



A2005-0793 -- Department of Corrections  
Finding of Record and Closure  
March 22, 2007

*This public report has been edited to remove identifying information  
and information confidential under Alaska Statute.*

An inmate at the Palmer Correctional Center contacted the Office of the Ombudsman to complain that Department of Corrections (DOC) staff did not follow proper procedure under Alaska law when the complainant and eight other inmates were involved in a motor vehicle accident during a prisoner transport. The complainant asked that the Office of the Ombudsman bring felony charges and terminate the officer that drove the vehicle, require DOC to make restitution to him in the amount of \$2.2 million tax free, and pay his lifetime medical expenses.

The complainant wrote that he was being transported to court by DOC Correctional Officer (CO) Emmet Heidemann on December 3, 2004, when the van in which he was riding struck a moose. He alleged that CO Heidemann violated AS 28.35.050, Action of Operator Immediately After Accident; AS 28.35.060, Duty of Operator to Give Information and Render Assistance; and AS 28.35.080, Immediate Notice of Accident. Specifically, the complainant claims that CO Heidemann did not contact law enforcement to report the accident or call for an ambulance to provide medical assistance after the complainant informed him he was injured.

Our office does not provide legal advice and does not assist complainants with their requests to take criminal or civil action against an agency. The Ombudsman does not assist people with their requests for restitution. Additionally, as a matter of policy, the Office of the Ombudsman does not recommend specific disciplinary actions to be taken against employees. However, we do have jurisdiction to review and investigate whether state agencies are fulfilling their statutory obligations. Therefore, we reviewed the inmate's complaint to determine whether DOC had responded reasonably after the accident.

Intake Officer Denise Duff investigated the complaint and forwarded her report to me.

Ms. Duff opened the following allegations stated in terms that conform with AS 24.55.140:

**Allegation 1: Unreasonable:** Department of Corrections staff did not attend to the complainant's medical needs following a traffic accident in which the complainant was injured.

**Allegation 2: Contrary to law:** Department of Corrections transport officer failed to comply with statute and regulations concerning highway accidents while transporting inmates.

## INVESTIGATION

Ms. Duff reviewed relevant Alaska statutes and DOC Policies and Procedures. She also interviewed the following individuals to obtain information concerning his complaint:

- DOC Correctional Officer Emmet Heidemann, the transport van driver;
- DOC Correctional Officer Brett Bodnar, a witness to the accident;
- Department of Law Assistant Attorney General John Bodick, and
- Department of Transportation (DOT), State Equipment Fleet Manager Diana Rotkis.

Ms. Duff requested from DOC and Department of Transportation staff, copies of all relevant paperwork pertaining to the accident. Ms. Rotkis provided copies of the closed work order on the vehicle damage. The work order outlined the work performed, items purchased for the repair work and the total cost for repairs, including work that was required to be completed by an outside vendor. The cost for repairs totaled less than \$600. Anchorage Correctional Center (ACC) staff provided copies of the complainant's Health Care Progress Notes taken from the date of the accident, December 3, until December 19.

We also received copies of the incident report and three memorandums that were generated on December 3 as a result of the accident. The memorandums outlined the incident and actions taken through the chain of command within DOC.

**CO Emmet Heidemann** stated that the accident occurred at Mile 54 of the Glenn Highway at approximately 6:15 a.m. on December 3, 2004. He said it was dark and snowy and that he observed a moose on the side of the road and quickly slowed the vehicle. However, he was unable to avoid hitting the moose as it entered the roadway. The impact broke the driver's side view mirror and the moose's antlers punctured the windshield, but the damage did not impair his vision. The van remained upright in the road and was drivable. CO Heidemann said that after the van struck the moose, he asked each passenger individually, "Are you hurt?" and each passenger responded that they were not hurt. Based on the passengers' responses, he concluded that there was no need to summon an ambulance.

CO Heidemann stated that he notified the Alaska State Troopers (AST), Palmer Correctional Center Shift Sergeant Marty Steinrede, and Correctional Transportation Supervisor Sergeant Cyndi Addington about the accident from the scene. He said they cleared him to proceed to Mat-Su Pre-Trial (MSPT), which was approximately four miles away. He said that although the van windshield was damaged, the van was drivable.

Ms. Duff contacted AST, who were unable to find an entry about the accident on December 3.

Once at MSPT, CO Heidemann said he requested that the medical staff at MSPT screen the six inmates that were transported to MSPT. Records indicate the complainant was one of the six that were medically screened. The other three inmates were screened after they were transported to the Anchorage Jail.

**DOC Transport Officer Brett Bodnar** said he witnessed the accident from the oncoming lane of traffic. He said he didn't realize that a DOC van was involved until after the van had stopped. He told Ms. Duff that he saw the van swerve into his lane before the driver regained control of the vehicle and then the moose glanced off the side of the vehicle. He said he pulled over to the side of the road and watched the moose get up and walk away. CO Bodnar approached the van to ensure that everyone was okay and then realized the van was a DOC transport vehicle. Officer Bodnar stated that he asked CO Heidemann if he and the passengers were okay. Even though he was told everyone was all right, CO Bodnar said he opened the van doors and directly asked the passengers himself. He said that no one said they were not okay. He recalled receiving comments from the passengers about how well Officer Heidemann had handled the vehicle. **DOC Health Care Progress** notes indicated that the complainant was examined twice by a physician's assistant on December 3. He was examined again on December 4 and again on December 19. On December 19, he complained that he was still experiencing pain from the accident and he was referred to a physician's assistant for an evaluation.

**DOC Policies and Procedures Manual, Section 104.05, Use of Vehicles**, requires the operators of official vehicles to adhere to all State and local traffic rules and regulations. AS 28.35.080 requires a driver of a vehicle to report to the local law enforcement agency any accidents that result in bodily injury to or death of a person or total property damage to an apparent extent of \$2000 or more.

Additionally, **AS 38.35.060** requires vehicle operators to render assistance to an injured person. Assistance includes making arrangements for the person to be seen by a physician and transportation to a hospital for medical treatment if it is apparent that treatment is desirable.

**AS 28.35.050. Action of Operator Immediately After Accident.** (a) An operator of a vehicle involved in an accident resulting in injury to or death of a person shall immediately stop the vehicle at the scene of the accident or as close to it as possible and return to, and remain at, the scene until the operator has fulfilled the requirements of AS 28.35.060.

**AS 38.35.060. Duty of Operator to Give Information and Render Assistance.** (a) The operator of a vehicle involved in an accident resulting in injury to or death of a person or damage to a vehicle that is driven or attended by a person shall give the operator's name, address and vehicle license number to the person struck or injured, or the operator or occupant, or the person attending, and the vehicle collided with and **shall render to any person injured reasonable assistance, including making of arrangements for**

**attendance upon the person by a physician and transportation, in a manner that will not cause further injury, to a hospital for medical treatment if it is apparent that treatment is desirable.** Under no circumstance is the giving of assistance or other compliance with the provision of this paragraph evidence of the liability of an operator for the accident. (Emphasis added)

**AS 28.35.080. Immediate Notice of Accident.** (a) The driver of a vehicle involved in an accident resulting in bodily injury to or death of a person or total property damage to an apparent extent of \$2,000 or more shall immediately by the quickest means of communication give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the Department of Public Safety.

## ANALYSIS AND FINDING

The Office of the Ombudsman reviews and investigates complaints against state government agencies to determine if agencies are functioning in accordance with established policies and procedures, Alaska Law, and standards of good administration.

The standard used to evaluate all ombudsman complaints is **the preponderance of the evidence**. If the preponderance of the evidence indicates that the administrative act took place and the complainant's criticism of it is valid, the allegation will be found justified. Blacks Law Dictionary defines "preponderance of the evidence" thusly:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

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***Allegation 1. Unreasonable: Department of Corrections staff did not attend to the complainant's medical needs following a traffic accident in which the complainant was injured.***

The complainant alleged that DOC staff did not attend to his medical needs following the accident and did not adhere to Alaska Statute regarding proper procedure after an accident.

The record shows that two DOC officers questioned the passengers about injuries after the accident and, hearing nothing to cause them to proceed to a hospital, took the passengers to a nearby prison. There, DOC medical staff examined the complainant and the other passengers within minutes of the accident. The complainant was examined twice on December 2, again on December 4, and again on December 19.

The appropriate medical action for a specific health issue is best determined by a medical professional. Our office does not have the medical expertise to question health care decisions made by medical professionals, but based on the health care notes, it does not appear DOC medical staff neglected the complainant's medical concerns. He was

examined by medical professionals several times shortly after the accident and later in the month. Therefore, I find that Allegation 1 is *not supported* by the facts.

***Allegation 1. Contrary to law: Department of Corrections transport officer failed to comply with statute and regulations concerning highway accidents while transporting inmates.***

AS 28.35.050 requires drivers to stop their vehicles and, in accordance with AS 28.35.060, “**shall render to any person injured *reasonable* assistance, including making of arrangements for attendance upon the person by a physician and transportation, in a manner that will not cause further injury, to a hospital for medical treatment if it is apparent that treatment is desirable.**”

According to the two correctional officers at the scene and the medical record, the transport officer stopped his vehicle immediately after the accident and questioned each passenger about any physical injury. CO Bodnar, the witness, then questioned each passenger individually about their condition. Each prisoner stated that they were okay and the van proceeded four miles to MSPT where medical staff examined the passengers for injury.

Based on the review of the available information, it appears that DOC staff took appropriate action after assessing the condition of all parties involved, and the condition of the vehicle. The statute does not require that all persons involved in an accident be seen at a hospital emergency room, and the extent of the damage to the vehicle did not warrant notice to the Department of Public Safety. Based on the response that CO Heidemann and CO Bodnar received from the passengers at the time of the accident, it appears that the action to continue to the correctional facility and request that all passengers be screened by DOC medical staff was reasonable. Therefore, I find Allegation 2 *not supported* by the facts.

When both or all allegations in a complaint are found to be unsupported, the complaint can be closed without an agency response. Additionally, when the ombudsman finds that a complaint is unsupported, no recommendations are necessary.

Therefore, this complaint is closed as *not supported* with no agency response required.