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VIA EMAIL ONLY

March 7, 2022

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Re: *In the Matter of S.D.* (CSC Docket No. 2021-1768 and OAL Docket No. CSR 04817-21)

Dear Messrs. Gray and Chabarek:

The appeal of S.D., a Police Officer with the Freehold Township Police Department, of his removal, on charges, was before Administrative Law Judge Carl V. Buck, III (ALJ), who rendered his initial decision on January 21, 2022, recommending upholding of the removal. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

The matter came before the Civil Service Commission (Commission) at its March 2, 2022 meeting. Currently, only four members constitute the Commission. A motion was made to adopt the ALJ's recommendation and modify the removal to a six-month suspension. Two Commission members voted for this motion while the remaining two members voted against the motion. Since there was a tie vote, the motion was defeated, and no decision was rendered by the Commission. Henry M. Robert, Sarah Corbin Robert, Henry M. Robert III, William J. Evans, Daniel H. Honemann, and Thomas J. Balch, *Robert's Rules of Order, Newly Revised*, Tenth Edition, October 2000, Da Capo Press, Perseus Book Group, Chapter 2, Section 4, p. 51. Under these circumstances, the ALJ's recommended decision will be deemed adopted as the final decision in this matter. *N.J.S.A. 52:14B-10(c)*. Any further review should be pursued in a judicial forum.

Sincerely,

Allison Chris Myers
Allison Chris Myers
Director

Attachment

c: Office of Administrative Law
Records Center

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 04817-21

AGENCY DKT. NO. N/A

2021-1768

**IN THE MATTER OF S.D.,
TOWNSHIP OF FREEHOLD
POLICE DEPARTMENT.**

Christopher A. Gray, Esq., for appellant S.D. (Sciarra & Catrambone, LLC, attorneys)

Brian J. Chabarek and Timothy C. Moriarty, Esq., (Davison, Eastman, Munoz, Paone, PA) for respondent Township of Freehold

Record Closed: December 7, 2021

Decided: January 21, 2022

BEFORE CARL V. BUCK III, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On February 17, 2021, the Township of Freehold (Freehold) issued Officer S.D.¹ (S.D.) a Preliminary Notice of Disciplinary Action (PNDA) that suspended him without pay. (R-4.) S.D. was issued the following charges under the PNDA:

¹ Appellant is referred to by his initials per the terms of a Consent Protective Order issued on July 26, 2021. (C-1.)

N.J.A.C. 4A:2-2.3(a) General Causes: Subsections

2. Insubordination (failure to adhere to rules and regulations)
3. Inability to perform duties (e.g., arresting violators of the law)
6. Conduct unbecoming a public employee (violations of the New Jersey Criminal Code: use of illegal [controlled dangerous substance (CDS)])
7. Neglect of duty (use of CDS in violation of regulations)
12. Other sufficient cause (departmental rule violation)

The charges also allege a violation of Freehold's Rules and Regulations as follows:

3.1 Professional Conduct and Responsibilities

3:1.5 General Responsibilities: Members shall take all appropriate actions (c) prevent crime, (d) detect and arrest violators of the law, (e) enforce all federal, state, and local laws and ordinances coming within police jurisdiction.

3:1.7 Neglect of Duty: "Officers may be charged with neglect of duty for any act or commission in violation of law, police order, procedure or rule and regulation."

3:1.12 Obedience to laws and regulations: "Members and employees shall observe and obey all laws and ordinances, rules and regulations and orders of the department."

3.2 General Conduct of Duty

3:2.2 Alcoholic Beverages and Drugs: section (b): "Members or employees of the department shall not take drugs not prescribed and necessary for their health at any time."

3:2.2.4 "A police officer who produces a positive confirmed test result indicating unlawful drug use that is upheld after a fair and impartial hearing will be dismissed from employment."

3:2.6 "All police officers must disclose the use of any drugs (prescription or over the counter) which may impair job performance to the immediate supervisor."

Through issuance of the Final Notice of Disciplinary Action (FNDA) dated May 12, 2021, appellant was removed effective February 17, 2021. (R-36.)

Appellant asserts that the penalty of removal is "arbitrary and capricious as the allegations against Officer [D.] do not merit such an egregious penalty." And further states that:

1. He was subject to "secondhand smoke" stemming from wife using medicinally approved marijuana which would account for the positive THC results; and
2. Marijuana is no longer an "illegal" substance subsequent to the November 2020 New Jersey referendum on legalization of marijuana.

Appellant filed a direct removal appeal on June 1, 2021, to the Office of Administrative Law (OAL), where it was filed² as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52: 14F-1 to -13. The OAL noted receipt of the direct-filing removal appeal and fee on May 18, 2021.

On June 30, 2021, the matter was assigned to the undersigned. On July 2, 8, 19, and 26, 2021, telephonic case-management conferences were convened, at which time hearing dates and prehearing motions were discussed. A plenary hearing was originally scheduled to take place on July 26, and 30, and August 10, 11, and 12, 2021. Completion of reports and availability of witnesses delayed these dates, which were subsequently changed to September 8, 2021, September 13, 2021, and September 14, 2021.³ The record closed on December 7, 2021, after receipt of post-hearing briefs and transcripts. Appellant filed a waiver of the 180-day rule to allow this matter to continue to a full hearing,

² The emergency shutdown of the State of New Jersey because of the coronavirus pandemic delayed the perfection of the filing of this appeal and its assignment to the undersigned. The appeal was stamped "Received" at the OAL on June 1, 2021.

³ The transcripts of the Office of Administrative Law hearing are hereinafter referenced as follows: Transcript of September 8, 2021, hearing is referenced as "1T"; Transcript of September 13, 2021, hearing is referenced as "2T"; and Transcript of September 14, 2021, hearing is referenced as "3T."

with a limited waiver effective until forty-five days after submission of closing documents by both parties and closing of the file. This extension was confirmed by appellant's counsel on the first date of the hearing.

BACKGROUND INFORMATION

Appellant contends that the penalty of removal is "arbitrary and capricious as the allegations against [S.D.] do not merit such an egregious penalty." He further argues that he was subject to "secondhand smoke" stemming from his wife using medicinally approved marijuana, which would account for the positive test results, and that marijuana is no longer an "illegal" substance subsequent to the November 2020 New Jersey referendum on legalization of marijuana.

Respondent contends that the Township properly removed and terminated S.D., in accordance with its procedures and zero-tolerance drug policy, due to the report dated January 28, 2021, of the New Jersey State Toxicology Laboratory (Lab) which indicated that S.D. tested positive for cannabinoids in excess of the 15 ng/ml cutoff. S.D. tested positive for a controlled dangerous substance that was not listed on his medication review sheet, which confirmed a violation of the drug-testing policies of the Freehold Township Police Department (FTPD) and the Office of the Attorney General, State of New Jersey (OAG). As such, S.D.'s removal was the proper penalty.

FACTUAL DISCUSSION

For Respondent

George Jackson

Dr. George Jackson (Jackson) is the executive director of laboratories for the Office of the Chief State Medical Examiner. He oversees the law-enforcement drug-testing section of the Lab. (1T21:12-19.) The screening cutoff for carboxy-THC was 20 nanograms per milliliter (ng/ml.) The immunoassay test gives an indication of the

presence or absence of a particular drug group, and in S.D.'s case it was cannabinoids. Anything above 20 ng/ml would indicate a presumptive positive test. (1T26:9-25.)

If there is a presumptive positive test, a confirmation test is conducted by mass spectrometry. The mass spectrometry is used to identify the quantity of the metabolite, in this case, marijuana. (1T27:3-21.) The cutoff for confirmation of carboxy-THC for the Lab was 15 ng/ml. (1T27:22-24.) Jackson testified that the Lab uses the federal guidelines as detailed by the Substance Abuse and Mental Health Services Administration (SAMHSA) to establish the cutoff. (1T28:1-14.)

S.D.'s specimen, which included the sealed medication sheet, was brought to the Lab and was thereafter determined to be acceptable to be received. (1T32:20-33:23; R-6.) S.D.'s sample upon the initial testing had a presumptive positive result for cannabinoids. The test result was 53.2 ng/ml (which is above the 20ng/ml cutoff.) (1T35:13-37:2; R-7, Freehold 103.) S.D.'s sample was then subjected to gas chromatography/mass spectrometry (GC/MS). (1T39:7-12; 1T40:15-17; R-7, Freehold 121.) GC/MS testing resulted in a positive reading of 16.3 ng/ml for 11 carboxy-THC, which was considered above the 15 ng/ml cutoff. (1T41:6-16.) Jackson testified that the testing was acceptable and that the Lab's standards and all controls in the GC/MS testing were performed properly. (1T42:22-43:2.)

The Lab issued a toxicology report that identified that S.D.'s sample was positive, above the cutoff for 11 carboxy-THC, and that the medical review officer reviewed the results, and the controlled substance was not on S.D.'s medication sheet. (1T43:3-18; R-21.) Jackson testified that there are times when a positive confirmed finding is due to something on the medication sheet that an individual was prescribed. (1T43:21-44:2.) Jackson further confirmed that there have been studies regarding passive marijuana inhalation causing positive tests. (1T28:1-14.) In S.D.'s matter, the medical review officer, Dr. Falzone, did not identify any medication that would have affected the screening results and a finding for the metabolite of marijuana. (1T48:2-15; R-7.)

Jackson stated that the donor is given an opportunity to have their own testing done (on a split sample) to either verify or refute any confirmed positive finding of the laboratory. (1T48:16-50:7.)

With regard to accuracy of the control-sample results, the Lab's range of acceptable findings was a 20 percent window. Thus, if a control sample's expected concentration was supposed to be 5 ng/ml, it could come up between 3 and 7 to be acceptable. (1T53:4-25.) Whenever a control sample is run, day to day, there would be a variation in what the findings are no matter what the expected prepared concentration was. (1T59:15-60:7.) Jackson confirmed that there was a margin of error associated with the testing results. Jackson testified that in S.D.'s case the result could have been 13 or 19.

Jackson confirmed that he worked at NMS Labs (NMS) for at least seven and half years prior to becoming the director of the New Jersey State Toxicology Laboratory. He knows petitioner's expert, Dr. Isenschmid, very well. He was aware of S.D.'s split sample being tested, and that NMS Labs found a reading of 14.00 ng/ml, which was rounded down from 14.6 ng/ml, for the metabolite of marijuana. He confirmed that the testing for NMS had a variability of 5 ng/ml, which provides a result from 9 to 19. (1T62:16-63:3; 1T70:8-11.) Jackson confirmed that the AG's Guidelines require the split sample to be tested at an accredited lab, and he confirmed that NMS is fully accredited, and was fully accredited at the time of the testing of S.D.'s sample. (1T71:2-72:23; R-9 at 10.)

Jackson confirmed that the medical information sheet did not address exposure to secondhand substances, but only medications that the donor had ingested. (1T63:5-13.) He was shown the Attorney General's Law Enforcement Drug Testing Policy medication information attachment and confirmed that it was directed to medication or non-prescription medication taken by the donor in the previous fourteen days. (1T63:15-64:10; R-9.)

The medical review officer would have indicated if a donor put on his medical information sheet that he was taking medicinal marijuana. (1T66:6-17.) Jackson confirmed that respondent never sought an opinion from him as to S.D.'s wife being in

the Medicinal Marijuana Program and if this could have affected the results. He confirmed that this information would have to go to the medical review officer. He was not aware if the medical review officer was asked about S.D.'s exposure. The medical review officer did not contact him concerning the secondary testing of S.D.'s sample. (1T67:5-13; 1T69:15-70:7; 1T73:16-19.)

Jackson testified that although the Freehold Township Police Department Drug Testing Policy states that the sample must be tested within fifteen days, the Lab follows the AG's Guidelines; the sample was initially screened within fifteen business days of its receipt. (1T68:18-69:7.)

Jackson confirmed that he had been working at the Lab since December 2019, and that if the Lab's GC/MS testing had resulted in a 14.99 ng/ml reading for carboxy-THC that reading would have been reported as negative. (1T69:8-11.)

Joann Shaugnessy

Joann Shaugnessy (Shaugnessy) is an employee from the Lab. She ran the screening and confirmation test and testified that the calibrations and quality controls were acceptable. (1T86:13-88:6.)

Scott Hall

Detective Lieutenant Scott Hall (Hall) is employed by the Freehold Township Police Department and is commander of the Internal Affairs Unit. (2T89:6-20.) He has been in charge of Internal Affairs since 2016 and the random-drug-testing policy since 2018 and is familiar with the Attorney General Law Enforcement Directive Number 2018-2 dated March 20, 2018. (2T90:17-91:7; R-34.) Hall testified that if an officer tests positive in accordance with the random-drug-testing policy he is to be immediately suspended and terminated upon final disciplinary action. (2T91:12-23; R-34, section D.)

He testified that the current Attorney General Law Enforcement Drug Testing Policy was revised in December 2020 (AG Policy). (2T92:18-93:6; R-9.) Hall was

questioned on “illegal” versus “legal” drug use, and that termination is mandated for a positive test result. (2T93:7-14.) Hall confirmed that marijuana/cannabis was listed as a controlled substance that was to be tested for in accordance with the policy. (2T93:2194:4; R-9 at 11, sec. B.) Pursuant to the policy, if a law-enforcement officer tested positive for “illegal drug use” he would be suspended and, pending a final administrative hearing, terminated, as well as barred from future law-enforcement employment in New Jersey and put on the drug registry. (2T94:10-21; R-9 at 13, sec. C.) Hall testified that officers are to sign an acknowledgement to this understanding for testing positive for “illegal drug use.” (2T95:2-25; R-9 at 19.) Hall confirmed that the medication information sheet pertains to medication that the officer has taken in the fourteen days prior to testing. (2T96:2-20, R-9 at 20.)

Hall testified that Freehold has a general order related to random drug screening dated March 20, 2018 (Freehold Policy) and confirmed that S.D. signed off on the Freehold Policy. (2T98:2-99:1.) Pursuant to the Freehold Policy cannabinoids were included in the tested substances. (2T105:17-24; R-10 at 12.) Hall was asked what the consequences of a “positive test” were and confirmed that they were suspension, termination, being barred from law-enforcement employment in New Jersey, and being placed on the drug registry. (2T106:11-22; R-10 at 14-15.) Hall confirmed that officers must sign an acknowledgment for the consequences of testing positive for “illegal drug use.” (2T106:23-108:5.) Hall further testified that the Freehold Policy had a medication information sheet that requires listing of medications the officer has taken in the previous fourteen days. (2T108:6-14; R-10 at 20.) Hall testified with regard to the PowerPoint presentation related to training on the random-drug-testing policy. (2T112:6-19; R-35, Freehold 382.)

On February 16, 2021, he received notification that S.D. had failed his December 17, 2020, random drug test and it was positive for cannabinoids. He contacted the chief of police and the Monmouth County Prosecutor’s Office. It was confirmed that S.D. should be suspended and terminated upon the final disciplinary action. (2T117:1-14.) S.D. was notified, and he offered no explanation for the failed test and repeated that he did not know how this happened and that he did not smoke weed and denied trying CBD (cannabidiol) products. (2T117:15-118:1; 2T118:18-119:7.)

S.D. was suspended on February 16, 2021. (2T118:2-11; R-16; R-19.) Hall testified that the toxicology report did not indicate that anything was on S.D.'s medication information sheet. (2T119:12-21.) An Internal Affairs Complaint Notification was issued to S.D. on February 17, 2021. (2T122:2-21; R-18.) Hall issued a disposition recommendation and notified S.D. about the Internal Affairs complaint disposition and that he violated State, County, and departmental policies. (2T124:4-11; R-20.)

Hall testified as to the Applicant Notice and Acknowledgement Form with regard to the AG's Policy when S.D. applied for appointment and enrollment in the Monmouth County Police Academy. (2T130:4-12; R-29; 2T129:7-12; R-30.) Hall testified that the chief of police received notification that S.D. was suspended from the Monmouth County Emergency Response Team (MOCERT). (2T130:2-8; R-32.)

On February 17, 2021, S.D. was issued a PNDA for insubordination (failure to adhere to rules and regulations), inability to perform duties (e.g., arresting violators of the law), conduct unbecoming a public employee (violations of the New Jersey Criminal Code for use of illegal CDS), neglect of duty (use of CDS in violation of regulations), and other sufficient cause (departmental rules and regulations violations) (2T130:21-131:19; R-42), and an FNDA was issued on May 12, 2021 (2T134:6-16; R-36). Hall testified that he conducted the entire Internal Affairs investigation in three days. (2T137:3-5.) When asked if he conducted an Internal Affairs interview of S.D. in compliance with the Attorney General Guidelines, Hall testified that he had spoken with S.D. on the day that he was advised of the test result. However, S.D. was never given an administrative advisement form or a Weingarten rights form, and there was no recorded statement, nor was he advised that he could have counsel present. (2T138:4-139:1.) Hall was asked if he had any evidence that S.D. did any illegal drugs. (2T139:1-4.) There was a lengthy back and forth with the judge regarding the permissibility of petitioner to address the illegality of marijuana, although respondent repeatedly referred to the illegal use of drugs in the AG Policy and the Freehold Policy and the charges themselves. (2T139:2-145:9.) The judge only permitted the question as to if there were any evidence other than the test results, but there could be no reference to legality or illegality.

Hall confirmed that after the Lab results came back, he was never directed to get any further information from S.D. regarding the positive test result. (2T146:13-17.) Hall also confirmed that the drug-test tracking form does not indicate that there is ever a split sample. Moreover, the PowerPoint presentation to the officers did not say what happened when a split-sample test was inconsistent with the State Lab testing. (2T147:4-148:7.)

When asked if he knew that the second sample tested different than the Lab, Hall testified that he was informed by counsel. He confirmed that he and the chief had been provided this information, but he did not note it in his Internal Affairs investigation report, as he had already closed the report by then. Hall testified that he never did any follow-up investigation, although the split sample tested below 15 ng/ml. (2T148:8-149:25.) Hall testified he did not call the Lab to see what difference the second sample made, nor did he contact the Prosecutor's Office to discuss the difference of the split sample. (2T150:1-6.) Hall did testify that he believed the chief either called the Lab or the Prosecutor's Office.⁴ (2T150:7-11.)

Hall confirmed that although both the AG Policy and the Freehold Policy provide for split-sample testing, neither policy says what to do with the second-sample result, including an inconsistent result. (2T150:16-152:15.) When asked what his understanding was of the purpose of the split sample, Hall only responded that it was to test the sample independently. When asked if Freehold was obligated to accept the results of the split sample even when it mandates the type of lab to perform the second testing, the witness was not required to answer the question, as the judge stated that Hall had already confirmed that the policy did not say what to do with an inconsistent result. (2T153:3-154:9.)

In his experience, no one has ever tested positive before on a random drug test. Further, the Lab has never reached out for additional information. (2T154:14-20.) Hall confirmed that the Applicant Form and Academy Form offered into evidence repeatedly referenced "illegal drug use" with regard to a positive test result. (2T156:11-157:7.) He

⁴ The chief denied contacting the Lab or the Prosecutor's Office.

confirmed that there was no policy with regard to reporting a family member in the Medicinal Marijuana Program. Further, there was no discussion of medicinal-marijuana use in the training for random drug testing. (2T157:8-15.) S.D., since his employment began in 2007, did not have any sustained disciplinary actions. (2T157:16-158:2.) Hall further testified that there was no indication or observation that S.D. was under the influence of anything while he was working on the day of the random test. (2T158:7-11.)

S.D. was a field training officer and an instructor at the training academy in motor-vehicle stops. Hall had selected S.D. to work with him at the academy, as he was a competent and good officer. Hall further confirmed that S.D. was selected by the chief of police to be on the MOCERT team. (2T158:8-159:21.)

He was aware that S.D.'s wife was involved in the Medicinal Marijuana Program. (2T160:7-9.) Hall testified that he was aware that S.D. claimed that he was exposed to secondhand marijuana from his wife's usage. He stated that S.D. had told him about this at a softball game. Hall testified that he told S.D. to discuss this with his legal counsel. He further testified that he did not take this information back to his chief. He also did not look into whether this was a plausible explanation for the positive test result. (2T162:11-24.) Hall testified that in his capacity as the detective lieutenant in charge of Internal Affairs he did not seek any follow-up information regarding what S.D. discussed with him as to his exposure to marijuana. (2T164:5-8.) Hall confirmed that he did not take any further action with regard to the investigation after he found out that S.D.'s wife was approved for the Medicinal Marijuana Program. (2T164:21-165:4.)

At the time S.D. was notified of the test results, two months after the random drug test was taken, there was no time for him to verify what may have been going on two months before. Hall testified that at the time S.D. was told about the results he seemed surprised. (2T168:9-24.)

Kurt Baumann

Chief of police Kurt Baumann (Baumann) had been chief of police for approximately a year and eight months. (2T171:24-171:2.) He was shown the AG

Directive, the AG Policy, and the Freehold Policy and was asked to discuss the consequences of a positive drug test. He recalled S.D.'s positive test, the issuance of the suspension, and seeking his termination, as Freehold was following the Attorney General Guidelines. (2T177:21-178:24.) Baumann testified that with regard to the disposition of S.D.'s matter he reviewed the investigation documents and determined that all procedures were followed according to policy. (2T179:10-24; R-15.) He confirmed that S.D. was suspended from MOCERT. (2T180:4-8.)

The PNDA issued against S.D. included, but was not limited to, violation of the criminal code for use of illegal CDS and use of CDS in violation of regulations. He confirmed that the FNDA contained the same charges. (2T180:21-181:24; R-42.)

Baumann testified that the drugs that are tested for at random drug tests, as listed in the AG Policy, could be lawfully taken by an officer with a prescription, and he confirmed that a positive sample could be explained as legal drug use if a person had a prescription. (2T190:12-191:2.) Baumann confirmed that the drug-testing policy involves a two-step process: the first step is to determine whether there is a positive test, and the second step is to determine whether the person was lawfully using that substance. (2T192:12-193:9.)

He came to learn that S.D. had advised that his wife was in the Medicinal Marijuana Program and that he had secondhand exposure that caused his positive test result. He claimed not to know when this information came to him, but it was after he followed the AG Policy and Freehold Policy, which was when he initiated the termination proceedings against S.D. (2T193:11-194:14.) When asked what he did once he found out the circumstances of S.D.'s wife being in the Medicinal Marijuana Program and S.D.'s claim of secondhand-smoke exposure, he testified that he did nothing.

Baumann confirmed that other than the report from the Lab, he had no evidence that S.D. used any illegal drugs, and he stated that medicinal marijuana was a legal substance in the state of New Jersey. (2T197:25-198:7.) He testified that he would not change what he put on the Dispositions Recommendation Notice (R-15), that all the policies were followed.

Baumann testified that the AG Guidelines for Internal Affairs require that the target of an Internal Affairs investigation be interviewed, and that S.D. was not interviewed. (2T210:17-211:4.) He confirmed that he signed off on the Internal Affairs investigation. (2T211:6-9.) He testified that the Freehold Policy permits a second sample to be tested by an approved lab and stated that there is nothing in the AG Policy or the Freehold Policy that requires an investigation. (2T212:2-17.) Baumann testified that after he was made aware of the results of S.D.'s second-sample testing he did not contact the Lab to see if the results were accurate. (2T213:1-12.)

S.D. had no sustained disciplinary charges in his thirteen years on the force, and Baumann had no reason to believe on the day of the random drug test that S.D. was under the influence. S.D. worked for two months after the random drug test with no indication that he was using or abusing drugs, and there was no evidence of any drug dependency or abuse by S.D. to affect his performance on the job. (2T214:4-215:13.)

He never contacted the Prosecutor's Office regarding the results of S.D.'s second test being below the cutoff. Baumann testified that there was nothing in Freehold's policy that required him to do that. Baumann further testified that although he became aware that S.D.'s wife was in the Medicinal Marijuana Program, and there was a claim of secondhand exposure, he never contacted the Prosecutor's Office. (2T215:14-216:24.)

For Appellant

Daniel Isenschmid

Dr. Daniel Isenschmid (Isenschmid), a forensic toxicologist from NMS, detailed his educational background and participation in continuing education. He has been at NMS for ten years and prior to that was the chief toxicologist at the Wayne County Medical Examiner's Office. He also directed Southgate Medical Laboratory in Cleveland, Ohio. Isenschmid has reviewed many medical-examiner cases in New Jersey, and NMS has also performed work for a number of different agencies in New Jersey in Ocean, Union,

Middlesex, Bergen, Burlington, Camden, Salem, Hunterdon, and Gloucester counties. (2T18:18-19:14.)

He has done forensic research, including analysis and detection of cannabinoids in urine samples and interpretation of results in medical-examiner cases; published over twenty peer-reviewed papers; and wrote a chapter in a book on workplace drug testing. (2T19:17-20:1.)

Most of his work involves criminal matters for police agencies or medical-examiner work; he testifies as to the interpretation of the facts of a case and does not take a position on the case. (2T20:12-25.) He has testified over forty times and was accepted as an expert in forensic toxicology. (2T20:12-21:24; P-12.)

He provided a report regarding S.D.'s split sample dated August 24, 2021 (2T22:14-23:2; P-11), reviewing the data from the New Jersey State Toxicology Laboratory, NMS's toxicology report for S.D. issued on April 20, 2021, and the April 7, 2021, letter from appellant's attorneys to Freehold's counsel. (2T23:2-13.) With regard to the NMS's data, he reviewed the chain of custody; the analytical data, which included screening data and confirmation, data including the actual report; and NMS's litigation package. (2T25:8-24; P-9; P-10.)

The data revealed that S.D.'s sample was positive for the presence of delta 9 carboxy THC in a concentration of 14 ng/ml. The confirmation method used for the testing was liquid chromatography tandem mass spectrometry (LC/MS). (2T26:2-12.) He confirmed that LC/MS and GC/MS were both acceptable forms of confirmation testing. (2T27:6-10.) The raw data for S.D.'s sample was 14.680 ng/ml, and NMS Labs truncates down to the two significant figures. (2T27:11-23; P-9; P-10, SD136.) Isenschmid testified that the Lab's result of 16.3284 was analytically the same as the result by NMS of 14.00, as both samples are within the margin of error. (2T30:14-31:5.) Isenschmid explained that there is always an uncertainty of measure, and this reflects the variation amongst quality controls, pipettes, individual users, and just the general productivity of the analytical instrumentation. (2T31:7-12.) Isenschmid testified that the uncertainty of measure at NMS for this particular testing at 14 ng/ml was plus or minus 5. Isenschmid

explained that this is a snapshot in time. (2T31:20-32:6.) He confirmed that neither the number at NMS nor the number at the Lab was wrong; they were both analytically correct for that sample on that given day.

He testified to the April 7, 2021, letter to respondent's counsel, which discussed that S.D.'s wife was admitted to the New Jersey Department of Health Medicinal Marijuana Program due to health issues, and that S.D. had been in her presence when she smoked marijuana directly before his random drug test. (2T36:12-20; P-18.) He was asked to evaluate whether a positive test for S.D. could have resulted from passive inhalation of marijuana and testified that there had been numerous studies that have evaluated this issue as far back as the 1980s using a very low concentration of a THC and marijuana cigarettes. (2T36:21-37:3.)

The issue was addressed in a 2015 study sponsored by SAMHSA related to passive-inhalation exposure. (2T37:3-9.) The study looked at passive inhalation in unventilated rooms at concentrations of THC of 5.3 and 11.3 percent, and in a ventilated room at a concentration of 11.3 percent THC. Isenschmid testified as follows regarding the results of the study:

The results of which found that in an unventilated room at 5.3 percent THC there were three urine samples that were collected that had Carboxy THC at greater than fifteen nanograms per milliliter. And at a higher concentration, 11.3 percent THC, there were twenty-two samples, urine samples that were collected, that were greater than fifteen nanograms per mil. Two of which were collected twelve to twenty-two hours after the exposure and one that was collected twenty-six to thirty-hours after exposure.

And then finally, even a ventilated room at 11.3 nanograms per milliliter—11.3 percent THC, there were two urine samples that were greater than 15 nanograms per milliliter. (2T 37:15-38:3; P-13.)

If the marijuana potency was higher, closer to 30 percent, he would expect the positivity to go up as the concentration increases, depending on the particular room, and would also expect the duration of the detection time in the urine sample to increase.

Isenschmid further testified that the content of THC in marijuana today is much higher, as compared, for example, to the studies in the 1980s. (2T38:15-39:2.)

As the concentration of the THC increased so did the positivity rate. There was also the consideration of the proximity of the smoker and the non-smoker, and the duration of the exposure, especially as you would see higher concentrations for longer periods of time. (2T40:7-24; 2T44:15-20.) In a non-ventilated room, if the THC went from 5.3 to 11.3, the positivity increases, as does the duration of time that THC can be detected in the urine. (2T44:9-14.) He testified that with regard to the study, the highest confirmation result was for 57.5 ng/ml of carboxy TCH in a non-ventilated room. It was as high as 15.5 ng/ml in a ventilated room. Both of these numbers related to a potency of 11.3 percent. (2T45:22-46:4; P-13.) Isenschmid confirmed that the facts and opinions testified to and in his report were based on his experience in forensic toxicology and accepted analysis in the field. (2T48:22-49:1.)

Isenschmid confirmed that the data from the Lab appeared to be accurate. (2T55:14-56:12.) He explained that the study discussed in his report took place in a room that was ten by thirteen with seven-foot-high ceilings. In the unventilated room air circulation was cut off by taping up the ducts, and in the ventilated room air conditioning or heat was circulating. (2T56:23-57:22.) The 16.5 grams used equaled a half ounce, and it was shared by the six people in the room in the study. When asked by the judge how many cigarettes constituted 16.5 grams of marijuana, Isenschmid testified that he would not know that, as cigarettes are typically handmade, and he did not know what stores are selling.

He confirmed that the point of the study was to determine the viability of passive inhalation under extreme conditions. He stated that in his report he quoted that the "author did note the positive tests are likely to be rare and limited to the hours immediately post exposure and in conditions where exposure is obvious." (2T63:10-15.) Isenschmid testified that the study was done under extreme conditions, especially at the higher concentrations seen in marijuana today, and he confirmed, not knowing what conditions were present at the time S.D. was exposed to the marijuana smoke, that "the possibility

of a positive urine test result at greater than 15 in a ventilated and particularly an unventilated room do exist." (2T64:9-21.)

Isenschmid confirmed that a positive test in a ventilated room, as in the study with air conditioning or heat moving in a large room, had a lower degree of possibility than a positive test in an unventilated room, and he confirmed that in the study there were more positives under the extreme conditions, for example, no real ventilation as compared to a fully ventilated room, although both circumstances resulted in positive test results.

When questioned by the judge about the uncertainty of measure and the +/- 5, Isenschmid detailed how the uncertainty of measure has to be taken into consideration for every given concentration. The variance at 14 would not be same as, for example, at 50. Isenschmid explained the uncertainty of measure at NMS is from the quality assurance department of NMS and is re-evaluated at each concentration every two years. There is a calculation which takes into account all the factors for the lab, and it will be different at every lab, as each lab has different techniques and instruments. Isenschmid confirmed that the measurement has standard protocols, however; for example, with SAMHSA they don't have a requirement to determine uncertainty of measurement, and just use +/- 20 percent. (2T77:16-79:9.)

Isenschmid confirmed that NMS Lab's final result for S.D., 14.68 ng/ml, was below the cutoff that SAMHSA uses and would be considered a negative result. (2T83:13-17; 2T:85:11-22.) Isenschmid was asked the following questions related to the NMS Lab's and the State Lab's result:

Q. Based upon the data from NMS and the New Jersey State Toxicology Laboratory, Doctor, can you testify based on any degree of certainty as to whether S.D.'s results was either above or below fifteen nanograms per milliliter?

A. So, both results are valid results. One's above and one's below. That can be expected. (2T84:9-17.)

John Phelps

John Phelps (Phelps), CEO of Rayne Nutrition, testified on behalf of S.D. He has known S.D. and S.D.'s wife D.D. for ten years, as D.D. works for him at Rayne Nutrition, and he was familiar with the family on a personal level. (3T10:13-21.) Phelps testified that he wrote a letter regarding S.D. and D.D. dated July 15, 2021, and that it was completely accurate, and he stood by its content, stating he had no assistance in writing the letter. He said he had known about D.D.'s medical struggles, and/or the need for medicinal marijuana, as phrased by respondent's counsel. (2T11:17-212:18.)

Ernest Schriefer

Retired Freehold police chief Ernest Schriefer (Schriefer) was with the Freehold Police Department for forty years and chief of police for nineteen years. (3T93:3-9.) He wrote a letter on behalf of S.D., and he had hired S.D. (3T93:10-23.) S.D. was an excellent officer, and he did not recall any citizen complaints about S.D., which was a rarity for an officer. He was a hard worker and a good family man. S.D. was loyal to the Department and his fellow officers. (3T94:2-7.) Schriefer had personally nominated S.D. for Officer of the Year. S.D. was a veteran in the United States Military as an Iraqi War veteran, and Schriefer had also recommended S.D. to become a member of MOCERT, which required passing a rigorous physical-fitness exam and qualification with multiple weapons. (3T94:8-95:14.) S.D. was respected by members of the Department, and Schriefer found him to be very honest and well-liked by all his peers in the Department, as well as his supervisors. (3T95:15-23.)

Additional character-witness statements were admitted into evidence as A-16.

S.D.

S.D. testified that in June 1998, after he graduated from Freehold Township High School, he joined the Army National Guard. He had a family history of military service. After September 11, 2001, he decided to switch to active duty, which began in October 2002. He was stationed overseas in Germany before getting deployed to Iraq in May

2003, and he remained in Iraq until July 2004. (3T16:1-24.) In July 2003 he sustained an injury to his knee while being ambushed in a firefight. He served with an injured knee, which required multiple surgeries, and was medically discharged with honorable service in May 2006. (3T17:1-13.) He then took steps to become a police officer by taking the civil-service test and was ultimately employed by Freehold.

S.D. graduated from the police academy in June 2008. S.D. recalled signing the acknowledgement form for drug testing while at the academy. (3T18:25-19:3.) While working in Freehold he was a patrol officer with duties including traffic, community policing, and patrolling. He was also a member of MOCERT. The police chief at the time, Ernest Schriefer, had put his name forward for MOCERT. (3T19:4-19.)

He earned awards that included three Unit Citations, a Valor Award, a Combat Cross, a Wounded Combat Award, and Officer of the Year in 2017, and was an instructor at the academy in the areas of driving and active shooter starting in 2016. (3T20:14-24.) He was selected as a field training officer and certified in 2014 and served with the Freehold Township Police Department Honor Guard. (3T20:25-21:22.) S.D. testified that he was also a volunteer with his church. (3T22:1-5.)

S.D. and D.D. have been married for approximately eleven years. They have three daughters, ages nine, six, and two. (3T22:11-25.) D.D. has a long history of suffering from illnesses. This includes Lyme disease, rheumatoid arthritis, fibromyalgia, and gastrointestinal issues. She has had three cesarean-section deliveries and three back surgeries, which included a spinal fusion. She had an autoimmune disorder and has had blood-clotting issues. S.D. testified that D.D. has had many treatments, medications, and therapies prescribed. He testified that she has a full cabinet of medication for her illnesses. (3T23:1-25.)

At some point, it was recommended that D.D. try medicinal marijuana. S.D. identified D.D.'s medicinal marijuana card issued on November 24, 2020. (3T24:1-15.) Prior to November 24, 2020, D.D. was not in the Medicinal Marijuana Program, and she received her first prescription on November 30, 2020. (3T24:16-25:2.) Around this time,

S.D.'s daughter tested positive for COVID, S.D. was positive, and D.D. had COVID. (3T25:3-27:3; P-2; P-3.)

Initially D.D. was very sick with COVID, and after about two weeks she told S.D. that she wanted to try her medicinal-marijuana prescription, but she was afraid because she had never smoked before, and she did not know how she would react to the medicinal marijuana while she had COVID, an upper-respiratory virus. (3T27:25-28:4.) S.D. testified that D.D. first tried her medicinal-marijuana prescription on December 15, 2020, and he was present for her first try. (3T28:5-10.)

He and D.D. did not want her smoking anywhere near their children, so they went to S.D.'s car, as they wanted to stay warm. (3T28:11-29:3.) They sat in his 2016 Buick LaCrosse, him in the driver's seat and D.D. in the passenger seat, and because it was a very cold night they started the car and let the heat run on "full blast," with the car recirculating the air. (3T29:8-20.)

D.D. proceeded to light the medicinal marijuana, and while she was smoking the marijuana they were sitting shoulder to shoulder. D.D. was exhaling smoke out of her mouth and the smoke was accumulating in the car, which started to fill up with smoke. They were out in the car for thirty to forty minutes. As the car started to fill with smoke S.D. cracked his window a little bit, but even with the window cracked the car was filled with smoke and he was breathing it in. (3T30:23-31:15.)

After D.D. used her first prescription she felt much better and was able to sleep that night, without the usual pain she experienced. On December 16, 2020, D.D. again used her medicinal marijuana and it was under the same circumstances, except there was a terrible snowstorm that night. (3T32:2-9.) S.D. testified that they again went into the car to stay warm, and he accompanied her to make sure she was okay. (3T33:14-23.) Again the car filled with smoke, and they cracked the windows just a little bit because they wanted to stay warm and dry, as it was snowing heavily with strong winds. S.D. testified that again he was inhaling some of the exhaled smoke from D.D. They were in the car about thirty to forty minutes. D.D. started smoking at 10:00 p.m. S.D. testified

that he did not feel under the influence when he left the vehicle. (3T34:7-25; 3T41:19-23.)

On December 17, 2020, he reported to work, and his shift was 7:30 a.m. to 5:00 p.m. On December 17, 2020, he was notified that he would be subject to a random drug test, and he provided a sample. He signed an acknowledgment prior to signing the form. After providing his sample he completed his day at work. (3T35:1-17.) On February 16, 2021, Hall asked to meet with him in the chief's conference room and instructed him to secure his pistol, and a Department lock was put on his locker. (3T35:18-36:15.) In the conference room was Chief Baumann, the captain, Hall, Detective Sergeant Winowski, and his PBA representative, Daniel Valentine. (3T36:16-21.) S.D. was advised as to his positive drug test from the Lab.

S.D. stated that he was blown away, blindsided, and had no idea where this came from. S.D. testified that he could not get a word out, and all he could say was that he did not smoke weed and that he did not believe it. They indicated that he was a good employee and that they liked him, and initially suspended him with pay. (3T37:17-20.) There would be an Internal Affairs investigation, and he was advised of his legal avenues. (3T37:17-24.)

He was overwhelmed, and went into an office with his PBA representative, who said he could tell S.D. what to do, as S.D. did not appear to grasp what was going on. S.D. again said he was shocked and completely stunned by what just happened. (3T38:1-7.) The PBA representative explained about the PBA Legal Protection Plan and that he had to get a lawyer. S.D. testified that it was after about a half hour that he told the PBA representative that the positive drug test may have been because of his wife, as she had just gotten into the Medicinal Marijuana Program and started smoking for the first time just days before the random drug test. (3T38:20-39:2.)

S.D. testified that he did not recall how many days after December 16, 2020, D.D. smoked the medicinal marijuana, stating that maybe it was a week. Thereafter, D.D. changed her method of taking the marijuana from smoking to lozenges, as she did not like smoking. (3T39:13-40:11.)

Prior to S.D. telling his PBA representative that D.D. was enrolled in the Medicinal Marijuana Program, no one else knew. (3T40:12-16.) When asked if S.D. ever imagined that being with his wife on December 15 and December 16 would impact his job, S.D. testified that he never once thought that secondhand smoke really could affect a urine test, or anything at all really. He had never put himself in those positions before. (3T40:17-41:2.) He testified, "I just wanted to be there for my wife to make sure she was okay, you know, especially coming off COVID and smoking for the first time in her life." (3T41:3-6.)

On cross-examination, S.D. confirmed that as an officer and instructor at the academy he was aware of the AG's Policy. (3T43:13-18.) S.D. confirmed that when he was supporting his wife while she was first smoking her marijuana the kids were in the house sleeping, and they had a baby monitor in the car with them. (3T44:5-14.) S.D. confirmed that the windows were only cracked minimally in the car. (3T44:19-20.) When asked why he went with his wife on December 16, the second day she was using her medicine, S.D. testified that D.D. was still nervous about the whole procedure and unsure of herself. S.D. further confirmed that he stayed with his wife on December 16 for her safety, again confirming that she had just gotten over COVID, and they were afraid of how inhaling smoke for the first time might react with the resolving COVID infection. S.D. also clarified that any reference to his wife being okay after the first time she smoked was related to the medicinal marijuana's effect on her illness, not to her nerves and concern over her safety in using it. (3T44:25-45:2; 3T56:7-20.)

S.D. confirmed that he drove the vehicle D.D. was smoking in to work the day of the random test. The random test was taken towards the end of the day. (3T45:7-15.) S.D. confirmed that when he filled out the medication information sheet for the random drug test, he did not include any prescription medication since he was not taking anything. (3T45:16-47:3.) S.D. confirmed that he did not put that his wife was in the Medicinal Marijuana Program on the medication information sheet, as that information was not asked for. (3T46:22-47:7.)

S.D. confirmed he did not notify his superiors, anyone in the Department, or anyone in the Township that his wife was in the program in or around November 2020. (3T48:19-49:8.) He confirmed that a half hour or so after the meeting in the chief's conference room with all the superiors, he was able to get his emotions in check and take a deep breath, and he told his PBA representative that the result may have been because of D.D. His world had just turned upside down. (3T57:10-58:11.)

S.D. testified that he was aware of the consequence of a positive test result for illegal drug use. (3T49:29-53:19.)

S.D. confirmed that he had seen Hall at a PBA softball game in about May or June 2021, and he told Hall that he did not smoke and did not do this, and explained about his wife's prescription. (3T63:20-64:6.)

D.D.

D.D., S.D.'s wife, testified as to her medical history, explaining her diagnosis of Lyme disease that resulted in her being wheelchair bound. This led to severe inflammation in her joints, nerve pain, and gastrointestinal issues. (3T69:12-24.) She was later diagnosed with fibromyalgia, rheumatoid arthritis, IBD, and allergies. (3T69:25-70:4.) She has had three back surgeries, one which took place while she was pregnant. Her final back surgery was a spinal fusion, and her births were by cesarean sections, as she had a blood-clotting disorder. Since her children's births, her medical conditions have worsened, and she has had a range of different treatments and therapy options. (3T71:12-19.) She has had significant side effects from treatments that have resulted in her hospitalization. She has had problems where she would lose feeling in her hands and feet, resulting in tripping, falling, and difficulty walking, which necessitated S.D. carrying her. (3T72:5-13.)

D.D.'s doctor recommended the Medicinal Marijuana Program. She met with a marijuana doctor, who approved her for the program, and she received her medicinal-marijuana card on November 24, 2020. (3T73:1-17; P-1.) She went through coaching sessions, expressing questions about the process, and received her prescription on

November 30, 2020. She had been recommended the flower smoke, which was purportedly the quickest and most effective. Her prescription was initially to try smoking, as it was the most effective. She was told that that if it did not work out, she could try lozenges. D.D. testified that her prescription was high potency and had been called "bubble gum." (3T74:21-75:23.) D.D. testified that her concentration of THC in the prescription was listed as 26.64 percent. (3T75:22-23, 3T77:1-3.)

Although she purchased the prescription on November 30, 2020, she did not try using it until December 15, 2020, as the entire family was diagnosed with COVID, and because of her health issues and propensity for upper-respiratory infections. Additionally, the doctors were concerned about her having COVID. (3T77:5-15.) Her symptoms from COVID were serious, and she did not try the prescription until she was cleared medically. (3T77:16-25.)

D.D. testified regarding the December 15, 2020, first usage of her medicine. She testified that she was concerned about having the prescription anywhere near the children. D.D. said she told S.D. she was scared and did not want to be alone because she did not know what to expect. She did not want to be in any areas where the kids would be. Since it was December, the best option was to sit in the car, so they took the baby monitor outside with them and went into the car so she could smoke the marijuana. (3T78:5-25.) D.D. testified that on other occasions she had used the baby monitor to monitor the kids when she was outside. Once she got in the car she started smoking and the car filled up with smoke. She cracked her window just a little, as it was cold outside, and then S.D. cracked his window a little as well. They were in the car for thirty to forty minutes beginning around 10:00 p.m. (3T79:11-24.) D.D. testified that she had obtained some relief from the prescription, and this was evident because a storm was coming and usually that brings significant pain, but that did not happen. Because of the relief, she wanted to try it the next day, as a storm was on the way. (3T80:1-9.)

It was the same situation on December 16, 2020, when she smoked her prescription for about thirty to forty minutes. D.D. testified that she tried smoking again after that, but did not like the smoke, so she then switched to lozenges. (3T81:2-8.)

In February 2021 she was made aware that S.D. got the results from his random drug test. (3T81:14-16.) S.D. called her on his way home and told her that he was suspended. When asked how she felt, D.D. testified that she was numb, blindsided. She cried for about a month. (3T82:5-13.)

D.D. testified that she was smoking a joint, but she did not know how much flower she smoked. The container was an eighth of an ounce, and she did not know how many grams this equated to. When asked why it took thirty to forty minutes, D.D. testified that it was the first time she had smoked, as she had never smoked in her life. (3T85:15-86:1.) It took her the same amount of time on December 16, 2020, as she was taking her time, making sure she did not over-consume. (3T86:2-5.) D.D. testified that she smoked one joint each day. (3T86:6-14.)

FINDINGS OF FACT

The parties submitted a Joint Stipulation of Facts, and the following is therefore **FOUND as FACT:**

1. S.D. is not challenging the process of the random selection and acquisition of the samples.
2. S.D. is not challenging the acquisition of the sample that was collected as a result of the random drug screening.
3. S.D. is not challenging the drug-testing-specimen acquisition procedures, as well as the monitor's compliance with all applicable procedures.
4. S.D. is not challenging the transport of the sample to the New Jersey State Toxicology Laboratory.
5. S.D. is not challenging the chain of custody with regard to the sample prior to its arrival at the State Toxicology Laboratory.

6. S.D. stipulates to the proper form of the Preliminary (31-A) and Final (31-C) Notices of Disciplinary Action that were issued, but not necessarily the contents of the same.

7. S.D. stipulates that on May 12, 2021, he waived his right to a departmental hearing, in accordance with N.J.A.C. 4A:2-2.5.

8. The parties stipulate that the effective date of removal for S.D. was February 17, 2021.

9. The parties stipulate that S.D. filed an appeal of the Final Notice of Disciplinary Action removing him from his employment with the Office of Administrative Law on May 26, 2021.

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961.) A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it “hangs together” with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963.) Also, “[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958.)

The testimony of respondent's witnesses—Dr. George Jackson, Joann Shaugnessy, Detective Lieutenant Scott Hall, and Chief Kurt Baumann—was credible and persuasive. Their testimony was clear and concise. It was obvious that S.D. was aware of the Freehold and OAG policies, and there was no animus or prior issues with S.D.'s performance.

The testimony of Dr. Isenschmid was credible notwithstanding that his testimony dealt primarily with a study not necessarily comparable to the situation here. Mr. Phelps, Chief Schriefer, and the witness statements were persuasive as to S.D.'s character and behavior. S.D. and D.D. were also factual and comprehensive in their respective testimony. Their story was believable, and it held together.

Therefore, this is not a situation where credibility is a factor, but a situation where the test results, not challenged by either party, must govern.

Based on the documents and test results in evidence, and the testimony, I **FIND**, by a preponderance of the credible evidence, that on December 15, 2020, and December 16, 2020, S.D. accompanied his wife in a closed vehicle for approximately thirty to forty minutes on each occasion while D.D. smoked marijuana medically prescribed for her.

On December 17, 2020, S.D. reported for work and was directed to submit a urine sample for random drug testing. As part of that process, he did not report any drug or other substance use on the prescribed document which is a part of the random drug-screening process. He submitted a sample, which was divided into two parts. On February 16, 2021, S.D. was notified that the urine sample he submitted on December 17, 2020, revealed that his urine was positive for cannabinoids (THC) in excess of the 15 ng/mL cutoff.

The spilt sample was then sent for testing. The split sample revealed that his urine was positive for cannabinoids (THC), although in an amount of 14.680 ng/ml, less than the 15 ng/mL cutoff.

S.D. was aware of and knew the requirements of the FTPD and OAG Guidelines regarding illegal drug use.

LEGAL ANALYSIS

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil-service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). A civil-service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a).

This matter involves a major disciplinary action brought by the respondent against the appellant. An appeal to the Civil Service Commission requires the OAL to conduct a hearing de novo to determine the appellant's guilt or innocence as well as the appropriate penalty, if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

Appellant's status as a police officer subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1980). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Township of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

Appellant has been charged with violations of N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Appellant has additionally been charged with violations of the FTPD's rules and regulations as follows: 3.1, Professional Conduct and Responsibilities; 3.1.5, General Responsibilities; 3.1.7, Neglect of Duty; 3.1.12, Obedience to Laws and Regulations; 3.2., General Conduct of Duty: section 3.2.2, Alcoholic Beverages and Drugs, section (b); section 3.2.2.4; and section 3.32.6. (R-36.)

"Insubordination" generally denotes a subordinate's refusal to obey a supervisor's order whether by non-compliance and non-cooperation or by affirmative acts of disobedience. In re Adams, Camden Vicinage, Judiciary, CSC 2018-2946, 2019 N.J. CSC LEXIS 216, Final Agency Determination (April 24, 2019).

Here, the test results note that appellant's urine sample was above the 15 ng/ml threshold limit in violation of FTPD and OAG standards. Therefore, I **CONCLUDE** that the respondent has met its burden in demonstrating support to sustain a charge of N.J.A.C. 4A:2-2.3(a)(2), insubordination. The charge of violating of N.J.A.C. 4A:2-2.3(a)(2) is hereby **SUSTAINED**.

"Inability to perform duties" is not, strictly speaking, a disciplinary charge. An

employee must be able to physically, intellectually, and psychologically perform his or her duties. Where an employer brings a charge under N.J.A.C. 4A:2-2.3(a)(3), it is challenging the employee's ability to perform the duties associated with the position, and is seeking to remove the employee or demote him or her to a different position. However, from the employee's point of view, the outcome may be just as severe as if it were a disciplinary charge. Obviously, the outcome of this type of charge will turn on medical or performance-based evidence. The test results govern here. Therefore, I **CONCLUDE** that the respondent has met its burden in demonstrating support to sustain a charge of N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties. The charge of violation of N.J.A.C. 4A:2-2.3(a)(3) is hereby **SUSTAINED**.

"Conduct unbecoming a public employee" is an elastic phrase which encompasses conduct that "adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

In the present matter, the random urine sampling documents that appellant's sample tested positive above the threshold of 15 ng/ml. Appellant argues that his desire to support his wife, and therefore being subject to secondhand smoke and its negative effects, should exempt him from the most severe penalties called for. Appellant's arguments fail, as, intentionally or inadvertently, he did not comply with the policy. The conduct that he admitted to occurred on the two calendar days before the random sampling, and he made no note of the activity on the form accompanying his urine sample. The activity was only

mentioned when the results of the urine sample were received. Therefore, I **CONCLUDE** that appellant's actions constitute unbecoming conduct, and the charge of N.J.A.C. 4A:2-2.3(a)(6) is hereby **SUSTAINED**.

"Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform an act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military & Veterans Affairs, 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law & Public Safety, 92 N.J.A.R.2d (CSV) 214. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957).

Again, the urine-test results govern here, as detailed herein. Therefore, I **CONCLUDE** that appellant's actions constitute neglect of duty, and the charge of N.J.A.C. 4A:2-2.3(a)(7) is hereby **SUSTAINED**.

Finally, the charge of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, was sustained against S.D. This charge stems from with violations of the FTPD's rules and regulations as follows: 3.1, Professional Conduct and Responsibilities; 3.1.5, General Responsibilities; 3.1.7, Neglect of Duty; 3.1.12, Obedience to Laws and Regulations; 3.2, General Conduct of Duty: section 3:2.2, Alcoholic Beverages and Drugs, section (b); section 3.2.2.4; and section 3.32.6. As to these inclusive charges I **CONCLUDE** that the respondent has met its burden in demonstrating support to sustain a charge of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. The charge of violating N.J.A.C. 4A:2-2.3(a)(12) is hereby **SUSTAINED**.

The Attorney General Policy requires that all local law-enforcement agencies conduct random drug testing of their sworn police officers. The Attorney General Policy also requires that appropriate local authorities adopt their own random-drug-testing rules, regulations, and procedures. See also N.J.S.A. 40A:14-118. The Attorney General's Drug Enforcement Policy has not been reviewed by the courts yet, but I **CONCLUDE** that

it will have the force and effect of law on law-enforcement officers in New Jersey. See O'Shea v. W. Milford, 410 N.J. Super. 371, 382 (App. Div. 2009).

Appellant argues that:

1. He has been subject to secondhand marijuana smoke from marijuana that was legally obtained by his spouse for medical conditions detailed herein. Such secondhand smoke, from marijuana legally obtained, should not be a basis for failing a urine screen.
2. There is an inherent dichotomy here in that the State of New Jersey, through a referendum in November 2020, legalized marijuana usage, and neither the Attorney General Law Enforcement Drug Testing Policy nor the Freehold Police Department Substance Abuse Policy have been updated to reflect the legalization of marijuana.
3. The result of the split-sample testing showing a concentration of less than the 15 ng/ml cutoff should be accounted for in consideration of his penalty.

The fact is that the initial sample tested positive for cannabinoids (THC) in excess of the 15 ng/mL cutoff under the OAG and FTPD policies. As of the date of issuance of this Initial Decision, the regulations for sale and distribution of marijuana to the public have not been perfected, nor have any changes been made to the OAG policies regarding usage of marijuana by law-enforcement officers. Further, as of the date of issuance of this decision, marijuana was still illegal federally. Additionally, the Code of Federal Regulations explains the purpose and process of the split-specimen testing such as that performed by NMS Labs at the request of S.D. 49 C.F.R. § 40.177 (2021). The positive-level threshold cutoff concentrations are expressly to be excluded from consideration by the lab because the purpose of the split-specimen test is merely to confirm the presence of the drug metabolite in the specimen. That is, a split specimen shall be reported as a "positive result" when the laboratory result confirms the presence of the metabolite in the split specimen without regard to the threshold level. Split Specimen Tests, 82 Fed. Reg. 7920, 7965–67 (January 23, 2017). In that regard, Subpart N, Section 14.2, provides:

How does an HHS-certified laboratory test a split (B) specimen when the primary (A) specimen was reported positive?

(a) The testing of a split (B) specimen for a drug or metabolite is not subject to the testing cutoff concentrations established.

(b) The HHS-certified laboratory is only required to confirm the presence of the drug or metabolite that was reported positive in the primary (A) specimen.

(c) For a split (B) urine specimen, if the second HHS-certified laboratory fails to reconfirm the presence of the drug or drug metabolite that was reported by the first HHS-certified laboratory, the second laboratory must conduct specimen validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug or drug metabolite. The second laboratory should conduct the same specimen validity tests as it would conduct on a primary (A) urine specimen and reports those results to the [medical review officer].

The Civil Service Commission and New Jersey courts have dealt with this issue. In In re Pettey, Department of Corrections, CSC Docket No. 2009-2420, Civil Service Commission (March 10, 2010), the Commission determined that in the absence of any evidence, or even a suggestion, that the initial test produced an inaccurate result, the value of the split sample is significantly decreased. In Tuskusky v. Department of Corrections Training Academy, 2008 N.J. Super. Unpub. LEXIS 1443 (App. Div. Jan. 15, 2008), certif. denied, 195 N.J. 518 (2008), cert. denied, 555 U.S. 994 (2008), the court addressed the limited significance of a split-sample result. In Tuskusky, the appellant adamantly denied ever consuming drugs and contended that his due-process rights were violated by the destruction of the split sample. In that regard, the appellant argued that testing by an independent laboratory would have found his sample to be negative for cocaine. The court explained that the administrative law judge relied on George v. City of Newark, 384 N.J. Super. 232 (App. Div. 2006), and concluded that the destruction of the split sample did not violate the appellant's due-process rights. The Appellate Division affirmed, explaining:

As set forth in George, where there has been “destruction of physical evidence[]” our courts focus on three factors to determine whether a due process violation has occurred. The factors are: bad faith on the part of the government, the materiality of the evidence to the defense, and the prejudice resulting from its destruction.

Where, as in this instance, the split sample is “merely potentially exculpatory,” it is imperative that bad faith be established on the part of the agency.

[Tuskusky, 2008 N.J. Super. Unpub. LEXIS 1443 at *5–6 (citations omitted).]

Presuming, arguendo, that the results of the two tests were averaged (16.3284 and 14.680), the result is 15.5, in excess of the 15 ng/mL cutoff under the OAG and FTPD policies.

I **CONCLUDE** that I do not have the authority to unilaterally adjust the chemical parameters tested for by the NJSTL for law enforcement officers, nor to impose modifications due to methods of “absorbing” unauthorized substances. While appellant’s motive in supporting his wife are admirable, as a police officer he showed a lack of perspicacity in dealing with the situation. As a law-enforcement officer, he knew (or should have known) that being subject to marijuana smoke (whether directly or indirectly inhaled) in a closed, confined space two times in two days for periods of thirty to forty minutes each may have resulted in adverse results to his system, fitness for duty, and ability to react in a work or emergency situation—whether or not he felt any effects from the exposure.

Legality of marijuana does not necessarily demand a corresponding adjustment to the strict, zero-tolerance standards to which law-enforcement personnel are held. Those issues are to be dealt with at a different level and are not within the purview of this tribunal.

That said, the Attorney General’s Policy provides that prior to the submission of a urine specimen, an officer is required to execute a Consent Form advising him/her that a negative result is a condition of employment and that a positive result will result in: (a) the

immediate suspension from all duties; (b) administrative charges, and upon final disciplinary action, termination from employment as a law-enforcement officer; (c) an official report to the Central Drug Registry maintained by the Division of State Police; and, (d) a permanent bar from future employment as a law-enforcement officer in New Jersey. The Consent Form also advises the officer that his/her refusal to participate in the test process carries the same penalties as testing positive. Sworn officers are further required to complete a Drug Testing Medication Information Form (MIF) listing all prescription medication, non-prescription OTC medication, dietary supplements, and nutritional supplements that were ingested by the officer in the fourteen days prior to the drug test. In accordance with the Attorney General Policy, the Township adopted its own Substance Abuse Policy that mirrors the requirements of the Attorney General Policy, requiring random drug testing with a zero-tolerance-for-drug-use policy.

Appellant would have this forum conclude that lawful use of marijuana (or being subject to secondhand smoke from legally obtained marijuana) does not constitute a violation of the OAG and FTPD policies.

Appellant further stated that his failure to list his wife's medical-marijuana usage on the MIF was not an additional violation of the Substance Abuse Policy because he did not think her legal marijuana usage impacted him, as it was not his "medication," as used in the examples listed on the MIF. I **CONCLUDE** that his decision on what to list on the MIF was a knowing one, but, again, his common sense regarding the circumstances should have led him to note his exposure to his wife's medicinal marijuana on the disclosure form.

Exposure to legal drugs to the level that such exposure is reflected in approved testing or illegal drug use by someone in a safety-sensitive position is a serious offense, and the penalty should reflect the same. Indeed, refusal to even take a single drug test has resulted in an employee's termination from employment. See In re McGee, 2011 N.J. CSC LEXIS 110, at *6–7 (February 16, 2011) (upholding termination where policy did not provide for a lesser penalty when employee refused to comply with an order to submit to a drug test). Accordingly, I **CONCLUDE** that termination of appellant from his position as a police officer in the Township of Freehold because his urine-screening sample tested

positive for cannabinoids (THC) in excess of the 15 ng/mL cutoff under the OAG and FTPD policies must be upheld.

PENALTY

Once it has been determined that a civil-service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee's past record. West New York, 38 N.J. at 523–24. The past record is said to encompass the employee's reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Id. at 524. Consideration should also be given to the timing of the most recently adjudicated disciplinary history. Ibid.

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Ibid. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one's sense of fairness. Ibid. Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. Id. at 485. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious.

Here, respondent has brought and sustained charges of violations of N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Appellant has additionally been charged with violations of the FTPD's rules and regulations as follows: 3.1 Professional Conduct and Responsibilities; 3.1.5, General Responsibilities; 3.1.7, Neglect of Duty; 3.1.12,

Obedience to Laws and Regulations; 3.2., General Conduct of Duty: section 3:2.2, Alcoholic Beverages and Drugs, section (b); section 3.2.2.4; and section 3.32.6. (R-36.)

The facts in this matter are not in dispute. On December 15, 2020, and December 16, 2020, S.D. accompanied his wife in a closed vehicle for approximately thirty to forty minutes on each occasion while D.D. smoked marijuana medically prescribed for her. On December 17, 2020, S.D. reported for work and was directed to submit a urine sample for random drug testing. As part of that process, he did not report any drug or other substance use on the prescribed document, which is a part of the random-drug-screening process. He submitted a sample, which was divided into two parts. On February 16, 2021, S.D. was notified that testing of the urine sample he submitted on December 17, 2020, revealed that his urine was positive for cannabinoids (THC) in excess of the 15 ng/mL cutoff under the OAG and FTPD policies.

While appellant argues that his effort to support his wife and being subject to secondhand smoke should mitigate the penalty imposed, the fact remains that there is no dispute that, intentionally or inadvertently, he was subject to marijuana smoke. He knew it was illegal, knew the policies and procedures of the Department, and knew that he was held to higher standard as a law-enforcement officer. Further, while testimony reflects that appellant has no disciplinary record, test results documenting illegal drugs in the system of someone in a safety-sensitive position is a serious offense, and the penalty should reflect the same. Accordingly, I **CONCLUDE** that the sustained charges are sufficiently egregious to warrant the termination of appellant from his position as a police officer.

ORDER

The respondent has proven by a preponderance of the credible evidence the following charges against the appellant: N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Appellant has additionally been charged with violations of the FTPD's rules and regulations as follows: 3.1, Professional Conduct and Responsibilities; 3.1.5,

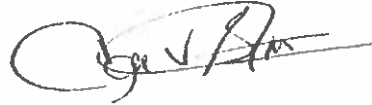
General Responsibilities; 3.1.7, Neglect of Duty; 3.1.12, Obedience to Laws and Regulations; 3.2, General Conduct of Duty: section 3:2.2, Alcoholic Beverages and Drugs, section (b); section 3.2.2.4; and section 3.32.6. (R-36.) Accordingly, I **ORDER** that these charges be and hereby are **SUSTAINED**.

Accordingly, and for the reasons set forth herein, it is hereby **ORDERED** that the appeal of S.D. is **DENIED**. It is further **ORDERED** that the termination of his employment is **UPHELD**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



January 21, 2022
DATE

CARL V. BUCK III, ALJ

Date Received at Agency:

Date Mailed to Parties:

CVB

APPENDIX

LIST OF WITNESSES

For Appellant:

Daniel Isenschmid

John Phelps

Ernest Schriefer

S.D.

D.D.

For Respondent:

George Jackson

Joann Shaugnessy

Scott Hall

Kurt Baumann

LIST OF EXHIBITS IN EVIDENCE

Joint Stipulations:

1. S.D. is not challenging the process of the random selection and acquisition of the samples.
2. S.D. is not challenging the acquisition of the sample that was collected as a result of the random drug screening.
3. S.D. is not challenging the drug testing specimen acquisition procedures as well as the monitor's compliance with all applicable procedures.
4. S.D. is not challenging the transport of the sample to the New Jersey State Toxicology Laboratory.
5. S.D. is not challenging the chain of custody with regard to the sample prior to its arrival at the State Toxicology Laboratory.

6. S.D. stipulates to the proper form of the Preliminary (31-A) and Final (31-C) Notices of Disciplinary Action that were issued, but not necessarily the contents of the same.
7. S.D. stipulates that on May 12, 2021, he waived his right to a departmental hearing, in accordance with N.J.A.C. 4A:2-2.5.
8. The parties stipulate that the effective date of removal for S.D. was February 17, 2021.
9. The parties stipulate that S.D. filed an appeal of the Final Notice of Disciplinary Action removing him from his employment with the Office of Administrative Law on May 26, 2021

For Appellant:

- A-1 DD Medicinal Marijuana Identification (S.D. 1-2)
- A-2 SD COVID Results 12/01/2020 (S.D. 3-4)
- A-3 DD COV-2 Antibody Results 2/12/21 (S.D. 5)
- A-9 NMS Certification of Authenticity of Laboratory Report dated July 9, 2021 (S.D. 68-70)
- A-10 NMS Litigation Support Package 21116040 (S.D. 71-151)
- A-11 NMS Labs Expert Report from Dr. Daniel S. Isenschmid, Ph.D, F-ABFT dated 8/24/2021 (S.D. 69-171)
- A-12 Curriculum Vitae Daniel S. Isenschmid, Ph.D., F-ABFT (S.D.172-198)
- A-13 Journal of Analytical Toxicology 2015 39:1-12 dated October 17, 2014 Non-Smoker Exposure to Secondhand Cannabis Smoke. I. Urine Screening and Confirmation Results (S.D. 199-210)
- A-14 Character Reference Chief Ernest H. Schriefer (Ret.) (S.D.152)
- A-15 Character Reference John Phelps, CEO of Rayne Clinical Nutrition dated 7/15/2021 (S.D. 162)
- A-16 Character References (S.D. 153-166)
- A-18 April 2021 correspondence from Gray to Munoz

For Respondent: (introduced exhibits)

- R-6 Office of the Chief Medical Examiner Forensic Urine Drug Testing Custody and Submission form from FTPD for Donor ID 0611800550 (Bates stamp No. Freehold000081) December 17, 2020
- R-7 Edwin H. Albano Institute of Forensic Science, NJ State Toxicology Laboratory testing data (Bates stamp Nos. Freehold000082-126) January 7, 2021 (printing date)
- R-9 State of New Jersey Office of the Attorney General Law Enforcement Drug Testing Policy (Bates stamp Nos. Freehold000217-240) December 2020
- R-10 Freehold Township Police Department General Order No. 2018-05 (Bates stamp Nos. Freehold000241-267) May 24, 2018
- R-11 Freehold Township Police Department General Order No. 2020-02 (Bates stamp Nos. Freehold000268-294) December 18, 2020
- R-12 Freehold Township Police Department General Order No. 2018-03 (Bates stamp Nos. Freehold000338-364) March 20, 2018
- R-14 Certification of Dr. George Jackson with exhibits (Bates stamp Nos. Freehold000297-304) July 6, 2021
- R-15 Internal Affairs Investigation Disposition Recommendations for FTPD File No. IA-21-02 (Bates stamp No. Freehold000305) February 16, 2021
- R-16 Memorandum of FTPD Lt. Scot E. Hall to Chief George Baumann re FTPD File No. IA-21-02 (Bates stamp Nos. Freehold000306-308) February 18, 2021
- R-17 Contact sheet for FTPD File No. IA-21-02 (Bates stamp No. Freehold000309) February 16, 2021
- R-18 FTPD Internal Affairs Complaint Notification to Officer S.D. for FTPD File No. IA-21-02 (Bates stamp No. Freehold000310) February 16, 2021
- R-19 Township of Freehold Suspension Notice to S.D. (Bates stamp No. Freehold000311) February 16, 2021
- R-20 FTPD Internal Affairs Complaint Disposition for FTPD File No. IA-21-02 (Bates stamp No. Freehold000312) February 19, 2021

- R-21 Toxicology Report, Law Enforcement Drug Testing, NJ State Toxicology Laboratory, Patient IDNJ03160000611800550 (IA file copy) (Bates stamp No. Freehold000313) January 28, 2021
- R-22 FTPD Standard Drug Testing Tracking Form for Donor ID No 0611800550 (Bates stamp No. Freehold000314) December 17, 2020
- R-23 NJ Office of the Chief State Medical Examiner, Forensic Urine Drug Testing Custody and Submission Form for FTPD Donor No. 0611800550 (IA file copy) (Bates stamp No. Freehold000315) December 17, 2020
- R-24 FTPD Drug Specimen Acquisition checklist for S.D. (Bates stamp No. Freehold000316) December 17, 2020
- R-25 FTPD Drug Testing Policy Explanation of Split Specimen Testing, Attachment E (Bates stamp No. Freehold000317) December 17, 2020
- R-26 FTPD Drug Testing Policy Medication Information Privacy, Attachment B-1 for Donor No. 0611800550 (Bates stamp No. Freehold000318) December 17, 2020
- R-27 Signature confirmation for receipt of General Order No. 2018-03 (Drug Screening Policy), initial release (Bates stamp No. Freehold000319) March 27, 2018
- R-28 Signature confirmation for receipt of General Order No. 2018-03 (Drug Screening Policy), as revised May 24, 2018 (Bates stamp Nos. Freehold000320) June 3, 2018
- R-29 Attorney General's Law Enforcement Drug Testing Policy Attachment A, Applicant Notice and Acknowledgement signed by S.D. (Bates stamp No. Freehold000321) October 18, 2007
- R-30 Attorney General's Law Enforcement Drug Testing Policy Attachment C, Trainee Notice and Acknowledgement signed by S.D. (Bates stamp No. Freehold 000322) October 18, 2007
- R-32 Correspondence to FTPD Chief George Baumann from John G. McCabe, Jr., Chief of Detectives, Monmouth County Prosecutor's Office (IA file copy) (Bates stamp Nos. Freehold000324-325) February 17, 2021
- R-34 Attorney General Law Enforcement Directive No. 2018-02 (Bates stamp Nos. Freehold000329-332) March 20, 2018
- R-35 FTPD PowerPoint presentation regarding random drug testing policy (Bates stamp Nos. Freehold000365-387)

- R-36 Final Notice of Disciplinary Action for S.D. (NJ Civil Service Commission form No. 31-C) with attached list of charges (Bates stamp Nos. Freehold000333-335) May 12, 2021
- R-39 CV for George Jackson, Ph.D. (Bates stamp Nos. Freehold000495-511)
- R-40 CV for JoAnn Shaughnessy (Bates stamp No. Freehold000512)
- R-41 Email of Chief of Police George Baumann to Monmouth County Prosecutor Professional Responsibility Unit (Bates stamp No. Freehold000010) February 19, 2021
- R-42 Preliminary Notice of Disciplinary Action for S.D. (NJ Civil Service Commission form No. 31-A) with all attachments (Bates stamp Nos. Freehold000513-515)
- R-43 Letter from Scott DeLuca dated February 17, 2021 (Bates stamp No. Freehold000516)