



## INVESTIGATIVE REPORT

Ombudsman Complaint A2004-0036  
(Final Public Report)

*The name of the complainant and a witness have  
been omitted from this public version for reasons of privacy.*

This is the final report under 21 AAC 20.210 of our office's investigation of a complaint we received from an inmate about the Department of Corrections (DOC).

### **Summary of the Complaint**

The complainant was an inmate at the Palmer Correctional Center in December 2003. On Dec. 5, 2003, he was assaulted by another inmate. He suffered a fractured jaw and other injuries that led to his transfer to Anchorage for surgery. The inmate said that he could not wear his dentures because of his injury. He said that before he left PCC, he placed his dentures into his property box.

When transferred out of the hospital, the inmate was confined at the Anchorage Jail. He asked for his dentures and was told that his dentures were not in the property box. He filed a lost property claim in December 2003, alleging that his dentures had been lost during his transfer from Palmer to Anchorage. He valued the dentures, a full set, at \$1,600.

DOC conducted an internal investigation of the inmate's claim. In January 2004, DOC property clerk Bill Kennedy denied his claim, stating that there was no evidence that the complainant had dentures when he entered the correctional system. He then complained to the Office of the Ombudsman.

The ombudsman opened an investigation into the following allegation:

***The Department of Corrections lost an inmate's dentures when the inmate was transferred for medical treatment and has unreasonably refused to reimburse the inmate for the loss or replace the dentures.***

Assistant Ombudsman Mark Kissel investigated the allegation. He provided notification of investigation via telephone to PCC Superintendent Zee Hyden on February 4, 2004.

## Investigation

The complainant was arrested and taken to the Cordova Center detention facility in Anchorage on March 5, 2003. There a DOC nurse, Suzan Del Rosso, interviewed him. Ms. Del Rosso recorded his vital signs and went through the Criminal Remand Screening form (807.14A). This form has a section on health history on which the interviewing nurse can check boxes for "Hepatitis" or any of numerous other medical conditions as appropriate. One of the medical conditions listed is "Dental problems." Ms. Del Rosso checked the box indicating dental problems and wrote "dentures" in the margin.

The inmate was discharged from the correctional system on March 12, 2003. He was imprisoned again on November 12, 2003, and taken to Cordova Center, where he underwent another health screening. DOC nurse Marie Souders conducted the screening using another Criminal Remand Screening form. Ms. Souders checked the box indicating dental problems, but did not specify what the problem was. When interviewed by the ombudsman investigator, Ms. Souders could not remember this inmate nor could she recall the reason she checked dental problems on his form. She told the ombudsman investigator that she generally does not consider dentures a health issue requiring a check in the "dental problems" box. She said it is possible that she would have checked the box if she noticed he had no teeth, but she does not remember.

The complainant's inmate file contains a Property Intake Sheet dated November 26, 2003, when he was transferred from Parkview Center to the Anchorage Jail. The sheet has space to list "property of value." Items such as shirt, pants, shoes, bracelet, necklace, and hair tie appear on his sheet. The form does not list his dentures. Below the list is a statement signed by the complainant:

I agree by signing below that the above listing of property is all property of value on my person. I further understand that I will not hold the Anchorage Jail responsible for any property that I have chosen not to list.

The inmate's file also contains a Prisoner Intake-Property Inventory form dated December 12, 2003, at the Palmer Correctional Center. The form lists personal property that is being stored at the prison and property that the inmate was allowed to retain. Stored personal property included a belt, necklace, bracelet, and camouflage pants. Retained personal property included shoes, socks and underwear. The form does not list dentures. Below the list is another statement signed by the inmate:

By signing below, I hereby acknowledge the correctness of the above listed personal property.

The ombudsman investigator asked the complainant if he had denture care material with him when he was remanded on November 12. He said that did and that it was in his shaving kit, which was still at Parkview Center, a halfway house to which he was sent after his November 12 remand. He said he was transferred out of Parkview Center to Anchorage Jail on November 26 because he committed an infraction. For some reason, his shaving kit

was left behind. The investigator contacted the director of Parkview Center, David Rhodes, who checked the inmate's property there and reported that he found a tube of Extra Strength Effergrip(c) in the inmate's shaving kit. Effergrip is a denture adhesive cream used to keep dentures from slipping off the gums.

The complainant also told the investigator that a fellow inmate, now released, had seen him with his dentures at the Anchorage Jail before the complainant's transfer to PCC. The investigator contacted the former inmate, who said he remembered the complainant, although, he said, "I don't really know him that well." He said they spoke when they were in the Anchorage Jail unit known as "Echo mod" shortly after Thanksgiving 2003. He remembered that the complainant had teeth. He said he did not realize at the time that they were dentures. He said when the complainant was assaulted at PCC, he came back to the Anchorage Jail. They saw each other in the segregation unit. The fellow inmate said that he noticed the complainant did not have teeth then and asked him what had happened. He said the complainant explained that he had worn dentures but the dentures had been lost.

The complainant said that the correctional officer who transported him from PCC to the Valley Hospital emergency room should be able to remember that he had dentures "because there was a conversation about not being able to put them in my mouth due to the injury." The investigator contacted the transporting officer, Jimmy Gillispie, a correctional officer at PCC. Officer Gillispie said he does not recall the inmate having dentures with him at the time of transport and he is sure he did not have them at the hospital. He recalls some conversation in the waiting room during which the inmate mentioned that he wore dentures. He said he believes that medical staff spoke with the inmate and noted that he lisped. He said he thinks the inmate told them at that time that he normally wore dentures but did not have them in.

The investigator spoke with DOC Sgt. Rod Ramirez, who is the training officer at PCC. Sgt. Ramirez described the procedure for transporting prisoners' property between institutions. He said a correctional officer would place an inmate's property in a "property box" or allow an inmate to place property in the box while the correctional officer watched. The correctional officer would then seal the box with tape and it would be transported along with the prisoner. The prisoner would not have access to the box until arriving at the destination facility, the Anchorage Jail in this inmate's case. The box would have remained at the Anchorage Jail while the inmate was in the hospital for surgery, Sgt. Ramirez said. He said that staff would not have inventoried the box before sealing it because the prisoner's property would already have been inventoried when he entered the correctional system.

Roger Hale is a physician's assistant with 19 years experience in DOC. Mr. Hale, who works at PCC, said that he saw the inmate shortly after his injury. He said the inmate did not say anything about dentures at that time. Mr. Hale said it did not surprise him that correctional officers and other staff who saw the inmate during his incarceration cannot recall whether he had teeth or dentures. Mr. Hale said that as many as 5 percent of inmates have no teeth, and so a toothless inmate would not have been memorable.

Mr. Hale agreed to go through the inmate's entire medical file, including all the notes from the physicians and surgeons who treated him after his injury. Mr. Hale said that, in his experience, doctors are very meticulous in recording details involving an injury, and he expected to find some reference to dentures in the medical record. He said that the surgeon, especially, would need to know whether his patient wore dentures, since any dentures would still need to fit following reconstructive surgery.

Mr. Hale said he went through the inmate's medical records and property records line by line searching for any mention of dentures. The only references to dentures were on the March 5 DOC Criminal Remand Screening form and on the Request for Interview and lost property forms the inmate turned in claiming his dentures had been lost.

The medical records of the inmate's first examination after the fight noted double vision, and inability to open his jaw, but no mention of dentures. At Valley Hospital, a Dr. Lee noted that the inmate had no teeth but again did not mention dentures.

On December 12, 2003, Dr. Parrish at Alaska Regional Hospital examined the inmate. Dr. Parrish noted the patient had no teeth and that the patient denied any occlusion problems.

### **Analysis and Findings**

The allegation is that DOC's refusal to replace the inmate's lost dentures was based on a mistake of fact. The Office of the Ombudsman's Policies and Procedures Manual at 4040(9) defines the standard *based on a mistake of fact*:

Those instances in which a significant part of the agency's decision is based on a misperception or misunderstanding as to the existence of relevant facts.

The relevant fact here is whether this inmate had dentures on his most recent entry into the correctional system. The evidence is not consistent.

On the one hand, there is evidence that he had dentures. A fellow inmate's testimony that his fellow inmate had teeth when they were confined at Echo Mod is backed up by the tube of denture adhesive the inmate had with him at Parkview Center. However, the record shows a disturbing lack of references to dentures where one would very much expect to find them. The inmate signed two property inventory sheets, one at Anchorage Jail and another at Palmer Correctional Center, without listing his dentures as property in his possession. The complainant argued that he did not consider his dentures to be personal property and did not think to list them. That is unfortunate, because he missed two opportunities to insure that a valuable item was recognized as such by DOC.

The inmate went through several physical examinations where one would expect him to volunteer information or be questioned about his dental history: the Criminal Remand Screening form of November 12, 2003, the incident report regarding his assault at PCC, the initial report of his injuries by PCC nurse Norma Crews, the emergency room records at Valley Hospital, and especially the surgeon's notes. None of these mention dentures, and that lack is unusual if the inmate indeed had worn dentures in the days prior to the assault.

Ombudsman regulation 21 AAC 20.210 authorizes the ombudsman to find a complainant's allegations *justified* or *partially justified* if the ombudsman believes the complainant's criticism of the agency is valid, *not supported* if the ombudsman believes the criticism is not valid, or *indeterminate* if investigation "does not provide sufficient evidence for the ombudsman to determine conclusively whether the complainant's criticism of the administrative act is valid or not valid."

In this case, the ombudsman finds that the evidence is insufficient to determine conclusively whether the complainant had dentures when he was most recently remanded to DOC custody and, therefore, whether DOC is responsible to replace them or reimburse him for their value. The ombudsman finds the allegation *indeterminate*. Since a finding of indeterminate is not critical of the agency, no response from DOC is required.

The ombudsman does, however, suggest that DOC revise its procedure for screening inmates on remand to ask specifically about dentures and other prosthetics. This could be done most effectively, it would seem, during the medical screening that is conducted using the Criminal Remand Screening form (807.14A). Two additional boxes could be added to the form for "dentures" and "other prosthetics." The boxes would prompt the nurse or physician's assistant to ask directly about these items. Screening for prosthetics could also occur during the personal property inventory, but two DOC institutional staff who offered opinions on the matter suggested that the health screening was the better place to ask these questions. A DOC superintendent suggested that the question be asked at intake screening and property inventory.