Proposed Resolution Report

MNCO CC2020-035 Investigative Report

I. Allegations of Misconduct

Allegation 1-Adherence to Policy and Rules: Evidence Procedures
Allegation 2-Adherence to Policy and Rules: Follow-Up Investigation Responsibility
Allegation 3-Deficient or Inefficient Performance of Duties

II. Summary Complaint:

On January 7, 2021, MNCO Investigator spoke with [redacted] ("Complainant") regarding a complaint against MNPD Officer [redacted] ("Officer"). On May 25, 2020, Complainant's son was found deceased from an apparent overdose in his apartment. After not hearing from her son in 24 hours, the deceased's father stopped by to check on him and found him on the couch, after which he called 911. Officer arrived, completed a report and spoke to the father and deceased's brother.

Two days later, Complainant called Officer to ask if Officer would be going through her son's phone for evidence of what happened. Complainant reported to Officer that she knew her son did not kill himself and that it was not a suicide. She believed it to be foul play, such as being given harmful narcotics without his knowledge or under the mistaken belief they were something else. Officer informed Complainant at that time that he would not be going through the phone because "it's not considered a murder case."

Complainant followed up a week later with the Officer, again asking about the potential of going through the phone, and at some point, again being given the response by Officer that "they don't investigate these cases as murders as a police department" and that "the [District Attorney's Office] doesn't recognize them as murder cases or prosecute overdose cases."

After speaking to a doctor at the Medical Examiner's office, however, Complainant was told that MNPD *does* investigate overdose deaths and investigators have testified in court on these types of cases.

On August 14, 2020, Complainant emailed a Commander at the East Precinct, and on August 17, the Commander responded that another officer would be taking over the case.

On August 18, 2020, another officer called Complainant informing her that she would be taking over the case. The newly-assigned officer also told Complainant that "they couldn't download everything from the phone at this point" and typically, the download of the phone "would need to take place within the first 96 hours from receiving the phone." Furthermore, the Complainant reports that the new officer said that the phone contained pertinent information and that the previous Officer had dropped the ball.

III. Policy Violations

MNPD Manual 4.20.040 (A) Adherence to Policy & Rules
Employees shall adhere to all policies, procedures, rules, regulations, ethical codes, and administrative or executive orders as established by the department or Metropolitan Government. (*Category: varies by corresponding violation, but generally classified as Category D unless otherwise stated*).

MNPD Manual 15.20.010(D)(8) Evidence Procedures
(b.) The primary case investigator is responsible for submitting all lab requests. Such investigator has the responsibility of seeing that the evidence is physically submitted by the appropriate element within 30 days of determining that the evidence should be submitted for examination. (c.) The primary investigator shall also ensure that all written reports of lab results received are appropriately included in the case.

MNPD Manual 15.30.020(B) Follow-Up Investigation Responsibility
(1) Follow-up investigations of crimes will be conducted by personnel assigned to the division having investigative responsibility**.**
(2a) Investigators will prepare supplemental reports detailing investigative activity on cases assigned, providing their supervisor with updated information on progress made and the need for further investigation. This will determine the status of all cases assigned.
(3) Follow-up case contact - Investigators shall attempt to/or make a second contact with principals involved in a case requiring follow-up investigation. This is to ensure that all pertinent information has been received by our department and to inform the victim of their case status.
(6) Investigators will work closely with Technical Investigations Section personnel to collect and document all physical evidence at any crime scene.

MNPD Manual 4.20.050 (F) Deficient or Inefficient Performance of Duties
Employees shall be efficient, productive and competent in the performance of their duties. Deficient or inefficient performance is generally corrected through the daily interaction of an employee and his/her supervisor. Such actions may include guidance, training, and/or formal or informal counseling. However, those occasions that represent a documented pattern of deficient or inefficient performance, or a significant occurrence, that has not been previously addressed, or documented, may be grounds for corrective disciplinary action.

1. Demonstrated inefficiency, negligence, or incompetence in the performance of duties.
2. Unsatisfactory quality of work.
3. Insufficient quantity of work;
5. Untimely performance of work;
6. Faulty decision making or poor judgment.
7. Inaccuracy of work.
8. Failure to complete work within time frames established in work plan or work standards;

(*Category varies by severity of violation*)

IV. <u>Executive Director Review</u>

The Executive Director Fitcheard received the Investigative Report, and it contained the following information, which was carefully reviewed:

EXHIBIT LIST:
Incident Report
CAD Report
Photos
Autopsy Report
Supplemental Reports
Audio Recordings
Recorded Interview with Complainant
Recorded Interview with Officers

IV. <u>Findings of Fact</u>

Based upon the review of MNCO's Investigative Report and Exhibits, the Executive Director finds by a preponderance of the evidence the material facts to be:

1. On May 28, 2020, Complainant and Officer had a telephone conversation, wherein she asked if Officer had son's phone, and Officer confirmed that he did.
2. On May 29, 2020, Complainant and Officer had another phone conversation, wherein Complainant specifically asked Officer if he would be going through her son's phone. "Are y'all going to be able to get into the phone?" Officer responded, "Probably unlikely." Complainant asked if the police would be going through "to see who [her son] was in contact with and where he got the stuff from?" Officer responded, "We generally do not try to investigate overdose deaths beyond whether it was a murder." Complainant asked, "You

don't go after those people? I was hoping y'all could look into it." The officer responded, "There's no indication that is going to occur. Contact me later."

3. On August 3, 2020, the Complainant followed up with Officer about prosecution of the people who gave the drugs that killed her son, and Officer informed her that "To my knowledge, the [District Attorney's Office] does not feel it is something that is prosecutable. The sales, of course, are criminal, but another unit investigates that, and will decide if they have time for it and whether it is a priority." Complainant told Officer she believed her son was intentionally poisoned. Officer responded, "That seems like a logical leap [that someone poisoned him]." Complainant responded, "Well, but they knew there was more in it that could kill somebody, right?" Officer responded, "I don't think that. I don't know that. I'm not a drug guy, so that whole conversation is a little bit beyond my depth."
4. Officer informed Complainant that his investigation was over, but that if anyone else was going to go into the phone, it would be up to the Crime Suppression Unit in relation to the drug sale. He gave Complainant the contact number for CSU, at Complainant's asking.
5. Later on that day on August 3, 2020, a CSU Sergeant emailed Officer to inform him that they would not be pursuing this overdose case per the Commander of their precinct. From the sergeant: "I received this phone message today pertaining to the death of the callers [sic] son. I do not know who the deceased is and the incident is not familiar to any of my guys. We are not working OD cases per Commander [redacted]."
6. Officer called Complainant that same day August 3, 2020 and informed her that CSU would not be going into the phone either. Officer again informed her that the district attorney's office would not be pursuing this as a homicide case. "We have reached the end of the line as far as the investigation goes." But that he would continue to hold the phone if Complainant wanted to reach out to the DA's office or other sources.
7. On August 13, 2020, Officer followed up with Complainant to inquire about whether she wanted them to continue to hold the phone or not. She indicated she did.
8. On August 13, 2020, Complainant sent an email to the Commander of the East Precinct.
9. On August 17, 2020, the Commander responded that another officer from the Special Investigations Unit would be following up, in response to an email she sent him.
10. On August 19, 2020, a different detective spoke to Complainant by phone.
11. On August 20, 2020, that detective reached out for camera footage and was informed that the footage is only available for two weeks. The Complainant's son was found deceased on May 25, 2020 so it was well past the two-week period.
12. On September 2, 2020, the detective wrote a search warrant on the Complainant's son's cell phone, and the phone was submitted to another detective to extract the data from the phone. The detective was informed that without the phone being brought within the first 72 hours of the phone being seized, it would be unlikely they would be able to get much, if any, data from the phone.
13. When asked if it's routine in overdose cases to search the cell phone, the new detective stated that this was her first overdose case, but she believes it would be best practice.

14. When asked if the MNPD investigates overdose cases, she stated the Department does investigate overdose cases.
15. "From my end, after I was assigned the case, there was not much more I could have done. I reached out to another detective to see if he had access to cameras where [Complainant's son] lived and where he was found deceased. There was no camera footage available at that time. The phone did not have a lot of data that was useful."
16. The new detective stated she had done everything she could to help the Complainant get justice in her son's death. When asked what she thought of the work done by [Officer], she stated, "I am not sure what all he did on his end, so I can't answer that."
17. The new detective also stated that the callout process has changed with regard to overdose cases. Previously and at the time the Officer was investigating, callout procedure was that either a homicide or precinct detective would respond. Now, the new callout procedure is that a new unit that has been formed will investigate overdose cases.

V. Discussion/Analysis

The Officer stated he has never known the MNPD to investigate overdose cases. However, in speaking with the new detective assigned, she asserts the Department will investigate overdose cases and turning over the cellphone would have been best practice. The Complainant asked Officer numerous times about reviewing the cellphone. Officer responded numerous times that "We do not work overdose deaths in terms of downloading the phones etc., to locate the dealer." According to the Officer, his investigation was concluded, and he was simply waiting for the autopsy report.

In reviewing the above-stated policy on evidence procedures, a preponderance of the evidence shows that the allegation made by Complainant is supported that Officer's failure to search the phone was a violation of policy. The Officer not only did not search the phone, he also did not test the white substance removed from the scene. The Officer stated, "our primary goal and responsibility as a precinct investigator was to determine, whether or not this individual was murdered. Essentially, that is what we are responding to do. It was determined that [Complainant's son]'s death was an overdose." However, the white substance was not tested until December 28, 2020, six months after his death by the new detective assigned.

In reviewing the policy on follow-up investigations, the evidence shows that Officer did not follow up on the case**.** When asked if there was a legal reason or policy that prevented him from checking the cellphone of [Complainant's son], as requested by his mother on numerous occasions, he stated, "it was not my unit's responsibility" and stated there "was no reason to communicate separately with the CSU team due to the team being on the email." When asked if he followed up with the team, he stated, "there was no need to follow up; the original email was what the original email was." Once the case was transferred to the next Detective, she received a search warrant for the cellphone, and it was searched. However, due to the amount

of time that had passed, there was not much information removed from the cellphone. Officer asserts that he has sent hundreds of cellphones to be searched but never in an overdose case.

VI. Mediation

Mediation was not offered in this case based on the nature of the complaint.

VII. Conclusion

The Executive Director concludes that after careful review of the Investigative Report and Exhibits, based on the preponderance of the evidence that:

Allegation 1 MNPD Manual 4.20.040 Adherence to Policy and Rules, Category D offense, by way of violating MNPD Manual 15.20.010(D)(8) Evidence Procedures **is sustained.**

Allegation 2 MNPD Manual 4.20.040 Adherence to Policy and Rules, Category D offense, by way of violating MNPD Manual 15.30.020(B) Follow-Up Investigation Responsibility **is sustained.**

Allegation 3 MNPD Manual 4.20.050 (F) Deficient or Inefficient Performance of Duties, Category varies, **is sustained.**

VIII. Recommended Action

The Officer had no relevant disciplinary history. He had a written reprimand in 2019 for a speeding incident (category E, 1st Offense). He also had a written reprimand for government care of vehicle for a traffic accident in 2018 where neither vehicle sustained damage (category E, 1st offense).

Here, violation of MNPD Manual 4.20.040 (A) Adherence to Rules and Policies are generally Category D offenses, 1st offense of which is generally disciplined with a 1-4 day suspension. Violation of MNPD Manual 4.20.050 (F) Deficient or Inefficient Performance of Duties is a category that varies with the severity of the violation.

Executive Director, based on the testimony and investigation presented, found Officer in violation of MNPD Manual 15.20.01(D), MNPD Manual 15.20.020 (B) and MNPD Manual 4.20.050 (F) and makes the following recommendation based on section 4.10.300 Disciplinary/Corrective Action Grid:

Allegation 1-Adherence to Policy and Rules: Evidence Procedures—Sustained; 1-day suspension

Allegation 2-Adherence to Policy and Rules: Follow-Up Investigation Responsibility—Sustained; 1-day suspension

Allegation 3-Deficient or Inefficient Performance of Duties—Sustained; 1 day suspension

The recommendation is a total of a 3-day suspension.

Submitted to the Community Oversight Board for Approval on Wednesday, October 27, 2021.

_____ _____

Jill Fitcheard Date
Executive Director

Board Recommendations:

_____ Accept/Send to MNPD Chief of Police

_____ Accept, but Modify

_____ Reject

_____ Return to MNCO Staff

BOARD RECOMMENDED MODIFICATION:

_____ _____

Andres Martinez Date
Chair