



## California Department of Corrections and Rehabilitation Prison Investigators Conducted an Inadequate Inquiry Into Allegations Staff Members Failed to Wear Face Coverings and, Despite a Reasonable Belief That Staff Misconduct Occurred, the Warden Failed to Refer the Case to the Office of Internal Affairs for an Investigation

The Office of the Inspector General (OIG) is responsible for, among other things, monitoring the California Department of Corrections and Rehabilitation's (the department) staff complaint process, internal investigations, and employee disciplinary process. Pursuant to California Penal Code sections 6126 and 6133, the OIG reports annually on the staff complaint process and semiannually on its monitoring of internal investigations and the employee disciplinary process. However, in some cases, where there are compelling reasons, the OIG may issue a separate public report regarding our monitoring; we call these *Sentinel Cases*. The OIG may issue a Sentinel Case when it has determined that the department's handling of a case was unusually poor and involved serious errors, even after the department had a chance to repair the damage. This Sentinel Case, No. 21-01, involves an incident in which an incarcerated person alleged the misconduct of several staff members, providing detailed information concerning the offenses, after which departmental staff conducted a substandard inquiry into the misconduct allegations, disregarded departmental policy for handling incarcerated persons' allegations of staff misconduct, and ultimately took no action against the staff members accused of committing the alleged misconduct.

In correspondence dated November 29, 2020, an incarcerated person at a prison in northern California sent a letter to the department, California Correctional Health Care Services, the Prison Law Office,<sup>1</sup> and the OIG concerning

1. The Prison Law Office is a law firm based in Berkeley, California that represents incarcerated persons in litigation related to the conditions of incarceration in State prisons and county jails, among other things.

allegations that staff members in a unit where the incarcerated person was housed failed to wear face coverings as required by departmental policy. The department requires staff members to wear face coverings at all times while performing duties on prison grounds, per written order signed by the Secretary.

On October 27, 2020, the Secretary of the department and the federal receiver issued a memorandum to all employees ordering all staff performing duties on departmental grounds to correctly wear approved face coverings at all times, with the exception being when an employee is alone in a hard-walled office, tower, or control booth, or when an employee in the performance of their duties is running or jogging while actively responding to an incident.

On November 19, 2020, the Secretary of the department and the federal receiver issued a memorandum to all employees updating previous memoranda related to face coverings stating that effective November 23, 2020, all staff performing duties on departmental grounds were required to wear polypropylene procedure masks or surgical masks while performing duties on institutional grounds, except in the following circumstances:

1. While eating or drinking, if a minimum of six feet of physical distance is maintained from all other individuals.
2. When alone in an office with the door closed.
3. When alone in a tower or enclosed control booth with no other individuals present.





In his letter, the incarcerated person documented specific dates and times he observed various staff members failing to wear face coverings, named 17 separate staff members in those incidents, and provided brief descriptions of what the staff

members were doing at the time of the policy violation. Below, we present excerpts from the letter in which the incarcerated person included the following observations (we have redacted the names of staff members and housing units).

The incarcerated person documented a total of 19 instances, including the five reproduced here (excerpts, see right), in which he observed staff members not properly wearing face coverings between November 18, 2020, and November 29, 2020. The incarcerated person also described a 20th incident in which a sergeant and an officer alerted staff members or incarcerated persons to put on face coverings because the warden was walking around the prison. In every instance, the incarcerated person included either the name and classification of the offending staff member or a physical description of the staff member. Also, the incarcerated person alleged that, even though departmental executives had designated a particular dormitory as housing for incarcerated persons on medical quarantine, on November 3, 2020, officers assigned to that particular dormitory visited officers in other dormitories before an outbreak of the novel coronavirus could be determined not to exist. Furthermore, the incarcerated person who wrote the letter also identified 10 staff members and a group of clinicians who were "always careful to properly wear face covers."

### Five Excerpts From the Incarcerated Person's Letter

- 3:20 PM [REDACTED], OFFICER [REDACTED] WITH MASK ON HIS CHIN NOT COVERING MOUTH OR NOSE. THREE OTHER OFFICERS WITHIN 3-4 FEET OF HIM. 11-18-2020.
- 5:08 PM, 11-18-2020, PSYCHIATRIC TECHNICIAN [REDACTED] - DISTRIBUTING MEDICATIONS IN [REDACTED] WITHOUT ANY FACE COVER.
- 8:04 AM, 11-19-2020, EOP SUPERVISOR [REDACTED] WALKING ALONE ACROSS [REDACTED] YARD WITH N-95 MASK ON HIS CHIN WORKING ON HIS CELLPHONE. NOBODY WAS WITHIN 6 FT OF HIM.
- 11:00 AM, 11-19-2020, ASIAN MALE PSYCHIATRIC TECHNICIAN, DISTRIBUTING MEDICATIONS AND INSULIN IN [REDACTED] WITHOUT FACE COVER AND WITH MED-ROOM DOOR SLIGHTLY OPEN.
- 10:47 AM, 11-20-2020, [REDACTED] OFFICERS, [REDACTED], [REDACTED] AND MALE [REDACTED] AT OFFICER WORK STATION. ONLY OFFICER [REDACTED] AND [REDACTED] HAD FACE COVERS ON.



## Prison Investigators Conducted a Biased and Inadequate Inquiry Into the Allegations Raised by the Incarcerated Person

The incarcerated person raised specific allegations of misconduct against several staff members at the prison. If the warden had determined there was a reasonable belief that misconduct occurred which would result in adverse action, he would have been required to immediately refer the matter to the Office of Internal Affairs. If the warden had not yet established a reasonable belief, then he would have been required to refer the matter to the Allegation Inquiry Management Section. In response to the letter, the warden did neither and instead directed the prison's investigative services unit to conduct an inquiry. Based on the information provided, the warden should have immediately referred the matter to the Office of Internal Affairs because there was a reasonable belief misconduct occurred.

The incarcerated person set forth sufficient information in his letter to establish a reasonable belief that misconduct occurred by providing detailed information regarding 19 separate incidents involving 17 named staff members over an approximate two-week period. Despite there being sufficient information to forward the matter to the Office of Internal Affairs, the warden instructed an investigative services unit lieutenant and a sergeant at the prison (prison investigators) to conduct an inquiry, and the investigative services unit lieutenant produced an inquiry report. The OIG reviewed the inquiry report and supporting exhibits, including interview recordings, and found the inquiry to be biased and woefully inadequate.

The inquiry report reflected that the prison investigators reviewed attendance records related to 18 of the 20 alleged incidents and confirmed that every staff member who had been identified by name in the incarcerated person's letter as failing to wear a face covering at a specific place and time was, in fact, working in that particular area during

the specified time frame. However, the inquiry report did not reflect that prison investigators reviewed attendance records pertaining to the remaining two incidents, namely an incident on November 24, 2020, and an incident alleging that a sergeant and an officer warned others of the warden walking around the prison on November 26, 2020.

The inquiry report reflected that prison investigators also gathered written reports from some staff members and conducted unrecorded interviews with some supervisors. Moreover, the inquiry report reflected that prison investigators conducted and recorded interviews of 16 incarcerated persons, including the incarcerated person who submitted the letter. However, the interviews were deficient. Investigators did not adequately address the incidents described by the incarcerated person in his letter; instead, they asked mostly general questions about how staff were doing and were focused on gathering information to exonerate staff members. In the OIG's opinion, the closest the investigators came to asking about any specific incident occurred during the December 7, 2020, interview with the incarcerated person who wrote the letter. The exchange occurred after a discussion about how medical and mental health staff were doing recently.

One prison investigator asked the incarcerated person whether staff were wearing their face coverings at the medication pass on the morning of the interview and over the weekend prior to the interview. The incarcerated person said the person distributing medications wore his mask the night before the interview, but that he did catch him not wearing a face covering a week prior. A prison investigator asked for this staff member's name, but the incarcerated person did not know it. The investigator asked was this person an "Asian," referring to the incarcerated person's letter in which he identified an "Asian male psychiatric technician." The incarcerated person said it was a "Black guy." The incarcerated person said he



caught the staff member not wearing a mask a couple of times while at the podium.

One investigator then noted that the medications were passed through a window from inside an office. The incarcerated person pointed out that the window was open and that they were not in a “sealed-in office.” The incarcerated person then referenced an incident when an “Asian male” had the door cracked open. The investigator did not follow up to ask when these two incidents happened, if they were incidents described in the incarcerated person’s letter, or if there were any other witnesses to these incidents. Instead, the investigator changed the subject to an irrelevant issue and asked how the incarcerated persons were doing with wearing their masks.

Rather than addressing every allegation the incarcerated person made with specific questions, the prison investigators asked him mostly general questions about how staff were doing recently, spent an unnecessary amount of time discussing issues unrelated to his specific allegations, and asked questions geared toward eliciting exonerating evidence. While impartial investigators should attempt to gather all evidence that could tend to exonerate those accused of misconduct, the investigators in this case focused more on gathering information to exonerate staff in general than they did on gathering evidence that could prove the allegations. For example, at the beginning of the interview of the incarcerated person who submitted the letter, the following exchange ends with the first question the prison investigator asked:

The reason that we are here today is because we received the allegation you are making regarding all the staff members not wearing their mask [sic], and I just wanted to get some clarifications regarding your observations. So you identified on multiple occasions that these staff

members were not wearing their masks. At times were they eating or drinking?

Instead of asking the incarcerated person for specific details about any of the incidents he described, the prison investigators opened the interview with a question attempting to elicit exonerating evidence. One prison investigator also asked the incarcerated person what his feelings were concerning incarcerated persons manipulating appeals to receive monetary compensation. The prison investigators asked the incarcerated person if he had received a “writeup” (discipline) and why he had received it. A prison investigator also asked the incarcerated person what was his motivation for bringing the allegations to light.

The prison investigator proceeded to ask the incarcerated person a series of questions about how staff members were doing generally with the face-covering order. Later in the interview, the prison investigator posited to the incarcerated person that it was “ten times better” at the prison than it was in March 2020, and asked if the incarcerated person thought it was getting better. The incarcerated person asked if she meant the department was doing better. The prison investigator continued to argue that the number of incarcerated persons testing positive “increasingly dropping to almost like no inmates” showed that the prison was doing better and asked the incarcerated person if the improved numbers spoke to how people were taking “it” more seriously, and that the face coverings were effective. The prison investigator then asked,

Because imagine if staff would not be wearing their masks on a constant basis, then I think we would have more of an infection, right? [sic]



The incarcerated person responded,

Well, it's possible. I think there's too much that people don't know about this virus yet.

In short, during the interview with the incarcerated person who wrote the letter, the prison investigator attempted to offer excuses for staff members and argued as to why the prison was doing better. However, the prison investigator failed to adequately address the specific allegations raised by the incarcerated person in his letter.

During interviews with other incarcerated persons, the prison investigators did not inform incarcerated persons they were doing an inquiry into allegations against staff and did not ask any incarcerated persons about any of the allegations raised by the incarcerated person who submitted the letter, whether it be dates, locations, or times of an incident, or the staff member who was involved in the incident. Instead, the prison investigators again focused on asking general questions about how staff were doing with wearing face coverings.

Nevertheless, some of the incarcerated persons provided evidence that corroborated the information provided by the incarcerated person who submitted the letter. For example, one incarcerated person told the prison investigators that sometimes staff members at the podium, also known as the officer's work station, in the building did not wear face coverings. The prison investigator asked the incarcerated person if he could identify the involved staff members in a photo lineup, to which the incarcerated person answered he could. However, there is no record the prison investigators actually followed up and asked the incarcerated person to review photographs and identify the staff members who did not wear face coverings while situated at the podium in the building.

The prison investigator asked this same incarcerated person when was the last time he

saw someone not wear a face covering, and he responded it was a couple of days ago. She asked what time of day, and he said "third watch." The prison investigator asked if there was one staff member who did it more than others, and the incarcerated person identified an officer by name who did not wear a face covering at "the podium." The incarcerated person who submitted the letter had previously indicated the same officer did not properly wear a face covering while standing at the "officer work station" on four occasions, along with a fifth occasion for which the incarcerated person did not specify the location.<sup>2</sup>

Furthermore, one of the prison investigators asked the incarcerated person whether the officer who was not wearing a face covering at the podium was eating or drinking at the time. The incarcerated person responded he did not look long enough to see whether the officer was eating or drinking. In another interview, a third incarcerated person told one of the prison investigators that sometimes staff members did not wear face coverings. When asked where the incarcerated person observed officers not wearing face coverings, the individual responded, "the podium," corroborating the allegation of the incarcerated person who submitted the complaint that on several occasions officers were not properly wearing face coverings at the officer's work station or "podium."

In the letter, the incarcerated person documented 19 incidents of staff members not properly wearing face coverings. These incidents included observations concerning a staff member walking without wearing a face covering, or officers gathering and conversing in front of a dormitory without wearing face coverings. However, the most common location cited for staff members failing to properly wear a mask was the officer's work station, or podium. The incarcerated person

2. When summarizing the allegations identified in the letter, in the inquiry report, the prison investigator referred to the "officer work station" as "the Officer's work station," "the Officer station," and "the Officers podium." It appears based on the inquiry report that the term "work station" refers to the "podium."



identified nine separate incidents in which multiple staff members—sometimes as many as seven—congregated at the officers’ work station while at least one of those staff members was not properly wearing a face covering. The incarcerated person identified a 10th incident in which a staff member working at the officer’s work station was not properly wearing a mask, but did not indicate any other staff members were in the area.

Furthermore, during the interviews, the prison investigators continually asked incarcerated persons if officers pulled down their face coverings to eat or drink. However, the prison investigators did not ask the other incarcerated persons about the specific incidents in the letter and whether staff members were eating or drinking during those incidents. Also, nowhere in the letter did the incarcerated person mention the officers were eating or drinking. In fact, the incarcerated person wrote,

It’s also important to note that in every instance that I documented, none of the staff members was [sic] eating, drinking or making any effort to social distance. Either way, it’s not possible to social distance in [housing unit] Officer work stations.

When one of the prison investigators asked the incarcerated person who wrote the letter whether any staff members were eating or drinking on any of the occasions he identified, the incarcerated person replied as follows:

No they weren’t. Most of the times that I identified, I was paying attention to..., I was paying attention to that, to whether they were eating or drinking, and I saw that they weren’t. Maybe once or twice. I wanna say one officer that was in front of [dormitory], he had a soda or something in his hand. But other than that, no I was

actually paying attention to that, and they weren’t.

Contrary to the incarcerated person’s statement, the prison investigator noted in her summary of this interview that the incarcerated person said he observed staff drinking soda on a couple of occasions. The following is the prison investigator’s summary of that exchange:

[Incarcerated person] stated that staff was not eating and or drinking when they had their mask off. He recanted and said it had only happened on a couple of occasions where he had observed staff drinking soda.

The prison investigator did not ask questions to identify which incident this was, whether the officer was merely holding the soda or drinking from it, whether there were other staff members around and whether they were socially distanced, or whether there were any other incidents in which an officer was holding or drinking a soda.

According to departmental policy, staff members may remove their face coverings while eating or drinking “if a minimum of six feet of physical distance is maintained from all other individuals.” The inquiry report did not reflect that prison investigators conducted an analysis or attempted to ascertain the following:

1. Whether the staff members claimed they were, in fact, eating or drinking on the dates and at the locations specified;
2. Where the staff members typically ate their meals while on duty; and
3. Whether it is impossible to socially distance at the podium as the incarcerated person alleged.

During many interviews of incarcerated persons, one of the prison investigators was assigned a dual



role, creating a potential conflict of interest. In eight of the interviews, the investigative services unit lieutenant introduced a sergeant as a “staff assistant” for incarcerated persons and noted on the record in six of those interviews that the interviewee was in the mental health delivery system at the enhanced outpatient program (EOP) level of care.<sup>3</sup> Although the report does not address this assignment, it can be reasonably inferred that the investigative services unit assigned the sergeant as the staff assistant to these incarcerated persons because they were designated as EOP.

In these interviews, the investigative services unit lieutenant introduced the sergeant as the interviewee’s “staff assistant” in case he did not understand something, or if the investigative services unit lieutenant spoke too fast. However, the investigative services unit lieutenant also introduced the sergeant as her “partner” in one of those interviews. In addition, the sergeant introduced himself as an “investigator” in some interviews and as “with investigations” in others. He performed investigatory tasks during the inquiry, including asking questions in interviews.

The prison investigators compounded the problem of bias when they failed to assign a staff assistant to the incarcerated person who wrote the letter, even though the investigative services unit lieutenant referred to him during the interview as a “very high functioning EOP inmate.”

The blending of the two roles of “staff assistant” and investigator is a poor practice, and if the department is going to assign a “staff assistant” to assist incarcerated persons in interviews, it should assign someone who is not already assigned to conduct the investigation, so as to remove the implication of bias. Furthermore, the department should treat complainants and other witnesses equally and fairly when assigning a staff assistant.

3. The enhanced outpatient program is an outpatient mental care program at the department for those incarcerated persons requiring a more enhanced treatment plan with mental health staff.

In addition to interviewing the incarcerated persons, the prison investigators gathered reports from nine staff members who may have been present during some of the alleged violations. Eight of the staff members documented that they did not remember or could not recall anyone not properly wearing face coverings on a specific date in question, with a couple making statements that they only witnessed staff remove their face coverings to eat or drink. Only one of the nine staff members did not qualify their memorandum as the other eight had and wrote that they did not observe any staff members not wearing or incorrectly wearing face coverings.

Three of the officers who submitted reports were officers who were accused of failing to properly wear a mask. However, their reports did not address the allegations against them and only contained statements concerning their observations on a day they had not been accused of misconduct. The prison investigator did not document any interviews with any of these nine staff members.

There is also no documentation showing prison investigators interviewed any of the staff members suspected of not wearing a face covering. The inquiry report only reflects that the prison investigators conducted unrecorded interviews of six supervisors who, with a couple of exceptions, stated staff members complied with the face-covering policy.

Regarding the allegation that officers from [housing unit] were visiting officers from other dormitories before a possible novel coronavirus (COVID-19) outbreak in [housing unit] could be ruled out, the prison investigator merely noted in her report there was documentation that the unit was not placed on quarantine status until November 4, 2020—not November 3, 2020, as the incarcerated person had alleged. However, the investigators did not ask the incarcerated person any specific questions about the allegation, including on what days and where he alleged the officers visited other officers.



## The Prison Investigator's Conclusion That the Allegations Were Not Sustained Was Meritless and Without Basis

At the end of the inquiry report, the investigative services unit lieutenant concluded, in part, the following:

At this time from the information provided the allegations brought forth by Inmate [REDACTED] were NOT SUSTAINED. Although Inmate [REDACTED]'s account of staff being on duty on specific times and dates, were extremely accurate there was no evidence to prove or disprove they were not in compliance with the masking order. The vast majority of witnesses interviewed, including staff and inmates provided information refuting [REDACTED] claims. The balance of the evidence is overwhelmingly indicative of staff being in compliance with the masking order as outlined in the June 11, 2020 memorandum. Therefore the allegations are deemed not sustained at this time.

The investigative services unit lieutenant's conclusion was meritless and without basis. The investigative services unit lieutenant asserted that the "vast majority of witnesses interviewed" refuted the incarcerated person's claims. However, although most of the incarcerated persons indicated staff members were generally doing well complying with face-covering requirements, the prison investigators did not ask any of them about the specific incidents identified by the incarcerated person who submitted the letter. For example, prison investigators did not ask any of the incarcerated persons about the specific allegation that, on November 20, 2020, at 10:47 a.m., specifically named officers gathered at an officer's work station without face coverings, nor did they ask if they recalled any similar incidents in the previous weeks.

Furthermore, contrary to the investigative services unit lieutenant's conclusion, staff members did not refute the incarcerated person's specific claims. Eight of the nine staff members who submitted reports wrote that, on one specific date, they did not recall anyone in violation of the department's

face-covering policy. Failing to recall anyone not properly wearing a face covering is not the same as refuting specific allegations about specific officers failing to properly wear a face covering at a specific place and at a specific time.

What we find most troubling, however, is the conclusion that there was "no evidence" to prove staff members did not comply with the face-covering order. This is not true. The incarcerated person who submitted the letter spelled out 19 specific incidents of staff members not wearing face coverings and noted the specific places and times of those incidents. *That is evidence.*

Interestingly enough, the investigative services unit lieutenant herself noted in the inquiry report that the incarcerated person was "extremely accurate" about the specific dates and times staff members were on duty. Furthermore, two other incarcerated persons corroborated the allegations made by the incarcerated person who submitted the letter, noting they observed officers at the podium without face coverings. One of those other incarcerated persons also identified an officer





who more frequently failed to properly wear a face covering; the incarcerated person who wrote the letter identified the same officer as not wearing a face covering on five occasions. *The statements of the other incarcerated persons are also evidence.*

Despite the corroborating evidence provided by incarcerated persons and the lack of refutation concerning the specific allegations, the investigative services unit lieutenant inexplicably determined the allegations to be not sustained. Subsequently, the warden approved the findings of the investigative services unit lieutenant and did not refer the matter to the Office of Internal Affairs for an investigation. The OIG previously identified as a concern that wardens found staff violated policy in only 1.7 percent of cases resolved between June 1, 2020, and August 31, 2020.<sup>4</sup> The warden's findings in this case along with the manner in which this inquiry was conducted provides further evidence supporting our concern that the exoneration rate of more than 98 percent demonstrates a lack of fairness in the process.

In the OIG's opinion, the prison investigators conducted a woefully inadequate and biased inquiry and made incorrect findings. The manner in which the interviews were conducted and the way questions were posed to incarcerated persons leads us to conclude that the investigators did not believe the allegations made by the incarcerated person from the outset and that the inquiry was not conducted in order to gather information relevant to the allegations made, but that it was conducted in such a way so as to reach a conclusion that the allegations were not true.

4. *The California Department of Corrections and Rehabilitation: Its Recent Steps Meant to Improve the Handling of Incarcerated Persons' Allegations of Staff Misconduct Failed to Achieve Two Fundamental Objectives: Independence and Fairness; Despite Revising Its Regulatory Framework and Being Awarded Approximately \$10 Million of Annual Funding, Its Process Remains Broken* (Sacramento: State of California, the Office of the Inspector General, 2021).

Despite the inadequate inquiry, there was sufficient evidence to determine that there was a reasonable belief that misconduct occurred. However, the hiring authority did not refer the matter to the Office of Internal Affairs for investigation, and the department issued no disciplinary action or corrective action to any of the staff members who were specifically identified as having violated departmental policy concerning face coverings, as well as a direct order from the Secretary of the department.

We elevated the decision that had been made to not take any further action to a departmental executive, an undersecretary, and voiced our strong disagreement with the department's decision to not take any action despite specific evidence of staff misconduct. Nevertheless, the undersecretary confirmed the decision to not take any action against the staff members who committed misconduct. Interestingly, following the inquiry, the warden instituted a policy ordering that for any staff member observed not wearing a face covering, management would immediately issue a letter of instruction. A letter of instruction is a form of corrective action, not disciplinary action.

THE OIG HAS PUBLISHED VARIOUS REPORTS detailing the department's failure to seriously investigate allegations of staff misconduct proffered by incarcerated persons within the last two years (e.g., also see [our 2019 report on Salinas Valley State Prison](#), [our inaugural Sentinel Case, No. 20-01](#), and [our special review cited herein as footnote 4](#)). In the OIG's opinion, this case is yet another example of the department failing to seriously investigate allegations of staff misconduct made by incarcerated persons and also of prison investigators conducting severely inadequate inquiries and investigations into alleged staff misconduct. OIG



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STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

GAVIN NEWSOM, GOVERNOR

**OFFICE OF THE SECRETARY**

P.O. Box 942883  
Sacramento, CA 94283-0001



May 14, 2021

Mr. Roy Wesley  
Office of the Inspector General  
10111 Old Placerville Road, Suite 110  
Sacramento, CA 95827

Dear Mr. Wesley:

The California Department of Corrections and Rehabilitation (Department) submits this letter in response to the Office of the Inspector General's (OIG) draft Sentinel Report 21-01 titled *California Department of Corrections and Rehabilitation Prison Investigators Conducted an Inadequate Inquiry Into Allegations Staff Members Failed to Wear Face Coverings and, Despite a Reasonable Belief That Staff Misconduct Occurred, the Warden Failed to Refer the Case to the Office of Internal Affairs for an Investigation*. In this report, the OIG notes that an incarcerated person sent correspondence to the Department, California Correctional Health Care Services, the Prison Law Office, and the OIG concerning allegations that staff members failed to wear face coverings in a unit where incarcerated persons are housed. The Department has reviewed the draft report and has the following comments:

**Sentinel Report 21-01, page 3:** *Based on the information provided, the warden should have immediately referred the matter to the Office of Internal Affairs because there was a reasonable belief misconduct occurred.*

**Response:** Under the current policy, the allegations in this letter would be considered staff complaints rather than allegations of staff misconduct because even if true, these allegations are not likely to result in adverse disciplinary action. As outlined in the October 27, 2020, memorandum titled *STAFF WEARING FACIAL COVERINGS AND PHYSICAL DISTANCING REQUIREMENTS IN INSTITUTIONS AND FACILITIES*, "Whenever managers or supervisors observe a subordinate employee fail to adhere to face covering or physical distancing directives, **corrective action** shall be taken in accordance with Departmental Operations Manual, Article 22, Employee Discipline, section 33030.8, Causes for Corrective Action." If this inquiry had established proof of masking violations, the hiring authority would have appropriately taken corrective action to change the employee's behavior. Adverse action, on the other hand, would be utilized only after corrective action had already been taken and the employee continually failed to adhere to policy. Because the consequence for non-compliance was corrective action, not adverse action, under current policy and procedure, the allegations should not have been referred to the Office of Internal Affairs as the OIG suggests. Lastly, the allegations were reviewed by the hiring authority who appropriately initiated a local inquiry as the allegations were not submitted via the grievance process.

1



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**Sentinel Report 21-01, page 3:** *The incarcerated person set forth sufficient information in his letter to establish a reasonable belief that misconduct occurred by providing detailed information regarding 19 separate incidents involving 17 named staff members over an approximate two-week period.*

**Response:** The complaint did include dates and times; however providing dates and times in and of itself is not always sufficient evidence to open an internal affairs investigation. While the letter is evidence and the details add credibility to the incarcerated person's statement, treating any single accusation as the only source required to establish reasonable belief is not appropriate.

2

**Sentinel Report 21-01, page 3:** *A prison investigator asked for this staff member's name, but the incarcerated person did not know it. The investigator asked was this person an "Asian," referring to the incarcerated person's letter in which he identified an "Asian male psychiatric technician." The incarcerated person said it was a "Black guy."*

**Response:** During the interview, the claimant was not always able to identify the staff he alleges were in violation of the face mask policy. At one point, the claimant noted the allegation was against an "Asian guy" and later it was a "Black guy". Inconsistencies such as these make it difficult to positively identify any staff member, and calls in question the reliability of the information being provided.

3

**Sentinel Report 21-01, page 5:** *During interviews with other incarcerated persons, the prison investigators did not inform incarcerated persons they were doing an inquiry into allegations against staff, and did not ask any incarcerated persons about any of the allegations raised by the incarcerated person who submitted the letter, whether it be dates, locations, or times of an incident, or the staff member who was involved in the incident. Instead, the prison investigators again focused on asking general questions about how staff were doing with wearing face coverings.*

**Response:** The Investigative Services Unit (ISU) staff have been specifically trained not to ask leading questions in order to elicit an unbiased response from the person being interviewed. In addition, the ISU staff take great care not to divulge too much information that could put the safety of any person, including the person who originally submitted the complaint, in jeopardy.

4

**Sentinel Report 21-01, page 9:** *In the OIG's opinion, the prison investigators conducted a woefully inadequate and biased inquiry and made incorrect findings. The manner in which the interviews were conducted and the way questions were posed to incarcerated persons leads us to conclude that the investigators did not believe the allegations made by the incarcerated person from the outset and that the inquiry was not conducted in order to gather information relevant to the allegations made, but that it was conducted in such a way so as to reach a conclusion that the allegations were not true.*



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**Response:** As previously noted, ISU asks general questions to elicit an original answer without unintentionally leading the person into a response. Furthermore, while the department and the OIG may disagree on the outcome of the inquiry, to describe an inquiry that resulted in a 21-page report and that included the review of attendance reports, interviews with supervisors, written reports from staff, and interviews with 16 incarcerated individuals, as “woefully inadequate” is disingenuous and misleading.

5

Thank you for the opportunity to review and comment on the draft report. If you have further questions, please contact me at (916) 323-6001.

Sincerely,

DocuSigned by:

*Kathleen Allison*

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KATHLEEN ALLISON  
Secretary



## COMMENTS

### OFFICE OF THE INSPECTOR GENERAL'S COMMENTS ON THE RESPONSE FROM THE DEPARTMENT OF CORRECTIONS AND REHABILITATION

To provide clarity and perspective, we are commenting on the California Department of Corrections and Rehabilitation's (hereinafter referred to as the department) response to our Sentinel Case No. 21-01. The numbers below correspond with the numbers we have placed in the margin of the department's response.

1. The department's response minimizes the allegations made by the incarcerated person in his letter. The incarcerated person's letter did not refer to an isolated incident of an employee failing to wear a mask, nor was this an instance of a supervisor observing a staff member failing to wear a mask on a single occasion. The incarcerated person's letter paints a picture of widespread and pervasive failures by staff to wear face coverings in and around a dormitory unit over a 12-day period from November 18 through November 29, 2020. The incarcerated population, as well as staff, suffered greatly as a result of the COVID-19 outbreak earlier in the year, making the failures even more egregious.

The incarcerated person identified two officers who failed to properly wear a face covering on five occasions over a 12-day period and another officer who failed to do so on four occasions. A total of nine employees were identified, including eight officers, who failed to properly wear a mask multiple times during this time period. The incarcerated person documented these violations in his letter, providing specific names, dates, times, and locations. The incarcerated person also noted incidents in which supervisors and officers were properly wearing a mask, but were present when staff members failed to properly wear a mask. There is no record in the inquiry report that any of these staff members reported the failure of staff to properly wear a mask. The incarcerated person identified incidents in which multiple staff members congregated without socially distancing and failed to wear face coverings in violation of a clear policy meant to protect incarcerated persons and staff members alike. The incidents described clearly amounted to potential misconduct, and the hiring authority should have referred these allegations to the Office of Internal Affairs or the Allegation Inquiry Management Section.



### Incidents Reported by the Incarcerated Person Concerning Staff Members Who Failed to Wear Masks

November 2020  
(Dates and times are listed in next row)

Staff Member	No. of Incidents	18	18	19	19	20	21	21	22	24	24	25	26	27	27	28	28	29	29	29	
		1520 hrs	1708 hrs	804 hrs	1100 hrs	1047 hrs	903 hrs	1402 hrs	1526 hrs	1057 hrs	1545 hrs	1420 hrs	2nd watch	230 hrs	1430 hrs	1315 hrs	1706 hrs	822 hrs	940 hrs	1000 hrs	
Officer 1	2	X										X									
Psychiatric Technician 1	2		X					X													
Doctor 1	1			X																	
Psychiatric Technician: Asian Male (unnamed)	1				X																
Officer 2	2					X	X														
Officer 3	5					X	X		X							X					X
Officer 4	5					X	X								X	X		X			
Officer 5	1					X															
Officer 6	2					Y			Y												
Officer 7	1					X															
Counselor, Male (unnamed)	1					Y															
Sergeant, Female (unnamed)	1						Y														
Officer 8	2						X									X					
Officer 9	1								X												
Officer 10	2								X	X											
Officer (unnamed)	1									X											
Psychiatric Technician: Black Male (unnamed)	1										X										
Officer 11	3											X	X		X						
Officer 12	4												X					X	X	X	
Officer 13	1													X							
Sergeant, Tall Male (unnamed)	1													Y							
Psychiatric Technician: Asian Male (unnamed)	1																X				
Officer (unnamed)	1																	Y			
Officer 14	1																			X	
Officer 15	1																			X	
Lieutenant 1	1																				Y
Sergeant 1	1																				X

**Key**

X = Failed to wear a mask properly

Y = Wore a mask properly, but was present when other staff failed to wear a mask properly

Note: All staff members listed with a number were identified by name by the incarcerated complainant, but their names have been redacted. If the incarcerated person did not name the staff member, but otherwise described them, they are referred to as *unnamed*.



2. Even if the department determined that the letter alone was not sufficient to establish a reasonable belief that misconduct occurred, it should have immediately referred the matter to the Allegation Inquiry Management Section as required by departmental policy. The hiring authority did not refer the matter to either the Office of Internal Affairs or the Allegation Inquiry Management Section. Instead, the investigative services unit conducted an inadequate inquiry and failed to ask all the necessary questions to corroborate or contradict the allegations made by the incarcerated person. The incarcerated person detailed 19 separate incidents that took place over a 12-day period, and prison investigators failed to adequately investigate any of them. The OIG dismisses the department's contention it could not establish a reasonable belief that misconduct occurred based on the incarcerated person's letter because the department decided to conduct a local inquiry and failed to adequately address whether there was a reasonable belief that misconduct occurred in any of the incidents raised in the letter.
3. The department responded the incarcerated person noted that one allegation was against an "Asian guy," then later that it was against a "Black guy," and that these statements were inconsistent. This contention is not accurate, as the incarcerated person never accused an "Asian guy" and a "Black guy" of the same specific misconduct as we will explain below.

The incarcerated person described in his letter three instances in which he observed psychiatric technicians failing to properly wear face coverings, but he did not name those individuals. He described those instances as follows:

- a. "11:00 a.m., 11-19-20, Asian male psychiatric technician, distributing medications and insulin (redacted) without face cover and with med-room door slightly open."
- b. "3:45 p.m., 11-24-2020, Black male psychiatric technician who worked (redacted) at officer work station wearing face cover on his chin with mouth and nose exposed."
- c. "5:06 p.m., 11-28-2020, Asian male psychiatric technician issued me medications in (redacted) without face covering."

The letter never indicates that any one of the psychiatric technicians involved in these instances was the same person.



During the interview, the investigators asked the incarcerated person if the staff were wearing masks during medication pass on the day of the interview (December 7, 2020) and over the weekend prior to the interview. The incarcerated person said the person distributing medication the night before had his mask on, but that he did catch him not wearing a mask about a week prior to the interview. The investigator asked if he was “Asian.” The incarcerated person said he was a “Black guy” and that the incarcerated person had caught him not wearing a mask a couple of times at the podium. The incarcerated person did not state in the interview that he was an “Asian guy” as the department claims in its reply. Furthermore, the incarcerated person’s statement was consistent with his letter in which he identified a Black male psychiatric technician who failed to properly wear a face covering while at the workstation, or podium.

The department contends the incarcerated person was inconsistent and calls into question the reliability of the information being provided. This is simply not true.

As we pointed out in our report, the investigators failed to ask during the interview if the incidents discussed were the same as those described in the incarcerated person’s letter, or if there were any other witnesses to these incidents. The department’s inadequate inquiry failed to establish that the incarcerated person was being inconsistent.

Finally, the department replied that the inconsistency makes it difficult to positively identify any staff member. However, the department ignores that the investigator was able to identify psychiatric technicians who were on duty at the time of these incidents. The investigator did not ask the incarcerated person if he could identify by photograph any of the psychiatric technicians as being the person who failed to wear a mask. As we noted in our report, investigators asked a second incarcerated person if he would be able to identify by photograph staff members who failed to properly wear a face covering at the podium. The incarcerated person said he could. There is no record the prison investigators actually followed up and asked the incarcerated person to review photographs and identify the staff members who did not wear face coverings. It is difficult to identify staff members involved in misconduct when investigators fail to take obvious and reasonable steps to follow up on readily available information.





4. The department contends it is unable to ask incarcerated persons about specific allegations without asking leading questions. A leading question is one in which the question prompts, implies, or encourages the respondent to give the desired answer. There are many ways to ask witnesses about allegations regarding a specific incident without asking leading questions, and the OIG observes investigators with the Office of Internal Affairs do so in almost every investigation.

Furthermore, the investigators failed to ask the incarcerated complainant about the allegations he raised in his letter. The department's concerns about safety are not relevant to the investigators' failure to ask specific questions of this incarcerated complainant.

5. The department contends our opinion that the inquiry was woefully inadequate is disingenuous because the investigator wrote a 21-page report, conducted 16 recorded interviews of incarcerated persons (11 of which were fewer than three minutes long), conducted unrecorded interviews of some supervisors, and reviewed attendance records. The OIG disagrees with the department that this work amounts to an adequate inquiry.

While we disagreed with the outcome of the inquiry, that is not why we described it as woefully inadequate. As we pointed out in our report, investigators failed to sufficiently ask questions concerning the incidents described in the letter written by the incarcerated person. Furthermore, they failed to follow up with the incarcerated person who said he could identify by photograph those staff members who failed to properly wear a face covering while at the podium. The investigators failed to interview the accused staff members about the allegations against them. In addition, the investigators failed to determine whether it was possible for staff members to congregate at the podium without masks and safely socially distance while eating. For these reasons and for the remainder set forth in this Sentinel Case, we have properly concluded that the inquiry was woefully inadequate.