

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE POLICE STANDARDS COUNCIL**

In the Matter of:)	
)	
DERRICK MEDINA)	OAH No. 21-2495-POC
<hr style="width: 80%; margin-left: 0;"/>)	APSC No. 2021-02

DECISION

I. Introduction

In October of 2020, correctional officer Derrick Medina was the Lieutenant for the Wildwood Correctional Complex. His duties included a role in overseeing the facility’s Covid-19 protocols. Beginning late that month, he had a series of interactions with his supervisors and co-workers that undermined and violated those protocols in a way the caused a significant staffing crisis at the facility and tens of thousands of dollars in extra costs. The conduct included deceptive statements and nondisclosures. These incidents led to his resignation in lieu of discharge from the Alaska Department of Corrections (DOC), ending a thirteen-year career. In September of 2021, the Executive Director of the Alaska Police Standards Council began proceedings to revoke Mr. Medina’s APSC correctional officer certificate. Mr. Medina contested the revocation and requested a formal hearing.

Mr. Medina did not participate in the hearing that took place at his request. A default hearing was held in accordance with the Alaska Administrative Procedure Act, in which the Executive Director presented an abbreviated case through several witnesses from DOC.

This decision finds that Mr. Medina’s conduct was detrimental to the reputation, integrity, and discipline of the Department of Corrections and is conduct that creates substantial doubt about his honesty and respect for the rights of others. Mr. Medina’s correctional officer certificate should be revoked pursuant to 13 AAC 85.270(a)(2) and must be revoked pursuant to 13 AAC 85.270(b)(3).

II. Facts

A. Background

Derrick Medina became a DOC employee in 2007. He was granted his APSC basic certificate as a Certified Correctional Officer on September 5, 2008,¹ working as a DOC corrections officer thereafter. In 2017 DOC promoted him to lieutenant. Prior to the events at

¹ Agency Record (A.R.) 83.

issue in this case, in the words of Director of Institutions Jeremy Hough, he had “a pretty good track record.”

Medina worked at Wildwood Correctional Complex, a 477-bed facility. Wildwood has a superintendent and two assistant superintendents, and below them a single lieutenant. At Wildwood, the lieutenant serves as the buffer between top management and the staff, which includes a number of sergeants and a broader corps of correctional officers (COs). The lieutenant sets schedules and works staffing and security issues for all parts of the facility, interacting with all employees.²

During the pandemic, the lieutenant at each DOC facility was an important part of coordinating the institution’s Covid response. The lieutenants oversaw Covid screening procedures that the department had put in place. They were the supervisors in charge of making sure those directives were followed.³

Wildwood is a large, old facility in which it is difficult to prevent the spread of disease within the facility. It houses a population with below-average health. Facility staff were seen as the primary way new infections could get into the population, and the primary line of defense against Covid outbreaks was to have strict staff protocols to prevent that from happening.⁴

In the fall of 2020, DOC was taking Covid protocols very seriously, following an earlier period when the approach had been more relaxed. The tightened protocols were causing the staff to be stressed, drained, and exhausted. Officers were tired of having to cover for other officers who took, or were required to take, Covid-related leave.⁵

At the time of the events at issue, officers had to go on leave for 14 days after a hard contact, or for ten days from the onset of symptoms (if symptoms occurred), whichever expired first. The leave was paid and did not come out of an employee’s leave bank.⁶

At the time of the events at issue, Mr. Medina was working to finish a significant construction project at his house. He spoke of the project often at the workplace.⁷

² Main sources for paragraph: testimony of Stephanie Crosby and Shannon McCloud.

³ Main source for paragraph: testimony of Jeremy Hough.

⁴ Main sources for paragraph: testimony of Hough and McCloud.

⁵ Main sources for paragraph: testimony of Crosby and McCloud, as well as the Milbauer Affidavit.

⁶ Main source for paragraph: testimony of Crosby.

⁷ Main sources for paragraph: testimony of Crosby and McCloud.

B. The Events at Issue

On October 20, 2020, Lt. Medina presented at the Wildwood entry point, mentioned that he had been in contact with his stepfather (also a Wildwood employee) who in turn had had exposure to Covid and was on Covid leave. He asked if he should be on leave. He was told that he should not because this once-removed exposure was not a hard contact for him. Later that morning, he mentioned that he could certainly use a 14-day leave to work on his house with his stepfather. He amended his disclosure to mention that he had had contact with his wife's family, who had tested positive for Covid. He said that he had forgotten to mention that in his interaction at the entry point. This was indeed a hard contact, and he was sent home on 14-day paid quarantine.⁸

On October 22, 2020, Lt. Medina attended a family birthday party at Pizza Boys restaurant in Soldotna. The party was apparently held in a back room of the restaurant, but nonetheless would not have been consistent with Covid isolation. Coworkers found out about it on social media.⁹

On October 23, Lt. Medina apparently began having some Covid symptoms, or at least so he would later report.¹⁰

On October 24, Medina invited six other Wildwood employees, including five corrections officers, to his home to help him move concrete slabs he was using for countertop. He did not tell them he was on Covid quarantine.¹¹

On October 26, Lt. Medina took a Covid test.¹²

On October 27, Medina rode in a car with another Wildwood CO and helped the CO move a heavy item. On October 28, he had additional contact with his stepfather (who was already on Covid quarantine leave but would have to restart his quarantine when this new contact with Medina was discovered).¹³

On October 28, Lt. Medina's October 26 test was processed. He tested positive for Covid 19.¹⁴

⁸ Main source for paragraph: Milbauer Affidavit.

⁹ A.R. 45, 52.

¹⁰ Crosby testimony.

¹¹ This paragraph is taken from A.R. 45 and the underlying recording of the pre-determination meeting.

¹² A.R. 54.

¹³ This paragraph is taken from A.R. 45 and the underlying recording of the pre-determination meeting, as well as Crosby testimony.

¹⁴ A.R. 54.

On October 29, Lt. Medina contacted two members of the Wildwood Covid response team and reported that he had tested positive. He told both of them that he had begun having symptoms on October 23.¹⁵

On November 2, Lt. Medina was called back into work based on having completed the ten-day quarantine from his report of symptoms starting October 23. Medina angrily protested, saying that he should be on leave for additional days. He indicated that it was unfair that his stepfather was getting to restart his leave, while Medina himself, who was the one who tested positive, had to come back to work. He said he did not recall having had symptoms. Based on this new denial of symptoms, his quarantine period was recalculated based on the longer period for asymptomatic people with hard contacts, and he was sent home. This Covid leave was immediately converted to administrative leave for misconduct, and he never returned to Wildwood.¹⁶

As a result of Lt. Medina's conduct—specifically, his contacts on October 24 and 27-28—six officers and one maintenance worker had to be put on paid Covid leave for 14 days. This created a “staffing emergency,” in the words of the Superintendent. To cover for the lost staff and its ripple effects, other COs had to work 16-hour days, a probation officer and an Assistant Superintendent worked as COs, and a secretary worked in the kitchen. The facility narrowly escaped having to lock down.¹⁷

The final tally of extra personnel costs due to Medina's conduct was \$56,000.¹⁸

C. Aftermath and this Proceeding

1. Mr. Medina's Discharge

Lt. Medina was placed on administrative leave on November 2, 2020.¹⁹ Following an investigation and a recorded pre-determination meeting, DOC Institutions Director Hough made the decision, in keeping with the handling of similar cases across DOC, that Medina should be terminated but should be offered the chance to resign in lieu of termination.²⁰ Mr. Medina agreed on December 22, 2020 to a “full and final settlement of all matters involving the recent disciplinary investigation” under which he would immediately submit an irrevocable letter of

¹⁵ Main sources for paragraph: Milbauer Affidavit, Crosby testimony, and A.R. 45. On November 2, Medina would deny that he had intended to report having had any symptoms. First e-mail attachment to Milbauer Affidavit; A.R. 45.

¹⁶ Main sources for paragraph: Milbauer Affidavit, Crosby and McCloud testimony, A.R. 61 & 63, and Ex. C.

¹⁷ Main sources for paragraph: Crosby and McCloud testimony and A.R. 57-59.

¹⁸ Hough testimony.

¹⁹ A.R. 73.

²⁰ Hough testimony.

resignation “for personal reasons.”²¹ Under the agreement, DOC was permitted to complete an exit evaluation noting that Mr. Medina resigned after his failure to adhere to Covid-19 protocols exposed coworkers. Medina was immediately processed out with a Form F-4 specifying that he had resigned in lieu of dismissal and that de-certification was recommended.²²

2. *Initiation of APSC Discipline Process*

The Executive Director initiated an investigation promptly after receiving the Form F-4, issuing a subpoena to DOC for all connected materials, including the recorded interview.²³ The APSC found probable cause for the Executive Director to pursue revocation in its meeting on June 22, 2021.²⁴ The Executive Director then opened this proceeding with a formal Accusation in September of 2021. After requesting and being granted an extension of several weeks, Mr. Medina entered a Notice of Defense on November 16, 2021, requesting the hearing to which he is entitled under the Administrative Procedure Act.²⁵ The matter was sent to the Office of Administrative Hearings (OAH) the following day under a voluntary referral agreement.²⁶

3. *Events Leading to Mr. Medina’s Default*

A case planning conference was set for December 7, 2021, but both parties wished to have it rescheduled. Mr. Medina asked that it be pushed back all the way to the third week of January, and to accommodate this request the conference was set for January 19, 2022. One day before the scheduled conference, Mr. Medina e-mailed that he was working seven days a week with limited telephone reception; he requested that the conference be moved until after he completed his current work project “sometime in March or April.” He provided no details. The Office of Administrative Hearings responded one hour later as follows:

The conference scheduled for January 19 is a short planning conference. It has already been delayed significantly, and it was set at a time requested by Mr. Medina. It will go forward as scheduled. Neither side is required to participate, but if you do not participate, decisions about the schedule for resolving the case will have to be made without your participation.²⁷

²¹ A.R. 76.

²² A.R. 72.

²³ See A.R. 41.

²⁴ See A.R. 26. Mr. Medina was notified of the probable cause finding the following week in a letter that lucidly explained the administrative process that would ensue. *Id.*

²⁵ A.R. 2-4.

²⁶ The applicable agreement is the Memorandum of Agreement for Adjudication Services dated February 11, 2019, which is not specific to this case. It provides that the 120-day hearing-and-proposed-decision track in AS 44.64.060(d) does not apply to APSC referrals. Most other OAH procedures, including the proposal for action process after a proposed decision, do apply to these referrals.

²⁷ E-mail from H. Canfield to parties, Jan. 18, 2022, 10:08 a.m.

Mr. Medina did not participate in the conference on January 19. It was held on the record as scheduled, and a pre-hearing process and hearing date were set. Twenty minutes after the conference had ended, Mr. Medina called OAH Staff and asked to be put through to the Administrative Law Judge. In accordance with office procedures prohibiting *ex parte* contact, he was not put through.

At the conference, the schedule for the case was set with a view to putting the case before the Council at its May meeting. The Council has a duty to protect the public and is entitled to resolve disciplinary matters with reasonable promptness, and failure complete the hearing process for the May meeting would have resulted substantial further delay. To put the matter before the Council in May, the proposed decision would have to be issued by early April so as to allow for the AS 44.64.060 proposal for action process. Hence the hearing was set for mid-March, leaving about two weeks for preparing the proposed decision.

The schedule was set in a Scheduling Order distributed January 20, 2022. There would be a mandatory conference (an integral part of the hearing) on March 10, 2022, followed by evidentiary proceedings to begin March 15.

In early March, Mr. Medina and counsel for the Executive Director corresponded by e-mail about witnesses and logistics for the hearing.²⁸ In that correspondence, Mr. Medina took the position that he still could not participate in the hearing. He did not communicate with the tribunal, however.

On March 10, 2022, the preliminary conference was held. Mr. Medina did not participate. Arrangements were made for a telephonic evidentiary proceeding to begin on March 15, as previously scheduled, and a call-in number was distributed by email to the parties.

On March 14, 2022, Mr. Medina emailed a member of OAH staff as follows:

As I have stated when I requested consideration to reschedule; I am working remotely with limited connectivity, I have attempted to explain this multiple times. I do wish to defend myself in a reasonable way but without the ability to participate in these hearing I have no chance to defend myself. I will make every attempt to be on the line for the hearing March 15th.²⁹

The following day, the hearing convened as scheduled. Mr. Medina did not call in and could not be reached by telephone.

²⁸ OAH was not a party to the correspondence, but obtained copies later in exhibits to a pre-hearing motion.
²⁹ E-mail from D. Medina to S. Marshall, March 14, 2022, 5:06 a.m.

Mr. Medina’s failure to participate has placed the tribunal and the Council in a difficult position. In both January and March, he has waited to the last minute, then alluded vaguely to being too busy to attend to this disciplinary proceeding and to having limited connectivity. The only time he provided a relatively firm time when he would be available (third week of January), he still failed to be available. Otherwise, he has declined to give any details of his circumstances, nor to provide alternative dates so that this important proceeding can be scheduled to accommodate him. He has never formally moved for a continuance.

In light of this history, with subpoenaed witnesses waiting to testify, Mr. Medina was declared to be in default under AS 44. 62.530 when he again failed to appear on March 15, 2022. The declaration of a default in a proceeding such as this does not relieve the Executive Director from having to prove his case.³⁰ However, it does permit the Executive Director to make an abbreviated evidentiary presentation, including the use of affidavits.

4. Evidentiary Hearing

At the hearing, APSC Exhibits A-D and the entirety of the numbered Agency Record (pages 1-96 plus an unnumbered recording of the pre-determination meeting) were admitted without objection or restriction.³¹ Also admitted was an affidavit of Wildwood Nurse Suzette Milbauer and its attachments. Live sworn testimony was taken from Wildwood Officer Stephanie Crosby, retired Wildwood Superintendent Shannon McCloud, DOC Human Resources Consultant Jason Burnett, and DOC Director of Institutions Jeremy Hough. The hearing took approximately half a day.

III. Discussion

A. Mr. Medina’s Conduct was Improper

Mr. Medina was a high-level supervisor at Wildwood, responsible for overseeing the entire staff. Regardless of its public health implications, if any, his conduct showed an astonishing disregard for his institution. He interacted with six Wildwood COs without informing them of his quarantine status and of his onset of symptoms. This created circumstances that, if discovered, would certainly require them to take extended leave. He did this primarily because he

³⁰ AS 44.62.530 provides, in relevant part: “If the respondent does not file a notice of defense or does not appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without notice to the respondent.”

³¹ In this case, the AS 44.62.460(d) restriction on hearsay applied only if raised by timely objection. *See* Scheduling Order (Jan. 19, 2022).

needed help with his construction project. The resulting staffing crisis cost his institution, and the public fisc, \$56,000.

In addition to reckless disregard for the proper functioning of Wildwood, Mr. Medina's conduct clearly showed elements of deception. It was deceptive to interact with the other employees without letting them know his status. There was also apparent deception in Mr. Medina's shifting accounts of whether he had symptoms and with whom he had been in contact. This second set of deceptions seems to have been motivated by a desire to maximize his paid leave time.

B. APSC Action Is Both Appropriate and Required

1. Discretionary Revocation

The Council's regulation at 13 AAC 85.270(a)(2) gives the Council *discretion* to revoke a correctional officer's basic certificate if the officer has resigned under threat of discharge for a reason that "is detrimental to the reputation, integrity or discipline of the correctional agency where the officer worked."

Mr. Medina unquestionably resigned under threat of discharge. The evaluation then moves to the nature of the reason for the termination. In this regard, the Council requires its Executive Director to prove that the underlying detrimental conduct occurred. In other words, revocation of a certificate is not imposed simply because the employer *thought* the conduct occurred and terminated for that reason; the underlying bad conduct must be proved to the Council.³²

The deliberate disregard of Covid protocols by a supervisor tasked with implementing them, causing a staffing crisis that greatly inconvenienced workers under his supervision, compromised institutional efficiency, and cost the institution \$56,000, is conduct that undermined discipline at Wildwood, was detrimental to its integrity, and—had it become known—would have damaged DOC's reputation.³³ Accordingly, the Council has discretion to revoke Mr. Medina's certificate.

³² See, e.g., *In re E.X.*, OAH Case No. 13-0473-POC, APSC No. 2012-22 (APSC 2013) (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=4689>).

³³ Revocation on this ground does not require a showing that the employer's reputation was actually harmed; it simply needs to be the kind of conduct that, if known, would discredit the employing law enforcement agency. *In re Bowen*, OAH No. 10-0327-POC (APSC 2011), at 14 (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=4683>).

Alaska has no provision for suspension of certification; the Council’s only remedy is revocation. However, Alaska does permit individuals whose certification is revoked to apply for reinstatement after one year, so that revocation is not necessarily permanent.³⁴

In exercising discretion in this instance, the Council must bear in mind that Lt. Medina was in a leadership position and, indeed, a leadership position that made him responsible for and well aware of Covid-19 protocols. Nothing he did was inadvertent. Moreover, his flaunting of the guidelines spanned several incidents over several days. The misconduct had major and wholly foreseeable financial costs for his employer. All of these are aggravators. The Council should revoke in these circumstances.

2. Mandatory Revocation

A partly overlapping regulation, 13 AAC 85.270(b)(3), *requires* the Council to revoke the certificate of a correctional officer who has resigned under threat of discharge “for conduct . . . that is detrimental to the integrity of the correctional agency where the officer worked.” It is unclear how this particular aspect of 13 AAC 85.270(b)(3) is intended to interact with 13 AAC 85.270(a)(2), which makes revocation discretionary in precisely the same circumstance (conduct “detrimental to the integrity” of the agency). We need not reconcile the two provisions here, however, because another aspect of 13 AAC 85.270(b)(3) clearly makes revocation nondiscretionary in this instance.

13 AAC 85.270(b)(3) requires the Council to revoke the officer’s certificate if the officer has resigned under threat of discharge “for conduct . . . that would cause a reasonable person to have substantial doubt about an individual’s honesty . . . [or] respect for the rights of others.” The lack of forthrightness when he invited the other employees to his home, the inconsistent information given about his Covid contacts and symptoms, and the apparent gamesmanship to maximize his paid Covid leave all would create, in reasonable observers, a substantial doubt about both Mr. Medina’s honesty and his respect for others’ rights. Accordingly, revocation is appropriate on this ground as well.

³⁴ AS 44.62.550. *Cf.* 13 AAC 85.270(d), (e).

IV. Conclusion

The Executive Director has proved that Derrick Medina's actions in October-November of 2020 that led to his termination from the Department of Corrections both merit and require revocation of his Basic Certificate as a Certified Correctional Officer. The certificate is revoked.

DATED: March 29, 2022.

By: Signed
Christopher Kennedy
Administrative Law Judge

Adoption

The Alaska Police Standards Council adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of May, 2022.

By: Signed
Rebecca Hamon
Chair, Alaska Police Standards Council

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]