

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



January 15, 2019

202.747.1904 direct

File Number: 37PA-191555

Deputy Superintendent Danny Murphy
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 22.12 Supervisory Referrals for Mandatory Psychological Evaluation. The OCDM has no objection to the policy as written.

We believe that Chapter 22.12 Supervisory Referrals for Mandatory Psychological Evaluation, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
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NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 22.12

TITLE: SUPERVISORY REFERRALS FOR MANDATORY PSYCHOLOGICAL EVALUATIONS

EFFECTIVE:

REVISED: Replaces Policy/Procedure 1011

PURPOSE

The purpose of this policy is to set guidelines for supervisory referrals and psychological evaluations.

DEFINITIONS

Unfit for duty—If an officer is referred for a fitness-for-duty evaluation, an evaluation shall be performed by a psychologist outside of NOPD. If this evaluation determines that an employee is unable to perform his/her duties, the employee is unfit for duty. The employee's supervisor who receives the evaluation shall immediately recommend to the Superintendent that the employee is placed on sick leave or Administrative Reassignment until cleared for return to full duty. The employee may be referred to other medical professionals for a second opinion or treatment. Return to duty in these cases may depend, in part, on the opinion of the treating physician or qualified mental health professional.

Police Psychologist—A qualified mental health professional who is retained and paid by NOPD, but is not an employee of NOPD and is outside of the NOPD chain of command, and to whom NOPD shall refer officers for fitness-for-duty evaluations.

POLICY STATEMENT

1. The Officer Assistance Program is completely independent and distinct from supervisory referrals and psychological evaluations. (See also: **Chapter 22.2.7 – Officer Assistance Program Traumatic Incident Stress**, **Chapter 22.2.6 – Officer Assistance Program Member Mental Health Service** and **Chapter 22.2.8 – New Orleans Police Peer Assistance**).
2. The exceptions to confidentiality for the Officer Assistance Program imposed by law or by professional regulation on all psychologists, psychiatrists, family therapists, and psychotherapists include:
 - (a) **Threats of physical harm**—If any individual in counseling threatens to harm another person, the mental health professional is required by law and professional regulation to notify the threatened person and the Police

Department.

- (b) **Suicide**—Any mental health professional who reasonably believes that a client is seriously contemplating suicide is required by law and professional regulation to do everything possible to prevent such an attempt, including making whatever notifications are necessary to stop the attempted suicide.
 - (c) **Child, domestic, individual with disability, and elder abuse**—If a client discloses participation in abuse of a child, domestic partner, a person with a disability, or an elderly person, the therapist must notify the appropriate agency of such abuse.
 - (d) **Malpractice**—A therapist may use counseling material in defense of malpractice allegations.
3. Nothing in this Chapter shall be construed as relieving supervisors from taking disciplinary action when necessary. The Officer Assistance Program and the supervisory referral process are not a substitute for any disciplinary action necessitated by an employee's behavior.

SUPERVISORY REFERRAL FOR MANDATORY PSYCHOLOGICAL EVALUATION

4. The dual purpose of the psychological evaluation is to assist the employee and to provide a safeguard for the Department and the public. This process is completely independent from the Officer Assistance Program.
5. A supervisor shall refer a subordinate employee for a psychological evaluation when there is reason to believe:
- (a) The employee exhibits violent behavior, including, but not limited to, spousal or child abuse, or repeated use of excessive force;
 - (b) The employee is abusing alcohol, prescription or non-prescription drugs, or intoxicating substances; or
 - (c) The employee's performance or behavior raises serious questions concerning the employee's emotional stability or ability to perform police work (UNFIT FOR DUTY).
6. Any commissioned or non-commissioned employee who observes another employee display one of the behaviors listed above shall report the behavior directly to the observed employee's Division-level Commander. The Division-level Commander shall investigate the allegation and prepare a confidential interoffice correspondence to the Deputy Chief of the observed employee's Bureau.
7. The confidential interoffice correspondence shall:
- (a) Contain the results of the Division-level Commander's confidential investigation into the allegation.
 - (b) Omit the name of the person who was the source of the information. However, the identity of the individual who is the source of the information shall be retained in the file kept by the Division-level Commander preparing the correspondence, should such information be needed at a later date for disciplinary and/or criminal investigations.
 - (c) Explain the basis for recommending the employee for a psychological evaluation.
 - (d) Recommend an appropriate disciplinary process or reassignment, if applicable.
8. Upon receipt of the confidential interoffice correspondence, the Bureau Deputy Chief shall approve or disapprove the recommendation for a psychological evaluation. The Bureau Deputy Chief shall then forward the correspondence to the Superintendent of Police with his/her recommendation noted. If the matter involves the disciplinary process or the reassignment of the employee, the Bureau Deputy Chief shall also forward a copy

of the report to the Deputy Chief of the Public Integrity Bureau.

9. Upon approval of the recommendation(s), the Superintendent, or his/her designee, shall immediately notify the employee, in person and in writing that he/she is being ordered to submit to a psychological evaluation within 72 hours.
10. Immediately after notification of the employee, the Superintendent, or his/her designee, shall notify the Police Psychologist, or other designated Department qualified mental health provider external to NOPD who will perform the evaluation, that the employee has been ordered to report for evaluation and provide a copy of the confidential interoffice correspondence related to the referral.
11. The employee's timely attendance and full cooperation in the psychological evaluation shall be mandatory. Failure to comply with the reporting requirements or to cooperate in the evaluation process shall be grounds for discipline up to and including termination.
12. The Superintendent of Police, not the Police Psychologist or designated qualified mental health provider, will determine the administrative consequences for an employee who refuses to participate in the psychological evaluation.
13. Employees who are ordered to be evaluated shall be scheduled for the evaluation during their regular working hours when possible and carried as regular working in the ADP payroll system by his/her unit of assignment.
14. The psychological evaluation shall be conducted as soon as possible by an independent psychologist, psychiatrist, neurologist or other qualified mental health provider.
15. The psychological evaluation may consist of interviews, psychological tests, or medical tests as determined by the provider.
16. The provider shall discuss the evaluation results with the employee.
17. Based upon the results of the interviews and any tests performed, the evaluation of the designated provider shall recommend to the Superintendent of Police:
 - (a) If medical and/or psychological treatment is required;
 - (b) The appropriate treatment needed; and
 - (c) If the employee should be decommissioned and/or reassigned.
18. Treatment may be an option for alcoholism or dependency upon legally prescribed drugs. In accordance with CAO Policy Memorandum No. 89, treatment alone shall not be an option for commissioned personnel of the Police Department who use or abuse illegal, designer, and/or synthetic drugs.
19. Recommended treatment shall accord with the following guidelines:
 - (a) Inpatient, chemical-dependency treatment at a center certified by the Joint Commission;
 - (b) Inpatient psychiatric treatment at a hospital certified by the Joint Commission;
 - (c) Outpatient psychiatric treatment by a licensed psychiatrist in the State of Louisiana; or
 - (d) Outpatient treatment by a licensed mental health professional in the State of Louisiana.
20. Upon the Superintendent's receipt and acceptance of a written recommendation for the employee's treatment by the Police Psychologist or designated medical provider, the employee will be instructed to report immediately to the Office of the Superintendent.

21. The Superintendent, or his/her designee, shall inform the employee, in writing, of the Psychologist's evaluation and recommendation.
22. The employee will then have 72 hours within which to enroll in the appropriate treatment program designated by the recommendation.
23. The employee shall be responsible for all expenses of treatment not covered by the employee's health insurance plan.
24. The employee shall be relieved of duty upon receipt of the written notification of treatment order. The employee may also be decommissioned by the Superintendent.
25. Employees will be carried sick, furlough, or leave without pay during treatment.
26. The employee may be restored to duty when the Superintendent receives written notification from the Police Psychologist or designated qualified mental health provider that the employee has completed sufficient treatment and is able to return to duty. The return to duty may be full or limited duty at the discretion of the Superintendent.
27. Any employee failing to obtain and maintain treatment as ordered within the specified time shall be decommissioned, relieved of duty, and face other administrative consequences up to and including termination.
28. The New Orleans Police Department is a client during this type of psychological evaluation. A consent form, executed by the Police Psychologist or designated qualified mental health provider prior to any evaluation, shall advise the employee in writing that anything said in the interviews, as well as any test results or treatment, will be included in the evaluation report to the Superintendent. The evaluation results will remain in the possession of the Superintendent and the Police Psychologist or designated qualified mental health provider, but will not become a part of the employee's personnel record.
29. In cases where the employee has been referred to another outside professional or treatment center, the Police Psychologist shall monitor the progress of the employee and report his/her findings to the Superintendent of Police.
30. In cases where an employee is allowed to continue working while under treatment, the Superintendent of Police shall inform the employee's Bureau Deputy Chief as to the progress of the employee under treatment.
31. The Bureau Deputy Chief shall keep the employee's Division-level Commander notified as to the progress of the employee as it relates to his/her fitness for duty only.
32. The dissemination of personal and confidential information, relative to an employee's treatment, shall include only those elements necessary for proper supervision and monitoring.
33. An employee who feels he/she is being referred to the Police Psychologist or medical provider unjustifiably may appeal the referral to his/her Bureau Commander.