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KING & SPALDING

TO: Nuria Rivera Vandermyde, City Coordinator

FROM: King & Spalding

DATE: February 1, 2019

PRELIMINARY OBSERVATIONS MEMORANDUM

I. Background

In June 2018, the Minneapolis City Attorney initiated discussions to engage King & Spalding ("K&S") to conduct an independent investigation arising from reports that Minneapolis Police Department ("MPD") officers were inducing or encouraging Emergency Medical Services ("EMS") personnel to administer ketamine during police-citizen encounters. On July 12, 2018, Ms. Segal signed a letter memorializing the City's intent to engage K&S to conduct this investigation (referred to in this Memorandum as the "Letter of Intent"), specifying the following tasks:

(1) Conduct an independent, neutral review of the communications and actions of MPD officers specifically in connection with instances where Emergency Medical Services (non-City ambulance service - "EMS") were called and Ketamine was administered either pre-hospital or while MPD officers were present in an emergency room setting;

(2) Review current MPD policy and any training materials with respect to when EMS personnel should be called by MPD officers and concerning proper communications by MPD officers to EMS personnel; and

(3) Provide a report summarizing findings and recommendations based upon the review.

Because the allegations of MPD officers' involvement in the administration of ketamine elicited nationwide media coverage as well as intense local attention, the City Attorney's office asked K&S to begin working on the investigation immediately. The Letter of Intent recognized that K&S would begin its work before a final contract was approved by the City Council, and therefore created a contingency plan in the event that the City and K&S could not reach a final agreement regarding the scope and cost of the full investigation. Specifically, the Letter of Intent provided that in the event that a

final agreement is not approved, the parties would enter into a contract for K&S to provide: (1) a preliminary assessment based on the review already undertaken by the firm; and (2) a summary of next steps and recommendations based on the review already undertaken. In return, the City would pay K&S a set amount of $50,000, recognizing that K&S's fees for the work already performed would significantly exceed that amount.

Pursuant to the City Attorney's request, K&S began its work on the full independent investigation as described in the Letter of Intent in July 2018. From July through mid-September 2018, K&S attorneys completed substantial preparatory and investigative tasks in furtherance of the engagement, including:

- Preparation of a detailed review protocol for analysis of the relevant videos and in-person training for reviewer attorneys to ensure appropriate focus and consistency;
- Review and analysis of materials for 132 incidents including approximately 122 hours of video footage;
- Preparation of detailed review summaries of each incident;
- Consultation with national experts in policing to gauge the policies and practices at issue in this matter;
- Coordination with the City Attorney's Office to develop a broader search protocol within the database of police reports to identify incidents involving sedatives in addition to ketamine;
- Collection and review of 911 communications in relevant encounters to identify the presence of a medical issue requiring EMS response;
- Drafting of preliminary witness interview outlines; and
- Analysis of relevant MPD policies and policies of other related entities.

On September 21, 2018, the Minneapolis City Council voted not to approve the contract agreed to by the City Attorney and K&S to conduct the full independent investigation. As we explained in letter to you dated October 4, 2018, additional investigative steps beyond those listed above were either ongoing or scheduled for the coming months, and without the facts and evidence yet to be developed by these steps, K&S was not in a position to make definitive and final assessments and conclusions about the factual and policy questions presented by this investigation. Consequently, on

January 11, 2019, K&S and the City entered into the reduced-scope contract specified in the Letter of Intent, which states that K&S will provide the City Attorney with "a preliminary assessment and any recommendations based on the review already undertaken, recognizing that a full and complete investigation has not been completed and this work product will be based solely on the work performed thus far."

This Memorandum contains K&S's preliminary assessments and recommendations from the investigative work completed as of September 21, 2018, and constitutes K&S's written deliverable in completion of the January 11, 2019, contract. In addition to this written work product, K&S provided a lengthy oral summary and answered questions during a 90-minute telephone presentation with City Attorney Susan Segal and Assistant City Attorney Brian Carter.

II. Limitations and Reservations Regarding K&S's Preliminary Assessment

Due to the circumstances of the City Council vote, our investigation ended before its completion. Throughout this Memorandum, our discussion identifies additional investigative steps that we believe should be completed in order to generate a fully developed understanding and analysis of the events under examination. As a result, we caution throughout this Memorandum that our discussion represents only preliminary observations based on our work thus far and the specified additional steps are required to support specific definitive and authoritative findings and conclusions.

While we have reviewed all of the available video recordings and associated reports with sufficient depth to draw initial impressions about some issues, we are not in a position to offer complete assessments or conclusions about the facts and circumstances of the police-citizen encounters that are the focus of this engagement. Similarly, we have reviewed two newly released MPD policies designed to ensure closer oversight of these encounters, but we have not completed a full review of all MPD policies and those of other associated agencies and entities that might be relevant to this investigation. We have had initial conversations with experts in policing practices, but we did not have an opportunity to examine MPD's policies with experts who might identify best practices and experience-tested protocols in this area.

If anything, our partial investigation has identified more questions that warrant further investigation and should be answered in order to understand and evaluate the events at issue and ensure effective application of policies and practices within both MPD and EMS agencies. Specifically, if continued our investigation would have examined: whether EMTs previously administered other sedatives with comparative frequency before the sharp increase in ketamine use arose, or whether the use of ketamine reflected a new trend in sedative use in police-citizen encounters; whether, if the use of sedatives overall has remained constant over a longer period of time, the use

of sedatives in Minneapolis reflects a greater frequency than in other comparable municipalities; whether the increase was linked to any training or guidance issued by MPD or EMT supervisors, or any informal patterns or practices that arose within those organizations; whether any links exist between the increase in ketamine use and informal instruction or guidance given to MPD officers about "excited delirium syndrome" or "EDS"; and whether any links existed between the increase and a clinical study involving ketamine that was taking place at the Hennepin County Medical Center. Finally, our investigation also would have included a broader yet equally important examination of the criteria and conditions that authorize or induce MPD officers to request EMT assistance during police-citizen encounters.

III. Preliminary Assessment and Observations

A. Police-Citizen Encounters

As summarized above, the K&S team conducted a careful and thorough review of the video recordings, written reports, and dispatch communications associated with 132 police-citizen encounters that occurred between 2016-2018, which were identified because the written MPD reports submitted for these encounters included the word "ketamine." This Memorandum contains our initial observations regarding these encounters, with further discussion below regarding additional actions and steps that would be required to authenticate and contextualize our observations and permit definitive conclusions about the issues and questions raised by these encounters.

- In approximately 10 of the encounters we reviewed, the officers' language and actions reflect a high degree of familiarity with the use of ketamine as a restraint, to the extent that several of the officers appeared to hold an expectation that the involvement of the EMS personnel would result in administration of ketamine. During these incidents, the statements and conduct of the MPD officers also reflect a concerning level of participation in conversations with EMS personnel regarding administration of ketamine.
- Some of the incidents we reviewed involve the use of ketamine where the subject appeared to display severe mental health symptoms or be experiencing a serious medical issue, and was acting violently toward the officers.
- Several of the incidents we reviewed involve the administration of ketamine when a subject is physically resistant or aggressive, but from the recordings there does not appear to be a serious medical issue or mental health symptoms that inhibit the subjects' lucidity or situational awareness.
- In the majority of the incidents that we reviewed, the MPD officers conducted themselves professionally both in their communications with and actions toward the subjects, often in challenging and potentially dangerous circumstances.

- Some of the incidents involving ketamine demonstrate the challenges faced by the officers and EMS personnel in responding to calls where a subject shows some indications of mental health issues but is initially compliant, and later becomes physically aggressive or resistant while otherwise appearing to be fully functional and lucid except for the resistant behavior. In some of these incidents, the officers successfully interacted with the subject for a period of time but the encounter turned physical when the subject refused to go to the hospital or exit the residence. Several of these incidents involved subjects who expressed some level of suicidal ideation (sometimes before the MPD officers arrived or the officers' body cameras were activated) but were otherwise coherent and who, when it became apparent that ketamine would be administered, verbally objected to its use. These episodes highlight the blurred lines between a subject who is experiencing a serious mental health episode and a subject who may have a minor mental health issue and is simply resisting.
- A significant number of the episodes involving ketamine use are deemed by the officers to involve "excited delirium syndrome" or "EDS." The video recordings appear to corroborate some of these assessments, but the presence of EDS in other episodes is less apparent from the video recordings themselves. Medical experts are best positioned to opine about the accuracy of the officers' assessments. We note that our investigation identified materials suggesting that officers and EMS personnel received some information or warning regarding EDS, but we were unable to document any training sessions on this topic or review the content of any guidance provided to MPD officers.
- A significant number of the incidents reveal a factual chronology where it is not apparent who called EMS to the scene. We received and conducted a preliminary review of the dispatch communications involving these incidents to identify whether a citizen requested EMS during the initial distress call, or if the dispatch officer requested EMS in response to the facts related by the complainant. This review shows that for some of the incidents, EMS was dispatched prior to the responding MPD officer arriving on the scene.

As previously stated, while our preliminary review raises issues and questions regarding some of these police-citizen encounters involving ketamine, a full independent investigation requires a look beyond this review of the recordings and supporting documents.[1] Specifically, we would need to conduct witness interviews and properly

[1] The City of Minneapolis's Office of Police Conduct Review ("OPCR") issued its own report examining MPD involvement in pre-hospital administration of ketamine and similarly noted that, despite its intention to conduct interviews and solicit feedback from police and hospital officials to provide context for its analysis of the incidents it reviewed, the early release of a working draft of the report precluded the Office from completing an analysis of the issues involved. "MPD Involvement in Pre-Hospital Sedation," at 3-6 (July 26, 2018), available at

designed statistical analysis to test our initial observations and evaluate them in the proper context. Nearly all the incidents we reviewed present complicated fact patterns. In order to make judgments about the officers' actions and decisions, we would want to interview the officers and their supervisors and then evaluate these actions and decisions against the backdrop of the officers' motivations and reasoning, prior training and guidance, and awareness of any informal practices regarding ketamine. The interviews likely would extend to other witnesses present during these encounters to explore the potential medical issues that precipitated the involvement of EMTs and the use of a sedative. We also would wish to interview the EMTs and their supervisors as well for further context that may not be obvious from the video recordings.

Similarly, in our view, an evaluation of the issues presented by these episodes should include a comparative statistical analysis of the use of ketamine as a sedative, both within Minneapolis historically and as compared to other cities. While the number of police-citizen encounters involving ketamine dramatically increased from an annual average of four incidents in 2010-2014, to 14 in 2015, 35 in 2016, and 62 in 2017 (using the OPCR numbers), the cause and import of this increase is not clear without a complete and comparative analysis of these figures. First, we would perform a statistical examination of the historical use of sedatives other than ketamine to determine whether the increase in ketamine use reflects an overall increase in the use of sedatives, or a change in the specific medication used for a practice that has been ongoing for some period before 2015. Second, a statistical assessment would provide valuable information regarding the rates of increase of ketamine or other sedative use to the rates of increase of all police-citizen encounters.

Finally, a statistical analysis would benefit from some comparison to the frequency of sedative use by other, comparable jurisdictions. This comparative analysis also should be extended to the percentage of police service calls that involve calls to EMS. For example, the Journal of Prehospital Emergency Care published a study in August 2018 (https://www.tandfonline.com/doi/full/10.1080/10903127.2018.1511018) that calculated the requests for EMS help in "a moderately sized city" in 2014-2015. This study concluded that only 2.2% of police-citizen encounters involved requests for EMS help, and that most of these requests involved trauma (51.4%), followed by medical (24.7%), drug/alcohol use (17.1%), and psychiatric (6.7%). While the study found that EMS calls from police were "common," they represent a tiny fraction of the total police-citizen encounters. A comparative analysis to these statistics would provide a meaningful context to the scope of MPD's reliance on EMS.

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https://lims.minneapolismn.gov/Download/File/1389/Office%20of%20Police%20Conduct%20Review%20(OPCR)%20Pre-Hosptial%20Sedation%20Study%20Final%20Report.pdf.

B. MPD Policies

As initially contemplated, this independent investigation included a review of MPD policies relating to an officer's decision to call for EMS support, and communications with EMS personnel once they arrive on scene and decide whether use of a sedative is necessary. We understand that before the summer of 2018, MPD had no policies to address either situation. In May and June of 2018, MPD issued two new policies, the first setting forth criteria for officers' decisions to request EMS assistance during police-citizen encounters and the second prohibiting any MPD involvement in EMS decision-making whether to administer a sedative to a subject. Our investigation ended before we had the opportunity to conduct interviews that would be necessary to explore the reasoning and intentions behind these new policies, as well as the potential interaction between the new and existing policies that might also impact these encounters. This Memorandum therefore offers our initial observations regarding the policies and how they might be applied, and does not represent a complete and definitive review of these policies.

The first policy, **MPD Administrative Announcement AA18-013, dated May 18, 2018,** provides that EMS personnel hold the exclusive authority in determining whether to administer chemical sedation, and MPD officers "shall never suggest or demand EMS Personnel 'sedate[]' a subject. This is a decision that needs to be clearly made by EMS Personnel, not MPD Officers." The announcement further provides, in relevant part:

1. As always, in situations where a subject is showing physical signs of a medical condition such as cocaine psychosis or excited delirium, EMS should always be requested early as a precaution. It's important to have EMS en-route as soon as possible to ensure timely medical assistance;
2. In those cases where EMS determines chemical sedation is not an option, MPD officers and paramedics should collaborate to stabilize the situation and control the subject; and
3. In situations not requiring EMS response (i.e., the subject is physically resisting, combative/aggressive, but does not show signs of a medical condition or distress involving EMS), Officers should utilize their training and experience to attempt de-escalation and/or physical controlling tactics to stabilize the situation.

The second new policy, **MPD Special Order SO18-013, dated June 15, 2018, amending Section 7-350 of the MPD Policy and Procedure Manual,** provides that MPD employees must request assistance from EMS as soon as practical "if any employee comes into contact with an individual having an acute medical crisis and any delay in treatment could potentially aggravate the severity of the medical crisis," or as otherwise required by policy. The Special Order further provides, in relevant part:

1. Officers who are assisting individuals who are not in an acute medical crisis but may need medical attention shall offer EMS response, and must document the offer and answer;
2. Officers shall not make any suggestions or requests regarding medical courses of action to be taken by any medical personnel. Determinations made by medical personnel regarding medical courses of action must be clearly made by medical personnel;
3. Officers who are responding to incidents where EMS already has been requested shall not cancel EMS unless the employees determine that the call was unfounded or the subject is no longer at the scene; and
4. Officers must document in a report any assistance provided to medical personnel regarding the medical crisis, including actions taken by the officers, the effects of those actions on the subject, and the outcome of the situation.

Together, these new policies reflect a commendable action by MPD leadership to exercise immediate oversight over these situations moving forward, and both policies appropriately restrict all decision-making regarding the administration of a sedative exclusively to EMS personnel. We have no visibility into the process by which MPD drafted its new policies. Given the gravity of these issues and importance of striking the proper balance between public safety and medical concerns, these new policies should incorporate and reflect the best practices and current research of policing and medical experts. Application of these policies necessarily will involve critically important decisions about the health and safety of citizens and officers alike, and the especially thorny challenges that officers regularly face in responding to mental health distress. These episodes further raise questions relating to an individual's right to refuse medical treatment, even if it does not involve ketamine or a sedative. In this respect, a policy must balance individual rights and statutory authorization for medical treatment. In the event that MPD drafted and implemented these policies without consulting the appropriate national policing organizations, medical experts, or similar thought leaders, MPD should consider seeking this guidance in evaluating their effectiveness and the need for any revisions.

Moreover, we are concerned that key terms in both policies are phrased in a way that potentially renders them subject to varied and inconsistent application in the field. The critical term of the EMS policy, "acute medical crisis," is not further defined and it is not clear what factors must exist to satisfy this term, as opposed to a medical problem that is serious, but not "acute" and not to the level of a "crisis." Officers similarly may have difficulty determining whether an individual is experiencing "cocaine psychosis or excited delirium syndrome" under the new ketamine policy, as the policy itself offers no criteria or symptoms to define how to recognize these conditions, especially where our investigation has identified no formal training provided to MPD officers regarding the

symptoms of these conditions. It may be possible to provide additional guidance through officer training to ensure appropriate application of these terms moving forward, but this route presents its own challenges in making sure that these training sessions are provided regularly and consistently, with sufficient documentation to memorialize how the trainers instruct that the terms should be interpreted.

In particular, it is not apparent how mental health figures into the definition of an "acute medical crisis." Our review of the 132 episodes showed recurring instances where an individual made some unspecified reference to suicidal ideation but is otherwise fully coherent, and then becomes resistant when officers seek to remove the individual from the location to go to the hospital. It is not clear how these types of scenarios are to be applied under this new policy, and how the policy interrelates to other policies or guidance for responding to suicidal individuals.

Finally, while the policies for EMS assistance and sedation are not facially inconsistent, they also are not squarely on identical footing. For example, the EMS assistance policy states that EMS should not be called unless an individual is experiencing an "acute medical crisis," while the sedation policy states that EMS should be called as early as possible if a subject is "showing physical signs of a medical condition such as cocaine psychosis or excited delirium." These terms, and any inter-relationship between them, should be further described or defined to provide workable guidance to MPD officers who must make immediate decisions under difficult circumstances.

IV. Recommendations

If the City wishes to develop a more accurate and complete understanding of the specific facts and circumstances of the police-citizen encounters involving assistance by EMS and sedation with ketamine, and to fully evaluate the efficacy and of its policies governing these situations, the following recommendations should be taken into consideration:

1. The City should consider interviewing the officers and their supervisors regarding the officers' motivations and reasoning during the encounters, their prior training and guidance, and awareness of any informal practices that resulted in the use of ketamine. It also may be necessary to interview relevant EMS personnel and supervisors, as well as eyewitnesses to particular encounters as described above.

2. The City should consider performing a properly constructed, comparative statistical analysis as described above. Even if the City concludes that no further investigation of these episodes is warranted, the City should consider performing this statistical analysis to verify whether the rates of use of ketamine, or other sedatives, as a restraint are increasing such that this issue merits further study, or is occurring with a frequency that is

consistent with overall increases in police-citizen encounters or the rate of use by other municipalities.

3. The City should consider reevaluating MPD's new policies involving EMS assistance in order to provide guidance or definitions of key terms, including "acute medical crisis," and when an individual is showing physical symptoms of "cocaine psychosis" or "excited delirium syndrome." The City also should consider soliciting and evaluating any available guidance and best practices from policing and medical experts and organizations, and reconcile the varying criteria for calling for EMS assistance in the two policies.

4. Beyond the specific MPD policies, the City should consider reviewing the policies adopted by the authorities operating local EMS departments that address responding to police-citizen encounters, including the administration of ketamine and other sedatives. This review should include an evaluation of any training materials or guidance, whether formal or informal, provided to EMS providers. This review also should include consultations with policing and medical experts and organizations for their expertise and recommended best practices relating to the involvement of and the use of sedatives in police-citizen encounters.

5. Moving forward, the City also should consider performing regular audits of the numbers/percentage of calls involving EMS, as well as the numbers/percentages of calls involving the use of sedatives, to test the efficacy of the new MPD policies.

6. MPD officers and EMS personnel all should receive regular and consistent training about the new policies and the appropriate use of medical interventions in citizen encounters. In addition, the City should consider providing more thorough and consistent training regarding specific symptoms or behaviors that serve as triggering conditions under the new policies, including "excited delirium syndrome" and "cocaine psychosis," and how officers are to accurately recognize and effectively respond to such conditions. MPD's training and supervision should remain consistent in the context of current trends and developments; for example, when the abuse of synthetic drugs caused an increase in agitated violent behavior, officers require formal guidance about accurately recognizing this condition and responding appropriately to this trend.

7. The City should ensure formal documentation of training of MPD officers and, if provided, to EMS personnel. This documentation will allow the City to more effectively monitor how these policies are applied in actual encounters, and provide the City with a reference point when evaluating an officer's decisions after these encounters.

8. The City should ensure that sufficient training also is provided to dispatch officers, especially if these officers possess the ability to send EMS to a scene before the responding officers arrive and make an assessment in accordance with the new MPD policies.