to address the methodology and requirements for regular home visits of members who are on LOD leave;
- c) reconsider the practice of selecting members for home visits based upon geographic location;
- d) record and retain all documentation related to actions taken as a result of the home visit, including the selection process;
- e) conduct more visits to members on LOD leave; and,
- f) reconsider the requirement that two MAO Supervisors be present at each visit.

Audit Finding (7):

Weakness in the Administration of Recurrences of LOD Leave

The auditors tested 108 occurrences of leave (discussed in Audit Finding 1). Of those, 81 were for the recurrence of symptoms from the initial injury.

Article 7.⁹

In the instance of a claimed recurrence, both the police officer and the AMT need to call their precinct, provide a quick description of their ailment and refer to their initial injury number in order to be placed on LOD leave. However, Police Department Article 7 requires a police officer to *immediately* report to the CSO while an AMT has 24 hours to do so. The MAO is responsible for ensuring that members comply with Article 7

From our examination of 17 occurrences of LOD leave taken (out of 108 occurrences originally sampled) we identified 11 occurrences -- nine recurrences and two initial occurrences -- where the time reporting requirements as defined in Article 7 were violated.

ADM 4125.¹⁰

According to Police Department procedure ADM 4125, any member of the force returning to duty after being on sick leave for more than three days, and/or for any length of time related to LOD leave, must notify their supervisor and report directly to the CSO to officially sign themselves off of sick leave.

⁹ Police Department Procedure ART 7, *Absence*, page 3 of 5, effective 2/13/06.

¹⁰ Police Department Procedure ADM 4125, *Sick Leave – Force Members*, effective 4/26/02.

Audit Findings and Recommendations

Our testing found instances of non-compliance with ADM 4125 and Article 7 including instances where a police officer:

- called in on a recurrence of LOD leave the day before retirement and did not report to the CSO;
- called in on a recurrence, visited the CSO only to be denied LOD leave and was put back on full duty. This same police officer called in on a recurrence the following day but did not visit the CSO, remained out on LOD leave for one shift, and signed back on duty without visiting the CSO (a violation of ADM 4125); and
- had three recurrences and did not report timely to the CSO (as required by Article 7) for any of them.

In addition, the MAO cannot immediately identify which police officers should have reported to the CSO until they have reviewed the daily CHIEF report that lists members on sick leave and LOD leave for the day. However, due to the time of day (generally around 9:00am) that this report is generated claims for occurrences of leave may not be captured until the following day.

Audit Recommendations:

The Police Department should:

- a) review procedures to make sure that the entity responsible for supervising LOD leave can monitor whether or not the member has been seen by the CSO and that the CSO has approved the LOD leave; and,
- b) ensure that the MAO consistently and appropriately disciplines members who do not comply with Article 7.

Audit Finding (8):

Inadequate Management Oversight of Payroll Costs Associated with LOD Leave

The cost of 207-c leave includes the salary of members on leave and the cost of overtime paid in order to comply with minimum staffing requirements.

For the audit period we found that the Police Department had not instituted an effective plan to accumulate, monitor and report the salary and overtime costs associated with LOD leave. Information regarding these costs cannot be obtained from the time and leave sub-system in CHIEF because the system does not separately identify payroll costs associated with LOD leave.

In order to compensate for the deficiencies of CHIEF, MAO staff manually generated their own reports to accumulate data on 207-c related sick leave.

As a result of interviews of MAO personnel and management, along with analysis of the reports generated by the MAO, we found that:

Audit Findings and Recommendations

- the MAO started to manually generate a report that listed salaries associated with LOD leave;
- MAO personnel compiled the data by manually entering it (rather than using Excel formulas) from CHIEF, which was an error-prone process;
- a comparison of the MAO report to the CHIEF report for the period January 2007 to March 2007 identified discrepancies in the number of LOD injuries and the number of LOD leave days taken.

The inability of the CHIEF system to segregate payroll and overtime costs associated with 207-c leave contributed to poor management oversight of the costs.

The MAO is now receiving monthly reports from IT of payroll costs associated with LOD leave.

Audit Recommendations:

The Police Department should monitor payroll costs associated with 207-c by:

- a) ensuring that the issues related to monitoring 207-c payroll costs are addressed, as may be appropriate, in conjunction with the development of the County's new "In Time" system; and
- b) work with IT to obtain a report of LOD related overtime costs.

Audit Finding (9):

Potential Conflict of Interest in the CSO

A physical therapist was paid as a consultant to the CSO. As a consultant, the physical therapist interviewed members who report to the CSO, as it relates to their need for physical therapy, and evaluated their progress from physical therapy treatments.

A recent report from Triad showed that there were 476 payments (totaling \$109,831) made to the consultant's physical therapy private practice from 2005 through 2007. This included payments for physical therapy administered to Police and Sheriff Department employees.

We noted that the consultant was not compensated for any services performed after December 2007 and that the contract with the consultant was not renewed for 2008.

Audit Recommendations:

The Police Department should:

Audit Findings and Recommendations

- a) consult with the County Attorney regarding the conflict of interest rules for consultants to the CSO; and
- b) ensure that no real or apparent conflicts of interest exist regarding other medical service providers' responsibilities at the CSO.

Audit Finding (10):

Weaknesses in the Process of Applying for Disability Retirement

It has been the practice of the Police Department to apply for disability retirement on behalf of a police officer who has been on restricted assignment¹¹ (RA) or extended leave due to an LOD injury, if the member has not done so and does not anticipate returning to full duty in the near future. The application process is commenced by the MAO once the police officer has been on RA or extended leave due to an LOD injury for at least 18 months. There were no written policies or procedures on how the MAO should submit an application for disability retirement.

Eligibility for disability retirement is determined by the New York State Police and Fire Retirement System ("NYSPFRS"). Police officers may be eligible for ordinary disability retirement, accidental disability retirement or performance of duty disability retirement. Either the Police Department or the police officer may file the retirement application; however courts have held that employees currently receiving 207-c benefits who are under the age for mandatory retirement cannot be involuntarily retired on ordinary disability.¹²

It has been the practice of the MAO to first apply to NYSPFRS for the more beneficial accidental disability retirement, which pays 75% of the police officer's final average salary and wait for the disposition of that application prior to applying for performance of duty disability retirement, which pays 50% of the final average salary. In some cases, NYSPFRS' response to an application can take over two years. This time delay increases the likelihood of NYSPFRS denying any disability retirement application for a police officer who has been filling an RA for that same period, since NYSPFRS can hold the opinion that a position has been created for that police officer. In the past, NYSPFRS has denied disability applications for individuals that have been filling an RA position for two years.

We have been informed by MAO staff that since the completion of our fieldwork they have been applying for both accidental and performance disability retirement simultaneously.

Audit Recommendations:

¹¹ A "restricted assignment" is an administrative function assigned to the member because the LOD injury prevents them from being able to perform active duty.

¹² Matter of Faughnan v. City of Binghamton, 71 A.D.2d 235 (3d Dep't, 1979)

Audit Findings and Recommendations

The Police Department should:

- a) continue to simultaneously apply for accident and disability retirement for members on RA or extended leave of duty due to an LOD injury as soon as it is apparent that the member is not returning to full duty;
- b) reconsider its practice of waiting 18 months to file a retirement application; and,
- c) establish written procedures at the MAO on the steps to be taken for submitting disability applications.

Audit Finding (11):

A Memorandum of Understanding (“MOU”) Grants 207-c Benefits to Employees Who Would not be Entitled to 207-c Status Under the Law

In 1993, the County and the PBA entered into a Memorandum of Understanding concerning 207-c eligibility.¹³ The MOU expands the definition of an LOD injury beyond the definition provided for in the statute. The MOU also establishes a Medical Review Board as an administrative appeals process for police officers for 207-c issues including whether an injury or illness is covered by 207-c and whether the police officer is able to return to work.

The MOU defines an LOD injury as one “received while the member was on duty...; or received while the member was acting pursuant to the duties and responsibilities of a Police Officer; or received while the member was acting in response to the direction of a Superior Officer.”

In contrast, under 207-c, it is not sufficient that the injury was caused while the employee was on duty, the injury must also have been caused by the employee performing his or her job responsibilities. In *Theroux v. Reilly*, 1 N.Y.3d 232, 239 (2003), the New York State Court of Appeals explained that “in order to be eligible for section 207-c benefits, a covered municipal employee must show a ‘direct causal relationship between job duties and the resulting illness or injury.’ ” Thus in order to be eligible for 207-c benefits, the employee’s injury or illness must be directly related to the general job responsibilities of the injured employee. The Appellate Division applied this standard in *Martino v. County of Albany*, 47 A.D.3d 1052 (3rd Dep’t, 2008), where it held that a police officer who injured his back while taking out a bag of garbage at work was not entitled to 207-c benefits because taking out the garbage was not part of his job duties as a police officer. The MOU removed the requirement that the injury be caused while performing the employee’s job duties for Nassau County police officers.

We were not able to determine what percentage of injuries or illnesses were granted LOD status that would *not* be eligible for 207-c status under the standard established by law. It

¹³ The provisions of the MOU were later extended in other MOU’s to include the Superior Officers Association and the Detectives Association.

Audit Findings and Recommendations

stands to reason that some instances occur, increasing the expense of the LOD program beyond what is required by state law.

Audit Recommendation:

The County should consider whether to re-negotiate with the police unions to restrict injuries or injuries eligible for 207-c benefits to the standard established by New York State law.

COUNTY OF NASSAU

INTER-DEPARTMENTAL MEMO

DATE: July 6, 2009

TO: Nassau County Comptroller

FROM: Deputy Chief Thomas C. Krumpter, Office of Commissioner of Police

SUBJECT: AUDIT RESPONSE TO - "LIMITED REVIEW OF THE NASSAU COUNTY POLICE DEPARTMENT - GENERAL MUNICIPAL LAW 207 -C ADMINISTRATION"

On January 16, 2009 the Nassau County Police Department received from the Nassau County Office of the Comptroller, a document entitled, “Limited Review of the Nassau County Police Department-General Municipal Law 207-c Administration.” This document, the results of an audit conducted from January 1, 2005 through March, 2007, was referred by the Commissioner of Police to the Bureau of Personnel and Accounting within the Police Department for review and consideration. The Personnel and Accounting Bureau has operational authority over the Chief Surgeons Office (“CSO”) and the Medical Administration Office (“MAO”), which were the subjects of this audit. That review has been completed and our findings, comments and results of that review are presented here for consideration.

The following should be noted prior to discussing the findings of this report. Many of the findings, which addressed inefficiencies relative to the Administration of 207-c benefits for our department members, became apparent to Police Commissioner Lawrence Mulvey and his Administrative Staff soon after he assumed office in July 2007. Accordingly, the operational authority of MAO and CSO were realigned and placed under that of the Personnel and Accounting Bureau during March of 2008. Subsequently, and at the direction of the undersigned, a more aggressive case management policy was instituted. This policy included chairing of weekly meetings with not only MAO and CSO but also included the presence of representatives of the County’s Risk Management Office as well as Triad Group (Triad), the third party administrator for the County’s 207-c and workers’ compensation benefits. As a result, the incidence of 207-c days was drastically reduced by 35% for the calendar year 2008 as compared to 2007. These meetings and efforts continue to date. Additionally, some new efficiencies are in the process of being implemented as well. It is our firm contention that the maximum effectiveness of our managing 207-c matters will be further optimized going forward.

Upon a review of operations of the Medical Administration Office and the Chief Surgeons Office it was determined that a paradigm shift was required. It was determined that the Department would take a two-prong approach. First the Department would raise the standard of care that is provided to the members that are injured in the line of Duty. Historically, effort was concentrated on the containment of medical costs. What was being overlooked was the inherent labor costs incurred by

Appendix – Police Department Response and Auditor’s Follow-up

members who were out sick for an extended period of time. It was anticipated that by raising the standard of care there would be a significant reduction in line of duty sick time. As you can see, there has been a significant reduction in Line of Duty sick time. Secondly, the Department will regularly review those cases where long term sick or long term restricted duty status exists and apply for State disability pensions where appropriate.

To date the following significant changes have been made:

- The Department reviews all cases on a regular basis where members are either on long term sick (greater than 30 days) or long term restricted (greater than 60 days) to determine if it would be appropriate to file Disability Applications with the New York State Pension System.
- In any case where a member files an Accidental Disability application (hereinafter “Accidental”) the Department will file a Performance Disability application (hereinafter “Performance”) immediately. Both applications will run concurrently, thus increasing the Department’s chances of success and expediting the process.
- [A Triad employee] has been tasked to coordinate with New York State to expedite the disability applications. Historically, the application process would take up to 48 months to be completed. As result of the changes that have been made, approvals of Disability Pensions are taking approximately 10 months.
- In those cases where Disability applications are denied, the Department conducts a review and appeals the Denial where appropriate. In the last 12 months the state has denied approximately 18 disability applications of which the Department filed appeals in approximately 14 cases. The Department is currently awaiting decisions in these cases that have been appealed. Previously the Department did not appeal denied cases.
- An aggressive case management policy was instituted. - This policy included chairing by the undersigned or in my absence the Commanding Officer of Personnel & Accounting Bureau, of weekly meetings with not only MAO and CSO but also included the presence of representatives of the County’s Risk Management Office as well as employees of the Triad Group (Triad), the third party administrator for the County’s 207-c and workers’ compensation benefits.
- The hiring of additional Part Time Orthopedic Surgeons. - The vast majority of our line of duty injuries are orthopedic in nature. In the past, the Department employed only one Orthopedic Surgeon. By increasing the number of orthopedic surgeons, the Department will be able to raise the standard of care that is provided to our members. Going forward it is the Department’s intention to increase the number of orthopedic surgeons and attempt to recruit Neurosurgeons.
- Diagnostic Testing - Diagnostic Testing such as MRI’s are now prescribed by Department surgeons in close proximity to the injury. - This was [a] significant change in protocol. Previously Department surgeons did not prescribe any tests. This change in procedure has already paid significant financial dividends by identifying injuries early and treating accordingly thus resulting in earlier recoveries.
- Changes in Chief Surgeons Office workflows related to the Medical Review Process – Workflow changes have resulted in a significant reduction in the processing effort. This has resulted in our members being returned to work more quickly in those cases in which the Department prevails in the medical review process. It should be noted that the member remains on sick leave until the medical review process is completed.

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- The Department uses Independent Medical Exams where appropriate.
- During the weekly case management meeting a retro review of all line of duty injuries is conducted to determine if a line of duty classification is appropriate.
- [A] Triad Representative works in the Medical Administrative Office one day a week during which time she expedites care of members and consults on Workers Comp and 207c issues.
- Department has assigned one additional Supervisor to the Medical Administrative Office. This will allow the office to increase the number of home visits.
- Additional changes that were made prior to the issuance of the audit report or recommendations from the Comptroller’s Office have also been made and have been outlined below.

It is the intention of the Department to implement the following items during 2009.

- The Department will contract with a Forensic Psychiatrist to consult where appropriate. The Department currently employs a part time Psychiatrist to conduct evaluations and make recommendations in cases involving the removal or return of firearms.
- The Department will contract with radiological groups, with a requirement that they must provide MRI tests and results within 48 hours. The Department has significantly reduced the amount of time our members await MRI tests and results. We look to further improving the care that our members receive.

As should be evident, there has been a significant paradigm shift in the administration of General Municipal Law 207c by our Department. At the direction of the Commissioner of Police significant improvements have been made to the Chief Surgeons Office and the Medical Administration Office that has resulted in significant saving. Additionally, all of the changes were made prior to any recommendations or audit findings by the Comptroller’s office.

Relative to the Audit findings, our specific responses to each are outlined below. To this end and as stated above, it is our goal to become more effective and efficient in managing our 207-c benefits and we welcome the office of the County Comptroller in assisting us in this pursuit.

The audit document, as a background introduction, presents data compiled by the auditors and is presented as an estimate of annual salary and overtime costs for the Police Department relative to 207-c days. The formula used in calculating these costs assumes a one to one relationship between the members absence from their duties, to the overtime replacement costs for those members. First, it should be noted that not all department members in general or those on 207-c leave are assigned to minimum manning commands thus requiring their replacement with members on overtime. Secondly, even those members assigned to minimum manning commands are not necessarily replaced with members on overtime since only in those incidences where such absence creates a staffing shortage, is such cost incurred. Therefore we disagree with the cost findings and contend that they are inflated subsequent to the erroneous costing formula. Without conducting a detailed review of all minimum manning roll calls, it would be impossible to accurately formulate an estimate of the overtime impact of 207c sick time. Such a roll call review would be labor intensive and thus detract from our efforts in minimizing the occurrences of such overtime opportunities by reducing the number of those out sick who cause same.

Auditor’s Follow-up Response:

We support and concur with the many changes in the Department’s administration of the 207-c program. The findings cited in this audit were discussed with management at Police Headquarters, the Medical Administration Office and the Chief Surgeons Office during the course of the audit in 2007. Concerning our estimate of salary expense associated with 207-c leave, we estimated overtime costs as described in the report, because the Police Department could not provide a cost analysis.

The following is the results of our review of each finding and recommendation presented:

Audit Finding (1): Twenty seven Instances of LOD Leave Granted Despite Denial by Chief Surgeon’s Office (LOD Denials 27 LOD occurrences found to be misclassified)

A review of the cases [c]ited in the audit was conducted with the following determinations:

- 3 members were classified in Chief Surgeons Office (CSO) as "off duty approved" - this was corrected prior to the issuance of the Draft Audit Report and is no longer the practice
- 5 members availed themselves of the Medical Reviews and prevailed thus the sick leave was not changed
- 4 members were denied LOD and did not appeal.
- 1 member was in the Medical Review process when NYS disability was granted – As a result of the state determination the Department withdrew the Medical Review and granted the line of Duty Injury.
- 2 members (civilian Ambulance Medical Technicians) were denied 207C and forwarded to Legal Bureau as per protocol
- 12 cases resulted due to a failure in notification between CSO & the Medical Administration Office (MAO) a new procedure is now in place and this process has been corrected.

To expand on the last bullet above, the LOD denial notification procedure from CSO to MAO has been amended and improved as follows:

- a. CSO doctor accompanies member denied LOD, along with PDCN From 199A, to MAO supervisor.
- b. Member is immediately notified of denial, signs denial notification, explained the Medical Review Process, and provided documents to appeal.

The Department in conjunction with the Office of Labor Relations will conduct a review to determine if the audit recommendation would be a mandatory item of bargaining or if the Department has the ability to unilaterally impose the change.

In a related topic, the necessary changes in the sick leave subsystem portion of CHIEF following the findings of Medical Review, is now the responsibility of one person and is reviewed by a Sick Leave Management supervisor.

A modified MAO Command Level Procedure has been implemented regarding Medical Review.

This Procedure has corrected the weaknesses found. Notification of LOD denials is now in person immediately and a written report is prepared at that time. The "off duty classification" is no longer used and as noted above, one supervisor is now responsible for monitoring the sick leave adjustments.

Auditor’s Follow-up Response:

We concur with the corrective actions taken by the Department. We reiterate our recommendations that the Police Department promulgate written procedures, update members’ time and leave records to appropriately record sick leave based on the results of the Medical Review and/or IME, include a methodology to monitor the 30-day limit for requesting a Medical Review, and require retention of documentation when the CSO’s determinations are reversed.

Audit Finding (2): Weaknesses in the Evaluation of Members’ Fitness for Duty and LOD Injury Status

In order to make proper determinations regarding fitness for duty and LOD status, members are routinely requested to provide the results of authorized tests. Compliance issues regarding these requests impede these determinations. The current procedure requires discipline for non-compliance and is implemented by the member’s command. In an effort to add to the effectiveness and accountability of such discipline, suggested actions are being implemented:

- The Medical Administration Office will notify the members Command and request that appropriate discipline be carried out.
- Where appropriate the Department will suspend member’s 207c benefits.

Other corrective measures to strengthen our evaluation process have been formulated such as:

- Tracking of authorized testing and follow-up procedures
- Hospital records being forwarded from the member’s command and filed with the member charts in CSO.
- Command policies and procedures have been amended to assure that a PDCN429 form is completed for all injury related visits.

Auditor’s Follow-up Response:

We concur with the corrective actions taken by the Department.

Audit Finding (3): Six out of Six Injury Packages Examined Were Missing Required Forms but Were Approved by the Member’s Commanding Officer and Division Chief

The Department has emphasized the importance of injury packet completeness. The packets are reviewed by the Medical Administration Office supervisors. In those case where required forms are not completed the appropriate commands are contacted and the forms are requested.

Auditor’s Follow-up Response:

We concur with the corrective actions taken by the Department. We also recommend that the Police Department comply with its policies and procedures, and review the injury packages for all open cases and ensure that any missing documentation is obtained.

Audit Finding (4): Lack of Investigation of Initial Injuries by the Medical Administration Office

The Department disagrees with audit finding number (4). The Medical Administration Office conducts a review (as outlined in the finding) of every line of duty investigation that is completed by a supervisor. Where appropriate Supervisors assigned to the Medical Administration Office conduct a follow up investigation.

Additionally it should be noted that an initial investigation is conducted by a Patrol Supervisor. This investigation is then reviewed by all members within the Chain of Command. (The Chain of Command includes the unit Commanding Officer, Division Chief, Chief of Department).

To implement the recommendation of the Comptroller for Audit Finding (4) would require the Department to assign 16 additional supervisors to the Medical Administration Office (at an approximate cost of 2.8 million dollars.) Taking into consideration the fact that an investigation is conducted by a Patrol Supervisor this would neither improve the efficiency or effectiveness and thus would be counterproductive

Auditor’s Follow-up Response:

We reiterate our recommendation that the Department review the requirements for the MAO’s investigation of initial injuries as provided in OPS 1111 and Command Procedure 04-003. If the Police Department determines that its procedures are not cost effective, it should consider revising those procedures. Current procedures required that investigations be performed and documented in the injury package. This includes the results of documentation review, records of interviews (date, person interviewed, and interviewee’s statements), location photos and results of surveillance.

Audit Finding (5): Police Department Procedures Allow Members to Claim an LOD Injury Without Being Seen by the CSO When Leave is Not Taken (Two occurrences where the member failed to report to CSO when required)

The Police Department’s Rules, Article 7, Rule 17, requires that a member who is injured on duty or taken ill while on duty report to the CSO as follows;

- a. On duty injury & on sick leave – within 24 hours
- b. On duty injury, not on sick leave – next tour coinciding with CSO hours.
- c. Recurrence of on duty injury/illness – immediate response to CSO

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The enforcement and compliance of this rule is effective. This is apparent by the minimal incidence rate of deficiencies as cited in the audit. Of the two cases cited out of the 108 reviewed, one occurrence was simply missed and the other involved a member who made a reasonable request to report to CSO at a later date. That request was granted and the ensuing examination was completed timely. Taking into consideration that 108 cases were reviewed and only 1 deficiency, the findings can only be described as immaterial with little or no effect on the operations of the Department.

Finally, the audit report suggests that MAO should not determine LOD status until after the member has been examined by CSO, thereby ensuring an LOD determination not being made prematurely. This recommendation was implemented by MAO and is the current practice prior to the issuance of the Draft Audit Report or any recommendation made by the Comptroller’s office.

Auditor’s Follow-up Response:

The CSO’s examination of the injured officer is critical to determining the merits of a claim. The two exceptions we noted represent a breakdown in the Police Department’s procedures. In one case, the member was never seen by the CSO, while in the other case, the 207-c leave was granted before the date of the visit to the CSO.

Audit Finding (6): Inadequate Home Visit Monitoring of Members on LOD Leave by the MAO

MAO Command Procedure – Sick Leave Visits, will be updated to include the audit’s recommendations that MAO should:

- a) Prioritize visits by the cost of absences to the Police Department;
- b) Update written procedures to address the methodology and requirements for regular home visits of members who are on LOD leave;
- c) Reconsider the practice of selecting members for home visits based upon geographic location;
- d) Record and retain all documentation related to actions taken as a result of the home visit, including the selection process;
- e) Conduct more visits to members on LOD leave;

Recommendation f, not listed above, which states that we should reconsider the requirement that two MAO Supervisors be present at each visit, is disputable. We believe that contrary to the audit findings, two (2) MAO supervisors conducting sick leave visits is a necessity. Safety is a paramount concern and justifiable since MAO supervisors in the past have encountered angry and indignant members during a sick visit. Also, on occasion a moving surveillance utilizing a video recorder is required whereas one MAO member drives while the other is recording. Two supervisors being present also provide support to observe conduct and conversation and avoid the “he said/she said” argument.

Auditor’s Follow-up Response:

We concur with the corrective actions taken by the Department. We reiterate our recommendation

that MAO reconsider the requirement that two MAO supervisors be present. While we agree that the safety of the MAO personnel is paramount, MAO may achieve its goals by replacing the presence of one supervisor with a civilian employee or a lower-ranking police officer.

Audit Finding (7): Weakness in the Administration of Recurrences of LOD Leave

The finding here reflects a small percentage of cases 11 out of 108 reviewed where the time reporting requirements as defined in our Departmental Rules and Regulations Article 7 or Police Department procedure ADM 4125, were actually violated. It is our current policy that in cases where members who have not complied, MAO notifies that member’s Commanding Officer in writing when such violation occurs. Discipline is the responsibility of the CO of the member’s command.

Auditor’s Follow-up Response:

We concur with the corrective action taken by the Department.

Audit Finding (8): Inadequate Management Oversight of Payroll Costs Associated with LOD Leave

It is generally agreed that the tracking of 207c costs is inadequate and hampered by the inability of the County System to effectively collate them. The finding does mention however, that MAO is receiving reports monthly from IT to assist in this endeavor. This process is continuing with refinement being pursued to adequately attribute the costs of LOD. However, efforts to reduce LOD days have been effective and energies expended to try and determine related costs are being better spent in this reduction effort.

Regarding the audits reference to the County’s new “INTIME” system possibly ensuring that the issues related to monitoring 207c payroll costs are addressed and developed, this has been reviewed with County IT and the Accenture consultants. It has been determined by them that the new system cannot encapsulate the Sick Leave Management portion of CHIEF without a “bolt-on” application. Such application has been considered and rejected by applicable authorities outside of the Police Department. With out such a “bolt-on” application and the instituting of INTIME for the Police Department, the management of our Sick Leave occurrences will require dual entries in both CHIEF and INTIME. Such would be counter-productive at best and lead to costly inefficiencies and exasperation of such issues that are in need of streamlining not duplicity.

Auditor’s Follow-up Response:

Information Technology’s Intime Project Manager has informed us that he anticipates the “bolt on” application to be completed sometime in 2010 at which time the Department will be able to use Intime to monitor payroll costs.

Audit Finding (9): Potential Conflict of Interest in the CSO

This conflict has been resolved with the termination of the contract for consultation with the Physical Therapist in question. Additionally, it should be noted that this occurred prior to the issue of the Draft report or any recommendation from the Comptroller’s office. Based on the above it requested that this Audit Finding be removed from the final report.

Auditor’s Follow-up Response:

We concur with the corrective action taken by the Department and note that there have been no payments for any services after December 2007.

Audit Finding (10): Weaknesses in the Process of Applying for Disability Retirement

For the past year MAO has been coordinating it’s disability application process with Triad and the New York State Retirement System.

- a. The Department now files Accidental and Performance of Duty (POD) disability applications simultaneously, if the member has not filed.
- b. Once the member files for Accidental, the Department immediately files a POD application.
- c. The prior practice of waiting eighteen (18) months to file has been amended to filing when appropriate based on the nature of the injury. The Department also reviews all members on long term sick on a monthly basis to determine if it is appropriate to file disability applications. Additionally, the Department consults on an ongoing basis with employees of Triad.
- d. Written MAO Command Procedures regarding this have been established.

Additionally, it should be noted that this policy change was implemented prior to the issuance of the draft audit report or any recommendations from the Comptroller’s Office. Based on the above it is requested that the Audit Finding be removed from the final report.

Auditor’s Follow-up Response:

We concur with the corrective action taken by the Police Department. Deficiencies in the Police Department’s disability application process were discussed with the CSO, MAO and Police Department Administration during the audit in 2007.

Audit finding (11): A Memorandum of Understanding (MOU) Grants 207c Benefits to Employees who would not be entitled to 207c Status under the Law

Audit Recommendations:

The County should consider whether to renegotiate with the police unions to restrict injuries or injuries eligible for 207c benefits to the standard established by New York State law.

The ability to implement the recommendation is outside the purview of the Department. The Nassau County Office of Labor Relations is responsible for negotiating all labor contracts on behalf of the County. It should be noted that the County’s Unions have Collective Bargaining agreements that expire on December 31, 2015.

Additionally, if the Department was able to “renegotiate” and adopt the New York Standard for 207c it would have a minimal impact on the overall cost. The vast majority of injuries (approximately 99%) would still be eligible for 207c benefits. Additionally, the members would still receive benefits under Workers Comp. It should also be noted that the types of injuries that would most likely not be treated as 207c are minor in Nature.

Based on the Comptrollers recommendation the Department will include in requested items during the next round of Contract negotiations.

Auditor’s Follow-up Response:

We concur with corrective action to be taken by the Department.