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## **Suicide and Public Safety Officers**

### **Disciplinary, Medical and Compensation Issues**

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For many years, when police officers, corrections officers and firefighters killed themselves, management treated these as isolated events. Counseling often was not available and those who sought treatment were the objects of scorn by their colleagues.

Beginning in the 1970s, there was sporadic research and some speculation that law enforcement personnel killed themselves at a higher rate than the general population. Others dispute that. However, as the abstract of a 2001 article states:

“Police officers are commonly referred to as a high-risk group for suicide. So far no comprehensive review has been published about epidemiologic[al] studies among police. This article systematically explores the worldwide literature on suicide in police.

“None of the recent nationwide studies show elevated suicide rates among police. Other studies show inconsistent results. Conclusively, it is not

documented that there is an elevated suicide rate in police. A particular problem in previous research has been methodological shortcomings. There is need for further systematic research, and this review points out some strategies of research.”

Erlend Hem, MD, “Suicide in Police - A Critical Review,” 31 (2) *Suicide and Life-Threatening Behav.* 224-233 (Aug. 2001).

The most prominent researcher and writer in police suicidology and related topics is Prof. John M. Violanti of the School of Public Health and Health Professions, at the State University of New York at Buffalo. He spent twenty-two years with the New York State Police. Several of his writings are listed in the reference section of this article.

It is also possible that some officer suicides are under-reported as accidental deaths.

### **Liability Considerations**

In 1976 an off-duty NYPD officer shot his wife five times, then himself, using an approved off-duty weapon. The officer died; his wife lived and sued the city, alleging that her husband’s superiors had long ignored his psychological problems and had failed to order his participation in an evaluation and therapy program. They also required him to be armed when off-duty.

A federal jury awarded \$300,000 in compensatory and \$125,000 in punitive damages. *Adjusted for today’s purchasing power, the verdict would be over \$1 million.* A three-judge appellate panel later affirmed the award. [Bonsignore v. City of N.Y.](#), 521 F.Supp. 394 (S.D.N.Y. 1981), *aff’d* 683 F.2d 635 (2d Cir. 1982).

As of that time, 1,500 NYPD officers were under evaluation and more than half of those were under close monitoring by department psychologists.

### **Grounds for Termination**

What if a public safety officer that attempted suicide lives? Does he or she have a right to continued employment as a police officer, deputy sheriff, corrections officer, firefighter/EMT or civilian public safety employee?

What if the employee only threatened suicide, and did not cut or shoot him/herself or ingest a toxic substance? It might be a conditional threat, e.g., “If [*a stated event occurs*], I will kill myself.” After what treatment or passage of time would mental health professionals agree that the person has recovered?

In Pennsylvania, an appellate court sustained the demotion of a police officer to an unarmed civilian position after a suicide attempt. The panel concluded that his alleged recovery was irrelevant. [Herman v. Cmwlth. Dept. of General Services](#), 475 A.2d 164 (Pa. Cmwlth. 1984).

Another early case to discuss this situation was in Indiana. The chief had terminated a woman officer who had tried to kill herself.

She was suffering from temporary pressures from a failed marriage and an unemployed husband. One doctor described the attempt as a sudden “loss of impulse control” whereas other examiners found persisting depression.

In view of the conflicting evidence, a Circuit Court judge ordered her reinstatement.

A three-judge appellate panel reversed. [City of Greenwood v. Dowler](#), 492 N.E.2d 1081 (Ind.App. 1986). The panel said:

“A policeman frequently works alone, wields great authority, carries lethal weapons which he is empowered to use in proper circumstances, and exercises wide discretion continuously while on and off duty. He must, at a moment’s notice be prepared to pursue dangerous criminals and shoot them if necessary, or be shot. He may expect high-speed chases. He is confronted with extricating hurt, dead, and dying people from vehicular accidents. In short, it is not an occupation for the fainthearted, a person with weak nerves, or a person with questionable emotional stability.

“Such unfortunate afflictions go to the very heart of the qualifications of a police officer. Lack of control and bad judgment can result in grave consequences. \* \* \* From all the evidence, reasonable people may conclude (though reasonable people could disagree) that [the officer] had become sufficiently emotionally unstable as to be unreliable as a policeman in stress situations.”

In another appellate case, a five-judge panel upheld the termination of an officer that had threatened suicide. When confronted by other officers, he declined to surrender his weapon and challenged them to shoot him in the head. [Galas v. Ward](#), 166 A.D.2d 275, 564 N.Y.S.2d 117, 1990 N.Y. App. Div. Lexis 11912.

These cases were decided before adoption of the ADA, but after enactment of the [Rehabilitation Act of 1973](#), 29 U.S. Code §791.

## Disability or Medical Discrimination

Congress enacted the [Americans with Disabilities Act](#), which applies to public entities and private businesses. Employers have a legal duty to reasonably accommodate a disabled worker, with limited exceptions.

In 1997 EEOC issued [Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities](#). This document was written to guide employers and advise those with psychiatric disabilities. The EEOC believes that individuals with a condition that is controlled by medication are still disabled under the ADA

However, the Supreme Court has held that if medication corrects an illness, the individual no longer is a person with a federally recognized disability. [Murphy v. United Parcel Serv.](#), # 97-1992, 527 U.S. 516, 119 S.Ct. 2133 (1999).

The EEOC Guidance addresses when employers may ask about psychiatric disabilities or required mental health examinations. It discusses what types of reasonable accommodations may be effective and when management may require psychiatric disabled individuals to adhere to workplace conduct standards.

The Guidance states that “*attempting suicide does not mean that an individual poses an imminent risk of harm to him/herself when s/he returns to work.*” The EEOC requires accommodation requests to be decided on a case-by-case basis.

Reasonable accommodation includes a modified work schedule; extra time off; physical changes to the workplace; providing a job coach; and excusing disabled workers from certain policies, rules or regulations. *No mention is made of suicide attempts by armed employees, such as law enforcement officers.*

In Massachusetts, a health care worker twice tried to kill herself in a six-week period, by overdosing on medications. Because she worked in a facility caring for autistic patients, management believed that she could not be trusted to safely dispense medications, an essential job function, and there was no other job reasonably available to her.

## Medically Unsupported Stereotypes?

She was terminated and filed a complaint with the EEOC. In its lawsuit against the employer, the EEOC claimed that the employer was irrationally biased against persons who attempt suicide. The District Court ruled for the employer; a three-judge panel of the First Circuit affirmed, writing:

“We hold that, in a Title I ADA case, it is the plaintiff’s burden to show that he or she can perform the essential functions of the job, and is therefore ‘qualified.’ Where those essential job functions necessarily implicate the safety of others, plaintiff must demonstrate that she can perform those functions in a way that does not endanger others. \* \* \*

“It was eminently reasonable for [the employer] to be concerned about whether [the plaintiff] could meet her responsibilities, and also reasonable for it to conclude that the risk was too great to run. The employer’s judgment here about the risks of future behavior by an employee is based on past behavior and reasonable indicia of future behavior.”

[EEOC v. Amego](#), #96-1837, 1997 U.S. App. Lexis 6455, 110 F.3d 135 (1st Cir.), affirming 1996 WL 799241.

This case turned on the fact the worker was responsible for the care of others, which is also true in the case of law enforcement, correctional, and fire service/EMS personnel -- and the fact that the employer acted on competent medical advice.

In Arkansas, a federal court rejected ADA and FMLA challenges to the termination of a police sergeant that threatened to kill himself. He had called a friend and told him to “send the coroner to my house.”

The sergeant was found in the shower, holding his service revolver to his forehead; he eventually surrendered the weapon. At the time that he threatened suicide, he was on a two-day suspension for failing to attend a firearm qualification session.

The sergeant was fired while on medical leave. He then sued under the ADA and the FMLA. He claims that he has no recollection of his suicide threat and does not remember notifying his supervisors of a need for medical leave.

The District Court dismissed the action, noting that it is unlikely that he alleged a prima facie case under the ADA because depression, if controlled by medication, is not a disability.

Even if he made his prima facie case by showing disability, “a city may legitimately terminate a police officer for attempting suicide.” The judge cited an Eighth Circuit case with nearly identical facts, [Spades v. City of Walnut Ridge](#), #98-4119, 186 F.3d 897 (8th Cir. 1999).

A three-judge panel wrote in that case:

“The City articulated a nondiscriminatory reason for his termination-increased likelihood of liability. ... Claims of negligent hiring, supervision, and retention loom large in the minds of employers and their lawyers. Thus, [the plaintiff] has advanced no factual or legal argument, beyond mere conjecture and conclusion, that the City’s stated reason for discharging him was a pretext for discrimination.” Spades v. Walnut Ridge, 186 F.3d at 900.

Prichard v. City of Bryant, 4:04-cv-00660, 2006 WL 751296, 2006 U.S. Dist. Lexis 22720, 11 WH Cases2d (BNA) 882, Pacer Doc #41 (E.D. Ark. 2006).

In Arizona, the Ninth Circuit rejected the suit of a former detective who claimed constructive discharge because management purportedly terminated her because of her disability (depression and attempted suicide). Brown v. City of Tucson, #01-16938, 2003 U.S. App. Lexis 15061 (9th Cir. 2003).

### **Behavior Not Suicidal**

A California appeals court ordered the reinstatement of a police officer that, while off-duty, put a gun to his head and disobeyed an off-duty sergeant. There was no firm medical evidence supporting the claim that he was either dangerous or suicidal.

Three doctors hired by the agency concluded that the officer was fit for duty, although the chief persuaded one of the three to revise his recommendation. A fourth expert, hired by the officer, came to a similar opinion.

An arbitrator found that management failed to establish that a document written by the officer was a “suicide note” or that he was ever a threat to himself or others. The arbitrator concluded that the grievant should be reinstated as a police officer with partial back pay.

A Superior Court judge confirmed the arbitrator’s award, and a three-judge appellate panel confirmed. Brazier v. City of Rialto, #E034910, 2004 Cal. App. Unpub. Lexis 11403 (2004).

To a layperson, an employee’s statements and behavior – especially if a firearm was displayed – may seem unreasonable and dangerous. But without clear and convincing testimony from examining psychologists or other professionals that prior statements or behavior were suicidal, any disciplinary action is likely to fail.

## Medical Records and Fitness Examinations

In a post ADA case, the judge upheld the city's demand that a suicidal officer release her psychiatric records before restoring her to full duties. Thompson v. City of Arlington, 838 F.Supp. 1137 (N.D.Tex. 1993).

It is not uncommon for an officer who has attempted or threatened suicide to file for medical leave under the FMLA.

- A [Fitness For Duty Evaluation](#) (FFDE) or other psychological or medical testing must be required **before** the worker goes on FMLA leave.

Three federal courts have held that under the FMLA, an employer cannot require a FFDE after an employee has been certified by a physician or psychologist as being able to return to work, *unless* the employee's post-leave behavior justifies it. Albert v. Runyon, 6 F.Supp.2d 57 (D.Mass. 1998); Routes v. Henderson, 1999 U.S. Dist. Lexis 9835, 5 WH Cases2d (BNA) 768 (S.D. Ind.) and Underhill v. Willamina, 1999 U.S. Dist. Lexis 9722 (D. Ore.).

A federal appeals court has held that an employer may not impose return-to-work standards that are more burdensome than the provisions of the [Family Medical Leave Act](#), even if those requirements are embodied in a collective bargaining agreement. Harrell v. U.S. Postal Serv., #03-4204, 415 F.3d 700, 2005 U.S. App. Lexis 14550 (7th Cir. 2005).

Another federal circuit has upheld a Dept. of Labor regulation that bars the waiver or release of a worker's FMLA rights, 29 C.F.R. §825.220(d). The "plain language [of §825.220(d)] prohibits both the retrospective and prospective waiver or release of an employee's FMLA rights ... [and] applies to all FMLA rights, both substantive and proscriptive ...

"§825.220(d) permits the waiver or settlement of FMLA claims only with the prior approval of the DoL or a court." Taylor v. Progress Energy, #04-1525, 415 F.3d 364, 2005 U.S. App. Lexis 14650, 10 WH Cases2d (BNA) 1281 (4th Cir. 2005).

## Job-Related Death Benefits and Workers Compensation

Job-related mental illness and injuries (even if self-inflicted) may be covered under an agency's health insurance, may qualify for retirement or death benefits, and may be eligible for workers' compensation awards.

The Supreme Court declined to review an appellate holding that rejected federal death benefits for the widow of a police officer who killed himself due to job-

related stress. The 43-year-old officer had been falsely accused of “engaging in sexually inappropriate behavior” with a ten-year-old boy he counseled as a youth safety officer for a Boston suburb.

Because 28 C.F.R. §32.2(g) (1997) specifically excludes stress and strain from the definition of “personal injury,” her lawsuit was dismissed by the appellate court.

[Yanco v. U.S.](#), #00-5058, 258 F.3d 1356 (Fed. Cir. 2001); rev. den., #01-674, 122 S. Ct. 921, 2002 U.S. Lexis 530 (2002).

A federal judge in Connecticut dismissed a suit by brought by the father of an officer who killed himself, seeking damages from the police chief. There was no evidence the chief knew of the officer’s suicidal tendencies and workers’ comp. laws provide an exclusive remedy. [Hanrahan v. City of Norwich](#), 959 F.Supp. 118 (D.Conn. 1997).

However, a California appellate court approved an award of worker’s comp. death benefits for the family of a police sergeant that had killed himself. The deceased suffered abnormal stress after receiving low performance evaluations. [Chu v. WCAB](#), #D025723, 57 Cal.Rptr.2d 221, 49 Cal.App.4th 1176, 1996 Cal.App. Lexis 928.

In New York, an appellate court denied worker’s comp death benefits to family of a police officer who fatally shot himself while on duty. His stress and drinking problems were caused by marital and personal problems. [Kriete v. Port Auth. N.Y.N.J.](#), 617 N.Y.S.2d 560 (A.D. 1994).

New York courts also rejected the claim brought by the family of another police officer that killed himself. The fact the officer was suffering from stress was an insufficient basis to support a workers’ compensation death benefit claim. [Musa v. Nassau Co. Police Dept.](#), #85645, 276 A.D.2d 851, 714 N.Y.S.2d 545 (App. Div. 3rd Dept. 2000).

In Nebraska, a state trooper fatally shot himself after learning that two individuals that he had stopped later robbed a bank, resulting in multiple deaths. A gun found by the trooper was not identified as stolen when he had stopped the individuals. They claimed the suicide was an occupational disease or accident.

All seven members of the state supreme court agreed that the suicide was not compensable because it was precipitated by depression, not an injury, following his being told of the consequences of a work-related error. [Zach v. Nebraska State Patrol](#), #S-05-449, 273 Neb. 1, 2007 Neb. Lexis 16 (2007).

## Employee Assistance

Although this is a **law** journal, there must be a personal assessment in each case. Suicidal employees should be evaluated and treated by physicians and psychologists. Removal from duty is likely to lower a worker's self-esteem and heighten despair. Management has both moral and social obligations to the workforce.

In some cases an officer with a medical, mental or physical impairment has been reduced to a civilian support position, without any diminution in compensation. City of Park Ridge v. Karbusicky, 1994 F&P Persnl. Rptr. 40 (Fire & Police Cmsn. 1993); Karbusicky v. City of Park Ridge, 950 F.Supp. 878, 6 AD Cases (BNA) 661 (N.D.Ill. 1997).

Aside from the rehabilitation factor, a reclassification without a pay loss is often less expensive than a transfer with a pay reduction, because courts generally require an "adverse" personnel action before the employee can litigate a Title VII or disability discrimination claim. Jordan v. Chertoff, #05-1788, 2006 U.S. App. Lexis 30903 (7th Cir. 2006); Burlington Northern v. White, #05-259, 126 S.Ct. 2405 (2006).

In the Karbusicky case (above) the city demoted an impaired police officer to an unarmed community service officer (CSO) position, at the same rate of pay. In response to the officer's federal lawsuit, the city responded that the "decision to transfer plaintiff to the position of CSO is a reasonable accommodation and, in any event, is not a materially adverse action under the ADA."

The court agreed; the judge wrote:

"Although plaintiff, as a CSO, may not carry a gun or arrest persons as a police officer may, *he maintains the same pay scale and benefits that he did as a police officer*. Based on these uncontested facts, the court finds that defendant's decision to reassign plaintiff to the position of CSO is a reasonable accommodation as a matter of law, and defendant is entitled to summary judgment on this issue as well." (Emphasis added).

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Risk Management with Suicidal Patients, by Bruce Bongar, editor, Gilford Press, NY. (ISBN 1-57230-498-7; 1998).

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Trends in Police Suicide, J. M. Violanti, 77 (2) Psychol. Rep. 688-90 (Oct. 1995)  
PMID: 8559900.

Suicide Risk: Evaluation and Management, 34(3) Am. Fam. Physician 167-174 (1986). Quote:

“Patients with a history of attempted suicide have a five-to-sixfold increased risk of trying to kill themselves again. The risk of a second attempt is greatest within three months of the first attempt. The rate of completed suicide among persons who have previously attempted suicide is up to 64 times higher than that in the general population. It is possible that those who have previously attempted suicide are desensitized to the act.

“Employees who are under medical care are still at risk. In one study, 82 percent had seen their primary care physician within six months of the suicide, and 53 percent had done so within one month. In another study, two-thirds of the patients in their study had seen a physician in the month preceding the suicide, with nearly three fourths having seen a physician within a week before the suicide”

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American Association of Suicidology

<http://www.suicidology.org/>

American Foundation for Suicide Prevention

<http://www.afsp.org/>

Law Enforcement Wellness Association, Inc.

<http://www.cophealth.com/>

National Institute of Mental Health: Suicide Statistics and Prevention

<http://www.nimh.nih.gov/publicat/harmsway.cfm/>

National P.O.L.I.C.E. Suicide Foundation, Inc.

<http://www.psf.org/>

Survivors of Law Enforcement Suicide (SOLES)

<http://www.tearsofacop.com/>

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