

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
DETECTIVE ALFREDO VIVAS JR.,) **No. 14 PB 2865**
STAR No. 21021, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1064835)**
RESPONDENT.)

FINDINGS AND DECISION

On May 28, 2014, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Detective Alfredo Vivas Jr., Star No. 21021 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 1: Violation of any law or ordinance.
- Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 6: Disobedience of an order or directive, whether written or oral.

The Police Board caused a hearing on these charges against the Respondent to be had before Fredrick H. Bates, Hearing Officer of the Police Board, on September 17, September 18, and October 27, 2014.

Following the hearing, the members of the Police Board read and reviewed the record of the proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Bates made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a detective by the Department of Police of the City of Chicago.

2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.

4. The Respondent, Detective Alfredo Vivas Jr., Star No. 21021, charged herein, is **not guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

On or about September 6, 2013, Detective Alfredo Vivas Jr. rendered a urine specimen that contained codeine, thereby violating Chapter 720 of the Illinois Compiled Statutes, Section 570/402, by possessing codeine on or before September 6, 2013.

The uncontested evidence in this case established that Detective Alfredo Vivas Jr. (hereinafter referred to simply as “Vivas” or Respondent), suffers from a condition known as gout, an excruciatingly painful disease by all accounts. Vivas is a highly decorated Chicago Police detective, who is also a law student. Despite his medical condition, he has missed only one day of work in his 17-year career with the Chicago Police Department. Vivas is married to Guadalupe Torres, an advanced practice nurse who is the lead nurse on a transplant team at

Loyola University Medical Center. Vivas's primary-care physician also works at that hospital. At all times relevant hereto, Dr. Susan Hou, a physician licensed to practice medicine in Illinois and authorized to prescribe the narcotic at issue in this case (Tylenol 3), was the head of the transplant team that Vivas's wife worked in at Loyola University Medical Center. The Board finds Detective Vivas, Ms. Torres, and Dr. Hou to be credible witnesses.

On September 1, 2013, Vivas worked his regular tour of duty, but experienced an acute flare-up of gout during his shift. He went home at the end of his shift and rested, hoping the pain would subside. Vivas was not scheduled to work on September 2nd or 3rd. On September 4, 2013, he worked his regularly scheduled tour of duty. Again he experienced an acute flare-up of gout during his shift. He called his wife and asked her to see if she could get him an appointment to see his primary-care physician. He went home at the end of his shift and got in bed.

His wife was unable to secure an appointment for him with his primary-care physician. However, she spoke to Dr. Hou concerning his condition, and Dr. Hou told Vivas's wife that he needed to take an opiate-based pain killer. Vivas's wife informed Dr. Hou that she had Tylenol 3 in her cabinet at home.¹ Rather than writing a prescription for the medication, Dr. Hou authorized Vivas's wife to administer to Vivas a couple of the Tylenol 3's that were in their home medicine cabinet. When Vivas's wife returned home, she told him that she had obtained a prescription for his pain, handed him a glass of water and "two tablets of Tylenol 3 with codeine ... and said to him take this, this should help you with pain, this is what the doctor said you can take for pain." (Tr. 102.)²

¹ It is noteworthy that the evidence adduced at the hearing in this matter established that despite being in excruciating pain on September 1 and September 4, 2013, before his wife returned home from work, Vivas did not take the Tylenol 3 prescribed for his wife, although it was available in his medicine cabinet at his home.

² It was not until after he had taken the medication that he discovered Dr. Hou had prescribed the Tylenol 3.

On September 6, 2013, Vivas returned to work and was sent for a random drug test. The test results showed a low level of codeine. (Supt. Ex. 1, Attachment 3). It is undisputed that the amount of codeine in Vivas's system was inconsistent with abuse of this narcotic drug, and in line with the undisputed evidence that he ingested one or two tablets a few days before the test.³ Because the Superintendent believed that Vivas did not have a valid written prescription for codeine, the Superintendent filed the charges at issue in this case seeking to discharge Vivas from the Department.

Dr. Hou testified that she gave a valid oral prescription for the Tylenol 3 in this case. Dr. James O'Donnell, an expert in pharmacology, opined that he concurred with Dr. Hou's assessment that she gave a valid oral prescription for the Tylenol 3 in this case. Even the Superintendent's expert, Dr. Shirley Conibear, medical review officer for the Chicago Police Department, testified that doctors can give valid oral prescriptions.⁴ The preponderance of the evidence in this case established that there was a valid oral prescription issued by a physician licensed to prescribe Tylenol 3. Moreover, at the time Vivas took the Tylenol 3 he believed that it had been validly prescribed to him. Based upon the unique set of facts presented in this case, the Board does not believe that the evidence is sufficient to establish that Vivas possessed the requisite intent to have violated 720 ILCS 570/402 (Possession of a Controlled Substance), as charged by the Superintendent. Accordingly, Respondent is not guilty of violating Rule 1 as charged in this case.

³ Even the Superintendent's expert witness, Dr. Shirley Conibear, medical review officer for the Chicago Police Department, testified that there was no evidence of abuse in this case.

⁴ Dr. Conibear did not believe that there was a valid oral prescription in the instant case because Dr. Hou had not personally seen Vivas that day, and did not have a traditional doctor-patient relationship with him. In essence, Dr. Conibear's difficulty was with the manner in which Dr. Hou issued the prescription.

5. The Respondent, Detective Alfredo Vivas Jr., Star No. 21021, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

On or about September 6, 2013, Detective Alfredo Vivas Jr. rendered a urine specimen that contained codeine, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference. Vivas's conduct did not in any way impede the Department's efforts to achieve its policy and goals, nor did he in any way bring discredit upon the Department. Accordingly, he is not guilty of violating Rule 2 as charged in this case.

6. The Respondent, Detective Alfredo Vivas Jr., Star No. 21021, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

On or about September 6, 2013, Detective Alfredo Vivas Jr. rendered a urine specimen that contained codeine, thereby violating Employee Resource directive E01-09, Article II, Section B.

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference. Based upon the unique facts of this case, where there is undisputed evidence that a verbal prescription was given by a physician authorized to prescribe the drug at issue in this case,

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the Board is not persuaded that sufficient evidence was adduced to establish that Vivas violated the Employee Resource directive E01-09, Article II, Section B. Accordingly, he is not guilty of violating Rule 6 as charged in this case.

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POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes:

By votes of 8 in favor (Demetrius E. Carney, Ghian Foreman, William F. Conlon, Michael Eaddy, Rita A. Fry, Susan L. McKeever, Elisa Rodriguez, and Rhoda D. Sweeney) to 0 opposed, the Board finds the Respondent **not guilty** of violating Rule 1, Rule 2, and Rule 6.

As a result of the foregoing, the Board, by a vote of 8 in favor (Carney, Foreman, Conlon, Eaddy, Fry, McKeever, Rodriguez, and Sweeney) to 0 opposed, hereby determines that cause exists for restoring the Respondent to his position as a detective with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective June 19, 2014.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Detective Alfredo Vivas Jr., Star No. 21021, as a result of having been found **not guilty** of the charges in Police Board Case No. 14 PB 2865, be and hereby is **restored** to his position as a detective with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective June 19, 2014.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Demetrius E. Carney, Ghian Foreman, William F. Conlon, Michael Eaddy, Rita A. Fry, Susan L. McKeever, Elisa Rodriguez, and Rhoda D. Sweeney.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 11th DAY OF DECEMBER, 2014.

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Attested by:

/s/ DEMETRIUS E. CARNEY
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

The following members of the Police Board hereby dissent from the Findings and Decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2014.

GARRY F. McCARTHY
Superintendent of Police