



Barry L. Kluger
Inspector General

Office of the Inspector General

Metropolitan Transportation Authority

Two Penn Plaza, 5th Floor

New York, New York 10121

212-878-0000

July 11, 2018

Catherine Rinaldi
President
MTA Metro-North Railroad
420 Lexington Avenue
New York, NY 10170

**Re: Metro-North Drug Use Notification
Policy
MTA/OIG #2018-46**

Dear Ms. Rinaldi:

The Office of the MTA Inspector General (OIG) has completed its investigation into an allegation that a Metro-North Railroad (MNR) employee failed a drug test and his supervisors covered it up. While our investigation did not substantiate the allegation, we found that MNR lacked sufficient protocols to ensure that Medical Review Officers (MRO) notify MNR of an employee's violation of its policies and rules relating to the use of prescription medication. We recommend that MNR take action to ensure that MROs timely document and report such violations to the agency. Toward that end, we make three recommendations in this letter report

During OIG's investigation, we found that the employee who was alleged to have failed a drug test was taking prescription medication which could have affected his ability to safely perform his job. The employee also had failed to notify his MRO about his use of the prescription drug prior to performing his duties, in violation of MNR Policy #21-012, Section II (6)(a)(1) and Operating Rules, Rule G, section 3. Additionally, there is no record that MNR management was notified of the employee's violation of the policy and rule until OIG discovered the violation during our investigation.

MNR Policy #21-012 and Rule G of MNR's Operating Rules govern the use of alcohol, prescription medication, and over-the-counter drugs by MNR employees. With respect to use of prescription medication and over-the-counter drugs, pursuant to the policies and rules, all MNR employees are required, prior to performing their duties, to notify their MRO upon being prescribed or using any medications that may affect the employee's job performance and safety. Upon such notification, the MRO must make a medical determination as to whether the employee is medically fit to continue to perform his or her assigned duties while taking the medications or drugs. This employee notification requirement is imperative because it allows MNR to ensure that its employees are medically fit to perform their duties safely, which can include work involving the third rail, operating trains and heavy equipment, and other safety-

sensitive functions. The MROs are MTA Headquarters employees assigned to the MTA Occupational Health Services (OHS) and designated as the MROs for specific MTA agencies. OIG staff interviewed MNR staff about the process used to document alcohol and drug testing. Dr. Mautaz Jaber (Dr. Jaber), Assistant Medical Director of OHS, is the designated MRO for MNR; Clyde E. Armstrong (Armstrong) is the Director, Regulatory Oversight-Operations Department; and Karen Oles (Oles) is the Designated Employer Representative (DER) and Assistant Director, Regulatory Oversight Department. According to Armstrong and Oles, MNR conducts random alcohol and drug tests pursuant to U.S. Department of Transportation (US DOT) regulations. MNR conducts the Breath Alcohol Tests and collects urine specimens for testing at US DOT approved MNR facilities. The OHS office located in the Graybar Building is a US DOT approved facility. A Custody and Control Form (CCF), includes the employee-specific information, an employee certification, and the specimen collection information. The CCF is completed for every urine sample taken. Once collected, the samples are sent to a medical laboratory, which conducts the tests and submits the results to Dr. Jaber.

According to Dr. Jaber, after reviewing the results, he completes the relevant section of the CCF, certifying the test results as negative or positive, refused or cancelled, and submits the form to Oles. For all positive test results, he reaches out to the employee to find out if the employee is taking any prescribed medication that may account for the positive result. If the employee claims he is on prescribed medication, Dr. Jaber verifies with the prescribing medical professional that the prescription is valid, and determines whether the medication would account for the positive result. According to Dr. Jaber, if he determines the prescription is valid and accounts for the positive result, he is required to mark the employee's test result as negative on the CCF, meaning the employee's drug test did not reveal a positive result for any illicit or other drugs not prescribed for the employee. Under MNR Policy #21-012, Section II (6)(a)(3), Dr. Jaber is also required to make a medical determination regarding the employee's fitness to continue to perform his duties while under the influence of the prescribed medication. If he believes the employee is not medically fit to perform his duties, Dr. Jaber notifies MNR of his medical determination.

Further, since MNR policy requires employees to notify Dr. Jaber's office of the use of prescription medications or other drugs that may affect their job performance, he told OIG staff that he reviews the employee's medical file to determine if the employee made the notification as required by MNR Policy #21-012, Section II (6)(a)(1) and Rule G, section 3. If the employee failed to make the notification, Dr. Jaber stated that it is his practice to notify Oles of the violation via phone or email. Dr. Jaber stated there is no formal process as to how to make the notification and he does not keep a written record of the notifications he has made. In the instant case investigated by OIG, Oles and Armstrong claimed that they never received such notification; they only received the employee's CCF indicating his test result was negative.

Oles and Armstrong further claimed that they only learned that the employee had failed to notify Dr. Jaber of his use of prescription drugs prior to reporting to work, in violation of MNR's

notification policy and rule, as a result of OIG's investigation and long after the test was given. It was Oles and Armstrong's opinion that they were unable to take any disciplinary action against the employee as the 30-day period within which MNR was required to bring disciplinary charges against the employee had already expired. Oles and Armstrong stated this was part of a collective bargaining agreement, but did not cite to any specific provision supporting their position.¹

While working collaboratively with the OIG during the investigation, Dr. Jaber has proactively updated his MRO Verification Form to include a statement that notification has been made to Designated Employer Representative (DER) of any Rule G violation.

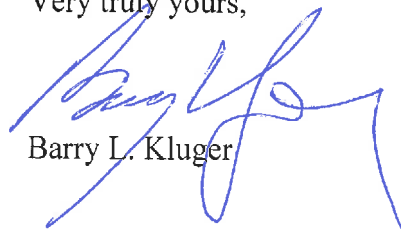
RECOMMENDATIONS

Based on our investigation results, we recommend that the below steps be taken to ensure that MROs report violations of MNR policies and operating rules by employees in a timely manner.

1. Creation of a separate form for MROs to use to notify MNR of policy and operating rule violations by employees that are found by MROs.
2. Addition to MNR Policy #21-012, Section II, of a provision which sets forth when, how and to whom MROs are to make notifications of violations of MNR policy and rules.
3. Addition to MNR Policy #21-012, Section II, of a provision which sets forth how notifications are to be documented and records maintained.

Please provide me with the agency response to our recommendations within 30 days of receipt of this letter. As always, we appreciate your continued courtesy and cooperation. Should you have any questions, please contact me at (212) 878-0007 or Deputy Inspector General for Legal and Investigations Demetri M. Jones at (212) 878-0279.

Very truly yours,



Barry L. Kluger

Cc: Richard Gans

¹ OIG has learned that the employee in question has resigned from his MNR employment.