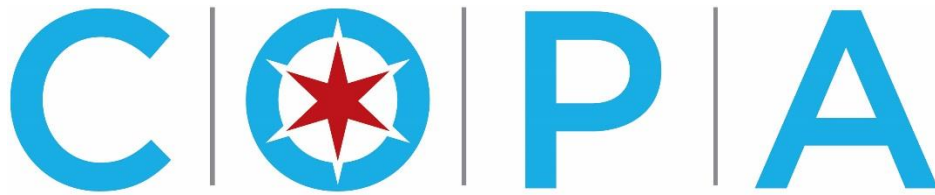


**City of Chicago
Civilian Office of Police
Accountability**



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

INTEGRITY • TRANSPARENCY • INDEPENDENCE • TIMELINESS

**Report on the Chicago Police
Department's Response to COPA
Advisory Letter
IN RE: Member Use of Certain
Prescription Medications**

May 14, 2019



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY
INTEGRITY • TRANSPARENCY • INDEPENDENCE • TIMELINESS

Eddie T. Johnson
Superintendent
Chicago Police Department
3510 S. Michigan Avenue
Chicago, Illinois 60653

May 14, 2019

**Re: Chicago Police Department's Response to COPA Advisory Letter IN RE:
Member Use of Certain Prescription Medications**

Dear Superintendent Johnson:

Pursuant to the Municipal Code of Chicago Section 2-78-120(m), the Chief Administrator of the Civilian Office of Police Accountability (COPA) is empowered and has a duty to make recommendations to the Superintendent of the Chicago Police Department (the Department). To fulfill the mission, as outlined in Section 4.4.1 of COPA's Rules and Regulations, the Chief Administrator may make recommendations when an investigation uncovers a problem that hinders the effectiveness of Department operations and programs or has identified a verifiable potential liability or risk that warrants attention by the Department.

On November 13, 2018, COPA sent the Department an Advisory Letter concerning potential risks and liability posed by Department members' non-disclosure of their use of certain prescription medications. The Department responded to COPA's letter on January 11, 2019.

Please find enclosed our report addressing the Department's response.

Respectfully,

Sydney R. Roberts
Chief Administrator

I. Introduction

Pursuant to the Municipal Code of Chicago Section 2-78-120(m), the Chief Administrator of the Civilian Office of Police Accountability (COPA) is empowered and has a duty to make recommendations to the Superintendent of the Chicago Police Department (the Department). To fulfill the mission, as outlined in Section 4.4.1 of COPA's Rules and Regulations, the Chief Administrator may make recommendations that are intended to promote best practices in policing, to address specific gaps in policy and training, or to improve the integrity and transparency of the Department's operations and performance.

On November 13, 2018, COPA sent the Department an Advisory Letter concerning potential risks posed by Department members' non-disclosure of their use of certain prescription drugs that can adversely impact their ability to carry out their duties in a safe and lawful manner.¹ The Department responded to COPA on January 11, 2019.² This report summarizes COPA's recommendations to the Department regarding member disclosure of such prescription medication usage, the status of COPA's recommendations, and COPA's conclusions regarding the Department's response to its earlier recommendations.

UNDISCLOSED MEMBER USE OF OPIOID NARCOTIC ANALGESIC PRESCRIPTION MEDICATIONS

In the investigation precipitating COPA's November 2018 Advisory Letter, one of the involved officers tested positive for both Hydrocodone and Hydromorphone. The Department requested that an independent doctor³ review the test results. Pursuant to the analysis of the test results, the doctor issued a written report indicating that a prescription for Hydrocodone/Acetaminophen could have caused the positive drug test. The doctor specifically noted that the officer "should not perform safety sensitive job duties when using this medication."

In reviewing the Department's Rules and Regulations and Directives System, COPA was unable to identify any Department rule or directive requiring members to report using any medication that may impede the performance of "safety sensitive job duties." Nor could COPA identify any specific standard for evaluating whether a prescription drug impairs a

¹ See Appendix A for a copy of COPA's November 13, 2018 Advisory Letter.

² See Appendix B for a copy of the Department's Response Letter to COPA's Advisory Letter.

³ Note: the M.D. is a certified Medical Review Officer.

Department member's ability to perform his or her duties. Employee Resource E01-09⁴ addresses the use of illegal drugs and the abuse of legal drugs but does not address the legal use of prescribed medications that may impair the ability of a Department member to safely perform his or her duties.

II. COPA's Recommendations

Recommendation Related to Prescription Drug Use

COPA recommended that the Department adopt a directive to address legal prescription drug use by its members, noting that best practices suggest CPD policies should:

- Require members to consult with their medical provider to determine if prescribed medication may interfere with the safe and effective performance of duties or operation of City equipment or vehicles.
- Require members to report the use of medication that may impair on-duty performance to their immediate supervisor.
- Make a supervisory determination whether the member will be allowed to perform regular duties, be reassigned to limited duty, or be relieved of duty for that shift.

III. The Department's Response

In its response, the Department stated its recognition that officer mental and physical fitness are imperative requirements to safety serving the public. Further, that it has been confronted in the past with issues of officer fitness for duty and that "different factors have influenced the Department's approach to the issue."

The Department also informed COPA that while it is assessing the feasibility of COPA's recommendations, "a simple implementation of [those] recommendations are not easily attainable."

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⁴ Chicago Police Department, Employee Resource E01-09 "Drugs, Drug Abuse, and Mandatory Physical and/or Psychological Examinations," Effective March 13, 2018.

IV. Recommendation Status

COPA classifies the status of the Department's response to an Advisory Letter and the recommendations contained therein, in one of three ways:

- **Agrees:** The Department agrees with COPA's policy recommendation and indicates that it has taken steps to implement or plans to implement COPA's recommendation in full.
- **Agrees In Part:** The Department partially agrees with COPA's policy recommendation and may or may not have indicated that it has taken steps to implement COPA's recommendation.
- **Does Not Agree:** The Department does not agree with COPA's policy recommendation and has not taken steps to implement such recommendation or is non-committal in its response to such recommendation.

Recommendation 1: Require members to consult with their medical provider to determine if prescribed medication may interfere with the safe and effective performance of duties or operation of City equipment or vehicles.

Status: Does Not Agree.

On January 11, 2019, the Department stated that the feasibility of COPA's recommendations was being assessed. However, COPA has yet to be informed of the results of the Department's assessment or whether it will implement any of COPA's recommendations.

Recommendation 2: Require members to report the use of medication that may impair on-duty performance to their immediate supervisors.

Status: Does Not Agree.

On January 11, 2019, the Department stated that the feasibility of COPA's recommendations was being assessed. However, COPA has yet to be informed of the results of the Department's assessment or whether it will implement any of COPA's recommendations.

Recommendation 3: Make a supervisory determination whether the member will be allowed to perform regular duties, be reassigned to limited duty, or be relieved of duty for that shift.

Status: Does Not Agree.

On January 11, 2019, the Department stated that the feasibility of COPA's recommendations was being assessed. However, COPA has yet to be informed of the results of the Department's assessment or whether it will implement any of COPA's recommendations.

V. Conclusion

COPA reiterates its concern that absent the Department's issuance of a specific directive it is ill-equipped to protect its members and the public from the potential adverse side effects associated with certain medications that can inhibit a member's ability to "perform safety sensitive job duties" at a critical moment.

In the present case, whether the medication(s) in question is Hydrocodone, Hydromorphone, or Hydrocodone/Acetaminophen, these are Schedule II opioid narcotic analgesics (pain medications) with side effects that can include:⁵

- Uncontrollable shaking of a part of the body
- Overactive reflexes
- Poor coordination
- Depression
- Blurred vision
- Lightheadedness, dizziness, or fainting
- Muscle spasms
- Changes in mood
- Talking or acting with uncontrollable excitement

⁵ <https://www.merckmanuals.com/professional/resources/brand-names-of-some-commonly-used-drugs?search=Hydromorphone>

- Change in consciousness
- Decreased awareness or responsiveness
- Fear or nervousness
- Unusual tiredness or weakness

Most Department members are necessarily engaged in work that can, at times, become dangerous. By authority of law, they carry loaded firearms and hold the power of life and death in their hands. They sometimes must engage in perilous vehicular pursuits of fleeing subjects that require their driving skills to be at peak levels. At other times they may have to depend on their reasoning and negotiating skills when verbally engaging with a person to deescalate a hostile situation or talk someone off of a ledge.

In all those situations and in many more, the police officer must have 100% presence of mind and be in full command of his or her body and emotions because the safety of the public and themselves demands it—**no compromise of these critical abilities is acceptable.**

That said, COPA recognizes that Department members have legitimate privacy concerns and may be entitled to reasonable accommodations for disabilities under applicable law—once the Department knows that an Individualized Assessment may be necessary.

Nevertheless, the member's fellow officers and the public have the right to be free of the risk of injury or death posed by an officer who may be impaired by undisclosed medications. However, unless the member is required to notify the Department of the medication involved no one will know of his or her diminished capacity until *after* an unfortunate incident has occurred.

Although the U.S. Equal Employment Opportunity Commission in its enforcement of the Americans with Disabilities Act (ADA) disapproves⁶ of blanket workplace rules that require civilian workers in non-safety related jobs to disclose all prescription medication use, the U.S. Supreme Court has noted that law enforcement work has overriding considerations:

... [T]he Government has a compelling interest in ensuring that front-line interdiction personnel are physically fit and have unimpeachable integrity and judgment. It also has a compelling interest in preventing the risk to the

⁶ EEOC v. M.G. Oil Company d/b/a Happy Jack's, 4:16-cv-04131-KES (D. S.D.)

life of the citizenry posed by the potential use of deadly force by persons suffering from impaired perception and judgment ...⁷

COPA appreciates that dealing with members' medical issues can be complex as they relate to privacy, the ADA, and EEOC rulings.⁸ However, not only have other departments done so, the ADA expects law enforcement agencies to do so—and it is the right thing to do for the member him or herself, for the public, and to protect the city from liability.⁹

Regards,



Sydney R. Roberts
Chief Administrator

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⁷ Nat'l Treas. Emp. Union v. Von Raab, 489 U.S. 656 (1989)

⁸ 969 F. Supp. 1073, Vincent J. Krocka v. James Bransfield and the City of Chicago

⁹ See e.g., Philadelphia Police Department, Directive 6.5 Impairment and Drug Testing of Police Department

Sworn Personnel. Effective September 30, 2014. <http://www.phillypolice.com/assets/directives/D6.5-ImpairmentAndDrugTestingOfPoliceDepartmentSwornPersonnel.pdf>;

Portland Police Department Directive, 0316.10 Drug/Controlled Substance Use. No effective date. <https://www.portlandoregon.gov/police/article/525572>;

Seattle Police Department Manual, Policy 5.170 Alcohol and Substance Use. Effective November 21, 2012.

<https://www.seattle.gov/police-manual/title-5---employee-conduct/5170---alcohol-and-substance-use>;

San Francisco Police Department General Order 2.03(D). Effective July 20, 1994.

<https://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/14817-DGO2.03.pdf>.

Appendix A



Eddie T. Johnson
Superintendent
Chicago Police Department
3510 S. Michigan Avenue
Chicago, Illinois 60653

November 13, 2018

Re: Advisory Letter Regarding Prescription Drug Use

Dear Superintendent Johnson:

COPA issues this Advisory Letter to inform you of potential risk associated with to a member's failure to disclose the use of certain prescription drugs that can adversely impact their ability to carry out their duties in a safe and lawful manner. Pursuant to the Municipal Code of Chicago Section 2-78-120(n), the Chief Administrator of COPA is empowered and has a duty to make recommendations to the Superintendent of the Chicago Police Department (the Department) to improve the accountability, effectiveness, integrity, and transparency of the Department.

Prescription Drug Use

In Log Number 1086925, one of the involved officers tested positive for both Hydrocodone and Hydromorphone. The Department requested an independent doctor¹ review the test results. In a letter dated October 12, 2017, the doctor reported that a prescription for Hydrocodone/Acetaminophen 10-325 could have caused the positive drug test. The doctor specifically noted that the officer "should not perform safety sensitive job duties when using this medication."

COPA reviewed the Department's Rules and Regulations and Directives System and was unable to identify any Rule or directive requiring Department members to report drugs they are prescribed that may impede the performance of "safety sensitive job duties." Employee Resource E01-09²

¹ Note: the M.D. is a certified Medical Review Officer.

² Chicago Police Department, Employee Resource E01-09 "Drugs, Drug Abuse, and Mandatory Physical and/or Psychological Examinations," Effective March 13, 2018.

A.L. 2018.02

1615 WEST CHICAGO AVENUE, 4TH FLOOR, CHICAGO, ILLINOIS 60622
312.743.COPA (COMPLAINT LINE) | 312.746.3609 (MAIN LINE) | 312.745.3598 (TTY) | WWW.CHICAGOCOPA.ORG

addresses the use of illegal drugs and the abuse of legal drugs, but does not address the legal use of prescribed drugs that may impair the ability of a Department member to perform his or her duties. The use of certain prescription drugs raises serious safety concerns and may expose the Department to significant liability. COPA recognizes that Department members have legitimate privacy concerns and may be entitled to reasonable accommodations under applicable law. Nonetheless, other police departments have directives regarding the use of prescription drugs that may impact the ability of members to perform their duties.³

Recommendation Related to Prescription Drug Use

The Department should adopt a directive to address legal prescription drug use by its members. Best practices suggest that polices should include the following characteristics:

- Require members to consult with their medical provider to determine if prescribed medication may interfere with the safe and effective performance of duties or operation of City equipment or vehicles.
- Require members to report the use of medication that may impair on-duty performance to their immediate supervisor.
- A supervisory determination whether the member will be allowed to perform regular duties, be reassigned to limited duty, or be relieved of duty for that shift.

Thank you for your time and consideration of these issues. We respectfully request a response to these recommendations within 60 days. COPA will publish this letter and the Department's response, if any, on the COPA website after the 60-day response time has passed.

Respectfully,



Sydney R. Roberts
Chief Administrator

<http://directives.chicagopolice.org/directives/data/a7a57be2-1289b78-c9812-8fa9-71368e61b5b79f86.html?hl=true>

³ See e.g., Philadelphia Police Department, Directive 6.5 Impairment and Drug Testing of Police Department Sworn Personnel. Effective September 30, 2014. <http://www.phillypolice.com/assets/directives/D6.5-ImpairmentAndDrugTestingOfPoliceDepartmentSwornPersonnel.pdf>;

Portland Police Department Directive, 0316.10 Drug/Controlled Substance Use. No effective date. <https://www.portlandoregon.gov/police/article/525572>;

Seattle Police Department Manual, Policy 5.170 Alcohol and Substance Use. Effective November 21, 2012. <https://www.seattle.gov/police-manual/title-5---employee-conduct/5170---alcohol-and-substance-use>;

San Francisco Police Department General Order 2.03(D). Effective July 20, 1994. <https://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/14817-DGO2.03.pdf>

A.L. 2018.02

Appendix B



Rahm Emanuel
Mayor

Department of Police - City of Chicago
3510 South Michigan Avenue - Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

January 11, 2019

Sydney R. Roberts
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

Re: Advisory Letter Regarding Prescription Drug Use

Dear Chief Administrator,

The Chicago Police Department received an Advisory Letter regarding prescription drug use for sworn Department members.

The Department recognizes that it is imperative that each officer be fit for duty, both mentally and physically, in order to ensure that a capable and professional organization is serving the public safety needs of the City of Chicago and its residents. In doing so, it is incumbent on the Department and its individual members to constantly evaluate, prior to each and every tour of duty, the competency and preparedness of every officer that will face the challenges presented in the law enforcement environment.

The Department is assessing whether your recommendations are feasible. The Department has been confronted with similar issues regarding the fitness for duty of officers in the past and a number of different factors have influenced the Department's approach to the issue. Due to the implications of various state and federal laws and regulations, as well as the impacts of collective bargaining, a simple implementation of your recommendations are not easily attainable.

The Department is committed to providing the citizens of Chicago with the most competent, professional law enforcement organization possible. As such if you wish to discuss this matter further, please contact the General Counsel, Charise Valente, at 312-745-6115.

Handwritten signature of Eddie T. Johnson in blue ink.

Eddie T. Johnson
Superintendent of Police
Chicago Police Department

Emergency and TTY: 9-1-1 • Non Emergency and TTY: (within City limits) 3-1-1 • Non-Emergency and TTY: (outside City limits) (312) 746-6000

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