STATE OF NEW JERSEY

In the Matter of Jeffrey Sykes,
Hillside, Police Department

CSC Docket No. 2023-1222
OAL Docket No. CSR 10855-22

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

ISSUED: AUGUST 13, 2025

The appeal of Jeffrey Sykes, Police Officer, Hillside, Police Department, removal, effective November 28, 2022, on charges, was heard by Administrative Law Judge Matthew G. Miller (ALJ), who rendered his initial decision on July 1, 2025. Exceptions were filed on behalf of the appellant and a reply was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on August 13, 2025, adopted the ALJ's Findings of Facts and Conclusions of Law and his recommendation to uphold the removal.

As indicated above, the Commission has thoroughly reviewed the exceptions filed in this matter and finds them unpersuasive. The appellant makes myriad arguments, most of which were sufficiently dealt with by the ALJ in his eminently thorough and detailed initial decision, including claims of chain of custody issues, *etc.* These arguments need not be addressed by the Commission as it agrees with the ALJ's assessment of the credible evidence in the record in rejecting those arguments. In this regard, most of the ALJ's findings were based on his assessment of the credibility of the witnesses as compared to the evidence in the record. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 *N.J.* 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor,* 158 *N.J.* 644 (1999) (quoting *State v. Locurto,* 157 *N.J.* 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659

(citing *Locurto, supra).* The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A.* 52:14B-10(c); *Cavalieri u. Public Employees Retirement System,* 368 *N.J. Super.* 527 (App. Div. 2004). The Commission finds no persuasive evidence in the appellant's exceptions or the record to demonstrate that the ALJ's detailed findings and conclusions were arbitrary, capricious or unreasonable. As such, the Commission finds those determinations worthy of due deference and ascertains no basis in the record or the appellant's exceptions to find otherwise.

Regarding the appellant's contention that the ALJ improperly based his determinations on non-expert testimony, the Commission disagrees. The ALJ found the credible testimony and evidence in the record sufficient to establish the proffered charges. In doing so, the ALJ painstakingly considered the appellant's expert witness' opinions as to several aspects of the drug test. The ALJ concluded that those opinions did not overcome the otherwise credible evidence in the record. Further, the ALJ found, after extensive review of the evidence and relevant caselaw, that any purported procedural irregularities in the testing process or chain of custody were not fatal. Upon its *de novo* review, the Commission agrees.

The appellant also argues that the penalty of removal is too harsh as, even if accurate, the test result would have been the result of an "accidental" ingestion. The Commission rejects this contention. Regarding the penalty, the ALJ stated:

> Both the A.G. and H.P.D. guidelines call for the officer's termination (along with some attendant penalties) in situations such as this. Absent extraordinary circumstances, none of which are present (or argued) here, the only option is termination. While there are some cases that discuss either the allegedly reckless or inadvertent ingestion (and the fact pattern suggests that this could be at least a colorable defense), they are not presented here. (citation omitted).
>
> However, the facts of this case are much more in line with the Court's analysis in *In re S.D.*, 2024 *N.J. Super. Unpub. LEXIS* 266 (App. Div. Feb. 22, 2024). That case involved a petitioner's claim that his positive drug test was caused by the passive inhalation of his wife's medicinal marijuana smoke. The Court affirmed the ALJ's analysis of the law, which is effectively mirrored above, noting specifically the higher standard of behavior to which police officers are held, the acknowledgement of the expressed consequences of a failed drug test in both the A.G. and Departmental regulations and the carelessness/recklessness which led to the positive result.
>
> Ultimately, I **FIND** that termination is the only appropriate penalty for Officer Sykes. New Jersey has taken an extremely hard line

on drug usage by police officers (footnote omitted). Some might argue that the policy is unduly harsh, but no one argue that the consequences of a positive test are not well known. Further, the law is clear that the officer is responsible for what ends up in his body, no matter who provides it. Here, for whatever reason, I **FIND** that Officer Sykes tested positive for Oxycodone/Oxymorphone and he;

a. Failed to list it on his medication form
b. Failed to provide a prescription for it
c. Failed to have his split sample tested
d. Took medication from his wife without knowing what it was

Even accepting his claim of naivety as truthful, all of the above, no matter his version of events, leads to a conclusion that he was reckless in how he handled himself when he knew that the ultimate penalty for a positive test was termination.

Regarding the penalty, similar to its assessment of the charges, the Commission's review of the penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 *N.J.* 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also, In re Phillips*, 117 *N.J.* 567 (1990).

In this matter, the Commission agrees with the ALJ, and finds that the appellant's infractions are egregious and inimical to what the public expects from a Police Officer, who is held to a higher standard. Clearly, the appellant's positive drug result cannot be excused or tolerated. As such, a penalty less than removal would serve to undermine the public trust. Accordingly, the Commission finds the penalty of removal neither disproportionate to the offense nor shocking to the conscious.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Jeffrey Sykes.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 13TH DAY OF AUGUST, 2025

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Director
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSR 10855-22
AGENCY DKT. NO. N/A

IN THE MATTER OF JEFFREY SYKES,
TOWNSHIP OF HILLSIDE.

Annette Verdesco, Esq., for petitioner (Caruso Smith Picini, P.C., attorneys)

Scott D. Salmon, Esq., for respondent (Jardim Meisner Salmon Sprague & Susser, P.C., attorneys)

Record Closed: July 1, 2025 Decided: July 1, 2025

BEFORE **MATTHEW G. MILLER**, ALJ:

STATEMENT OF THE CASE

On December 7, 2021, petitioner, Jeffrey Sykes, was employed by respondent, Township of Hillside ("Hillside"), as a police officer with the Hillside Police Department ("HPD"). That day, he was selected to undergo a random drug test. Due to a combination of vacation and a bout with COVID-19, he did not undergo the testing until January 15, 2022. By letter dated February 23, 2022, he was notified that he had tested positive for oxycodone/oxymorphone. On February 25, 2022, he was suspended from his position without pay, and on November 28, 2022, he was terminated from the department.

Officer Sykes argues that, for multiple reasons, the testing process led to an inaccurate result and that the penalty of termination was excessive.

PROCEDURAL HISTORY

The record shows that on December 7, 2021, Officer Sykes was chosen for a random drug test. Ultimately, the screening test was performed on January 25, 2022, and the confirmatory testing was performed on January 31, 2022, and was determined to be positive for total oxycodone and total oxymorphone.

Hillside was advised of the positive test on February 23, 2022 and Officer Sykes was suspended without pay on February 25, 2022 and was served with a Preliminary Notice of Disciplinary Action (PNDA) (R-3), charging him with incompetence/failure to perform duties, insubordination, inability to perform duties, conduct unbecoming a public employee and failure to follow federal regulations. N.J.A.C. 4A:2-2.3(a)(1), (2), (3), (6) and (10).

A departmental hearing was held on September 26 and 28, 2022, after which Hillside served Officer Sykes with a Final Notice of Disciplinary Action (FNDA) on or about November 28, 2022, in which he was notified that all of the charges against him had been sustained and that he was being terminated from his employment effective that day. (C-2.)

Officer Sykes filed an appeal with the Office of Administrative Law (OAL) and the Civil Service Commission (Commission). The appeal was perfected on December 1, 2022, and was received by the OAL on February 6, 2022, pursuant to N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F-1 to -13, and N.J.S.A. 40A:14-200 et seq.

After preliminary conferences, the hearing commenced with testimony on June 1, 2023 and continued on June 2, June 23, September 12 and September 14, 2023. The hearing was scheduled to continue on September 26, 2023. However, on September 25, 2023, respondent requested an adjournment, advising that it was undergoing some personnel issues in the Internal Affairs Department and had frozen all disciplinary matters.

On or about October 24, 2023, the Court was advised that the Union County Prosecutor's Office ("UCPO") had initiated an investigation that involved both Chief Ricciardi and Lt. Brown and that they had been suspended pending the outcome of same. By letter dated October 25, 2023, respondent requested that he be permitted to recall Chief Ricciardi (who had testified on June 1, 2023) and Lt. Brown (who had testified on June 2, 2023 and June 23, 2023) as witnesses.

Following an October 31, 2023 conference call, the hearing was scheduled to continue on December 13, 2023. On December 5, 2023 petitioner made a Motion to Recall and to Produce the investigative files. In the alternative, petitioner requested that the records be produced for an *in camera* review in order for the undersigned to determine whether they may be relevant to the case and/or support the recall of the witnesses "for the limited subject of their credibility and related chain of custody issue". An Order was entered which led to that *in camera* review and ultimately led to a stipulation concerning those records and their impact on the case.

The hearing then concluded on December 13, 2023. Following the receipt of post-hearing argument, the record remained open pending a decision on the Motion to Disqualify Dr. Pandina. Upon the issuance of this Order, the record closed.

FORMAL STIPULATION

During the pendency of the hearing, but after he had testified, respondent's counsel learned that the chief of the Hillside Police Department ("HPD"), Vincent Ricciardi, had been under investigation by the Union County Prosecutor's Office ("UCPO") since March 18, 2022. A copy of the UCPO's report was released on September 21, 2023. Subsequent to the release of that report, Chief Ricciardi was suspended, and disciplinary proceedings were brought against him.

Also, during the pendency of the hearing, but after she had testified, respondent's counsel learned that the UCPO had commenced an investigation into the actions of Lieutenant Qiana Brown, the head of the HPD's Internal Affairs Division ("IAD"). That

report was released on October 3, 2023, and she was also suspended, with disciplinary action also being brought against her.

Given the pending disciplinary actions, their testimony and the subject matter of this hearing, the parties have stipulated that the allegations made against both Chief Ricciardi and Lt. Brown are entirely unrelated to the HPD's drug testing policies or procedures. It has been further stipulated that the allegations against Lt. Brown are unrelated to her role in any investigation conducted by the IAD, nor do they touch on anything related to this specific case.

While the allegations against both witnesses do touch upon the general credibility of both Chief Ricciardi and Lt. Brown, "they do not involve or are related to Ofc. Sykes or the Township's drug testing policies or procedures."

As was noted in the stipulation, the UCPO investigative reports were reviewed *in camera* by me, and I am in agreement with the terms of the stipulation, which is attached hereto as C-1.

TESTIMONY

FOR RESPONDENT:

Vincent Ricciardi, Police Chief, Hillside Township

Chief Ricciardi testified that he has been employed by the Hillside Police Department for twenty-nine years and has been chief since April 2017. The department is partitioned into divisions: Patrol, Criminal Investigative, Administrative and Internal Affairs. He testified that Internal Affairs ("IAD") is responsible for the enforcement of the rules, regulations and general orders of the department, as well as for carrying out the drug testing policy and compliance with both the attorney general and Union County Prosecutor's Office directives.

Currently, the only employee of the IAD is Lt. Qiana Brown, although there are investigators who are embedded with the Patrol and Administrative divisions. Lt. Brown has been the supervisor of IAD for about three years.

Chief Ricciardi testified that he is familiar with Officer Sykes, who was hired in July 2014, about three years before he became chief. While he does not have direct supervision over him, his impression was that he was an "average" officer, although he had been involved in "an unusually excessive number of motor vehicle accidents with our police cars." (T1 at 12:7–12.)

Hillside has a departmental policy concerning drug testing, which is required by both the New Jersey Attorney General's Office ("A.G." and/or "A.G.'s Office) and the UCPO. The HPD policy mirrors the A.G.'s Law Enforcement Drug Testing Policy and includes a list of prohibited substances that cannot be in an officer's system while they are working. Chief Ricciardi continued that in 2018, the A.G. instituted a program of random drug testing for all law enforcement officers in New Jersey. Effectively, the policy is that as a condition of employment, an officer must test negative for those substances.

Chief Ricciardi is familiar with the A.G.'s policy and testified that the HPD policy was promulgated shortly thereafter, since they had been given a compliance deadline by the A.G.'s office. In reviewing the policy, he testified that it is mandated that no less than ten percent of the police department be subjected to random drug testing annually and that this is exactly what Hillside does. More specifically, Hillside performs biannual random drug testing of ten percent of the force, regardless of rank or assignment. Even the date of the testing is random; he simply picks a day, goes into internal affairs and says, "Let's just do a random today." (T1 at 18:23–25.)

Lt. Brown is the only person responsible for conducting the test, although both he and representatives of each of the police unions are present during the lottery process, which determines who is randomly selected for the testing.

As for Officer Sykes, Chief Ricciardi testified that he was selected during the December 7, 2022, random test selection. The HPD uses a computer program called

RandomWare, which is utilized by numerous police departments, for the selection process. The HPD has had RandomWare since the onset of the random drug testing policy. He had first heard of the program from the Clark (N.J.) Police Department. The program selects ten percent of the force for drug testing, and it also selects one of those selected for the drug testing for random steroid testing. For the December 2022 test selection, Officer Sykes was one of the seven officers selected for the drug test, but he was not selected for the steroid test.

Although Chief Ricciardi did not recall which union representatives were present when the RandomWare program was run that day, it is usually Captain Benjamin Niewinski from the supervisor's union and Detective Alan Lu from the patrolmen's union. Those who are present sign the back of a form, but are not told who was selected for testing, nor are they permitted to even disclose that testing was to take place. The only two people who know the identities of those selected are he and Lt. Brown.

As for the testing itself, Chief Ricciardi testified that if a selected officer is on duty, he will be tested right then. If they are not working, they will be tested when they come in. Officer Sykes wasn't tested until January because he was off-duty when his name was pulled. He wasn't entirely sure why there was such a long delay, but it may have been because it was the holiday season. His only other role in the testing would be if an officer tests positive. In his history as chief, there had only been two (other) positive tests, but both were for prescribed medications for which the officer provided appropriate documentation. He was not present during Officer Sykes' test, but it was monitored by Sgt. Anthony Caravano.

Chief Ricciardi testified that when an officer tests positive, a letter is sent from the state toxicology laboratory to Lt. Brown. She would then notify him either in person or by phone. Since Officer Sykes was off-duty, he was advised by phone. At that point, the department had never had a positive test "without having medical documentation or having it listed on his medical form." (T1 at 25:9–12.) He knew that Officer Sykes had to

be immediately suspended per the A.G.'s policy, and that is what happened. His equipment was taken, and a Loudermill[1] hearing was scheduled.

Per both the HPD and A.G.'s policies, he knew that following the immediate suspension, Officer Sykes had to be terminated following a final disciplinary action. Further, a report concerning the positive test had to be sent to the Central Drug Registry, which is monitored by the New Jersey State Police. While Chief Ricciardi testified that he consulted the A.G.'s drug testing policy before suspending Officer Sykes, he did not consult with anyone concerning the steps to take because they are "very clear." (T1 at 27:21.) He felt it was "kind of a strict liability-type situation where if . . . a law enforcement officer does not test negative then these are the steps that must be taken." (T1 at 28:3-6.)

Chief Ricciardi then reviewed the H.P.D.'s General Order for Law Enforcement Drug Testing, which he had drafted and which had been published to the HPD on PowerDMS on November 18, 2019. When it was in the process of being drafted, the department was going through an accreditation process and had hired an outside consultant to ensure that everything was in compliance with all laws, regulations and directives. Once the policy is published on PowerDMS, officers have a set period of time to review it and electronically sign off on it. He testified that the HPD policy is verbatim to the A.G.'s policy.

Chief Ricciardi prepared the PNDA and it was served by Cpt. Niewinski. He had learned that Officer Sykes had tested positive from Lt. Brown via telephone and later he saw the letter from the Medical Examiner's office. A Loudermill hearing was held, with Chief Ricciardi acting as the hearing officer. Officer Sykes was represented by counsel and Lt. Brown presented Hillside's case. As a result of the hearing, Chief Ricciardi determined that there was sufficient evidence to suspend Officer Sykes without pay.

On cross-examination, Chief Ricciardi testified that Officer Sykes was selected for testing during the second part of the 2021 testing regimen. The testing took place in January because he was off-duty until then and had been sick in January. As for the use

[1] Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985). An excellent explanation of the Loudermill hearing process is included in In re Picariello, 2012 N.J. Super. Unpub. LEXIS 1624 (App. Div., July 9, 2012) at *7 n.1.

of RandomWare, the only requirement for the software (or whatever process was going to be used) is that it produces unbiased results. After talking with the manufacturer and researching the program, he was convinced it would produce random results.

The Social Security numbers of the officers are placed in the system (no names), and you just direct the software to pick out seven names for drug testing and one of those names for steroids as well. Only sworn law enforcement officers are tested; the policy does not apply to civilian workers, but all non-civilians, regardless of rank or assignment, are included in the software. Chief Ricciardi testified that Hillside currently has sixty-three officers, so ten percent, rounded up, would be seven.

It is very simple software that does not need updating and is only on the IAD computer, which is only accessible by Lt. Brown. He was unsure as to whether the software had ever been ported to a new computer, but if it had, it was not recently. The IAD office is one of the most secure in the department, and no one is allowed in without the supervisor being present.

Chief Ricciardi confirmed that this was a random test and that there was no suspicion that Officer Sykes had consumed drugs or had shown up to work intoxicated. He had never been selected for a random drug test previously and Chief Ricciardi had never had a reason to order a "for cause" drug test for any member of the department.

Chief Ricciardi then reviewed the policy as to what substances must be tested for, but he could not distinguish whether oxycodone and oxymorphone, being listed together, should be considered a category of drugs. However, since the letter from the toxicologist listed both substances, he assumed that they were different, although he reiterated that he was not an expert. He just read the report "plainly as anyone would." (T1 at 56:20.)

As to the collection of the sample, Chief Ricciardi testified that Lt. Brown would summon a monitor (here, Sgt. Caravano) and let them know that a sample needed to be collected. Lt. Brown was trained on the procedure and she would then train the monitor. He believed that Lt. Brown was trained by the UCPO when they changed the type of collection cups to split-specimens. Chief Ricciardi has never acted as a monitor but was

familiar with the cups because he had been selected for random testing previously. Once the sample is obtained, the cups are stored in the IAD refrigerator until they can be transported to the state lab in Newark.

He authored the February 25, 2022 PNDA, which was issued at least a few days after he learned of the positive test. It would not surprise Chief Ricciardi if the date of the test results was February 23, 2022. He believed that the sample had been collected on January 15, 2022. He did not know when the sample was taken to the lab in Newark (which likely would have been done by Lt. Brown). Pending transportation to the lab, the sample was kept in the IAD refrigerator, which was only accessible by Lt. Brown. He has never been told of any issues with the appliance and it is still in use today.

Chief Ricciardi reiterated that he was not involved in the collection or transportation of the sample and assumed that it was conducted properly but was not one hundred percent positive that it was. He also could not guarantee that the testing was performed properly by the lab.

The focus of the questioning then shifted over to the medication sheet that an officer completes prior to the testing, which gives him the opportunity to list any medications that may be present in his system at the time of the testing. Chief Ricciardi confirmed that officers are aware that they are required to list all medications, both prescription and non-prescription (as well as supplements), that they have taken in the past fourteen days. Officer Sykes did complete the form in conjunction with the testing.

Once the form is completed by the officer, no one, including the monitor, sees it. Instead, the officer being tested completes it, puts it in an envelope and seals it. It is only opened if there is a positive test. Chief Ricciardi believed that he had seen the form, but he did not recall the actual form itself. He reiterated that he is not involved in the actual testing and only reacts to a positive result and then it is pursuant to the HPD and A.G. policies, which are "substantively" exactly the same. (T1 at 73:9.)

Chief Ricciardi keeps himself apprised of any updated policies but not of case law concerning inadvertent consumption. He reiterated that if it is not in the A.G. or HPD policies, he does not follow it.

Once again, Chief Ricciardi testified that he believed that Officer Sykes was out sick in January and acknowledged that he had tested positive for COVID on January 4 and 5, 2022. He was unaware of any impact that these COVID test results would have had on Officer Sykes's physical or mental condition. Tracking back to the medication form, Chief Ricciardi acknowledged that if an officer was unsure of what medications he was taking, he could not fully complete the form.

Finally, Chief Ricciardi confirmed that if an officer selected for a random test is not on duty, Lt. Brown holds the name in her office until he reports in, at which time the monitor is advised and the specimen is collected. The officer does not get any forewarning of the test.

Sorin Diaconescu, forensic toxicologist (New Jersey Office of the Chief State Medical Examiner)

Mr. Diaconescu testified that he is a forensic toxicologist at the New Jersey State Crime Laboratory and works under the supervision of the laboratory director to schedule testing and perform positive and negative test certifications. He has been in that position since 2016. He was originally a lab technician in the same office from 2001 through 2007 before taking positions in other toxicology labs. He received his undergraduate degree in chemistry and biochemistry from Montclair State University in 1999 and his graduate degree in forensic science from John Jay College of Criminal Justice in 2005.

He also has both bachelor's and master's degrees in forensic science and has been employed in clinical and forensic toxicology for over twenty years. He is a member of the Society of Forensic Toxicologists and underwent in-house training at the State lab, which included specimen receiving, screening, chain of custody and confirmation testing. More recently, he has been trained in certifying positive and negative cases by the lab director. While he used to perform the testing himself, currently his primary duties

concern certifications, "to ensure that the testing was done correctly and then sign out cases as needed." (T1 at 92:17-19.)

As to how the testing system works, Mr. Diaconescu testified that a specimen can be delivered by mail, courier service or in person. Each specimen is inspected to ensure it meets certain criteria, including chain of custody. It is then given an accession number in the computer and undergoes an initial screening test. If the result of that test is negative, it is reviewed, and a final report is issued. If the screening test is positive, then a confirmatory test for any substance that tested positive on the first test is performed. Once the confirmatory test is completed, the result is reviewed by the MRO, who will review the medication sheet submitted by the officer to see if the positive test can be explained by that.

Consistent with the A.G.'s guidelines, Mr. Diaconescu testified that the State lab is the only one permitted to screen for illegal drug use by law enforcement officers and that it correctly lists the drugs that will be tested for. When there are requests for anabolic steroid testing, the lab refers that to outside labs, since it does not have the ability to perform that analysis.

When drug tests are performed, there is no way for the individual conducting the testing to identify the officer by name. Rather, the donor ID is composed of three different fields consisting of nine characters that are specific to the requesting agency (the ORI number). The characters consist of the donor's date of birth and the final numbers of the donor's Social Security number.

As for the chain of custody, Mr. Dioconescu testified that there is a criterion for acceptance. Once that is met, it is accessioned in the lab's computer system and the person receiving the specimen will print and sign the form and indicate that it has been received. The system then keeps track of the chain of custody and any of the aliquots[2] or portions of the specimen that are utilized throughout the testing process. However,

[2] Aliquot – a fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen. https://www.nationaldrugscreening.com/blogs/dot-terms-and-definitions/ (last accessed March 23, 2025)

there are aspects of the chain of custody that are performed manually throughout the process.

For every donor, the lab receives two urine bottles that are produced at the same time. First, they test one aliquot; if it tests negative, the testing is over. It is called a split specimen because the "kits . . . include a collection cup into which the donor voids urine and then that collection cup is used to pour into two separate containers." (T1 at 106:1−7.) They are sealed with locking caps with security seals that are provided on the submission form. If the test returns positive, the donor has the option of having the second aliquot tested for the same substance for which the first one tested positive.

Mr. Dioconescu then testified as to the State lab's training aids for the collection of specimens. It includes directions where the donor actually splits the specimens so that the monitor does not have to handle them. This eliminates concerns about hygiene as well as contamination. He was involved in the preparation of the document by extracting the text from the A.G.'s guidelines and inserting demonstrative pictures and he believes that it is in compliance with those guidelines.

In reviewing the specimen forms for this case, there is no indication that the split B sample was tested. On the form, Jeannie Smith's name appears; she is an aide who works in the receiving part of the lab, while Ana Arango was the technician who mainly performs the initial screening. She resigned in 2022. Finally, Joann Shaughnessy is the forensic toxicologist who primarily worked with confirmatory testing on samples that tested positive on the initial screening test. She retired in 2022.

In reviewing the form, there is no indication that there was a break in the chain of custody.

On cross-examination, Mr. Dioconescu first confirmed that as part of his job duties, he performs positive and negative case certification, which he described as "making sure that all the testing was performed, all the chain of custody (is) maintained before we release a positive or negative report to . . . our clients." (T1 at 119:12−15.) He does not perform the actual testing itself on a regular basis but will do so on rare occasions if the

lab is short-staffed or backlogged. He has been in his role as the certifying scientist since the second half of 2022. Prior to that, his duties would have included overseeing the testing schedule, method validations, writing standard operating procedures and staff training: essentially the same duties that he has now, absent the case certifications.

The policy and procedures document that he created was authored within the last three or four years to coincide with the introduction of the split-specimen selection kit. It was designed to be a training aid and was provided by the lab to police/law enforcement agencies.

Mr. Dioconescu then testified about the importance of chain of custody in drug testing cases. It accounts for the integrity of the specimens as it "keeps track of who, when and how and why any kind of handling occurred with that specimen." (T1 at 130:14–18.) He conceded that if the chain of custody were interrupted, there might be an issue with the reliability of the test result.

He then reviewed the lab's intake process, including the criteria for rejecting an incoming specimen. The security seal must be present and unbroken, the donor's initials and date of collection must match and be legible, the samples must be similarly colored, etc. Mr. Dioconescu then testified that every specimen is submitted with a form, two specimen containers labeled "A" and "B" and a sealed medication sheet. The person receiving the sample would check the date on the specimens against the collection date on the monitor/agency acknowledgment. As soon as the specimen is delivered, it is accessioned into the computer and then placed in a refrigerator until it is ready to be tested, which would be within a few days.

The "A" specimen would then be taken to the lab for the initial testing. The specimens are scanned into the LIMS[3] system, which is used to accession urine specimens and generates the electronic chain of custody. There is also a manual chain of custody that is maintained throughout the confirmation testing process or the

[3] Laboratory Information Management System.

secondary testing, which is handwritten by everyone who has touched the same. It is an internal chain of custody that is utilized during phases other than screening.

For Officer Sykes' specimen, the form indicates that Jeanne Smith received the sample and started the accession process on January 18, 2022, at 5:38 p.m. and generated a label for a screening aliquot. Then, on January 19 at 9:25 a.m., she retrieved the specimen from the walk-in refrigerator. The next entry on the sheet is on January 25 by Ann Arango and while he assumed that the specimen was in storage at that time, he cannot determine what was actually happening to it.

Ms. Arango was a lab technician and performed the test on January 25, 2022, at 9:00 a.m. The screening aliquot was then discarded at 1:53 p.m.

The handwritten form provides additional detail concerning the chain of custody for any confirmation testing that may be required if the initial test is positive. If the initial testing is negative, there would be no further testing and therefore no handwritten form.

In reviewing the A.G.'s guidelines, Mr. Dioconescu confirmed that the lab screens for:

a. Amphetamines
b. Barbiturates
c. Benzodiazepines
d. Cocaine
e. Marijuana/Cannabis
f. Methadone
g. Opiates
h. Oxycodone/Oxymorphone
i. Phencyclidine

As for oxycodone and oxymorphone, he confirmed that chemically they are two different substances, although they are related. He testified that if the screening test is

positive for this category of drug, it is not possible to determine which of the two was detected. That can only be accomplished with a final confirmation test.

Mr. Dioconescu again reviewed the testing procedure, testifying that initially, the screening test results in either a negative or presumptive positive test "based on whether or not the assay detects any substance listed on the previous page." (T2 at 9:7-9.) However, since this is a screening test only, it cannot be reported as a positive with a much more specific confirmatory test. If that confirmatory test is negative, "the final report would just show that the test for oxycodone/oxymorphone would be negative." (T2 at 10:10-13.)

Mr. Dioconescu confirmed that all of this testing is performed on the "A" sample and that "(t)he "B" sample never gets tested or opened by our laboratory unless it's a specific request by the donor or donor's legal representative. So yes . . . all the testing that we do is out of bottle A." (T2 at 11:6-10.) He also noted that if there is a request for the "B" sample to be tested, the State lab doesn't perform the testing; rather, it is sent to a lab of the donor's choice to be tested independently. It was further confirmed that the "A" sample is not split into aliquots at the onset, but rather that aliquots are retrieved from the sample as needed.

The focus then turned to the medication information sheet, which is completed by the donor at the time the sample is taken. It is only used by the MRO to determine if a positive test is explained or justified by any substance listed on the form. It is delivered in a sealed envelope. The MRO only gets involved if the confirmation test is positive for any substance. Only then would the envelope containing the medication sheet be unsealed and the substances listed on it compared to the substance(s) for which the officer tested positive. The MRO is provided with a copy of the screening test results as well as a copy of the confirmatory test results. He then reviews the donor's medication information form and ultimately completes the MRO certification form. He does not review the chain of custody form or notes.

Mr. Dioconescu testified that he does not know how the MRO determines whether the listed medications justify or explain the positive result or not.

While the handwritten chain of custody notes are maintained in a case folder, the only document provided to the testing organization is the final test report. Everything else is retained by the lab. He also confirmed that in order to "see" the entire chain of custody, one would have to review both the electronic document and the handwritten notes.

Andrew L. Falzon, M.D., New Jersey Chief State Medical Examiner

Dr. Falzon testified that he has been New Jersey's Chief State Medical Examiner since 2015 and oversees the death investigations system in the State. He also directly oversees two of the ten medical examiner offices and is responsible for the oversight of the New Jersey State Toxicology Lab, which, as part of its duties, "provides urine drug screening for the law enforcement drug testing program that is overseen by the Attorney General's Office." (T2 at 34:16–18.)

He received his M.D. from the University of Malta in 1986, which was followed by a four-year residency in clinical pathology at the University of Mississippi Medical Center and a one-year fellowship in forensic pathology at the University of Birmingham. He is a certified medical review officer and is Board-certified in anatomic, clinical and forensic pathology.

Concerning drug testing, Dr. Falzon is not only the lab director, but he also serves as the MRO, so in the case of a positive test, he is the one who reviews the medication log sheets and reviews them for anything that would explain the findings. After reviewing the medications, he would check off a box on the Medical Review Officer Certification Form as to whether there is a drug that explains the findings. He completed that form in this case. The only writing on the form that is his are the two checkmarks under "Not Listed on Medication Sheet" and his dated signature. He did not recall receiving any additional documentation in this case.

Dr. Falzon testified that for a test to be positive, there would have to be a minimum baseline amount (in nanograms per million), but the important thing is that it is listed as being positive or negative; he does not take into account whether the amount detected is

near the cutoff or not. Those levels, however, are set by the State and are the same as recommended by the United States Department of Transportation ("USDOT") for its testing program. The area on the form for MRO comments is used when something needs clarification and is often used for specimens that test positive for THC.[4]

Concerning the medication form submitted by Officer Sykes, Dr. Falzon recalled that he had not listed any prescription medication but had listed four over-the-counter medications. He did not recall seeing Vicodin on that list and while he did recall seeing Advil and NyQuil, he was not certain of what exactly was listed.

Dr. Falzon then testified concerning the possibility of false positives, but he first reviewed the testing procedures at the lab. He noted that first, a very sensitive, but not necessarily specific, screening test is performed. When something tests positive there, "you run the risks of false positives," so you then move on to a confirmation test. In his experience since taking over as chief state medical examiner in 2015, he is unaware of any false positive tests.

On cross-examination, Dr. Falzon reviewed the Forensic Urine Drug Testing Custody and Submission Form, which is part of the chain of custody as well as an identifier for the sample donor. The focus then turned to the testing of oxycodone and oxymorphone. These are both drugs in their own right, but significantly, oxymorphone is a metabolite of oxycodone. Dr. Falzon testified that if you take oxycodone, "you could have oxycodone and oxymorphone in your system because the body breaks down oxycodone into oxymorphone." (T2 at 51:4-7.) Effectively, if you consume oxycodone, you can test positive for: 1. oxycodone only, 2. oxycodone and oxymorphone (because some of it has been metabolized) or 3. oxymorphone (because all of it has been metabolized). However, if you only ingested oxymorphone, you would not test positive for oxycodone. You would not be able to differentiate between the two drugs, however, if the donor took both.

[4] Tetrahydrocannabinol – the primary psychoactive ingredient in marijuana.

If the screening test is positive, it is considered a "presumptive positive," and it is considered a positive until proven otherwise. The confirmatory testing is performed to confirm the presumptive. Dr. Falzon explained that as part of the testing process, they test a blank sample that has no drugs so as to ensure that the equipment is properly calibrated and functioning. He testified that every time the equipment is used to test a batch of samples, the protocol would be to do a negative run and a positive run. If there is a specimen that tests positive, they need to ensure that there is no carryover of drugs from one specimen to the other.

Dr. Falzon agreed that if there were irregularities or deviations from the lab guidelines, that may be indicative of a potential problem with the procedures. However, as the MRO, he was not involved in the testing procedure itself and never interacted with the actual specimen but would have to rely on others to provide chain of custody information, etc.

He also confirmed that there is only a single immunoassay testing device at the facility and that while the negative and positive samples are not directly associated with a specific donor's batch, they can be matched by the date and time of the runs. The testing performed is gas chromatography/mass spectrometry ("GC/MS"), and it has been in use for many years.

Dr. Falzon testified that Vicodin/hydrocodone is not a separate class of drugs but would be detected by the test for opiates. While oxycodone is a synthetic opioid, the opiate testing is only sensitive enough to pick up related drugs like heroin, morphine, codeine and hydromorphone. There has to be a very high level of oxycodone to elicit a positive test with the opiate test, so it is tested separately.

In preparing the certification form, Dr. Falzon did not review the GC/MS worksheet, but he reiterated that he only reviewed the positive result and made a determination if it could be explained by anything listed on the donor's medication sheet. He did not know who performed the actual testing and never spoke to any lab personnel about it.

However, Dr. Falzon did review some of the names on the chain of custody form. Gina Smith is a lab aide who sits in the specimen receiving section of the lab, and she logs them in. She does not perform any testing. Joanne Shaughnessy is a now-retired forensic toxicologist. Anna Arango was a former lab technician and would have been involved in testing. It was usually Ms. Shaughnessy who performed the testing, and he would rely upon the accuracy of her work in making his conclusions.

Dr. Falzon testified that he was aware of instances where compounds of NyQuil and other cold medications have triggered false positives, but only on the immunoassay ("IA") screening procedure. Returning to the GC/MS Confirmation Data Review Worksheet, Dr. Falzon acknowledged that while it was not one he reviewed, it was authored by Ms. Shaughnessy.

Dr. Falzon testified that the specific amount of each drug detected is not important to him, as long as it is above the legal threshold, although that information would have been available to him if he had wanted to see it. While he could not guarantee that no errors were made during the testing, he relies on the fact that the lab is accredited by the College of American Pathologists and has standard operating procedures in place and he is confident in the results.

He then explained some of the terms on the data review worksheet, including the carryover check. This ensures that if there is a positive finding with one probe, that positive does not "follow" the probe into the next specimen and cause a false positive.

The focus of Dr. Falzon's testimony then returned to the test results, with a review of the presumptive test reflecting a score of 124.2198 (and therefore a positive result for OXY 100/oxycodone). The patient ID on that page matched that on the MRO certification form. The GC/MS test result was then reviewed, which reflects that the relevant sample was positive for both oxycodone and oxymorphone. There were no other positive results for this sample, and Dr. Falzon testified that while the confirmatory testing was only performed to detect the presumptively positive substance, it would have picked up any other substances, such as hydrocodone (Vicodin).

Dr. Falzon then reviewed the chain of custody form for the confirmation batch, which was completed by Ms. Shaughnessy and is largely self-explanatory. He also confirmed that there is no specific "Vicodin" test and that he only reviewed the actual test results and the medication sheet before certifying the results.

Qiana Brown (Lieutenant, Hillside Police Department)

Lt. Brown testified that she has worked for the HPD for over twenty years and is currently a detective lieutenant. She has been the Internal Affairs ("IA") supervisor and accreditation manager since 2019, having previously been a shift commander. She has been involved in IA since 2018.

Her duties as the IA supervisor include being in compliance with reporting to the UCPO as well as being responsible for receiving IA complaints, assigning and conducting investigations and maintaining all IA records. This also includes conducting/running the drug testing program. Three other officers work with her and two captains are also capable of performing investigations. Multiple officers can assist with the drug testing program as monitors.

Lt. Brown testified that she received training from the UCPO on the current drug testing policy, including split kits, the testing itself and the appropriate forms, including chain of custody. She has also taken multiple courses and been trained on the A.G. guidelines and the HPD policies and procedures. She underwent training with the UCPO in 2022, but she also underwent training in January 2021 when the split kits were introduced.

She then reviewed HPD's drug testing policy, which was authored in conjunction with an outside consultant to be compliant with the AG guidelines. The policy in effect at the time of this testing has since been revised. Hillside has a procedure to randomly select officers for testing. Once the Chief dictates that testing is to be performed, one member of each police union will be present to witness the selection process, as will Chief Ricciardi and herself. She activates the selection software and also reviews the procedures, including potential discipline if they disclose that the testing is to take place.

The union reps are also shown the list of personnel to ensure everyone is listed and that the correct percentage (minimum of ten percent of the department) is selected.

Lt. Brown confirmed that Hillside uses the RandomWare software (selected by Chief Riccardi in 2018), which runs a random selection of Social Security numbers to select the officers who will be subjected to the test. She inputs the list into the IA computer, which no one else has access to.

Lt. Brown knows Officer Sykes and testified that he was hired in 2014. She is unaware of any other times he was selected for random testing. She was involved in his selection for the 2021 random test and recalls that the sample was not obtained until January 15, 2022. The delay was because he was on vacation and he did not return until a day or two before he provided the sample. He was advised of the test that night and she did not recall any conversation or reaction from him about it. Officer Sykes accompanied her back to the IA office and she advised him that he had been selected for testing. He was provided with a notice and acknowledgement to read and sign, which was then countersigned by her and a witness. Officer Sykes did not have any questions about the form, which includes the line, "I understand if I produce a positive test result for illegal drug use it will result in my termination from employment." (S-1.)

Lt. Brown testified that she then writes the assigned case number on the form, provides the medical information sheet (which she does not see) and provides a blank, unsealed envelope for the officer to place the information sheet in and seal, while placing the date and their initials on it. She testified that Officer Sykes was aware of the policy since he had to acknowledge that he had reviewed it on the PowerDMS system. She also reviewed the form, which confirmed that he had reviewed those policies.

As for the actual testing, Lt. Brown then showed a sample collection cup to Officer Sykes along with documentation (including pictures) on how to use it. Some officers had never used a split kit, so the process was explained and demonstrated for the officer and the monitor. Officer Sykes then picked his own sealed split kit cup out of the box that she had in her office, and they then reviewed the collection process. The officer then goes

into the bathroom, and a same-sex monitor accompanies him and again explains the collection process.

The monitor in this case was Sgt. Caravano, and this was the first time he had performed this task. In explaining how the testing would work, Lt. Brown utilized the Medical Examiner's Urine Specimen Collection Procedure guidance, had that document in front of her and reviewed the entire document with both Officer Sykes and Sgt. Caravano.

There was then additional paperwork for her to complete, including the time the sample was placed in the cube-style, compact refrigerator located in the IA office. It was purchased in approximately 2017–18, and there have been no issues with it. She testified that she is the only one with access to it and that it is locked, with only she and Chief Ricciardi having a key to it.

The Drug Testing Collection Form was completed partially by her and partially by Sgt. Caravano, with some of it completed pre-test and some post-test. The monitor actually takes the form with him and completes the appropriate aspects after/as the sample is provided. Once the officer is ready to donate, she leads them to the training room, opened opens the door, turns the lights on, removes the garbage can from the bathroom and lays out the contents of the split kit bag.

She then returned to her office, and about nine minutes later, Officer Sykes and Sgt. Caravano returned from providing the sample. She then unlocked the refrigerator, ensured that the specimen tops were secured and placed it in the appliance. She believes that there may have been two other samples in it at the time.

Lt. Brown then reviewed the chain of custody form, which she completed with Sgt. Caravano. He signed his portion in the training room. The second page of the document is the test result, which is mailed back to her from the lab. She personally transported the sample to the lab on January 18, 2022, three days after it had been collected. The delay was because you need an appointment to drop off the samples and that was the first date

available. She has thirty days to deliver the sample and it is supposed to be refrigerated in the interim. As far as she knew, the lab had no issues with the sample.

Once the result came back positive, she called Chief Ricciardi and advised him. This was not the first time that there had been a positive result, but in the other case, the MRO had noted that the medication was listed on that officer's medical information sheet, and the officer was able to provide a valid prescription for the substance, which ended the matter. Here, she was able to match the numbers and determined that it was Officer Sykes' sample that had tested positive. That day, she authored a letter to advise him of the positive, which she delivered personally in the parking lot of the police station.

Lt. Brown then testified concerning the second specimen in the split kit and the HPD policies and procedures concerning same. In essence, the policy reads that if the initial specimen tests positive, the only way to challenge that result is "by having the second specimen independently tested." (R-2.) Here, Officer Sykes never advised any agency that he wished to challenge the positive test result.

On cross-examination, Lt. Brown acknowledged that upon suspension (here on February 25, 2022), Officer Sykes would not be entitled to access HPD facilities, email, etc. As to when that specifically happened here (i.e., his ID card not working, etc.), she was unaware of exactly when that occurred. She acknowledged that the letter did not include notice that he could challenge the test results, but the policy did, which he had signed off on.

Lt. Brown testified that the reason it took so long from the random selection to the actual test was because Officer Sykes was out and they do not call in officers for overtime for the testing. Once he returned and both their availabilities matched, he was called in. She knew he was on vacation in December and had been ill in January and also acknowledged that this was simply a random test.

The temperature on the specimen cup is actually determined by tape that is on the cup itself and even though this was Sgt. Caravano's first time as a monitor, she had provided training to him, including using a sample kit. She had no indication that the

collection procedure was performed improperly. The kits are kept in the IA office in the original box and she and Chief Ricciardi are the only two with access to them.

On the day of testing, the donor picks his own kit out of the box; she does not touch them. If there were any problems with it, the donor would notice and advise her. She testified that the donor is trained for what to look for since they go through a tutorial, which shows the kit with a sealed foil cover, etc. They review the entire eight-page document together before the testing takes place.

Lt. Brown testified that Officer Sykes was unable to immediately provide a sample, so they went over the instructions together, and he would also review them with Sgt. Caravano once they entered the room. The monitor would bring the form with him.

The collection process actually occurred at 8:56 p.m., after the process had been initiated at 8:03 p.m. Sgt. Caravano documented the collection time. As to the urine collection itself, Lt. Brown reiterated that she assumed the procedure had been performed correctly, since she did not actively monitor it.

Lt. Brown acknowledged that she is involved in the disciplinary system in the department, and if there was a failure to adhere to collection procedures, that may be something that would be brought to her attention.

The timeline of the testing was again confirmed, with the random draw being made on December 7 and the sample not being collected until January 15. She also confirmed that as the head of IA, it is not her responsibility to recommend discipline but rather to investigate complaints and potential policy violations. She then makes a finding and forwards the investigation to the chief, who ultimately imparts whatever discipline may be appropriate.

The sample stayed in the refrigerator for three days until it was delivered to the lab in a sealed bag along with the medication sheet and the custody and submission form. Once it is delivered, Lt. Brown testified that her role is complete.

Turning attention to the medication sheet, she confirmed that its purpose "is to basically document any medications that he consumed, whether it's over the counter, prescription, non-prescription within the past 14 days." (T3 at 29:14-17.) She never saw what Officer Sykes put on his form and has no role or knowledge of how whatever was entered might impact a positive result.

Lt. Brown testified that Officer Sykes was present at the department for his Loudermill hearing and participated in it. It took place in the conference room at headquarters on March 2, 2021, and included herself, Officer Sykes, his attorney and Chief Ricciardi. Neither Officer Sykes nor his attorney requested that the split sample be tested, nor did they request a copy of either the A.G.'s or HPD's drug testing policy. She also confirmed that the A.G.'s policy can be found online.

Anthony Caravano (Sergeant, Hillside Police Department)

Sgt. Caravano testified that he has been employed by the HPD for nine years and has been the frontline supervisor of the patrol division since he was promoted to sergeant three years ago. His only involvement with the IAD is that he has twice served as a drug testing monitor, including for Officer Sykes, which was his first time. In preparation for that task, he reviewed the forms with Lt. Brown and signed off on the policy.

He testified that he and Officer Sykes were hired together and while he has worked directly with him, it had been five or six years ago. He did not know how he was selected as a monitor but was informed of it by Lt. Brown. That day, he was scheduled to work the overnight shift, and when he arrived, the shift commander told him to see Lt. Brown. He was not involved in the selection of Officer Sykes or any other aspect of the testing.

He recalled reviewing the HPD drug testing policy that day and reviewing it electronically earlier. He specifically recalled reviewing the specimen acquisition procedures with Lt. Brown as well as the monitor responsibilities, but he could not recall the specifics of exactly how that review occurred. He also testified that everyone in the department was required to review the electronic version of those guidelines. Sgt.

Caravano also recalled that he had been subjected to a random drug test a few years earlier (before the Officer Sykes test).

On the day in question, when he arrived at Lt. Brown's office, Officer Sykes was already there, and he was advised that Officer Sykes had been selected for a random drug test and that he was going to be the monitor. First, they reviewed the forms, and then he and Officer Sykes went into the training room (which has its own bathroom) and conducted the test.

When they first went into the room, Sgt. Caravano testified that they set up the forms and tests, checked the bathroom, and then Officer Sykes went in to take the test. The door to the bathroom was kept open and Sgt. Caravano stood outside while Officer Sykes provided the sample. He could see Officer Sykes's back and the actual provision of the sample took less than a minute. He did not recall if Officer Sykes had any questions about the forms or the process. After the sample was provided, Sgt. Caravano put it in a canvas bag and brought it back to Lt. Brown. No one else was present.

He testified that the urine collection process was no different than portrayed in the documents he reviewed. He then reviewed the specimen collection form and confirmed the portions that he had completed and that the monitoring was his only role in the entire process.

On cross-examination, he confirmed that it was Lt. Brown who had completed the donor and test information sections of the form, not him, which goes against the procedural guidelines. When he first saw the collection kit, it was already out, but he did not recall whether Officer Sykes had picked one out already. He did not recall seeing Lt. Brown check them. She did review the entire document both in his and Officer Sykes's presence.

After the sample was provided, he checked that there was adequate volume and used the temperature strip to check it. He had been trained on its use by Lt. Brown. There was no hesitation by Officer Sykes throughout the entirety of the procedure.

Sgt. Caravano admitted that the collection documents were completed by both him and Lt. Brown and that some aspects of the same that should have been completed by him were actually completed by her. However, in the collection of the samples, the exact procedure as outlined in the documents was followed, although he could not recall how long the process took. After the sample was procured, it was split and the split sample cups and the three completed forms were placed in the canvas bag and it was brought back to Lt. Brown. That ended his involvement.

FOR PETITIONER:

Jeffrey Sykes, Police Officer (Hillside Police Department)

Officer Sykes graduated from Hillside High School in 2005 and immediately began working for an armored car company as a production worker. He joined the HPD shortly after graduating from the police academy in December 2014. He was assigned to the patrol division with an officer monitoring him for the first three months. His responsibilities were safety first, community engagement and protection of the town and its residents. During his time with the department, he received a commendation for reviving a patient in 2017 or 2018 and was also commended for assisting in the recovery of a stolen car in February 2018.

Concerning the February 25, 2022 letter of suspension, Officer Sykes testified that he received a call from Captain Lewinski and was told to meet with him; he was not told why. After picking up his children from school, he met with Capt. Lewinski, who handed him the letter in front of his house. He did receive a letter from Lt. Brown about the positive drug test and received the PNDA from Capt. Lewinski shortly thereafter.

Before this, he had never been subjected to a drug test with the department for any reason.[5]

[5] There was additional testimony concerning the motor vehicle accidents that Officer Sykes had been involved in. Given that he was not disciplined for them and that this was a random drug test, I **CONCLUDE** that the accidents are irrelevant. (T3 at 135-136.)

Returning to the time of the testing, Officer Sykes recalls being out of work in December 2021. He was on a "five on – five off" rotation, so he worked his vacation so he could get fifteen days in a row out of work (i.e., off for five, vacation for five, off for five), and with his seniority, he was able to do that at the end of the year around the holidays. There are three shifts: day shift from 7:00 a.m. to 5:45 p.m., the mid-shift from 5:30 p.m. to 4:15 a.m. and the night shift from 8:30 p.m. to 7:15 a.m. During all the time relevant to this case, he worked the night shift.

He testified that he provided the sample on January 15, 2022. He had pulled into the parking lot a little early that morning, and immediately after parking, he received a call advising that Lt. Brown needed to see him and that he was to report directly to her office. He did exactly that and she arrived a minute or two later. She then advised him that he had been selected for a random drug test. He sat down and she went "through the whole procedure with me, explaining to me that it was a newer form of test." He also went through some paperwork. (T3 at 143:11–19.)

Officer Sykes then reviewed the Drug Testing Notice and Acknowledgement form and confirmed signing it. He understood that he was to provide a specimen and that if he refused, he would no longer be eligible for employment as a police officer. He testified that he had no concerns about taking the test because "I don't take drugs." (T3 at 144:22.) He also recalled completing the medication sheet, but not exactly when he did that. He left the part concerning prescription medications blank, since he had not taken any in the last two weeks. For non-prescription medications, he listed Tylenol, Advil, NyQuil and Alka-Seltzer, "because that's what I remembered taking within 14 days." (T3 at 150:10–11.)

After he and Lt. Brown reviewed the documents, she called Sgt. Caravano into the office to act as a monitor. She explained his role as a monitor and went over the procedure with Officer Sykes observing. It took "about five minutes or less" for Lt. Brown to review the documents with Officer Sykes and he testified that he paraphrased them and did not read them line-for-line.

As for the testing procedure itself, he testified that he had to produce a specimen before the forms were sealed. He, Sgt. Caravano and Lt. Brown went to the training room together. She unlocked it, opened the door, turned on the light, gave brief instructions on what to do and pointed out the bathroom. She also set up the table where the samples would be split before leaving. Officer Sykes could not remember if the cups were sealed or not. He then produced a sample and handed it to Sgt. Caravano with a gloved hand. He could not recall whether he split the sample or not.

Officer Sykes then recalled seeing Sgt. Caravano complete an additional form, take two bottles and place tape over them. Lt. Brown then returned to the room, reviewed the seals on the bottle and took possession of them. Officer Sykes then left to get changed and begin his shift. He was not worried about the test, since there "wouldn't be a reason for anything to return positive," and he was very surprised when he received the PNDA. (T3 at 159:13-2.)

In practical terms, being suspended means that he cannot work or receive the mail that arrives in his work mailbox and he has to surrender his police gear and ID (which acts as his key to the building). Upon receipt of the PNDA from Capt. Lewinski, his suspension took immediate effect. He was unsure whether and when his access to his departmental email was suspended, but he was "certain" it was. HPD policies are made available through PowerDMS, and his access to that was also suspended; he was unaware of any other means through which he could obtain those policies.

While he had reviewed the HPD policy on drug testing, he did not have a physical copy of it. He had received a call from Lt. Brown a few days prior to receiving the letter from Capt. Lewinski telling him to check his mailbox, but he was unable to due to work responsibilities. He was then reminded by a sergeant to check and found the letter and was "surprised by what I read." (T3 at 169:23.)

The letter requested that he provide a prescription from a doctor to justify the positive test. Officer Sykes saw that he "had a significant amount of time to supply the

prescription or anything."[6] (T3 at 171:20–25.) While he had not reviewed anything prior to the testing, after the test results came back, he attempted to locate some information from Eastern Dental that concerned prescriptions for Amoxicillin and Vicodin in 2008 and 2012.[7]

As for oxycodone or oxymorphone, Officer Sykes testified that "(i)t's possible" that he had been prescribed the same. (T4 at 9:23–25.) He testified that in general, when he is prescribed a medication, he uses it until he feels better and then if there is any left over, "Usually it just sits inside of the medicine cabinet or wherever I keep those medications." (T4 at 10:15–19.)

He recalled testing positive for COVID on January 6, 2022. He was supposed to work that day, but he began to feel sick. Pre-COVID, he would have tried to push through, but with COVID, they were being encouraged to stay home, so he contacted his supervisor and was advised to stay out and get tested. He testified that he actually was tested twice; the first was a rapid test and the second was a PCR. He testified that initially he felt like it was a cold, but his symptoms progressively worsened to the point where he felt "pretty bad." During that period, he took NyQuil, which is his go-to medication.

Officer Sykes confirmed that he returned to work on January 15, 2022, and provided his sample (and completed his med form) that day. He also recalled taking Tylenol in the relevant time period, particularly as his symptoms worsened. He also took Advil but did not recall the specifics, except that it was as he was feeling worse. He recalled taking NyQuil within a day or two of returning to work.

In 2021 and 2022, Officer Sykes testified that he was living in Woodbridge with his wife and children, and when he had COVID, she effectively became his caretaker. She had access to the cabinet where the prescription medication was kept and he did not know what medication she gave him. He struggled with COVID to the point where he needed assistance to get to the bathroom. However, he did not obtain any prescription

[6] March 8, 2021, per the letter.

[7] Lorcet was also listed on the paper; it is the substantive equivalent of Vicodin. https://www.drugs.com/acetaminophen_hydrocodone.html (last accessed Oct. 7, 2024)

medications during this period, which is why that portion of the med form was left blank. To his knowledge, he did not take any oxycodone or oxymorphone and has never taken those medications without a prescription.

Officer Sykes testified that when he submitted to the drug testing, he had no reason to believe that he would test positive. He then re-reviewed what happened on the day he returned to work, including the completion of the med form and how Lt. Brown showed him a diagram walk-through of the collection process, as well as trying "to physically display to show (him) how it was actually supposed to be done." (T4 at 32:20–23.)

As for the provision of the sample, he recalled urinating into the cup, but "then I can't remember who exactly split the samples or whatever or what took place after that." (T4 at 33:10–18.) The cups (one big one and two smaller ones) were presented to him by Lt. Brown in a box, and he picked them out. He did not recall if they were sealed but believed that the "kit in its entirety was altogether in a bag." (T4 at 35:3–5.)

He testified that the instructions he received from Lt. Brown did not make complete sense until everything was laid out; then it began to coalesce in his mind. He testified that he had little recollection of what happened to the sample or the last time he saw it. He did recall that Sgt. Caravano was standing at the open door when he was in the bathroom.

After receiving the letter concerning locating prescriptions, he testified that "the very next day I started to try to figure out how that could be possible." He asked his wife if she had given him anything, and "she wasn't sure exactly at the moment. She just – she knows she had gone in that kitchen cabinet to get whatever at the time to try to help me out." (T4 at 39:1–9.) But after he got suspended, "I kind of just, I don't even know the words, but they really threw me . . . off." (T4 at 39:10–13.) His wife was not able to find anything that would explain the positive test and if he had been able to come up with any explanation for the positive test, he would have supplied it to the department prior to the deadline.

On cross-examination, Officer Sykes reiterated that while he never took any medication that contained oxycodone or oxymorphone, he was unsure exactly what his wife had given him when he was sick. He further reiterated that he had reviewed the HPD Law Enforcement Drug Testing Policy on PowerDMS. He did not believe that he had access to the police computer system after he was suspended but acknowledged that he did not attempt to view the policy on the internet or obtain it in some other way.

He then testified that while some of his gear was in his police locker, after his suspension, Capt. Niewinski came to his Hillside address to pick up his radio, gun, etc. He also clarified his position on taking oxycodone and oxymorphone:

> Q. When did you become a Police Officer with Hillside?
>
> A. I believe it was 2014.
>
> Q. That's what I thought. Okay. And that – that was my recollection of your testimony actually. And you testified earlier that you had not taken Oxycodone or Oxymorphone from the time that you became an Officer with the Hillside Police Department, correct?
>
> A. That's correct.
>
> Q. Okay. So in the prior six, seven years you had not – there would not be a prescription for Oxycodone or Oxymorphone because you hadn't taken any in that time frame; is that correct?
>
> A. That's correct.
>
> [T4 at 49:24–50:14.]

Officer Sykes then confirmed the process of the entirety of the test; that he completed the medication form himself and that it was put in an envelope before the test; he also selected a split kit from the box, although he did not recall if he unsealed the kit and removed the contents himself. He then recalled being told to provide a sample into "one big container" and split that sample into two separate ones, although he was not "sure" that he did so. He did not know if the monitor checked the volume and temperature of the samples.

As for the split sample and the ability to have it tested, Officer Sykes provided this answer:

> Q. Is there a reason why you did not inform the Department that you wanted to have a second test done?
>
> A. I don't know. I don't believe I was aware to be honest with you.
>
> [T4 at 55:21–25.]

Upon further questioning, he acknowledged that "he didn't know the reasoning for (the second cup)" and "just thought I was to provide two separate cups." (T4 at 56:4–13.) He was aware, upon reading the forms, that he would be terminated if he did not go through with the test or if he tested positive.

Reviewing the medication form, Officer Sykes testified that he completed the same strictly from memory and did not check any notes or his phone to help him remember. As for the dates on the form, while he was sure about when he had taken Advil, he was unsure that the January 8th date (when he had last taken NyQuil) was accurate. It is possible that he may have taken it closer to the January 15 test date.

Concerning the presence of oxycodone or oxymorphone in the house, he recalled that in 2015 his wife "may have been prescribed something due to complications with birth. I can't – I can't say for sure what it was exactly, though." (T4 at 62:13–22.) After he tested positive, he checked the medicine closet but could not find anything that contained either drug. In reviewing the Eastern Dental prescription form, he acknowledged that the last listing was from 2012 and the Vicodin ES listing from "2028" is "possibly" a typographical error, since he has not been prescribed that medication in the last five years.

On re-cross examination, Officer Sykes testified that even though he had nothing to be concerned about, this was an unnerving process and he completed the form quickly.

He testified that Lt. Brown can be intimidating and that "the less time I have to spend (with her) the better." (T4 at 68:1–2.)

He reiterated that he had never taken any prescription medications containing oxycodone or oxymorphone intentionally during his employment as a police officer.

> Q. The only way that Oxycodone or Oxymorphone ended up in your body in that 14-day period you would not be aware of how that occurred?
>
> A. That's correct.
>
> Q. You didn't knowingly take – Your testimony is that you didn't knowingly take any Oxycodone or Oxymorphone during that period and the only way it would have ended up in your body was you either were exposed to it or somebody else gave it to you to ingest and you didn't know what it was?
>
> A. That's correct.
>
> [T4 at 71:18–72:5.]

He also confirmed that he did not necessarily follow the instructions on the NyQuil package but would take it more frequently if he felt poorly and less frequently if he felt better.

Officer Sykes testified that he was living with his wife when the drug testing occurred and that when he received the letter from Lt. Brown, he discussed it with her. She did not know how it was possible that he tested positive, but he then testified:

> And her response was "I gave you some stuff out of the cabinet because you were – you were really out of it, you were really hurting, I don't remember what it was but I, you know, outside of giving you NyQuil from time to time and it not doing anything," she started to – she started giving me, again, I don't know exactly what it was, and she couldn't tell me what it was.
>
> [T4 at 76:11–8.]

He claimed to have gone straight to the medicine cabinet to look for what she might have given him, but there was nothing there that was of concern. He did not see a doctor after his positive COVID-19 test and did not have a family doctor at that time. He then confirmed that the Eastern Dental medication list was for drugs that were prescribed in conjunction with dental treatment. He did not recall taking any prescription medications from 2012 through the present, and he did not have a regular pharmacy, although his wife may have used a CVS.

He also confirmed that despite the pressure of filling out the forms and taking the drug test, in re-reviewing the medication form, it is accurate and does not miss any information.

Dr. Robert Pandina

Initially, the respondent sought to offer Dr. Pandina as an expert. Given that there had been an extensive discussion concerning his qualifications, counsel for Officer Sykes conducted an extensive *voir dire* prior to his substantive testimony. That was followed by cross-examination by counsel for respondent.

Voir dire

Dr. Pandina graduated with a B.S. in psychology from Hartwick College. He took courses in psychopharmacology, experimental psychology, physiological psychology, chemistry, biology and languages. Physiological psychology includes understanding how the body functions, focusing on peripheral and central nerve function, while psychopharmacology is the study of how drugs interact with the body.

He received both a Master's ('68) and a Ph.D. ('73) in psychology from the University of Vermont. The focus of his master's studies was physiological psychology and central nervous system processes that concern visual perception; in essence, how visual images on the retina translate into biological signals inside the central nervous system. As he moved into his doctoral studies, he "began focusing on the effects of drugs on human behavior." (T5 at 14:7–9.)

In addition to psychopharmacology, he also trained in developmental neuropsychology, which "is looking at changes in function on the central nervous system that take place over time." (T5 at 21:2-5.) He testified that when he teaches, he divides his course into two parts: "kinetics, the physiological aspects," and "dynamics, what happens when you distribute drugs." (T5 at 27:7-15.)

Dr. Pandina taught at Rutgers for forty-three years (until 2017) and he still lectures at New Jersey Medical College and is technically on the clinical staff at the Robert Wood Johnson Department of Psychology. His primary teaching duty was training psychiatry residents in clinical psychopharmacology.

Dr. Pandina was formerly the director of The Center for Alcohol Studies. While working there, he developed drug testing protocols for the Department of Defense. He also worked with Major League Baseball in the 1980s on its drug testing protocols, which involved the use of GC/MS. In developing those protocols, he worked on developing chain of custody protocols, including how the sample was obtained, maintained, transported and tested to ensure that it was reliable and valid.

In the mid-1980s, he was also involved in the development of random drug testing protocols for federal employees and in or about 1987, he contracted with SEPTA[8] on a new random drug testing program. He was then hired by New Jersey Transit ("NJT") in 1989 to do the same and actually ran the program for about three years, "basically acting as . . . medical review officers." (T5 at 46:3-4.)

He testified that he ensured that the manner in which samples were collected was within "the standards that we had established." (T5 at 46:15-17.) He would also ensure that the subcontractors were trained and would report back to NJT whether the results were truly positive or were false positives. NJT personnel were trained on drug testing protocols, and then the process was turned over to them:

[8] Southeastern Pennsylvania Transit Authority.

> We felt . . . that it was better being handled by medical professionals who were basically then trained to be able to apply what they knew towards their basic science mass who one understood and dealt with drug testing in the workplace.
>
> [T5 at 47:16–22.]

His focus was on whether the result itself was proper, not the impact of the result. Dr. Pandina emphasized that this was the beginning of drug testing in the workplace and that the process was still evolving.

He testified that his background in psychopharmacology allows him to opine as to what substances can cause false positive results. He understands that certain chemical families are related to others and that certain drugs and conditions are capable of producing a false positive. He cited to the issue of false positives for opiates from poppy seeds and how a secondary test was created to differentiate the two substances, such as heroin versus morphine. He gained this knowledge through on-the-job experience in reviewing hundreds of evidentiary packages and keeping abreast of the developing literature.

Dr. Pandina conceded, however, that many of the cases that he has testified in have concerned the impact of the drug that the party had tested positive for, such as "how long ago the person had ingested the material and the impact on that person's behavior X number of hours later." (T5 at 58:10–13.)

On cross-examination, Dr. Pandina confirmed that he had been retained to "offer opinions about urine drug testing procedures and analyzing the drug test results." (T5 at 61:22–24.) While that does not include "urine testing for analyzing drug test results," he testified that both of those disciplines require that. He understands that the only issue in this case is the positive test result: "whether or not Officer Sykes tested positive for Oxycodone or Oxymorphone . . . ." (T5 at 63:12–15.)

Dr. Pandina reiterated that he considers himself an expert in "psychopharmacology, effects of alcohol and drugs on human physiology and human behavior," as well as "analytic and forensic toxicology." (T5 at 67:1–2.) His degree is in

psychology, however, not forensic toxicology and he confirmed that he never went to medical school and has never practiced as a forensic toxicologist. He has never worked as a laboratory technician but performed lab work in the 1970s during his Ph.D. training. He does not belong to any forensic toxicology professional organizations and has not published in the area. He also confirms that he has never been qualified as an expert specifically in the field of forensic toxicology.

Dr. Pandina testified that the last time he physically performed an immunoassay test on a urine sample was in the 1980s, and he has not run a GC/MS test since the 1970s. He was unable to name a specific case where he had rendered an opinion concerning the State Police lab. However, he is being utilized as an expert in this area in an ongoing case, although there was a mistrial prior to his testimony, so he was not specifically qualified.

TESTIMONY

Dr. Pandina confirmed that he was hired by counsel for Officer Sykes to review the case and proffer opinions relative to that review. In addition to reviewing the evidence, he also had the opportunity to hear some of the testimony, including that of Dr. Falzon and Officer Sykes. He did not hear the testimony of either Chief Ricciardi or Lt. Brown.

Officer Sykes' testimony concerning when he potentially took Vicodin changed his opinion that the positive test could have been the result of the breakdown of that drug, because the timeframe wouldn't work in that Vicodin only stays in the blood for only three days post-ingestion.

He then testified as to how he examined the case, working backwards from the summary results through the chain of custody and how it was handled in the laboratory. The first step of the testing was the IA screening process, and from there, he "began to get somewhat confused" with the results and had difficulty processing how the GC/MS procedures translated to the paper trail. (T5 at 108:8.)

He explained that the actual testing procedure began with an initial IA screening that tests for amphetamines, barbiturates, benzodiazepines, cannabinoids, cocaine, methadone, opiates, phencyclidine and oxycodone. This is a "wider net" screening test, which would show a general positive result in a class without determining the specific offending agent. He assumed that this panel had been ordered by the HPD and that, presumably, these drugs would be tested in the confirmatory GC/MS testing.

He testified that he did not understand what "Oxy100" referred to but was aware that the test was positive for it. He then stated:

> And in the course of looking at this result, I also discovered another form that indicated a negative result for Oxycodone but a positive result for Oxymorphone. I could not authenticate or identify exactly how to interpret that form . . . I did not get clarification for what that meant in terms of this positive finding for Oxy100.
>
> [T5 at 112:22–113:7.]

After taking an initial sample from an aliquot for the IA test, a second sample from that same aliquot is used for the GC/MS confirmatory testing. This looks for specificity and sensitivity, meaning the particular substance and the sensitivity level (the score at which a test is determined to be positive). Dr. Pandina then questioned the GC/MS output scores, claiming that he was confused by them because they seemed to indicate general scores over 100 for Oxy but without delineating the specific outcomes for oxycodone and oxymorphone. He also expressed concern over the finding that the testing was negative for oxycodone and positive for oxymorphone. He was further concerned that the GC/MS testing was not specific as to the quantity of the positive testing agent, which he testified usually happened, as opposed to it just being noted to be over the threshold.

Dr. Pandina then testified that oxycodone is a synthetic narcotic analgesic, similar to an opiate. Oxymorphone is similar, but it can also be a metabolite of oxycodone. In other words, when oxycodone is metabolized in the body, it is metabolized down to several substances, one of which is oxymorphone.

Reverting to the results sheet, he noted the form completed by the MRO, "where he indicates that a screening result for oxycodone but not positive screening result for oxymorphone. Whereas in the GC/MS results, he indicates it was positive for Oxycodone and oxymorphone." (T5 at 133:16-20.) He never understood how the MRO determined that this was accurate. He confirmed that he had never reviewed a random drug test from the State lab previously and "can't account for the paper trail that led to what appears to be different results." (T5 at 136:16-18.)

Dr. Pandina then confirmed that oxycodone breaks down in the liver and metabolizes into oxymorphone. He acknowledged that the screening test could possibly only pick up the oxycodone, and then the more specific test could then detect the oxymorphone as well.

Dr. Pandina continued with issues concerning the results and testified that:

> I do think it would be prudent to go back and do a review. There was nothing . . . that would not permit them from taking an administrative action to put him on leave or whatever it is to redo these analyses to make sure there was a firm result.
>
> [T5 at 145:17-22]

He then reviewed Officer Sykes' medication form and its purpose:

> (t)o see whether or not any medications that are being prescribed or any other thing that could influence the outcome of the result can be taken into account when on interpreted the results of either a screening or a GCMS so that that could be used as part of the determination for what if any actions might be taken based on the results of the analyses.
>
> [T5 at 148:14-21.]

The only drug on the list completed by Officer Sykes that was meaningful to the test results was NyQuil. He testified that there was a possibility that it could have caused a positive finding for oxycodone or oxymorphone, given the timing of its claimed ingestion (January 8, 2022) and the specimen collection (January 15, 2022), although he testified

that "unless . . . he took a very large amount, (it) would be less likely to influence the results if he had taken it at that point in time." (T5 at 151:22-24.) However, if it had been taken closer in time to the screening, the possibility of the result being impacted is greater.

He testified that the "best evidence is that it would certainly trigger the initial tests, the screening test. There is some evidence and that's not yet been agreed, universally agreed upon that it would also influence the GC/MS portion of the GCMS mass spectrometry." (T5 at 153:19-24.) He went on to state that "literally the scientific community has not resolved" the issue of whether it would impact the GC/MS aspect of the testing.

Dr. Pandina also testified that, given the testimony of Officer Sykes regarding his use of Vicodin, it was "unlikely to influence" the outcome of the testing. Dr. Pandina's testimony then returned to NyQuil, and he claimed that while the scientific literature "is relatively small on this issue," there is some evidence that dextromethorphan may show a false positive for an opiate in a screening urine test. (T6 at 13:6-17.) That is why it is important to follow up with the confirmatory testing.

As to whether the GC/MS testing would also show a false positive, Dr. Pandina testified that "in the scientific literature there's evidence on both sides," although he later clarified that when it comes to urine testing, "the majority of studies will show an interference as long as the levels of Dextromethorphan are high enough." (T6 at 21:10-13.)

In performing the GC/MS testing, Dr. Pandina testified that the State Lab "should be able to determine . . . whether or not there was a presence of some other opiate. But they can't rule out that (it) could have been contaminated." (T6 at 23:6-10.) The State Lab, though, is "limited with regard to a quantitative analysis that is the amount of drug that's actually contained." (T6 at 24:13-15.) It is also limited in the type of drugs that it can test for.

Dr. Pandina testified that he did not find the test results to be reliable because he felt that one set of findings was different than the other. He also had an issue with an

inability to track the sample from step to step in the lab and argued that the MRO had also expressed some concerns. He also opined that the significance of having listed NyQuil on his medication sheet is that:

> (t)his drug has the capacity to cause a false positive in urine testing. One way to rule out any false positives that might have occurred would have been to test for the Dextromethorphan. And that – to my knowledge that laboratory may or may – may not be equipped to test for this drug. I don't remember whether this came up with regard to the Laboratory Supervisor. But any reason it would have been easy to send – send part of the sample out to – to clarify that. And if there was Dextromethorphan in the urine sample it might have alerted the staff that . . . could be a contaminant with regard to the . . . urine screening.
>
> [T6 at 37:23–38:11.]

In reviewing Dr. Pandina's report, he admitted on cross-examination that he did not interview Officer Sykes, nor is he aware if a COVID-19 diagnosis could cause a false positive for oxycodone or oxymorphone.

He testified that he was familiar with the machine used to perform the IA testing. Dr. Pandina also recalled Dr. Falzon's testimony that the IA testing for opiates is not sensitive enough for oxycodone, and that's why it had to be tested separately. However, he explained that he questioned the results because there was a negative for oxycodone and a positive for oxymorphone. He was also concerned with the lack of quantitation levels, so he had no idea of the quantity of the drug. For instance, if the threshold for a drug is 100 nanograms, a positive result only means that the amount of drug met that threshold, but it doesn't give you any idea of the actual level.

Dr. Pandina testified that the value of 124.2198 was effectively meaningless because there was no interpretation of whether that is considered a quantitative analysis or not. He was unable to link the output to the results. He did explain that on the urine testing, the abbreviation "X10" means that the urine was diluted by a factor of ten, while "ND" means that it was not diluted.

However, he then testified as follows:

> Q. Okay. So the numbers that are here for the non-diluted sample it says 531 for Oxycodone and 664 for Oxymorphone. That represents the amount of those substances in the sample using a measurement of nanograms per milliliter, correct?
>
> A. I believe that would be the case, yes. I would like to have someone interpret those.
>
> Q. Well, you're the expert. So I want your opinions.
>
> A. I understand that. But I don't believe they represent an actual quantitative analysis. It does indicate that there's sufficient amount to be above the cutoff scores that we've been discussing. That is correct.
>
> [T6 at 57:19–58:7.]

Dr. Pandina then testified that the fact that the results indicated a positive result is not the concern. Rather, the concern is the different numbers and that some of the results were negative. He admitted, however, that the cases he is generally involved in deal with therapeutic levels of drugs and their impact and not "zero tolerance" issues such as this.

Dr. Pandina then explained what a carryover check is and testified that he was unable to confirm whether the negative result on that page of the testing had any bearing on whether Officer Sykes tested positive on the IA testing. He then backtracked and admitted that this page had nothing to do with the actual test results. The carryover test result page was then reviewed and Dr. Pandina expressed concern as to how it was completed.

He then admitted that "there is no better methodology" at this time than GC/MS testing and that it is used after an initial positive IA test. Dr. Pandina further agreed with a journal article that "given the inherent nature of immunoassay testing, which uses antibodies to bind with a drug of interest or its metabolites false positive results are possible due to cross activity with metabolites of other prescription or over-the-counter drugs." (T6 at 79:16–21.) That is why the GC/MS confirmatory testing must be performed

to eliminate the possibility of "false positives and false negatives." (T6 at 80:22–23.) However, all of that is predicated on proper testing procedures being followed.

Dr. Pandina confirmed his knowledge that the A.G. guidelines require only urine testing with an initial IA test to be followed by GC/MS testing. He testified that the policy "uses the broadest possible screening," but also "requires (s) that it uses the better techniques to determine the presence or absences of a drug or its metabolite." (T6 at 85:16–21.)

He also confirmed that he withdrew the part of his report concerning Vicodin because Officer Sykes testified that he did not consume Vicodin. As to whether dextromethorphan can cause a false positive, Dr. Pandina pointed to two studies from 2015, which discussed the possibility of false positives from dextromethorphan on immunoassay tests but not GC/MS testing. The studies also note that it is known for producing false positives for phencyclidine, but not any other drug classifications, including opioids. He was also aware that Officer Sykes tested negative for phencyclidine. There is also a study that cites some anecdotal evidence that dextromethorphan may cause a false positive for opioids in IA testing.

Dr. Pandina emphasized that there is a relatively small sample size for false positives and inferred that the conclusions of these studies may not be definitive and that the science of false positives is "developing." However, he also confirmed that this opinion is limited to IA testing and does not implicate GC/MS testing.

He also confirmed that he had never reviewed a lab packet specifically for random drug testing before this one, although he had previously reviewed some from New Jersey Transit testing. The packets were similar, but those may have been more complete than these.

Dr. Pandina was unaware if Officer Sykes had requested that the second sample be tested.

As to chain of custody, he had no issues with the transportation from the HPD to the lab, but there was a question about storage in the lab. However, "in general they appear to have identified whatever samples they did have (properly)." (T6 at 111:22–25.) He also testified that the chain of custody documents were completed correctly, but he was concerned about the procedure itself, since there was a gap in the timing from when they were initially handled until they were disposed of. However, he did not question the order of events at the lab.

Dr. Pandina claimed that while the results reflect whether the testing was positive or negative, "they don't validate the output with regard to the actual quantitative analysis." (T6 at 121:20–22.)

He admitted that some of the articles referenced during his cross-examination indicated that there were doubts as to whether dextromethorphan can cause a false positive for oxycodone. However, as to whether it is possible that this could occur, he testified that "I'd say that I'm not convinced that it's not – doesn't remain a possibility." (T6 at 124:25–125:1.)

As to chain of custody, Dr. Pandina claimed that there are "large gaps in time" that are unaccounted for while the sample was in the laboratory. In general, the chain of custody of a given sample "is fundamental to the reliability and validity of . . . a result." The question is whether the sample has integrity or not and whether the sample actually reflects what was presumed to be in it. He reiterated his concern about the alleged time gaps (un)documented in the documentation.

He testified that a positive test result for Oxy 100 is a positive for a group of drugs, not a specific drug. For oxycodone and oxymorphone, a positive test can be indicative of either one or both of the drugs being present. He also testified that it is "possible" that dextromethorphan "may have" caused a false positive here.

While GC/MS testing is the current gold standard, if a sample is tampered with or contaminated, the analysis would be "faulty either qualitatively or quantitatively." As to the integrity of this sample, he is unable to determine one way or the other if the sample

was handled properly, given the absence of testimony from the lab worker who handled it.

Regarding the carryover document, Dr. Pandina testified that "it could have been more clearly stated." He further claimed that the GS/MS worksheet demonstrated some discrepancies with the "one positive and both positive" testing not being explained to ensure "that the integrity of the entire analysis was proper." He then testified:

> Q. So to be clear . . . in your opinion there is insufficient information relative to the methods that were employed in all of the . . . pre-work that goes into obtaining the final result there's insufficient information relative to those items for you to determine or say with any certainty whether or not the ultimate testing results are accurate?
>
> A. The answer to that is yes. But that doesn't apply to – necessarily to every stage of the analysis. While it's a general statement in terms of information being absent, this is the type of information we're talking about. There were – there certainly was information available. In my opinion, there were certain gaps within the record that I believe should be clarified before a – in making a determination about the reliability and validity of...the results. It may be that if those – if that was available you and I would not be having this conversation or I might be testifying differently if that information were available. Differently in the sense of having the gaps closed.
>
> [T6 at 142:18–143:16.]

On re-cross-examination, Dr. Pandina's testimony returned to the interpretation of the carryover testing report. While he felt that it was completed incorrectly, Dr. Pandina admitted that "if there is no carry over," the testing would be accurate. He did not know what the acronym ULOL stands for, only that they were "the laboratory standards," and confirmed that the 100 figure is effectively a "pass-fail" line for the testing.

The discussion then moved back to the issue of a potential false positive test and Dr. Pandina was asked to address a specific scenario. Assuming that Officer Sykes drank

NyQuil and tested positive for opiates the next day on an IA test and assuming that he had not ingested anything else, would the GC/MS testing be negative? Dr. Pandina answered, "The likelihood would be they would come up negative." (T6 at 157:21–158:1.)

He was then asked if this was a "false positive" case or a "contamination" case. In other words, "Is the GC/MS test positive because he took NyQuil or is the GC/MS test positive because the lab messed up?" (T6 at 158:10–12.) While the answer was not entirely clear, Dr. Pandina seemed to posit that a laboratory procedural error was more likely. In attempting to connect a laboratory error to a false positive, Dr. Pandina's primary concern was "that this sat out on a table somewhere for hours," and the sample may have become diluted.

He further testified that if both samples were treated the same but tested at different times, the test results should be within the plus or minus of the calibration of the machine. He agreed that testing the B sample would have "essentially take(n) away issues such as mislabeling or intentional contamination." (T6 at 167:2–23.) However, if there was a false positive in the A sample, the chances are that there will be a false positive in the B sample. (T6 at 168:4–9.)

CHARGES AND SPECIFICATIONS

Following the departmental hearing, respondent sustained the following charges listed in the PNDA (Exhibit J-A) and the FNDA (Exhibit C-1): violations of N.J.A.C. 4A:2-2.3(a)(1), incompetence/inefficiency, failure to perform duties; 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 a public employee; N.J.A.C. 4A:2-2.3(a)(10), violation of federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles and State and local policies issued thereunder.

Officer Sykes was suspended from his job duties immediately pursuant to N.J.A.C. 4A:2-2.5(a)(1) as it was "determined that (he) is unfit for duty or is a hazard to any person if permitted to remain."

The incident was described thusly:

> Employee reported for duty on January 15, 2022 and was subjected to a random drug test. The results were positive for both, Total Oxycodone and Total Oxymorphone which was not listed on his medication form or duly prescribed to him by a licensed physician.
>
> [C-2.]

DRUG TESTING GUIDELINES

There is no dispute that the November 18, 2019, Hillside Police Department General Order re: Law Enforcement Drug Testing (R-2) is, for all practical purposes, the equivalent of the Attorney General's Drug Testing Policy (R-1.)[9]

THE TESTING

The review of the testing in this case is both straightforward and unnecessarily wildly over-complicated. While the testimony from Hillside's witnesses was relatively straightforward, that was more than made up for by the verbose testimony from Dr. Pandina. What neither side did was actually examine the testing on a step-by-step, methodical basis. Instead, Hillside's experts were reactionary (and clearly unprepared for the deep dive that the appellant took into the results), while Dr. Pandina, purposefully or not, essentially refused to accept the obvious conclusion in favor of the obtuse.

The evidence demonstrates that, at its most basic, the following is how the testing proceeds. Once the specimen is received, it undergoes a screening (immunoassay or "IA") test,[10] which screens for eight possible classifications of banned substances:

a. Amphetamines
b. Barbiturates

[9] With one exception that will be discussed below.
[10] Also referred to as quantitative testing.

c. Benzodiazepines[11]
d. Cocaine
e. Marijuana/Cannabis
f. Methadone
g. Opiates
h. Oxycodone/Oxymorphone
i. Phencyclidine[12]

If, and only if, that test is positive for one or more of the listed substances, another aliquot from that same sample is subjected to confirmatory (gas chromatography/mass spectrometry or "GC/MS") testing.[13] It is uncontested that the GC/MS is more precise than IA testing. If that second aliquot tests negative, then the result is reflected as a negative and there are no consequences to the specimen donor. However, if the second aliquot tests positive, then the consequences which befell Officer Sykes can occur.

Dr. Pandina raised multiple issues with the test results, one of the main ones being that in the IA testing, there was a positive result only for oxycodone, yet in the GC/MS testing, the result was negative for oxycodone ("OXC") but positive for oxymorphone ("OXM"). While there was testimony *ad nauseum* on this issue, with Dr. Pandina continually stating that the result made no sense, in reality, the result was a perfectly reasonable one.

The evidence showed the following:

a. Both oxycodone and oxymorphone are semi-synthetic opioids.
b. Oxycodone metabolizes (breaks down) to oxymorphone.

The testimony also was relatively clear that the following could explain the negative–positive conundrum. The possibilities are as follows:

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[11] Commonly known "benzos", this classification includes Xanax, Valium, Klonopin and Ativan. https://www.drugs.com/drug-class/benzodiazepines.html (last accessed Feb. 23, 2025)
[12] Commonly known as PCP. https://pmc.ncbi.nlm.nih.gov/articles/PMC2859735/ (last accessed Feb. 17, 2025)
[13] Also known as qualitative testing.

a. + OXC, − OXM (testing done before the OXC metabolized into OXM)

b. + OXC, + OXM (testing was performed so that there was still unmetabolized OXC in the specimen, in addition to OXC that had already metabolized)

c. – OXC, + OXM (enough time had lapsed that all of the OXC had metabolized into OXM or the donor had only ingested OXM)

d. – OXC, − OXM (the testing was negative and/or was below the threshold amount to be deemed positive)

But let's go back to the IA testing first. Per the test results, Officer Sykes' specimen was positive for oxycodone/oxymorphone because it tested out at more than 100ng/ml[14] (hence OXY100) with a reading of 124.2198. (R-5 at 19.) Since the result was positive (all other testing was negative), as discussed above, we move on to the GC/MS confirmatory testing.

As was discussed at length, that testing is more precise and is able to differentiate oxycodone and oxymorphone. That testing demonstrated positive findings for both total oxycodone and total oxymorphone. That was reflected in the actual run sheet (R-5 at 24), the report signed off on by Dr. Falzon (R-5 at 21) and the MRO certification form. (R-5 at 20.)

Before concluding our discussion about the GC/MS, we need to review the GC/MS Confirmation Data Review Worksheet, which caused so much consternation. (R-5 at 21.) This worksheet is where the "negative/positive" conundrum was discussed and discussed and discussed and ultimately misinterpreted. While Dr. Pandina eventually admitted that this document did not concern the actual test results, but rather was to confirm that there was no contamination, he still expressed confusion about how one test was "negative" and the other was "positive."

[14] Nanograms per milliliter

However, this was just not that confusing. In reviewing the worksheet, while it is not perfectly clear, what is obvious is that it has no substantive impact on the case. What is also obvious is that Dr. Pandina did not thoroughly review its meaning. This worksheet is a carryover check and the numbers listed on the sheet are not all that difficult to find when one actually reviews the test results.

First, it must be understood that ULOL (Upper Limit of Linearity) is reached when a test result reveals a concentration that matches the linear range of the standard curve. If that concentration is higher, then a diluted test must be performed in order to obtain an accurate amount of substance in the sample. It is not a "positive" or "negative" value but a "how much" value.

Applying that definition to the Confirmation Data Sheet Worksheet, it was found that for oxycodone, the test value exceeded the ULOL. Since it exceeded the ULOL, the lab documented that it checked the ensuing test to see if the probe's next test was positive or negative. For oxycodone, the next test was negative (which is why NEG was circled), meaning that there was no possibility that the sample probe was contaminated and that a carryover check was unnecessary.

For oxymorphone, however, the next test was documented as positive (POS circled). Per the worksheet, that mandated that a carryover check be performed in order to ensure that the positive test was not caused by a contaminated probe. Ms. Shaughnessy documented that she performed that check and that there was "no" carryover.

All of the numbers in the carryover check aspect of the form can be located in the attached exhibits, which I have collated into (C-3).

Having reviewed these documents and in performing some basic definitional research, I **CONCLUDE** that respondent failed to demonstrate that there was anything in the testing documentation that was inconsistent with the conclusion that Officer Sykes tested positive on the IA test for oxycodone and positive on the GC/MS test for both oxycodone and its derivative, oxymorphone.

For all of the confusing, contradictory witness testimony on the documentation issue, when one actually sits down and parses through it page by page, the answers are there. While it can be tempting to look at reams of data and graphs and just throw your hands up, patience and fortitude can lead to the correct answer.

APPLICABLE LAW

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 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. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant, and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). Therefore, the tribunal must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna & W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to "generate belief that the tendered hypothesis is in all human likelihood the fact." Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is defined as: "The quality that makes something (as a witness or some evidence) worthy of belief." Black's Law Dictionary 463 (12th ed. 2024).

Credibility is the value that a finder of the facts gives to a witness's testimony. It 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. U.S., 314 F.2d 718, 749 (9th Cir. 1963).

Accordingly, credibility does not mean determining who is telling the truth but rather requires a determination of whose testimony is "worthy of belief" based upon numerous factors. Credibility is not based on who presented the most witnesses. Instead, it is "the interest, motive, bias, or prejudice of a witness [that] 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). The process entails observing the witnesses' demeanor, evaluating their ability to recall specific details, evaluating the consistency of their testimony under direct and cross-examination, determining the significance of any inconsistent statements and otherwise gathering a sense of their candor with the court.

When determining the appropriate penalty to be imposed, the Board must consider an employee's past record, including reasonably recent commendations and prior disciplinary actions. West New York v. Bock, 38 N.J. 500 (1962). Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 524. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.4.

A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential. See generally, In re Stallworth, 208 N.J. 182 (2011).

The concepts of progressive and major discipline have no fixed definitions and are case-specific, but in Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966), the court declared:

> It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law . . . . He represents 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.

These issues were also addressed in In re Carter, 191 N.J. 474 (2007):

> Even so, we have not regarded the theory of progressive discipline as a fixed and immutable rule to be followed without question. Instead, we have recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197–98, 627 A.2d 602 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense). In doing so, we have referred to analogous decisions to discern the test to be applied. See Id. at 197, 627 A.2d 602. Thus, we have noted that the question for the courts is "whether such punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." In re Polk License Revocation, 90 N.J. 550, 578, 449 A.2d 7 (1982) (considering punishment in license revocation proceeding) (quoting Pell v. Bd. of Educ., 34 N.Y.2d 222, 313 N.E.2d 321, 327, 356 N.Y.S.2d 833 (1974)).
>
> [Id. at 484–85.]

The entire disciplinary system was recently affirmed once again in In re Clark, 2025 N.J. Super. Unpub. LEXIS 611 (App. Div., Apr. 17, 2025).

Further, in matters involving the discipline of police and corrections officers, issues of public safety should be considered. Id. at 485. Officers are also held to a higher duty than a "normal" public employee, given their duty to uphold and enforce the law. In re Disciplinary Procedures of Phillips, 117 N.J. 567, 576–77; see also, In re Emmons, 63 N.J. Super. 136, 142 (App. Div. 1960). As noted in In re Villanueva, 2019 N.J. Agen. LEXIS 190, aff'd, 2019 N.J. Agen. LEXIS 332 (Apr. 5, 2019), aff'd, 2021 N.J. Super. Unpub. LEXIS 146 (Jan. 28, 2021), certif. denied, 246 N.J. 311 (2021):

> This must especially be true in connection with the use of force, although here it is the case that deadly force was not involved. However, given the risks, legal consequences and impact of such use on the officers, recipients and the perceptions of the public, strict adherence to the policies must be required. Indeed, the ability of law enforcement to utilize force, whether physical, mechanical or deadly, is the most relevant reason for the insistence that they meet such a higher level of conduct.
>
> [Id. at *23.]

Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside St. Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 35 N.J. 469 (1994).

It must be noted, though, in cases of positive drug tests, the A.G.'s guidelines (as well as HPD guidelines) are clear that:

1. The officer shall be immediately suspended from all duties.

2. The officer shall be administratively charged and, upon final disciplinary action, terminated from employment as a law enforcement officer.

3. The officer shall be reported by his or her employer to Central Drug Registry maintained by the Division of State Police.

4. The officer shall be permanently barred from future law enforcement employment in New Jersey.

[R-1 at 18 and R-2 at 15−16.]

Further, as a condition of his employment, Officer Sykes agreed to abide by these guidelines, including the penalty aspects of same. See generally, In re S.D., 2024 N.J. Super. Unpub. LEXIS 266 (App. Div., Feb. 22, 2024).

RESPONDENT'S POSITION:

Respondent argues that for all of the evidence and lengthy, complicated testimony, "(t)his is as straightforward a case as the Court will ever see." It points out that there is no real dispute that Officer Sykes tested positive for a controlled substance, did not have a prescription for that substance, and that he was therefore rightly terminated:

> As a result, the Township has more than met its burden to demonstrate that Sykes tested positive for two unlawful narcotics, oxycodone and oxymorphone. And given those positive results, Sykes must be terminated from employment with the Township.
>
> [Resp't's Br. at 2.]

It is argued that Officer Sykes has failed to posit any explanation (plausible or otherwise) for the sample testing positive and then failed to have the split sample tested. Further, there is no evidence of any substantive procedural errors.

Hillside emphasized that it followed both the A.G. and departmental testing guidelines, both as to Officer Sykes' selection for testing as well as its performance and pointed to evidence demonstrating that he was familiar with those guidelines and the rights and responsibilities that flowed from them.

Once the initial sample was procured, Hillside argued that a close examination of both the evidence and testimony demonstrated that it was handled correctly and that there were no legitimate chain of custody or testing issues in the state laboratory. It argued that the appellant's expert misconstrued the lab records, further emphasizing his lack of expertise in this specific area of toxicology.

Hillside further argued that given the results of the testing, it properly followed both the A.G.'s and its own departmental guidelines by terminating Officer Sykes from his employment. It provided proper notice of the testing, properly served a PNDA, conducted a Loudermill hearing, conducted a departmental hearing and issued an FNDA.

As for some of the specific "defenses" posited by Officer Sykes, Hillside points out that by failing to have the split sample tested, he cannot, per both the applicable guidelines and case law, challenge the positive test result. It was also noted that despite all of his expert's speculation and "vague insinuations," there is next to no scientific support for any of his conclusions or theories. He failed to point to any specific cause and effect between any alleged, unproven errors made at the lab and any impact upon the testing results. Without such evidence, case law is clear that even documented (not speculative) procedural errors are insufficient to nullify test results.

It was further pointed out that there was no requirement that the actual performing technicians testify at the hearing, citing In re Aponte, 2021 N.J. Super. Unpub. LEXIS 1491 (App. Div., July 20, 2021). Rather, having the chief medical officer and laboratory director testify as to policies, procedures and paperwork was more than sufficient to validate the test results. See also, State v. Michaels, 219 N.J. 1 (2014).

APPELLANT'S POSITION:

After reviewing the witness testimony, appellant makes a multi-pronged argument, first challenging the testimony of Chief Ricciardi and Lt. Brown concerning Officer Sykes on general credibility grounds. In particular, he points to Chief Ricciardi's "issue" with the multiple automobile accidents that Officer Sykes was involved in. He also argues that Sgt. Caravano was clearly "not properly trained and did not know what he was doing as

a monitor," as well as Chief Ricciardi's purported lack of knowledge as to the storage and transportation of the sample. He questioned Lt. Brown's credibility on the same issues, arguing that her testimony was "defensive and lacked any substance."

Appellant also raised concerns regarding the testimony of Mr. Diaconescu and Dr. Falzon "due to their lack of knowledge of chain of custody or the actual testing in this case" and criticized Hillside's failure to produce "the actual technicians or scientists that removed the stored sample (and/or) performed the initial screening results of the GCMS confirmatory results."

Counsel also pointed specifically to Dr. Falzon's testimony concerning the GCMS testing and the positive/negative test result conundrum. The full scope of this argument will be addressed below.

On the other hand, it was argued that Officer Sykes' testimony was "candid and open" and that he never consumed oxycodone and/or oxymorphone in the relevant time period, although, concededly, "his wife gave him unidentified medication from their kitchen cabinet while he was sick and up to his return to work." He also argued that the evidence showed that there was a real possibility that the NyQuil he was taking at the time could have led to a false positive.

Finally, he pointed to Dr. Pandina's testimony concerning the "high probability that the GCMS test was positive due to problems with the laboratory procedures and lack of proper procedure, which resulted in contamination of the sample." He pointed to testimony concerning the handling of the specimen in the lab. He also cites to "unrefuted" testimony that the active ingredient in NyQuil "causes a false positive in urine testing for Oxycodone" and that there are "valid theor(ies)" which support this position.

Appellant did not proffer an argument on the issue of appropriate discipline, be it based simply on a determination that the positive test result was simply that or whether it was a result of inadvertent or careless consumption of the prohibited substance.

DISCUSSION

The problem with the defense in this case, from the very beginning, was its scattershot approach. Effectively, Officer Sykes threw everything up against the wall with the hope that some of it would stick. It was a selection problem; it was a collection problem; it was a chain-of-custody problem; it was a testing problem; it was a false positive problem; it was an unintentional ingestion problem. Practically any potential defense was raised with no consistent theory or story of what they thought had actually occurred.

The problem with the litany of explanations is that none of them, when viewed in isolation, is particularly persuasive. In this way, this matter is very similar to In re Huchko, 2006 N.J. Super. Unpub. LEXIS 2580 (App. Div., June 12, 2006), which was also a "throw it against the wall" type of case. There, Officer Huchko tested positive for cocaine in 2022 and was ultimately fired. He denied having ever used cocaine or having been in a position to have unintentionally ingested the same.

The ALJ affirmed the termination and the CSC adopted that decision. On appeal, Huchko raised multiple issues, including the manner in which he was selected for testing, how the sample was collected, the sterility of the specimen container, how the sample was maintained throughout the testing process, the delay in obtaining the laboratory results and the improper disclosure of the test results to the media. Id. at *24–25.

The Court dismissed all of Huchko's arguments, noting that there was substantial evidence that even if there were procedural missteps, there was no evidence that any of those errors/issues were "material" or had any impact on the specimens or the test results.

Some of the procedural arguments in this case, which are framed as due process arguments, are simply factual determinations based upon the credibility of the testimony of the witnesses involved. Very simply, **I FIND** that there were no substantive factual or legal issues raised concerning the following:

a. The selection of Officer Sykes for testing

b. The collection process

c. The transportation of the sample to the laboratory

The testimony of Chief Ricciardi, Lt. Brown and Sgt. Caravano on these issues was straightforward, logical and believable and was not effectively challenged. The evidence demonstrated how Officer Sykes was randomly chosen for the test, exactly how the sample was collected, the supervision of the collection process, how the sample was stored and how it was transported and delivered. There is simply nothing in the record that even suggests that there was any substantive deviation from any guidelines, departmental or otherwise, in how these aspects of the testing process were performed. As will be discussed below, the minor paperwork issues raised concerning Lt. Brown and Sgt. Caravano are literally inconsequential.

The more significant concerns were those raised by Dr. Pandina. However, before we proceed with the factual discussion concerning these issues, we have to review the law.

As to the issue of how procedural violations may impact cases such as these, there are three primary cases to review (in addition to Huchko). First up is In re Gonzalez, 2009 N.J. Super. Unpub. LEXIS 70 (App. Div., Jan. 15, 2009). This case involved a firefighter who failed a drug test and where the split sample also tested positive. While he made multiple arguments, including that "the procedures used in dealing with the urine sample derogated proper chain-of-custody requirements," the court concluded that those issues were not "properly framed . . . on appeal" and therefore focused on the failure of the Medical Review Officer to review the test results. The court rejected this argument, holding that Gonzalez had "made no adequate proffer of unreliability regarding the test results and analyses . . . because of the lack of a medical review officer's involvement." Id. at *5.

Similar to Gonzalez, the Board in In re Darnell Stith, 2006 N.J. Agen. LEXIS 1095 (Mar. 8, 2006) found that alleged procedural violations (such as a lack of privacy when providing the sample and a perceived lack of security of the refrigerator where it was stored) did not warrant overturning Mr. Stith's dismissal from his position as a corrections

officer. Rather, it held, consistent with other case law, that since the record demonstrated that there was a "reasonable probability" that the integrity of the sample had been maintained, there was no reason to disregard the positive test result (for benzoylecgonine. Id. at *7–8.

The third key case is In re Picariello, 2012 N.J. Super. Unpub. LEXIS 1624 (App. Div. July 9, 2012). There, another Hudson County corrections officer tested positive for cocaine in the initial screening test. While there were potential issues with the initial sample, the focus of this case, for our purposes, is on the split sample. During the pendency of the disciplinary process, Sergeant Picariello's counsel requested that the split sample be tested. After a two-year delay, the laboratory selected to test the split sample declined to do so "because there was a problem with the chain of custody." Id. at *8.

The court held that with regard to a failure to comply with administrative guidelines or procedures, the aggrieved party must be "unfairly prejudiced." Id. at *18. See O'Rourke v. City of Lambertville, 405 N.J. Super. 8, 23 (App. Div. 2008, certif. denied, 198 N.J. 311 (2009). Specifically, as to the chain of custody issue, the court provided a succinct review of the controlling case law:

> Appellant raises a number of issues on appeal involving the chain of custody of the samples proffered for testing with both the State Police Laboratories and Quest Diagnostics. A trial judge's determination regarding chain of custody is subject to review for abuse of discretion. See State v. Kollarik, 22 N.J. 558, 565–66, 126 A.2d 875 (1956); see also State v. Brown, 99 N.J. Super. 22, 27, 238 A.2d 482 (App. Div.), certif. denied, 51 N.J. 468, 242 A.2d 16 (1968). Challenges to an administrative agency's finding regarding chain of custody are reviewed under the standard we identified earlier. In re Lalama, 343 N.J. Super. 560, 565, 779 A.2d 444 (App. Div. 2001). The appointing authority assumes the burden of proof that the chain of custody of the specimen is unbroken. Id. at 566, 779 A.2d 444. The legal standard for proving the validity of a chain of custody is a reasonable probability that no tampering has occurred. Brown, supra, 99 N.J. Super. at 28, 238 A.2d 482. "Reasonable probability" does not require proof of an uninterrupted chain of possession or the "negat[ion

> of] every possibility of substitution or change in condition[.]" Id. at 27, 238 A.2d 482.
>
> [Picariello at *22-23.]

In Picariello, amongst multiple documentary issues/discrepancies, the petitioner claimed that the sample was kept in a refrigerator that was available to the staff and that the documentation supplied only demonstrated when the samples were placed in the refrigerator, not when they were removed. Id. at *23-24. There was also the issue concerning the split sample. The court ruled that because the appellant "failed to show that there were fundamental flaws in the testing process which rendered his [first] test result unreliable" and further because the delay which led to the chain of custody issue was not due to bad faith by the agency (it was allegedly due to the appellant's delay in identifying an appropriate laboratory for testing), he could not succeed on that claim.

Further, since no fault had been found with the original sample, the value of the split sample was "significantly diminished," and it would not be "clearly exculpatory" but only "potentially exculpatory." There was therefore no "manifest prejudice or harm," and the due process claim was dismissed. Id. at *27-29, citing George v. City of Newark, 384 N.J. Super. 232 (App. Div. 2006); State v. Dreher, 302 N.J. Super. 408 (App. Div. 1997).

Similar to Picariello, the court in In the Matter of Gregory Pettey, 2010 N.J. CSC LEXIS 590 (Mar. 26, 2010) found that a significant issue with the split sample was insufficient to reverse the appellant's termination. Pettey, a corrections officer at Riverfront State Prison, tested positive for marijuana. His union arranged for the split sample to be tested by LabCorp. However, Officer Pettey was later advised by LabCorp that the split sample could not be located. Id. at *2.

The ALJ upheld the termination, noting that it was LabCorp, the lab chosen by the appellant, which lost the sample; that the sample was only "potentially exculpatory"; and that there was not even a suggestion of impropriety with the original testing. Id. at *2-*3. The Board affirmed the ALJ's decision, largely for the same reasons. Id. at *5.

Here, there was extensive discussion of chain of custody and while Dr. Pandina raised some questions about time gaps within the laboratory documentation, I **FIND** that he "failed to show that there were fundamental flaws in the testing process which rendered . . . (the) test result unreliable." Both electronic and hand-written chain of custody forms were completed and reviewed and while the exact timing of the movements of the samples was perhaps not as well documented as one may have preferred, even Dr. Pandina failed to point to any specific flaw in the test results that may have resulted from the same.

Chain of custody was examined in In re Lalama, 343 N.J. Super. 560 (App. Div. 2001), in which a Paterson firefighter tested positive for cocaine. In that case, there were some documentary violations, but the ALJ ruled that those did not call into question the identity of the donor. The Board reversed, arguing that the chain of custody had been compromised. The Appellate Division reversed, holding:

> Although the reported New Jersey appellate decisions involving chain of custody issues have all been criminal cases, it is even clearer in an administrative proceeding that a party seeking to introduce drug test results only needs to show a "reasonable probability" that the integrity of the sample has been maintained, because a relaxed standard of admissibility of evidence applies in administrative proceedings. See N.J.S.A. 52:14B-10(a). This conclusion is supported by decisions in other jurisdictions that have applied the "reasonable probability" test in determining whether the "chain of custody" of a urine sample or other similar evidence was adequately demonstrated to justify the admission of test results in an administrative agency hearing. (citations omitted)
>
> [Id. at 447-48; See also, In re Martinez, 2011 N.J. Super. Unpub. LEXIS 2613 (App. Div., Oct. 18, 2011).]

The paperwork snafus were simply not enough to call into question a conclusion that it was reasonably probable that the integrity of the sample had been maintained.

Officer Sykes also raised the issue of the lab technicians not being called as witnesses. However, case law is clear that the techs do not have to testify in order for

the test results to be admissible. The key case on this issue is State v. Michaels, 219 N.J. 1 (2012), where the defendant was charged with vehicular homicide. In order to admit the results of the defendant's blood samples, the State called the assistant lab director/toxicology technical leader. Similar to Dr. Falzon and Mr. Diaconescu, he testified as to the lab processes, the specific tests performed, the test data, and that he "was satisfied that the testing had been done properly and that his independent review permitted him to certify the results." Id. at 11.

The testimony was strikingly similar to that presented in this case and the Court upheld Ms. Michaels' conviction, holding that:

> Here we are satisfied that the machine-calibrated, quality-controlled gas chromatography/mass spectrometry tests performed on defendant's blood sample provided a sound basis for Dr. Barbieri, as an expert in the fields of forensic toxicology and pharmacology and a person knowledgeable about the testing process employed, to opine on the drugs found in defendant's blood and their likely impact on her at the time the blood was drawn. When a confrontation challenge is raised, the record must show in detail the basis upon which the testifying witness soundly has reached his or her conclusion. Here, defendant's opportunity to cross-examine Dr. Barbieri satisfied defendant's right to confrontation on the forensic evidence presented against her.
>
> [Id. at 83.]

Perhaps the ultimate "procedural issues" case demonstrates just how bad those errors have to be in order for an appellee to prevail. The court in In re Michael Brown, 2009 N.J. Super. Unpub. LEXIS (App. Div., July 16, 2009) described a litany of problems in this case, which involved a corrections officer who tested positive for marijuana. During the OAL hearing, two witnesses testified for the employer: the personnel captain at the jail and the president of the company that was hired to do the testing (NSC). However, NSC had actually subcontracted that responsibility to another company (LabOne). Id. at *1–2.

Effectively, neither witness had any knowledge of anything. The captain "believed" that the A.G.'s drug testing guidelines had been followed, but neither witness knew

whether they actually were or not. While the captain did know that the incorrect interview form was used, neither witness knew who was present during the donation process, whether the sample was handled properly, or by whom and no chain of custody was established. The lab's MRO did not testify and all records of his review had been destroyed in any event. In fact, no one from the lab testified.

> In short, no one could verify that the test was conducted in accordance with the Attorney General guidelines or that the sample was properly collected, properly labeled, properly shipped and properly tested.
>
> Id. at *4.

Even given all those problems, the ALJ and the Board upheld the termination. The Appellate Division, though, had heard enough, noting very succinctly that:

> Our difficulty in reviewing this record is the lack of competent evidence. There were no witnesses who testified to first-hand knowledge of the procedures employed, and no witnesses who could verify that any of the essential elements of a fair and reliable testing procedure were followed.
>
> We disagree with the ALJ's finding after the remand that the documents presented by the County satisfied N.J.R.E. 803(c)(6) in that "these writings record acts, events, conditions, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, and were made in the regular course of business and it was the regular practice of that business to make." There is insufficient evidence in the record to support that statement. The documents are entirely hearsay and there was no competent testimony from anyone with first-hand knowledge as to the preparation of those records or even to ascertain that they were made in the regular course of business. Raslowsky testified as the President of NSC, not the custodian or the preparer of records, and he could not even verify that the Attorney General's guidelines were followed.
>
> In short, the County's entire case was based upon incompetent, inadmissible evidence. Even under the relaxed evidentiary standard of an administrative hearing, In re Lalama, 343 N.J. Super. 560, 566, 779 A.2d 444 (App. Div. 2001), the testimony and the documentary evidence are so

> substantially lacking in reliability that they cannot support the County's case against petitioner.
>
> [Id. at *5-6.]

This case does not remotely resemble Brown. Neither Dr. Falzon nor Mr. Diaconescu expressed any concern regarding the chain of custody issue in their direct testimony and little headway was made against them during cross-examination. Both of them, while not the laboratory technicians, had first-hand knowledge of not only how the testing was performed but also how the records were generated and who generated them. Further, as noted above, there were no real issues concerning Officer Sykes's selection for the testing or the collection and transportation of the samples.

Finally, other than what was purely conjectural speculation by Dr. Pandina, there was no evidence that the manner in which the sample was handled at the lab impacted the test results.

Ultimately, I **CONCLUDE** that there is no legitimate question that the specimen was maintained in the laboratory and that there was an unbroken chain of custody from the time the kit was opened in the HPD through the completion of the GC/MS testing.

I further **CONCLUDE** that no cognizable evidence has been proffered by Officer Sykes to demonstrate that the manner in which the specimen was handled in the laboratory somehow impacted the test results.

The Results

Obviously, in a drug testing case, there is a great deal of discussion about the positive test itself. Here, though, one factor that was largely ignored/downplayed during the hearing was Officer Sykes' failure to have the split sample analyzed. However, as was noted by respondent in its closing argument, this is a huge issue and one from which Officer Sykes does not recover.

As noted above, the H.P.D. Drug Testing Guidelines are based on and are the substantive equivalent of the A.G.'s Law Enforcement Drug Testing Policy. As to split samples, those guidelines read (in relevant part) as follows:

> E. Split Specimen
>
> 1. **A donor whose specimen tested positive may only challenge the positive test result by having the split specimen independently tested by an accredited laboratory. The first specimen will not be retested.**
>
> 2. The split specimen will be maintained at the Laboratory for a minimum of one year following the receipt of a positive drug test result from the Laboratory by the submitting agency.
>
> [(emphasis added) (R-2.)]

That language is pretty unequivocal. This issue was discussed in In re Griffin, 2024 N.J. Super. Unpub. LEXIS 82 (App. Div., Jan. 18, 2024). There, an officer with the Hudson County Department of Corrections (HCDC) underwent a random drug test in August 2018. The sample tested positive for a cocaine metabolite. For an unknown reason, the HCDC did not incorporate the A.G.'s newly issued March 2018 testing guidelines in full,[15] but as to split samples, gave donors an option of providing a split sample or signing a waiver of their right to submit that second sample. Predictably, Ms. Griffin failed to provide a second sample and did not sign a waiver. Id. at *3.

During the OAL proceeding, the judge found Ms. Griffin's testimony that she was unaware of her right to request a split sample and would have provided one if she had been aware to be "wholly unbelievable." Id. at *10. It was also found, contrary to her testimony, that she had been provided with two specimen cups and had been "advised of her rights to a second sample, knew her rights and chose not to give a second sample." Id. at *12.

[15] Directive 2018-2.

The Appellate Division determined that the HCDC obviously violated the A.G.'s drug testing policy, since those guidelines "have the force of law for police entities." Id. at *17 (citations omitted). Notwithstanding that, it was held that Ms. Griffin had not been deprived of due process, since "the claimant must either avail (her)self of the remedies provided by state law or prove that the available remedies are inadequate." Id. at *19, quot., Plemmons v. Blue Chip Ins. Servs., Inc., 387 N.J. Super. 551 at 566 (App. Div. 2006).

However, it is this paragraph that raises the biggest hurdle for Officer Sykes to overcome:

> Further, to the extent Griffin was prejudiced by HCDC's deviation from the policy, see George, 384 N.J. Super. at 243, **we are satisfied any prejudice was self-inflicted and resulted from Griffin's own refusal to submit a second sample**. Indeed, the fact Griffin refused to provide a second sample after being informed of her right undermines her due process challenge and validates the urine collection process, notwithstanding HCDC's deviation from the collection procedures mandated with the AG's Drug Testing policy. **In reaching this conclusion, we fully acknowledge the second sample is an integral feature of the specimen collection procedures, as it provides the sole avenue for challenging a positive test result**, but conclude HCDC's deviation from the AG's Drug Testing policy does not require Griffin's reinstatement under the idiosyncratic circumstances presented here, which include: 1) the fact the validity of the positive test result is uncontested; 2) HCDC having informed Griffin she needed to complete a second sample in order to challenge a positive test result; 3) the ALJ's finding she chose not to avail herself of that protection.
>
> [Id. at *24-25 (emphasis added.)]

While I acknowledge that Officer Sykes is challenging the positive findings on the initial test, the focus in Griffin was on the allegedly "missing" second test and whether she was prejudiced by the HCDC's failure to follow the A.G.'s guidelines (and its own, for that matter). It was only those failures which led to the dispute.

A timeline of events of the developments in this case provides some context for this issue:

January 15, 2022 – sample provided

January 18, 2022 – sample transported to lab by Lt. Brown

January 25, 2022 – IA testing performed

January 31, 2022 – GC/MS testing performed

February 2, 2022 – report generated and certified

February 23, 2022 – notice of failed drug test provided to Hillside P.D. and Officer Sykes

February 25, 2022 – notice of suspension issued to Officer Sykes

March 1, 2022 – counsel retained by Officer Sykes

March 2, 2022 – Loudermill hearing

April 24, 2022 – sixty days from notice of test results to Hillside P.D.

September 26, 2022 – departmental hearing (first day)

October 28, 2022 – departmental hearing (second day)

February 23, 2023 – one year from notice of test results to Hillside P.D.

This timeline creates multiple problems for Officer Sykes, starting with his testimony concerning the split sample. As noted above, this is what he said:

> Q. Is there a reason why you did not inform the Department that you wanted to have a second test done?
>
> A. I don't know. I don't believe I was aware to be honest with you.
>
> [T4 at 55:21–25.]

Upon further questioning, he acknowledged that "he didn't know the reasoning for (the second cup)" and "just thought I was to provide two separate cups." (T4 at 56:4−13.) While I found Officer Sykes to be very personable, his testimony on multiple key issues in this case lacked credibility. He testified that he had read the H.P.D.'s drug policy (which included a full paragraph on split sample testing), but even more importantly, he was represented by counsel (from the same firm which represented him in this hearing) from as early as March 1, 2022. That firm represented him at both the Loudermill and departmental hearings, and there was no indication, ever, that there was a request for the split sample to be tested.

At the very least, per the H.P.D. drug testing policy, Officer Sykes had sixty days from the date the notice of the positive test was supplied to Hillside to request that the split sample be tested.[16] Per the A.G.'s guidelines, he had a year to make that request. However, at no point did Officer Sykes, either individually, through his union, or through counsel, ever request that the split sample be tested. Even assuming that his professed initial ignorance of the reason for the two containers at the time of supplying the sample is legitimate, he had more than ample opportunity to become aware of the importance of the split sample.

I **FIND** it incredible that he was unaware throughout the post-positive time period of his right to have the split sample tested and the potential consequences if he did not. In fact, it would not be unreasonable, given the sequence of events, to infer that he made a conscious decision to forego the testing of the split sample and attack the test/disciplinary outcome on other grounds.

The decision in Griffin is consistent with the findings in In re Norman, 2006 N.J. Super. Unpub. LEXIS 819 (App. Div., Jan. 16, 2026). Norman involved an Asbury Park police officer who tested positive for cocaine. During the hearing, it was acknowledged that the Asbury Park drug testing guidelines did not follow the A.G.'s guidelines, but there was testimony as to the integrity of the testing and the Board determined that the

[16] "The second specimen will be maintained at the State Toxicology Laboratory as the first specimen tested positive for a controlled substance." (R-2 at 11.)

deviations neither violated the appellant's right to due process nor "in any way affected the reliability and validity of the positive test results." Id. at *9.

The Court upheld the Board, simply noting that its decision "could reasonably have been reached on sufficient credible evidence present in the record." Id. at *12, citing Close v. Kordulak Bros., 44 N.J. 589, 599 (1965).

Given the content of both the HPD and A.G. guidelines, the case law cited above, and the evidence/testimony presented during the hearing, I **CONCLUDE** that by failing to have the split sample tested, Officer Sykes has forfeited his right to challenge the positive test results.

CHARGES

As detailed above, Officer Sykes was found to have committed five separate violations: incompetence/inefficiency/failure to perform duties, insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty and violating policies, procedures and regulations concerning drug use. N.J.A.C. 4A:2-2.3(a)(1), (2), (3), (6) and (10).

In the grand scheme of things, the individual charges are largely irrelevant, since the A.G.'s Law Enforcement Drug Testing Policy (rev. 2020) requires that, in the event of a positive test, the agency immediately suspend and ultimately terminate the officer. Id. at 13 § VIII(C). (R-1.) Further, the A.G.'s policy provides that any officer who tests positive for illegal drugs "shall be permanently barred from future law enforcement employment in New Jersey." Ibid. See also H.P.D. General Order (Law Enforcement Drug Testing) (Nov. 18, 2019) (R-2.) This consequence has been upheld by the courts on multiple occasions, most recently in In re Ferro, 2024 N.J. Super. Unpub. LEXIS 1483 (App. Div., July 8, 2024).

INCOMPETENCE/INEFFICIENCY/FAILURE TO PERFORM

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. The Administrative Code provides no specific definition of these terms. N.J.A.C. 4A:2-2.3(a.) However:

> (C)ase law has determined incompetence is a "lack of the ability or qualifications necessary to perform the duties required of an individual [and] a consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position." Sotomayer v. Plainfield Police Dept, CSV 9921-98, Initial Decision (December 6, 1999), adopted, Merit Sys. Bd. (January 24, 2000), http://njlaw.rutgers.edu/collections/oal/final/csv09921-98.pdf (citing Steinel v. City of Jersey City, 7 N.J.A.R. 91 (1983); Clark v. New Jersey Dept of Ag., 1 N.J.A.R. 315 (1980).)
>
> [In re Ciuppa, 2014 N.J. Agen. LEXIS 206, *55 (May 16, 2023).]

INSUBORDINATION

Insubordination encompasses an employee's failure or refusal to follow a directive, order or instruction of a supervisor. Eaddy v. Dep't of Transp., 208 N.J. Super. 156, 158–59 (App. Div.), certif. granted, 104 N.J. 392, order vacated, appeal dismissed, 105 N.J. 569 (1986); City of Newark v. Massey, 93 N.J. Super. 317, 322 (App. Div. 1967).

This definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter, especially in a paramilitary context. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

INABILITY TO PERFORM DUTIES

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Once again, the Administrative Code provides no specific definition of these terms. N.J.A.C. 4A:2-2.3(a). However:

> (C)ase law has determined incompetence is a "lack of the ability or qualifications necessary to perform the duties required of an individual [and] a consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position." Sotomayer v. Plainfield Police Dep't CSV 9921-98, Initial Decision (December 6, 1999), adopted, Merit Sys. Bd. (January 24, 2000), http://njlaw.rutgers.edu/collections/oal/final/csv09921-98.pdf (citing, Steinel v. City of Jersey City, 7 N.J.A.R. 91 (1983); Clark v. New Jersey Dep't of Ag., 1 N.J.A.R. 315 (1980).)
>
> [In the Matter of Ciuppa, 2014 N.J. Agen. LEXIS 106.]

CONDUCT UNBECOMING A PUBLIC EMPLOYEE

Under N.J.A.C. 4A:2-2.3(a)(6), an employee may be subject to major discipline for conduct unbecoming a public employee. Although not strictly defined by the Administrative Code, "conduct unbecoming" has been described as an "elastic" phrase which encompasses conduct that "adversely affects the morale or efficiency" of the public entity or tends "to destroy public respect for [government] employees and confidence in the operation of [government] services." Karins v. City of Atl. City, 152 N.J. 532, 554 (quoting Emmons, 63 N.J. Super. at 140); see also In re Teel, 2012 N.J. Super. Unpub. LEXIS 667 (App. Div. March 27, 2012).

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 Zeber Appeal, 156 A.2d 821, 825 (1959)).

VIOLATION OF FEDERAL REGULATIONS

This charge, as delineated in N.J.A.C. 4A:2-2.3(a)(10), reads in full as follows:

> Violation of federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder.

This code provision is rarely cited in disciplinary proceedings, and when cases do address it, it is often largely ignored. However, it was addressed in a footnote in Reames v. Dep't of Pub. Works, City of Paterson, 310 N.J. Super. 71, 81 n.2 (App. Div. 1998):

> We recognize that N.J.A.C. 4A:2-2.3(a)(10) subjects a public employee to discipline for "[v]iolation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder. . . ." We are, however, satisfied that this rule was not intended to apply to random drug testing conducted by a public employer in violation of federal regulation.
> See also, Johnson v. Dep't of Transportation, 2006 N.J. Agen. LEXIS 704 at *9-10 (July 27, 2006)

FINDINGS

In reviewing the evidence, I **FIND** that respondent has proven by a preponderance of the credible evidence that by testing positive for the for Total Oxycodone and Total Oxymorphone acted in a manner unbecoming of a public employee on May 9, 2021. That failure clearly "adversely affects the morale or efficiency" of the public entity and tends "to destroy public respect for . . . [public] employees and confidence in the operation of . . . [public] services." Karins, 152 N.J. at 555.

As for the charge of insubordination, however, I **FIND** that respondent has also proven same by a preponderance of the credible evidence. By failing to follow the clearly spelled out and acknowledged A.G. and H.P.D. drug testing guidelines, Officer Sykes' actions met the definition of this charge, which requires only non-compliance without the necessity of any affirmative actions.

While neglect of duty is not defined by the regulation, in general it means that an employee either failed to perform and act or was negligent in doing so.

While there is not much of a definitional difference between "failure to perform" and "inability to perform" (and again, this aspect of the decision is largely an academic exercise), I **CONCLUDE** that due to the verbiage of the A.G. and H.P.D. guidelines, the positive test has forced Officer Sykes into a position where he is unable to perform his job duties and I therefore **FIND** him guilty of that charge. However, I **FIND** that the positive testing does not meet the definition of "failure to perform", because there is no evidence that he ever actually failed to perform any assigned duties, was incompetent or inefficient. I therefore **FIND** that he is not guilty of that charge.

Finally, given the verbiage of the "Federal" violations charge as well as the consistent interpretation by the courts that it simply does not apply in situations such as this, I **FIND** that Officer Sykes has not been proven guilty of that charge.

PENALTY

The parties have stipulated that Officer Sykes has no prior disciplinary history and while the "car accidents" issue was alluded to, I **FIND** that same has no impact on the ultimate disciplinary decision here.

However, in the grand scheme of things, Officer Sykes' history is effectively irrelevant. While New Jersey civil service law follows the concept of progressive discipline, [see generally, In re Stallworth, 208 N.J. 182 (2011)], in a case of a failed drug test, there is next-to-no wiggle room on the penalty issue.

Both the A.G. and H.P.D. guidelines call for the officer's termination (along with some attendant penalties) in situations such as this. Absent extraordinary circumstances, none of which are present (or argued) here, the only option is termination. While there are some cases that discuss either the allegedly reckless or inadvertent ingestion (and the fact pattern suggests that this could be at least a colorable defense), they are not presented here. See generally In re Aponte.

However, the facts of this case are much more in line with the Court's analysis in In re S.D., 2024 N.J. Super. Unpub. LEXIS 266 (App. Div. Feb. 22, 2024). That case involved a petitioner's claim that his positive drug test was caused by the passive inhalation of his wife's medicinal marijuana smoke. The Court affirmed the ALJ's analysis of the law, which is effectively mirrored above, noting specifically the higher standard of behavior to which police officers are held, the acknowledgement of the expressed consequences of a failed drug test in both the A.G. and Departmental regulations and the carelessness/recklessness which led to the positive result.

Ultimately, I **FIND** that termination is the only appropriate penalty for Officer Sykes. New Jersey has taken an extremely hard line on drug usage by police officers[17]. Some might argue that the policy is unduly harsh, but no one argue that the consequences of a positive test are not well known. Further, the law is clear that the officer is responsible for what ends up in his body, no matter who provides it. Here, for whatever reason, I **FIND** that Officer Sykes tested positive for Oxycodone/Oxymorphone and he;

a. Failed to list it on his medication form
b. Failed to provide a prescription for it
c. Failed to have his split sample tested
d. Took medication from his wife without knowing what it was

Even accepting his claim of naivety as truthful, all of the above, no matter his version of events, leads to a conclusion that he was reckless in how he handled himself when he knew that the ultimate penalty for a positive test was termination.

ORDER

Based on the foregoing, I hereby **ORDER** that petitioner, Jeffrey Sykes, be terminated from his employment as a police officer in the Township of Hillside, effective February 25, 2022[18].

[17] Except for cannabis.
[18] R-3

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. 52:14B-10.

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.

July 1, 2025
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: July 1, 2025

Date Mailed to Parties: July 1, 2025

MGM/sej

APPENDIX

WITNESSES

For Petitioner:

Officer Jeffrey Sykes

Dr. Robert Pandina

For Respondent:

Chief Vincent Ricciardi

Lieutenant Qiana Brown

Sorin Diaconescu

Andrew Falzon

Anthony Caravano

EXHIBITS

Court:

C-1 Joint Stipulation

C-2 Final Notice of Disciplinary Action (November 28, 2022)

C-3 GC/MS confirmation data

For Petitioner:

P-1 Completed Drug Testing Collection Form with officer acknowledgement (January 15, 2022)

P-2 COVID-19 test results (January 4 and January 5, 2022)

P-3 Eastern Dental prescription history (April 2008–September 2012)

P-4 Drug Testing Medication Information (January 15, 2022)

For Respondent:

R-1 Attorney General's Law Enforcement Drug Testing Policy (revised, December 2020)

R-2 Hillside Police Department General Order (Law Enforcement Drug Testing) (November 18, 2019)

R-3 Preliminary Notice of Disciplinary Action and Cover Memorandum (February 25, 2022)

R-4 N.J. Medical Examiner Toxicology Laboratory, Law Enforcement Drug Testing, Urine Specimen Collection Procedure

R-5 New Jersey State Medical Examiner Toxicology Laboratory Drug Testing File (Jeffrey Sykes)

R-6 Petitioner's review of Law Enforcement Drug Testing policies

R-7 Completed Forensic Urine Drug Testing Custody and Submission Form (January 15, 2022)

R-8 Letter to petitioner from Lt. Brown, re: positive drug test results (February 23, 2022)