

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	April 10, 2016
Time of Incident:	Approximately at 6:32am
Location of Incident:	[REDACTED]
Date of COPA Notification:	January 2, 2019
Time of COPA Notification:	3:00pm

On April 10, 2016, Chicago Police Department (“CPD”) Officers [REDACTED] (“Officer [REDACTED] and [REDACTED] (“Officer [REDACTED] responded to a call for service reporting someone drove into a tree located in a gas station parking lot and passed out.

Upon arriving, the officers attempted to wake the driver, [REDACTED] ([REDACTED] vehicle was unlocked, so the officers entered the vehicle, placed it in park, and successfully woke [REDACTED]. An intoxicated [REDACTED] was then transported to [REDACTED] Hospital via the ambulance.

At the Hospital, [REDACTED] was restrained due to aggressive and combative behavior. [REDACTED] alleged that while at the hospital, an officer choked him into submitting to a blood draw, and that hospital staff drew blood despite his refusal to consent.

Following an investigation, The Civilian Office of Police Accountability (“COPA”) determined that the involved officers did not commit the alleged misconduct and reached a finding of unfounded for all allegations.

II. INVOLVED PARTIES

Involved Officer #1:	[REDACTED] Star: # [REDACTED] Employee ID: # [REDACTED] Police Officer, Date of Appointment: [REDACTED] 2014; Unit [REDACTED] DOB: [REDACTED], 1981; Male; WWH
Involved Officer #2:	[REDACTED] Star: # [REDACTED] Employee ID: # [REDACTED] Police Officer, Date of Appointment: [REDACTED], 2014; Unit [REDACTED] DOB: [REDACTED], 1989; Male; WWH
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1965; Male, Black

**III. ALLEGATIONS<sup>1</sup>**

Officer	Allegation	Findings
Officer [REDACTED]	<p>It is alleged by [REDACTED] that on April 10, 2016, at or near [REDACTED] Hospital, an officer committed misconduct through the following act or omissions:</p> <ol style="list-style-type: none"> <li>1. Used excessive force by choking [REDACTED]</li> <li>2. Directed profanity at [REDACTED] and [REDACTED]</li> <li>3. Withdrew [REDACTED] blood without justification.</li> </ol>	<p>Unfounded</p> <p>Unfounded</p> <p>Unfounded</p>
Officer [REDACTED]	<p>It is alleged by [REDACTED] that on April 10, 2016, at or near [REDACTED] Hospital, an officer committed misconduct through the following act or omissions:</p> <ol style="list-style-type: none"> <li>1. Used excessive force by choking [REDACTED]</li> <li>2. Directed profanity at [REDACTED] and [REDACTED]</li> <li>3. Withdrew [REDACTED] blood without justification.</li> </ol>	<p>Unfounded</p> <p>Unfounded</p> <p>Unfounded</p>

**IV. APPLICABLE RULES AND LAWS**

Rules
<ol style="list-style-type: none"> <li>1. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.</li> <li>2. Rule 9: Engaging in any unjustified verbal or physical altercation.</li> </ol>
Federal Laws
<ol style="list-style-type: none"> <li>1. U.S. Constitution, Fourth Amendment</li> </ol>
State Laws

<sup>1</sup> Formal allegations were not served on the involved officers.

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1. 625 ILCS 5/11-501.2 Chemical and other tests

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## INVESTIGATION<sup>2</sup>

### a. Digital Evidence

#### *In car camera (ICC) footage<sup>3</sup>*

ICC shows Officers [REDACTED] and [REDACTED] reporting to a call involving an accident and a possible drunk driver. The officers arrive and find the driver, [REDACTED] asleep at the wheel. The officers make attempts to wake the driver from the outside of the car before discovering that the vehicle is unlocked. Officer [REDACTED] enters the vehicle through the front right passenger door and places the vehicle in park while Officer [REDACTED] accesses the driver seat door and succeeds in waking [REDACTED]. An ambulance arrives, and [REDACTED] is removed from his vehicle by Officer [REDACTED]. [REDACTED] is unable to walk on his own, so he is assisted in walking to the ambulance by Officer [REDACTED] and a female paramedic. [REDACTED] is heard slurring his words, directing profanity towards the officers and making comments about the paramedic being woman.

ICC continues while at the hospital capturing some excerpts of various conversations among [REDACTED] Officers [REDACTED] and [REDACTED] and hospital staff. Officers [REDACTED] and [REDACTED] discuss the possibility of drawing blood but concur that they lack the proper paperwork or clearance. A hospital staff member is heard telling [REDACTED] that they would be drawing his blood and taking a urine sample. [REDACTED] is not heard verbally protesting to his blood being drawn. The officers are not heard using profanity directed toward [REDACTED].

### b. Physical Evidence

#### *Medical records from [REDACTED] Hospital<sup>4</sup>*

Records indicate that [REDACTED] was combative and belligerent requiring him to be restrained while being attended to at the hospital. The records contain toxicology tests run on blood samples collected from [REDACTED]. Blood tests show [REDACTED] had a blood alcohol concentration of 299.1 mg/dL, indicating a .299 BAC.<sup>5</sup> [REDACTED] tested positive for cannabis and negative for other narcotics. No signs of trauma or injury were identified.

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<sup>2</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>3</sup> Attachment 15

<sup>4</sup> Attachment 19

<sup>5</sup> The legal limit for operating a motor vehicle is .08 BAC.

### c. Documentary Evidence

#### *Arrest report*<sup>6</sup>

Officers responded to an auto accident and observed damage to the gas station gates and a small tree. Officers found a black Chevrolet Avalanche with [REDACTED] sitting in the driver seat unconscious, with the keys in the ignition and the car in reverse. A witness stated that he saw the Chevrolet hit the gate and tree before the driver fell asleep at in the parking lot. The officers gained entry to the vehicle, placed it in park and noticed a strong smell of alcohol. When [REDACTED] awoke, the officers noticed his eyes to be bloodshot and a strong odor of alcohol coming from his breath. [REDACTED] began making aggressive motions, so Officer [REDACTED] placed handcuffs on him and also noticed that [REDACTED] had urinated on himself. [REDACTED] was removed from the vehicle after refusing to do so himself. [REDACTED] was placed in an ambulance and transported to [REDACTED] Hospital.

At the hospital [REDACTED] refused breathalyzer, standardized field sobriety tests and DUI kit tests. [REDACTED] was belligerent and required “8 people” in addition to officers [REDACTED] and [REDACTED] to be restrained at the hospital. The report also states that the officers’ requests for blood test results from [REDACTED] medical treatment were denied by hospital staff.

#### *Letter to COPA*<sup>7</sup>

In his letter to COPA, date January of 2019, [REDACTED] alleges that he was subjected to police brutality because he refused to sign a release allowing officers to draw his blood while at the hospital. He states that a “Hispanic officer” choked him and told him he would regret not signing the paper. [REDACTED] alleges that while he was being choked needles were inserted into both of his arms to draw blood. [REDACTED] then states that he “came conscious” in booking with bandages on his arms where the needles were inserted. He claims that he was never in an accident, and that he was parked and conscious when the officers came upon him in his vehicle.

## V. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

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<sup>6</sup> Attachment 3

<sup>7</sup> Attachment 2

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See *e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

## VI. ANALYSIS

### ██████████ *Credibility*

COPA does not find ██████████ account of the event credible. The ICC shows ██████████ to be visibly intoxicated. And by ██████████ own admission he went in and out of consciousness during the incident. In his letter COPA, ██████████ stated that he was conscious in his vehicle when the officers arrived at the gas station, a significant discrepancy that is directly contradicted by the ICC which shows that ██████████ was unresponsive to the officers as they arrived and entered the vehicle. Further, the medical records showed that ██████████ had a *significant* BAC of .299, well over the BAC limit of .08 for legal operation of a motor vehicle. Finally, ██████████ letter to COPA documenting his account of the event was authored years after the event occur. When considering these factors collectively, COPA find that ██████████ recollection of the incident unreliable.

### *Allegation 1*

COPA reached a finding of unfounded for allegation 1 against Officers ██████████ and ██████████

The hospital records show a lack of any physical injuries to ██████████. Additionally, the audio from the ICC did not contain evidence of verbal threats or abuse directed toward ██████████ from either of the involved police officers present during his arrest or time at the hospital, nor did it capture ██████████ complaining of any physical injuries or threat of violence from the involved officers. When considering these factors along with our finding of ██████████ reduced credibility, we believe that the physical threats alleged by ██████████ did not occur by clear and convincing evidence. Accordingly, COPA reached a finding of unfounded for allegation 1.

### *Allegation 2*

COPA reached a finding of unfounded for allegation 2 against Officers ██████████ and ██████████

The ICC shows most of the officers’ interaction with ██████ during his arrest and part of their interaction at the hospital. At no time in the ICC footage do the officers make any verbal threats towards ██████ or direct profanity toward him. Admittedly, the recording is not a complete record of every verbal exchange between the officers and ██████. However, given the weight of the available evidence, and ██████ diminished credibility, we find the evidence clearly and convincingly shows that the officers did not direct profanity towards ██████ as alleged by him. Accordingly, COPA reached a finding of unfounded for allegation 2.

***Allegation 3***

COPA reached a finding of unfounded for allegation 3 against Officers ██████ and ██████

Under Illinois Law<sup>8</sup>, those suspected of driving under while intoxicated can refuse to consent to field sobriety tests, breathalyzers and blood tests. ██████ refused field sobriety tests, and we find that the officers did not subject him to those tests. However, we do find that the evidence provided shows that ██████ blood was drawn as part of his medical treatment at ██████ Hospital, but no sample was provided to the involved officers at the time of the event. In fact, ██████ arrest report indicts that the officers requested a blood sample from the hospital but were denied. Because we find that the ██████ blood draw resulted from medical treatment and not an act of law enforcement, we concluded that ██████ Fourth Amendment claim is without merit. Accordingly, we reached a finding of unfounded for allegation 3.

**VII. CONCLUSION**

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding / Recommendation
Officer ██████	It is alleged by ██████ that on April 10, 2016, at ██████ Hospital, an officer: <ol style="list-style-type: none"> <li data-bbox="516 1415 1073 1486">1. Used excessive force by choking him in violation of Rule 8</li> <li data-bbox="516 1524 1105 1596">2. Directed Profanity at ██████ in violation of Rule 9</li> <li data-bbox="516 1633 1089 1747">3. Withdrew blood without his consent or a warrant in violation of his 4<sup>th</sup> amendment rights</li> </ol>	Unfounded  Unfounded  Unfounded

<sup>8</sup> 625 ILCS 5/11-501.2 Chemical and other tests

Officer [REDACTED]	It is alleged by [REDACTED] that on April 10, 2016, at [REDACTED] Hospital, an officer:  1. Used excessive force by choking him in violation of Rule 8  2. Directed Profanity at [REDACTED] in violation of Rule 9  3. Withdrew blood without his consent or a warrant in violation of his 4 <sup>th</sup> amendment rights	Unfounded  Unfounded  Unfounded
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Approved:

[REDACTED]

June 17, 2019


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Andrea Kersten  
*Deputy Chief Investigator*

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Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	3
<b>Investigator:</b>	
<b>Supervising Investigator:</b>	
<b>Deputy Chief Administrator:</b>	Kersten