

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

In the Matter of)	
)	
DAVID WILSON)	OAH No. 16-1009-POC
_____)	APSC No. 2016-20

FINAL DECISION¹

I. Introduction

The Executive Director of the Alaska Police Standards Council seeks to revoke David Wilson’s probation officer certification based on his unauthorized use of prescription medication. After consideration of the full record, the Executive Director’s revocation is affirmed.

II. Facts

David Wilson is the type of person you would like to have as a neighbor. He is hard working, gives back to the community, and is a good friend. Unfortunately, Mr. Wilson’s pain issues drove him to repeatedly behave in a manner inconsistent with the qualities required of a certified officer.

A. Work History and Prescription Medication Usage

David Wilson began working as a probation officer for the Alaska Department of Corrections in 1998. He received his probation officer certification from the Alaska Police Standards Council in 1999. Mr. Wilson worked as a Probation Officer III, a supervisory position at Lemon Creek Correctional Facility in Juneau, Alaska. He supervised probation officer RT, whom he considered a friend.

The two were somewhat familiar with each other’s medical issues. For example, Mr. Wilson knew that RT had a severe shellfish allergy. On two occasions, Mr. Wilson administered multiple epinephrine pens to RT when she displayed serious allergic responses.² RT characterized Mr. Wilson’s actions as life-saving.³ The Department

¹ The APSC made two technical edits to the initial proposed decision. On page 1, “licensed” was changed to “certified”. Additionally, Mr. Wilson’s subordinate’s name was replaced with initials for privacy.

² Epinephrine is used to counteract anaphylactic shock. Anaphylactic shock causes the respiratory system to shut down. Left untreated, it may lead to death. See <http://www.mayoclinic.org/diseases-conditions/anaphylaxis/home/ovc-20307210>.

³ RT testimony.

characterized Mr. Wilson's actions as dangerous because he administered more than the recommended dosage without medical credentials.⁴

Mr. Wilson and RT were also aware that each experienced chronic pain related to medical issues. In fact, three of the four probation officers employed in the unit had ongoing medical issues. Absences due to medical issues caused difficulty with scheduling and added to an already stressful work environment.⁵

Mr. Wilson began asking RT to share her prescription pain medication with him in 2011. Ordinarily, Mr. Wilson requested RT's medication while at Lemon Creek, unobserved by other staff members. RT never shared her medication while on the job, and Mr. Wilson never appeared impaired at work.⁶

At other times, Mr. Wilson requested pain medication while RT was at home, on sick leave. Mr. Wilson would bring RT a beverage or soup and inquire as to her health. He would then ask for her prescription pain medication. Mr. Wilson's attorney described these situations as checking on a friend who is not feeling well. The Executive Director casts these visits in a less flattering light – waiting until RT was vulnerable and under the influence of medications before requesting her to break the law. Under either theory the facts remain the same – Mr. Wilson went to RT's house, uninvited and unannounced, and asked her for prescription pills. On one occasion, Mr. Wilson entered her home, went down the hall to her bedroom where she was resting and under the influence of cold medication, and woke her up to request prescription drugs.⁷

On four to five occasions between 2011 and 2014, RT gave Mr. Wilson four to five of her prescription pain pills (methadone and oxycodone).⁸ RT observed Mr. Wilson ingest some of the pills, and keep the rest, presumably for later consumption. RT asked Mr. Wilson to stop asking her for pain medication. He did not. Mr. Wilson continued to ask for pain medication from RT through February 2016.⁹

RT spoke to her prescribing physician about Mr. Wilson's actions, and relayed this to Mr. Wilson. RT also confided in Katherine Sullivan, another probation officer supervised by

⁴ R19; RT interview, March 3, 2016.

⁵ RT testimony.

⁶ RT testimony.

⁷ RT testimony.

⁸ RT testimony.

⁹ See Ex. 2 – RT's log detailing Mr. Wilson requesting prescription medication.

Mr. Wilson, about Mr. Wilson's requests for pain medication. Ms. Sullivan, who had a difficult relationship with Mr. Wilson, reported Mr. Wilson's actions to the Department.

B. Investigation

Two Department employees, Gregory Gendron and Terrence Shanigan, investigated the allegations and conducted several interviews of Mr. Wilson and other Lemon Creek staff. It was Mr. Gendron's first time acting as lead investigator. Mr. Shanigan's involvement was also a Department first, as he had just been hired. Mr. Shanigan testified that he was hired to specifically investigate matters that could result in criminal prosecution. But he also testified that he had not been authorized to work the criminal aspect of investigations during the time of the Wilson investigation. Overall, the delineation between potential employment discipline and criminal investigation was blurred.

During a phone call on March 8, 2016, Mr. Shanigan told Mark Choate, Mr. Wilson's attorney, that he was a commissioned officer, not a human resources person, and he was employed to investigate allegations that could potentially lead to criminal charges. Mr. Shanigan informed Mr. Choate (inaccurately) that the interview had nothing to do with any potential job discipline.¹⁰ Mr. Choate advised Mr. Wilson not to answer questions with any potential criminal consequences.

During an interview on March 14, 2016, Mr. Gendron advised Mr. Wilson that he may choose not to answer questions because the matter was under criminal investigation. Mr. Gendron also advised Mr. Wilson that negative inferences would not be made against him.¹¹ This advisement aligned with the meeting notice sent to Mr. Wilson on March 9, 2016.¹² Mr. Wilson declined to answer questions related to the unauthorized use of prescription drugs. Later in the interview, however, Mr. Shanigan told Mr. Wilson that he was compelled to answer questions and that the answers would not be used against him in any criminal proceeding.¹³

The Department interviewed Mr. Wilson twice more, on March 21, 2016, and March 31, 2016. The interview notices stated that these were compelled interviews and that failure to answer questions may result in discipline, up to and including dismissal.¹⁴ The notices did

¹⁰ Recorded phone call, Shanigan and Choate, March 8, 2016. This conversation appears to reference the interview planned for March 10, 2016, which was moved to March 14, 2016.

¹¹ R59.

¹² R56.

¹³ Wilson interview, March 14, 2016, at approximately 1 hour, 36 minutes.

¹⁴ R24; R42.

not state that answers to questions could not be used against Mr. Wilson in criminal proceedings. However, at the beginning of these interviews, Mr. Wilson was informed that his answers could not be used against him in criminal proceedings. Mr. Wilson followed the advice of his attorney and chose not to answer questions related to prescription usage.

C. Termination and Certificate Revocation

On April 4, 2016, the Department terminated Mr. Wilson, without a hearing, based on his requesting and consuming prescription drugs belonging to a direct report, and for failing to answer questions during the second and third interview.¹⁵ On August 18, 2016, the Executive Director of the Police Standards Council sought revocation of Mr. Wilson's probation certification.¹⁶

Mr. Wilson appealed the revocation and an in-person hearing was held in Juneau, on May 22 – 24, 2017. Mr. Choate represented Mr. Wilson. John Novak represented the Executive Director and called the following witnesses: RT, Katherine Sullivan, Superintendent Cordle, Gregory Gendron, and Terrence Shanigan.

Mr. Wilson and his wife planned to testify. However, on the day before their planned testimony, Mr. Novak informed Mr. Choate and Mr. Wilson that any testimony from the administrative hearing was not compelled by the Department and was therefore not immune from consideration for criminal prosecution. Mr. Wilson chose not to testify.

The parties filed closing briefs on June 30, 2017.

III. Discussion

In a revocation hearing, the Executive Director bears the burden of proof by a preponderance of evidence.¹⁷ The Executive Director seeks revocation of Mr. Wilson's probation officer certification under four legal theories:

- Count I – Respondent was discharged from his position for cause for conduct that adversely affects the ability and fitness of the office to perform job duties or is detrimental to the reputation, integrity, or discipline of the correctional agency, which is grounds for discretionary revocation under 13 AAC 85.270(a)(2).

¹⁵ R3 – 4; R8; R18 – 19. Mr. Wilson's termination letter contains additional grounds for dismissal. Because the additional grounds are not a basis for the certification revocation, they are not addressed here.

Mr. Gendron prepared Mr. Wilson's termination letter for Superintendent Cordle's signature. Cordle testimony.

¹⁶ R2 – 6.

¹⁷ AS 44.62.460(e)(1).

- Count II – Respondent does not meet the minimum standards for a probation/parole officer. Respondent lacks good moral character, which is grounds for discretionary revocation under 13 AAC 85.270(a)(3).
- Count III – Respondent, after hire, illegally used or possessed a controlled substance other than marijuana, which is grounds for mandatory revocation under 13 AAC 85.270(b)(2)(B).
- Count IV – Respondent was discharged from his position for cause for conduct that would cause a reasonable person to have substantial doubt about an individual’s honesty, fairness, respect for the rights of others, or respect for the law; or that is detrimental to the integrity of the correctional agency, which is grounds for mandatory revocation under 13 AAC 85.270(b)(3).¹⁸

A. Illegal use of a Prescription Drug

Of these, Count III is most compelling. RT testified credibly that Mr. Wilson, on multiple occasions, requested, received, and ingested her prescription pain medication, methadone and oxycodone. This is grounds for mandatory revocation.

Mr. Wilson argued that amended regulations allowing the unauthorized use of prescription drugs in an “immediate, pressing, or emergency medical circumstance” should be considered.¹⁹ The Executive Director argued such consideration would be inappropriate under the prohibition against ex post facto legislation.²⁰ Even if the amended regulations were considered, it would have no bearing on the outcome of this case. The record does not support a finding that Mr. Wilson was in a situation analogous to that contemplated under the amended regulations.

Mr. Wilson lives and works in Juneau, Alaska, with readily available access to medical services. Mr. Wilson’s medical records document his ability to access medical professionals and prescription medication.²¹ Furthermore, Mr. Wilson was physically able to stop at the store, pick up a beverage, and travel to RT’s home to request her pain medication. These actions belie any exigent circumstance argument regarding Mr. Wilson’s request for medication.

¹⁸ R5.

¹⁹ See 13 AAC 85.270(b)(2)(B) as amended on September 24, 2016.

²⁰ An ex post facto law is a law passed after the occurrence of an act which retrospectively changes the acts’ legal consequences. *Doe v. State*, 189 P.3d 999, Alaska Constitution, Art. 1 §15; See also AS 01.10.090.

²¹ See Ex. L, pp. 2; 5-7; 38; 48; 110; 134; 155; 191.

Therefore, under 13 AAC 85.270(b)(2)(B), revocation is required based on the uncontroverted evidence of Mr. Wilson's unauthorized use of prescription medication.²²

B. Mr. Wilson's Conduct Warrants Discretionary Revocation

The Department terminated Mr. Wilson's employment based on his illegal use of opioids prescribed to a direct report. There is little doubt that if Mr. Wilson's conduct became known, such knowledge would negatively affect the correctional facility's reputation.

Those in command at a correctional facility are closely scrutinized and must maintain a high level of accountability to themselves, their unit, the incarcerated, and the public. It is likely that some inmates are incarcerated because of convictions stemming from illegal opioid use. "A fox guarding the hen house" comes to mind when both inmate and overseer use prescription drugs illegally. This type of situation plays out poorly in the media and around the water cooler, with a tarnished reputation as the result. Accordingly, the Council chooses to exercise its discretion and revoke Mr. Wilson's certificate under 13 AAC 85.270(a)(2).²³

C. The Record Established that Mr. Wilson Lacks Good Moral Character

Lack of good moral character is established when an individual engages in acts or conduct that would cause a reasonable person to have substantial doubt about an individual's honesty, fairness, and respect for the rights of others and the law.²⁴ Examination of moral character includes consideration of all aspects of a person's character.²⁵ A significant flaw, however, in any aspect may support a finding that that individual lacks good moral character.²⁶

²² Mr. Wilson argued that if the Council is compelled to revoke Mr. Wilson's certification for receiving illegal drugs, RT must also lose her certification for providing drugs. He claims to do otherwise would violate Mr. Wilson's equal protection rights. Wilson's closing brief, at 15 – 16. Because RT is not a party to this proceeding her certification cannot be addressed.

²³ Prior decisions address discretionary versus mandatory revocation based on conduct which reflects poorly on an agency. *See in re: Hoiby*, OAH No. 16-0545-POC, at 13 (APSC 2017). The Council revokes Mr. Wilson's certification under its discretionary authority.

²⁴ 13 AAC 85.900(7). There is some evidence in the record that Mr. Wilson distributed workloads unevenly based on gender. There is not, however, enough information to make findings regarding Mr. Wilson's fairness overall. Therefore, the "fairness" aspect of moral character is not included in this analysis.

²⁵ 13 AAC 85.900(7).

²⁶ *Steven Much v. Alaska Police Standards Commission*, 3AN-14-04466CI, at 6 (AK Superior Ct. 2016); *In re EX*, OAH No. 13-0473-POC, at 15 - 18 (APSC 2013).

The Executive Director argues that Mr. Wilson's conduct raises substantial doubt about his moral character as a whole.²⁷ During hearing, the Executive Director asserted that Mr. Wilson's failure to answer medication-related questions during the investigation and his answers regarding the use of epinephrine pens also support a finding that he lacks good moral character.

1. *Honesty*

To begin, we consider the impact of Mr. Wilson's refusal to answer questions. Outside of the criminal sphere, one may make negative inferences about a person's failure to answer questions.²⁸ The Council, however, is not beholden to the inferences of the Department of Corrections. Mr. Wilson received conflicting messages regarding the consequences of potential disclosures and was advised by his attorney to refrain from answering any questions about prescription pill usage. Under these circumstances, the Council will not infer dishonesty based on Mr. Wilson's failure to answer questions.

Next, Mr. Gendron testified that he believed Mr. Wilson was dishonest based on statements from Mr. Wilson that Nurse Iris Beach advised him on the use of multiple epinephrine pens in response to medical emergencies involving anaphylactic shock. Nurse Beach told Mr. Gendron that she did not advise or train employees.²⁹ The record does not contain the recorded interview with Nurse Beach. Nurse Beach testified that although she does not train employees, the use of multiple epinephrine pens could be advisable under certain situations.³⁰ RT reported that she has taken up to six doses of epinephrine in the past.³¹ She also testified that Mr. Wilson's actions saved her life. Accordingly, an inference of dishonesty is inappropriate here.

2. *Respect for the Rights of Others and the Law*

The more difficult question is whether Mr. Wilson's pill-seeking behaviors require a finding that reasonable people would have substantial doubt as to his moral character. Mr. Wilson's conduct is very troubling. He used prescription drugs illegally. He repeatedly asked – one could even say badgered – a subordinate and friend to participate in an illegal

²⁷ Executive Director's closing brief.

²⁸ See Alaska Evidence Rule 512(d).

²⁹ Gendron testimony.

³⁰ Beach testimony.

³¹ R87; RT stated that she has six epi-pens, and has taken that many in the past. RT interview, March 3, 2016, starting 58 minutes, clarified at 1 hour, 3 minutes.

activity. He continued to request medication after being asked many times to stop.³² It appears that Mr. Wilson did not stop requesting pain medication until his behavior was reported to the Department.³³ These behaviors raise doubt as to Mr. Wilson's respect for RT – her right to privacy as well as her right to be free from harassment.

Mr. Wilson's actions also raise doubt as to his respect for the law. Illegal acts, whether driven by pain, addiction, poverty, or a wayward moral compass indicate a lack of good moral character.³⁴

This is not meant to be a condemnation of Mr. Wilson. Mr. Wilson makes substantial contributions to his community. But good moral character is defined here in terms of Mr. Wilson's role as a probation officer, not as a community member. In *In re EX*, the Council revoked the certificate of a corrections officer based on his inappropriate use of a law enforcement database.³⁵ EX accessed the database after the conviction of his son. Like Mr. Wilson's actions, EX's behavior did not lead to a breakdown of security or actual harm to an inmate, officer, or victim.³⁶ The Council found revocation appropriate, noting that obedience to rules is a crucial attribute in a certified correctional officer.³⁷

Overall, Mr. Wilson's repeated requests for prescription medication from a direct report for approximately five years supports a finding that Mr. Wilson lacks good moral character for certification purposes.

IV. Conclusion

The Executive Director demonstrated that revocation of Mr. Wilson's probation officer certification is appropriate.

DATED this _____ day of _____, 2017.

By: _____
Signature

Name

Title

³² RT testimony.

³³ Ex. 2. Mr. Wilson asked RT for "a little help" at the end of February 2016. RT testified credibly that the last time she gave Mr. Wilson prescription medication was in 2014.

³⁴ 13 AAC 85.900(7)(A).

³⁵ OAH No. 13-0473-POC (APSC 2013).

³⁶ *In re EX*, at 25.

³⁷ *In re EX*, at 25.

Adoption

The undersigned adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter. *with the recommended changes to be submitted from the proposal for action.*

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 5 day of Dec, 2017.

By: 

Signature

Kelly Swihart, Chairman

Name

Chief

Title
