

COOK COUNTY SHERIFF'S MERIT BOARD

SHERIFF OF COOK COUNTY,)	
)	
vs.)	
)	Docket # 1739
DEPUTY LIEUTENANT,)	
KENNETH D. PROMISCO,)	
Employee # [REDACTED])	
Star #501.)	

DECISION

THIS MATTER COMING ON to be heard pursuant to notice before Jennifer E. Bae, a Board Member, and the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction:

1. Kenneth D. Promisco, (herein after "Respondent") holds a position as a Deputy Lieutenant which involves duties and responsibilities to the public.
2. Each member of the Cook County Sheriff's Merit Board (hereinafter "Board") has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term.
3. The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes.
4. The Respondent was personally served with a copy of the Complaint and Notice of Hearing and appeared before the Board to contest the charges contained in the complaint.
5. The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting documents.

Background:

By complaint dated November 26, 2013, Sheriff Thomas J. Dart, sought to remove Respondent from the Cook County Sheriff's Office. The complaint alleges that Respondent violated the Rules and Regulations and General Orders of the Cook County Sheriff's Office by violating the CCSO Drug-Free Workplace Policy, Rules of Conduct, Staff Responsibility, Code of Ethics, and Rules and Regulations of the Cook County Merit Board, specifically:

SHERIFF'S ORDER 11.2.23.0 (effective date: June 28, 2013)
CCSO DRUG-FREE WORKPLACE POLICY, in its entirety, including but not limited to, the following subparts:

I. Purpose

This order disseminates and implements the Cook County Sheriff's Office (CCSO) Drug-Free Workplace Policy and the Mandatory Guidelines for Drug Testing for all CCSO employees, sworn and civilian.

II. Policy

A. The CCSO shall take all reasonable measures to provide and maintain a work environment free of employees who unlawfully use drugs or controlled substances.

B. The following are strictly prohibited by CCSO employees, at any time, while on or off-duty:

1. Unlawful involvement with drugs or controlled substances;
2. The presence of drugs or controlled substances, or their metabolites in their system;
3. The use of cannabis or non-prescribed controlled substances; or
4. The abuse or unlawful use of legally prescribed drugs or controlled substances.

III. Applicability

This Sheriff's Order is applicable to all employees of the CCSO and is for strict compliance. Supervisors shall review the contents of this order with all employees under their supervision as appropriate.

VI. Responsibilities of CCSO Employees

It is the responsibility of all employees to acquaint themselves with, and abide fully by, the provisions of the CCSO Drug-Free Workplace Policy and the Mandatory Guidelines for Drug Testing (Appendix "A").

VIII. Disciplinary Action

Violations of this policy, substantiated by confirmed positive drug test, could result in the separation of a CCSO employee.

SHERIFF'S ORDER 11.2.20.0

RULES OF CONDUCT, in its entirety, including but not limited to, the following subparts:

I. Purpose

This order establishes basic rules of conduct to be followed by all employees of the Cook County Sheriff's Office (CCSO).

II. Policy

The CCSO serves the citizens of Cook County by performing law enforcement functions in a professional manner, and it is to these citizens that the CCSO is ultimately responsible. Employees of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. Employees shall not engage in activities that reflect unfavorably on the CCSO but shall instead serve to further the mission of service.

VI. Rules and Regulations for All Sworn and Civilian CCSO Employees

A. Compliance with Laws, Ordinances, and Regulations

1. Employees shall uphold the Constitutions of the United States and the State of Illinois, obey all federal, state and local laws in which jurisdiction the employee is present, and comply with court decisions and orders of courts having jurisdiction.

B. Conduct on and off duty.

CCSO employees shall:

2. Conduct themselves on and off-duty in such a manner to reflect favorably on the CCSO. Employees, whether on or off-duty, will not engage in conduct which discredits the integrity of the CCSO, its employees, the employee himself/herself, or which impairs the operations of the CCSO. Such actions shall constitute conduct unbecoming of an officer or employee of the CCSO.

GENERAL ORDER 1009

STAFF RESPONSIBILITIES, in its entirety, including but not limited to, the following subparts:

I. Purpose

The purpose of this Order is to define and emphasize some of the functions and responsibilities of the various positions within the Court Services Department (C.S.D.).

II. Functions and Responsibilities

A. –

B. Supervisory Members

Supervisory members will be responsible for adherence to the Department's rules, regulations, policies, orders and procedures. They are responsible and accountable for the maintenance of discipline and will provide leadership, supervision and continuing training to ensure the efficiency of operations. They have the responsibility to influence subordinate members and to motivate them to perform at a high level of efficiency. They have the responsibility for the performance of all subordinates placed under them. While they can delegate authority and functions to subordinates, they cannot delegate responsibilities.

C. Sworn Members

Sworn members will devote themselves fully to the attainment of the letter and spirit of the Department policy, and will conduct themselves at all times in such manner as well reflect credit upon the Department with emphasis on personal integrity and professional devotion to law enforcement.

They will:

3. Know and conform to the Department's policy, rules, regulations, orders, procedures, and directives.

GENERAL ORDER 3406

CODE OF ETHICS, in its entirety, including but not limited to, the following subparts:

I. Purpose

The purpose of this order is to establish a code of professional ethics for sworn members of the Court Services Department.

II.

III.

IV.

V. Procedures

Failure to abide by the conditions and standards as set forth in this Code of Ethics (see enclosure) will be considered a violation of the Rules of Conduct and may result in disciplinary action as provided in the Rules and Regulations of the Cook County Sheriff's Merit Board or the Collective Bargaining Agreement.

VI. Applicability

This order applies to all C.S.D. sworn members and is for strict compliance.

COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B

No Police Officer of the Cook County Sheriff's Police Department, nor any Correctional Officer of the Cook County Department of Corrections, nor any Deputy Sheriff of the Cook County Sheriff's Court Services Department shall:

1. violate any law or statute of any state or of the United States;
2. violate any ordinance of a county or municipal government;
3. violate any of the general orders, special orders, directives or rules and regulations of the Cook County Sheriff's Office.

Issues Presented:

Whether the actions of the Respondent violated any of the General Orders and Rules and Regulations set forth above and what if any discipline is appropriate if a violation occurred.

Evidence Presented:

A hearing was conducted on September 29, 2014, October 30, 2014, April 1, 2015, and April 23, 2015 at the Cook County Administration Building, 69 W. Washington Street, Room 1100, Chicago, Illinois. Present were Assistant State's Attorneys [REDACTED] and Assistant General Counsels [REDACTED] on behalf of the Cook County Sheriff and Attorneys [REDACTED] and [REDACTED] for the hearing dates of September 29, 2014 and October 30, 2014; and [REDACTED] on the hearing dates of April 1st and April 23rd of 2015 on behalf of the Respondent. Respondent was permitted to have [REDACTED] and [REDACTED] withdraw on December 4, 2014 and complete this hearing on April 1st and 23rd of 2015 with [REDACTED].

The following exhibits were admitted into evidence:

Sheriff's Exhibits:

- 1 Cook County Sheriff's Office – OPR De-Deputization
- 2 Cook County Sheriff's Office – OPR Statement made by Kenneth Promisco
- 3 A letter from [REDACTED] dated June 11, 2012
- 4
- 5 CCSO Sheriff's Order – Drug-Free Workplace Policy
- 6 CCSO Sheriff's Order – Rules of Conduct
- 7 CCSO Court Services Department General Order – Staff Responsibilities
- 8 CCSO Court Services Department General Order – Code of Ethics
- 9 CCSO Merit Board Rules and Regulations
- 10 CCSO Drug Testing Unit Affidavit, Notification, and Chain of Custody

- 11
- 12 CCSO Internal Affairs Inspector General Complaint Register for Kenneth Promisco
- 13 CCSO Drug Testing Unit – Notice of Availability of Test Specimen for Retest
- 14 Phamatech Chain of Custody Form
- 15 Phamatech Internal Transfer Chain of Custody
- 16 Phamatech Batch Worklist
- 17 Phamatech Laboratories – Report for Specimen ID [REDACTED]
- 18 [REDACTED] CV
- 19 Phamatech Laboratories THC by GC/MS dated 7-19-2013

Respondent's Exhibits:

- 1 Phamatech Chain of Custody Form
- 2
- 3 FDA – Highlights of Prescribing Information for [REDACTED]
- 4 Kenneth Promisco's personnel file

The following witnesses testified for the Sheriff:

[REDACTED]

[REDACTED] (herein after "[REDACTED]") testified that she currently works for CCSO, OPR as the Assistant Director. She had been working for the CCSO for 20 years. She investigated this matter along with Investigator [REDACTED] (herein after "[REDACTED]") after receiving a complaint register filed by Director [REDACTED] (herein after "[REDACTED]") from the Drug Testing Unit. First, she notified Respondent by telephone and asked him to come in. The initial meeting was held at the OPR office to de-deputize the Respondent based on the allegation of misconduct. Sheriff's Exhibit 1 was the form utilized to de-deputize the Respondent on July 24, 2013. At this meeting, [REDACTED] said that she informed Respondent of the positive result of the drug test. Respondent did not want to have an interview at that time and requested additional time to retain an attorney. Respondent was then asked when he would like to return to OPR for an interview and he replied sometime after August 5th. A second meeting was held on August 29, 2013. During this meeting, [REDACTED] Respondent and Respondent's attorney were present at the OPR office located at 3026 S. California. Prior to having the Respondent make a statement, he was given 3 forms: notification to appear, notification of allegation, and right to have or waive legal representation or union representation. During this meeting, [REDACTED] took notes as well as Respondent's attorney. After the interview was concluded, Respondent's statements were summarized into a written document and he was given a chance to make any corrections. The two-page statements along with 3 forms were marked as Sheriff's Exhibit 2 signed by all parties as being accurate. During this interview, [REDACTED] opened the confidential package that confirmed positive drug test taken on July 17, 2013. When informed of the positive result, Respondent said that it was due to [REDACTED], a medication he was taking for [REDACTED] [REDACTED] which caused false positive 4 years prior to this incident. Respondent did say that he did not change medication between 2010 and 2013 but that he changed it 2 weeks after he tested positive for the second time. [REDACTED] told Respondent that he could have his sample retested for \$150 at a different lab. Respondent informed her that he would think about that. Several days

later, [REDACTED] received a letter from the Respondent's attorney declining retest which was marked as Sheriff's Exhibit 3.

[REDACTED] prepared a report marked as Sheriff's Exhibit 4. She concluded that Respondent had violated CCSO Drug-Free Work Policy (Sheriff's Exhibit 5), Sheriff's Rules of Conduct Order (Sheriff's Exhibit 6), CCSO Court Services Staff Responsibilities Order (Sheriff's Exhibit 7), CCSO Court Services General Order Code of Ethics (Sheriff's Exhibit 8), and Merit Board Article X Rules and Regulations for Cook County Employees (Sheriff's Exhibit 9). Once [REDACTED] finished her investigation, she turned it over to her director and executive director for review. The command channel review recommended separation.

On cross-examination, [REDACTED] testified that she was the Assistant Director of OPR for the Unit A that investigated court services and sheriff's police harassments; hostile work environments; and lawsuits. She worked as a correctional officer for 10 years, promoted to police and then to OPR for the last 5 years of the 20 years with CCSO. As an investigator for OPR, [REDACTED] had participated in over 50 investigations and of the 50, 2 or 3 involved drugs. As an investigator, [REDACTED] received numerous trainings including how to conduct interviews and interrogations. [REDACTED] said she had training in collection of evidence. She understood the phrase "chain of custody" to mean that to have custody, it had to be documented each step of the way. Once she received notification from [REDACTED] she contacted Respondent to come in. Director [REDACTED] de-deputized Respondent in the presence of [REDACTED] and [REDACTED]. At that time, Respondent wanted additional time to take his daughter to school before he was questioned with his attorney. The packet [REDACTED] received from [REDACTED] was sealed envelope and [REDACTED] did not know who sealed it. [REDACTED] was allowed to review her investigation report (Sheriff's Exhibit 4) and pointed out that it said, "On August 29, 2013, Deputy Lieutenant Promisco was presented with a sealed confidential report of the test results from the DTU prior to him providing a statement." At this meeting, Respondent was given a form and an opportunity to have the specimen retested. [REDACTED] said that it was the employee's responsibility to review the policies upon issuance. [REDACTED] did not note in her report that Respondent had received CCSO Drug-Free Work Policy (Sheriff's Exhibit 5). [REDACTED] said recommendation of separation was made by the Executive Director.

Respondent's Exhibit 1 was the Phamatech Chain of Custody Form with specimen ID No. [REDACTED] signed by Respondent on July 17, 2013 which was filled out during the collection of specimen. [REDACTED] said that this form was part of the documents that she reviewed during her investigation. In preparing her report, [REDACTED] reviewed all mitigating and aggravating factors. She did not investigate whether Phamatech received the specimen as stated in the documents that she received from the Drug Testing Unit. [REDACTED] investigation sustained that Respondent tested positive for marijuana metabolite. When [REDACTED] wrote in her report that Respondent "engaged in conduct that clearly shows lack of leadership and example", she had not spoken to any of Respondent's supervisors.

On re-direct examination, [REDACTED] testified that during the interview, Respondent did not say that he had not received the general orders or that he didn't know it was a problem to smoke marijuana. [REDACTED] said that the supervisors were held to a higher standard because they act as the leaders.

In re-cross examination, [REDACTED] testified that she did not have any information that Respondent was ineffective in any way as a leader.

[REDACTED]

[REDACTED] is currently employed by the CCSO in the Drug Testing Unit as the Supervisor since May of 2012. He's duties included scheduling staff, processing results, and maintaining supplies. [REDACTED] oversaw training to ensure that all employees follow proper policies and procedures with regard to chain of custody. In July 2013, [REDACTED] said Respondent was selected for a random drug test. [REDACTED] explained the process of how employees of CCSO were selected for a random drug test. He said that the day before the test, he would go to a stand-alone computer that was not connected to internet and select certain number of employees from different departments that consisted of Corrections, Court Services, and Sheriff's Police. [REDACTED] goal was to test 20% of all employees annually. He said he had no control over which employees were selected for the test because they utilized software from a third-party consulting company called Computer Bits. Once a random selection was made from the computer, [REDACTED] prepared an envelope containing the names of the employees for the following day. He then placed the envelope in a locked safe. Each morning, the technicians opened the sealed envelope and notified the supervisors who notified each employee to come in for the drug test. The following steps were taken in each of the drug test:

1. employee is notified of the test;
2. employee comes into the Drug Test Unit;
3. employee signs in and puts down the time of arrival;
4. employee is given a sealed bottle and is told to open it;
5. both employee and technician review 3 forms: notification, affidavit, and chain of custody;
6. technician partially fills out part of the forms;
7. employee is told to wash hands;
8. both employee and technician go into a bathroom which has a shower curtain between them;
9. technician adds a blue agent into the toilet so that specimen is not diluted with water from the toilet;
10. employee provides specimen in the bottle and states that he/she is finished;
11. employee is told to carry the bottle out of the bathroom towards the sink and the cap is placed on the bottle by the employee;
12. employee and technician wash their hands;
13. the remaining forms are filled out by both; and
14. employee and technician go into another room nearby and place the specimen in the refrigerator to preserve it.

Sheriff Exhibit 10 was a copy of an affidavit, notification and chain of custody form for Respondent. The affidavit was filled out by Respondent and technician; the top portion of notification was filled out by Respondent's supervisor and the bottom portion by the technician; and the chain of custody was filled out by the technician, signed by Respondent. [REDACTED] explained that every night at 5 pm, UPS picked up and delivered specimens to a company called Phamatech in San Diego, California. Phamatech emailed [REDACTED] if any analysis of the specimens tested positive for drugs. [REDACTED] said when he received a positive result email from Phamatech; he prepared a packet of documents consisting of the notification, affidavit, chain of custody, couple of forms for retesting if employee wanted to have the specimen retested,

test result from Phamatech, and an internal confidential letter informing the employee of the positive result. [REDACTED] sealed this envelope which was picked up by OPR.

[REDACTED] said that Respondent did submit to a drug test on July 17, 2013 which was collected by [REDACTED] (herein after "[REDACTED]"). He believed all policies and procedures were followed when collection was made. [REDACTED] received a test result from Phamatech, marked as Sheriff's Exhibit 11. Based on the test result, [REDACTED] filed a complaint register, marked as Sheriff's Exhibit 12, which was part of the formal procedure for a positive drug test.

[REDACTED] explained that there were two tapes with the same identification number (Tape A and Tape B) for purpose of tracking: Tape A was placed on the bottle of the specimen and Tape B was placed on the notification form of the Sheriff's Exhibit 10. He further explained that when an employee tested positive, he/she was given an opportunity for a retest. This was usually done through OPR presenting a form to the employee to fill out to initiate the retest. The employee could choose one of the four or five labs certified by the federal government at the cost of \$150. If the retest unconfirmed the original test, the employee would be reimbursed for the cost.

On cross-examination, [REDACTED] testified that he was not directly involved in the Respondent's drug test. He was in charge of the Drug Testing Unit. After reviewing all the documents involved in Respondent's drug test, [REDACTED] believed that the chain of custody was intact. He did not know the procedures or protocols at Phamatech regarding chain of custody. The only requirement that [REDACTED] had was to make sure that Phamatech was a federally licensed lab.

[REDACTED] said 5 additional technicians have access to the computer and every 6 months, a computer consultant uploaded new personnel. [REDACTED] explained that there were approximately 3500 employees in Corrections, he would label them as Pool 1 and asked for 10 names, Pool 1 would generate 10 random names from the Corrections. He would track the number of employees from each Pool so that by the end of the year, he was testing 20 percent of the employees. [REDACTED] said no one from OPR asked him how Respondent's name appeared on the random list to be tested. He did not collect specimens from employees other than during training. The Drug Testing Unit was created in 1993 and [REDACTED] had been there since 2012. [REDACTED] did not play a role in writing the drug policy marked as Sheriff's Exhibit 5. He believed [REDACTED] was the technician on Respondent's drug test. [REDACTED] collected specimen and reviewed all documents with Respondent. [REDACTED] explained that they collected approximately 10 specimens per day but it may be more from time to time to meet the 20 percent goal. [REDACTED] did not know how many specimens were collected on the day Respondent had his test. Since he had been with the Drug Testing Unit, [REDACTED] had initiated approximately 200 disciplinary actions based on positive tests. [REDACTED] had no knowledge whether Respondent's bottle was corrupted. After specimen was collected, a temperature strip on the bottle determined the temperature to be between 90 and 100 degree.

[REDACTED] received bachelor's degree in Industrial technology and had not worked in the drug testing prior to being the supervisor at the Drug Testing Unit since May 2012.

On redirect-examination, [REDACTED] testified that in the two years since he had been the supervisor of the Drug Testing Unit, Phamatech had sent specimen back without a result just few times stating nothing or non-sufficient quantity. There was nothing in the document that [REDACTED] saw that indicated that the chain of custody was broken during the collection or the testing of the Respondent's specimen. He was not aware of any problems at Phamatech in

regards to the chain of custody. [REDACTED] reported to Director [REDACTED] when he first started working at the Drug Testing Unit. [REDACTED] retired in July 2013. During the collection of the specimen, employees were not asked to list medications on the document because of HIPAA. [REDACTED] from Computer Bits was the individual that checked on the computer and uploaded new employees. Computer Bits was the company that provided the software program that determined the randomization of employees selected. The technicians that work at the Drug Testing Unit did not have access to this program. [REDACTED] explained that by signing the Sheriff's Exhibit 10, the employee was acknowledging that he/she was informed of the process; that he/she authorized the collection of specimen for a drug screen; that the specimen container was sealed with a tamper-proof seal in the employee's presence; that the information provided on the form and the label affixed to the specimen bottle was correct; and that he/she authorized the laboratory to release the result of the test to the company or designated agent identified on the form.

[REDACTED]

[REDACTED] (herein after "[REDACTED]") had been employed by the CCSD for over 14 years and the last 5 years as a drug testing technician. He's job duties included testing, inputting data, contacting authorized individuals to notify employees that have been randomly selected, and teach an in-service class on the responsibilities of the Drug Testing Unit. As a technician, [REDACTED] main job was to administer the test and collect urine specimens. [REDACTED] explained that the specimens were stored in the testing office refrigerator that was locked immediately after each test was completed. The technicians and the supervisor were the only ones that have access to the refrigerators. [REDACTED] said that the specimens were tested by Phamatech Laboratories located in San Diego, California. The specimens were shipped out the same day of collection by UPS. [REDACTED] said the courier usually sat down with a third-shift technician to review and document the internal control number, and the date and the time of courier's arrival for pickup. Courier was not privy to any information and the specimens were inside the courier's sealed pouch. The specimens were usually pickup around 5 to 5:30 pm. [REDACTED] said that his signature was on the Sheriff's Exhibit 10 noting that he was the person releasing the specimen into the custody of the courier on July 17, 2013 with specimen number [REDACTED]. The courier on that day was [REDACTED] and [REDACTED] had seen him many times prior to this date. [REDACTED] had never experienced instances where the seal was broken or leaking once inside the sealed pouch. [REDACTED] explained that specimen was usually inside a sealed pouch which he referred to as a chain of custody transportation pouch. [REDACTED] further explained that the testing technician confirmed the chain of custody form with the donor. Once the specimen was collected, the technician and the donor go back into the testing room from the restroom to confirm the date of the test and the time of the collection. The specimen bottle was then sealed with tamper-evident Tape A after the donor initialed the Tape A confirming the date, and two numbers which were the chain of custody control number and the internal control number. The bottle then was placed inside of the chain of custody pouch.

On cross-examination, [REDACTED] testified that the specimen ID number was on every chain of custody form which was given to the Drug Testing Unit by the Phamatech Laboratories. The Drug Testing Unit assigned each donor an internal control number. [REDACTED] only involvement in the Respondent's matter was to fill out the third part of the affidavit noting that he took the specimen out of the refrigerator and placed it in the courier's bag. [REDACTED] said that he had

collected Respondent's specimen before but not for this occasion. [REDACTED] said that sometimes during a test, a bottle will leak but not once inside the transportation pouch.

[REDACTED]

[REDACTED] testified that he was previously employed by the CCSD for total of 10 years; 9 years in the Drug Testing Unit as a drug technician. He had been retired for 5 months. His duties included collecting specimens on a random and mandatory basis. During his career, he had conducted approximately 2000 collections. [REDACTED] explained that when an employee showed up for a drug test, he/she signed in after showing an ID and was asked whether he/she was ready to give a specimen. Once the employee was ready, a technician would take him/her into a drug testing room to complete the forms consisting of the notification and the affidavit. The employee usually brought the notification form (Sheriff's Exhibit 10 – 2nd page) which was signed by the employee and the technician. The affidavit, Part 1, had the date employee was notified, the control number from the bottle, name, home address, and the date and time of the specimen collection. The employee was allowed to pick out any bottle from a tub and the control number came from the bottle. The control number was placed on the affidavit by the technician. Once the forms were explained and reviewed, the employee was taken to a bathroom. Once inside the bathroom, technician had the employee break the seal on the bottle to make sure nothing was inside the bottle, the employee took the bottle into the bathroom where a curtain was drawn between the technician and the employee for privacy. The technician would put blue agent into the toilet so that the sample was not adulterated. Once the employee urinated into the cup, technician asked if employee was done. Technician then would have the employee place the cap on the bottle, carry it out to the sink where the employee washed his/her hands. They go back into the drug testing room to complete the procedure. Once back in the room, they would tag the bottle and fill out the rest of the forms. The employee wrote the date and initialed the Tape A that was placed on the bottle and the Tape B was placed on the bottom of the Notification form. The bottle was then placed in a delivery bag and the employee placed it into the refrigerator. The refrigerator was locked and only the technicians and the supervisor have access to it. [REDACTED] said that the collected specimens were never stored in the refrigerator for more than a day because they were picked up every day.

Cunningham said that he collected Respondent's specimen on July 17, 2013. Sheriff's Exhibit 10, 2nd page showed [REDACTED] signature as the technician under "Received by". [REDACTED] said that he signed this form after Respondent had given specimen. Respondent's signature was right above the [REDACTED] signature under "Signature of Affected Employee". [REDACTED] said that Respondent signed this form in front of Respondent's supervisor when he was notified for the test. [REDACTED] said that there was nothing unusual about collecting Respondent's sample. Sheriff's Exhibit 10, page 1, Part I of the affidavit stated July 17, 2013 at 10:08 am which meant that Respondent urinated into a bottle at that date with the control number [REDACTED]. Respondent also placed his initials on Part I A and B stating that he read both paragraphs. Under Part II of the affidavit, [REDACTED] signed it noting that he received and secured the specimen with [REDACTED] control number by placing it in a refrigerator on July 17, 2013 at 10:19 am which was initialed by the Respondent. Prior to placing the bottle in a refrigerator, the Respondent placed his initials on the seal which was on the Tape A. The Tape B was placed on the bottom of the notification form (Sheriff's Exhibit 10- page 2). Tape A and B both have a bar code which were the control number for the lab. The third page of the Sheriff's

Exhibit 10 was the Chain of Custody Form from Phamatech. This page contained the specimen number [REDACTED] which was the same barcode on Tape A and B. The Sheriff's internal donor number was on this page as [REDACTED] on line C which was the same number on Tape A and B. [REDACTED] said that Respondent had initialed this form in his presence corroborating that he had read it and authorized it. [REDACTED] said that Respondent did not have any questions or concerns about any of the forms. [REDACTED] said he followed all policies and procedures regarding chain of custody in collecting Respondent's specimen.

On cross-examination, [REDACTED] testified that Tape A and B do not come from the bottle but that the Drug Testing Unit had them. [REDACTED] said that control number was a designation number that was assigned to a particular drug test. [REDACTED] confirmed that he had read the temperature of the specimen within 4 minutes of collection and it was within 90 and 100 degree. He knew this because he had checked the temperature as soon as they both came out of the bathroom which was within 10 to 30 seconds. The form stated that a single specimen was collected which meant that only one bottle was collected. [REDACTED] said that he had collected only one bottle for all the tests he conducted. [REDACTED] meant that Respondent's specimen was done in 2013 and he was the 697th random specimen. There were two control numbers on the forms: RT was for the Sheriff's Office and the 3000 was for Phamatech. [REDACTED] said that employees were allowed to list any medication on the form. [REDACTED] said that Respondent may have told him about medication that he was taking but did not remember. In addition, if Respondent did tell [REDACTED] about his medication, he would have asked him if wanted to listed under the comments section of the affidavit. There were no medications listed on the forms. If an employee refused to list medication, [REDACTED] did not note it on the forms. [REDACTED] was told that listing medication was part of the procedure in the drug-testing policy. [REDACTED] said that he did not refuse to allow Respondent to list his medications because it was the employee's option to list his medication and not a requirement. Sheriff's Exhibit 10 did not indicate that [REDACTED] had asked Respondent about his medication but [REDACTED] said that he did ask Respondent because he always asked all employees.

[REDACTED]

[REDACTED] is employed by the CCSO in the OPR for approximately 1 ½ years as an Investigator in Squad 1. Prior to working at the CCSO, he was a physical scientist with the FBI Lab in the latent fingerprint unit analyzing evidence for latent prints, compare prints and write reports. He then was transferred to evidence control unit. He had two bachelor degrees in science – forensic and psychology. [REDACTED] was assigned to Respondent's matter along with Assistant Director [REDACTED]. He had been assigned to majority of the drug cases since his employment at OPR.

On August 29, 2013, [REDACTED] was present along with [REDACTED] and Respondent's counsel during an interview of Respondent. [REDACTED] explained that he was present when Respondent was told of his positive drug test and that he had an opportunity to retest with a different lab. Respondent was told that he had 3 days to decide whether to retest. [REDACTED] recognized Sheriff's Exhibit 13 to be a notice of availability of a test specimen for retest signed by Respondent, [REDACTED] and [REDACTED] and Employee's Request for Analysis of Specimen signed by Respondent.

On cross-examination, [REDACTED] testified that he was a physical scientist with the FBI prior to working at the CCSO, OPR. [REDACTED] said that he assisted [REDACTED] in conducting this investigation by contacting and speaking to Phamatech Laboratories. He read [REDACTED]

investigation report but had not corrected it or gave any suggestions as to how to write it. ██████ said that Respondent's choice not to retest was not an admission of guilt. He had conducted over 50 drug cases involving employees as an investigator for the CCSO. ██████ only involvement in this matter was being present for the Respondent's interview and talking to Phamatech Laboratories. ██████ said that chain of custody was not handled by OPR however, it was important to look at the documents relating to the chain of custody. If there was a problem with the chain of custody, the lead investigator, ██████ would have brought that up for examination. Of the over 50 cases ██████ was involved, some were random, mandatory and under suspicion.

████████████████████

████████████████████ (herein after "████████████████████") testified that he is employed at Phamatech Inc. located in San Diego, California. His current job title is Laboratory Director for 1 year 2 months. Prior to that, he was the laboratory manager since 2006. His duties included overseeing the day to day operation of the laboratory that included receiving samples from different couriers; processing, testing, reviewing the data; and reporting the results. Sheriff's Exhibit 18 was ██████ CV. ██████ had a degree in microbiology from San Diego State University and had been working in the toxicology field for past 29 years. He had been a member of the Society of Forensic Toxicologists for the past 20 years. He had been deemed as an expert in the testing of samples 7 to 8 times. There was no objection from the Respondent to having ██████ as an expert in the field of chemistry and analysis of narcotics by the Respondent.

As the Laboratory Director, ██████ was in charge of training all technicians, ensuring all equipment used were functioning properly, and maintaining records. Phamatech was certified by the Substance Abuse/Mental Health Service Administration which was one of 30 labs certified by them. Phamatech also performed testing for the federal agencies such as Department of Transportation, state agencies, and county agencies such as the Cook County Sheriff's Office. ██████ explained that when a sample came in through couriers such as UPS or FedEx, a receiver from the Phamatech verified that the seal was intact to confirm that the sample was not opened or tampered with and that the unique ID number on the bottle and the chain of custody form match. If the sample had been opened, leaked or the tape was broken, Phamatech will cancel upon receipt. ██████ further explained that within the laboratory, there were 4 rooms that have key-coded doors that allow employees of that area an access. Sheriff's Exhibit 14 was a copy of the chain of custody form that arrived at Phamatech with the Respondent's specimen. ██████ said that the top portion was filled out by at the collection site by the collector signed by the donor and the bottom was signed by ██████ who was the person that received it at Phamatech. On top of the document, Sheriff's Exhibit 14 had a specimen ID number ██████ which was a unique specimen number that matched the tamper proof seal ID number on the bottle of the specimen. This was a way to ensure that the document and the specimen bottle belong to the same person. Once Phamatech accepted the sample, a bar code was generated and placed on the document and the bottle. In this case, the bar code number was ██████. The box that was checked next to the bar code says "Yes" which meant that the tamper evidenced seal on the bottle was intact upon receipt at the lab. A portion of the urine from the bottle was poured into the bar coded test tube and was ready to be tested. The initial test was conducted on a chemistry analyzer which was a type of enzyme immunoassay test that determined whether the sample was positive or negative for drugs. ██████ said that immunoassay test was widely used among all drug testing laboratories and had been FDA

approved. Sheriff's Exhibit 15 was a copy of the internal chain of custody document that showed transfer of the aliquoted test tube into the laboratory for the initial testing. This document showed that [REDACTED] received samples, that [REDACTED] transferred samples into a temporary storage, that [REDACTED] received 49 bar coded test tubes and placed them on the Olympus 2700 analyzer for testing, and that [REDACTED] took the samples off the machine after testing was performed. Sheriff's Exhibit 15 noted the sample [REDACTED] had THC20 CONF which meant that there was a positive test for marijuana class of drugs. [REDACTED] explained that the initial test was to look for class of drugs by looking for a fingerprint of marijuana and the confirmation test was to look for a specific compound or drug that might be present in the urine sample that was performed by GC/MS. On July 18, 2013, when Respondent's urine was tested, the machine was working properly. In the confirmation step, there was a laborious extraction process where different buffers and acids were added to the urine sample to purify the urine in order to extract marijuana compound. The purified concentrated solution was injected on to GC/MS which turned it into gas form and the machine looked for fingerprint pattern for marijuana in the gas. This testing was the gold standard in the forensic urine drug testing and one that was accepted in the court of law. Sheriff's Exhibit 16 was a copy of the document that showed the chain of custody for the confirmation test. This exhibit showed that [REDACTED] poured portion of the Respondent's urine from the bottle into a temporary storage; [REDACTED] received Respondent's sample in the laboratory for the extraction process; [REDACTED] performed chemistry extraction; [REDACTED] received the purification and concentration sample from the chemistry extraction and placed it on GC/MS No. 5 for analysis; after testing was done, [REDACTED] pulled off the data from the machine and disposed the samples. [REDACTED] said that [REDACTED] worked for Phamatech and his duties were to perform the extraction process for confirmation samples; and [REDACTED] worked for Phamatech as GC/MS operator. Sheriff's Exhibit 19 was a copy of the documents that showed calibration standard and control run for the batch of samples including confirmation run for marijuana and Respondent's sample [REDACTED] that indicated that there was confirmation of marijuana metabolite detected in the amount of 67.56 nanograms per ML. [REDACTED] explained that they used 15 nanograms per ML which meant that anything 15 or above would be considered a positive test. He further explained that the test result contained on Sheriff's Exhibit 19 was reduced to the a document marked as Sheriff's Exhibit 17 which was a document that was created to report the result of the Respondent's urine test to [REDACTED]. Once the confirmation test was completed, Phamatech stored the Respondent's remaining urine sample into long term frozen storage.

[REDACTED] said that a drug such as Marinol prescribed for patients undergoing chemotherapy treatment would test positive for marijuana but that [REDACTED] which was medication for [REDACTED] would not give a positive test result on the GC/MS analysis because the chemical structure for [REDACTED] was completely different fingerprint pattern than marijuana.

On cross-examination, [REDACTED] testified that Phamatech had 80 employees in the laboratory. The last time [REDACTED] testified was in Las Vegas in person. [REDACTED] did not remember testifying telephonically in 2010 involving the same Respondent. [REDACTED] explained that he was not personally involved in doing the analysis for Respondent's specimen but was involved in reviewing the analytical data before the testing result was released to Cook County Sheriff's Office. [REDACTED] said that he was in the laboratory when Respondent's specimen was tested. Laboratory was approximately 15,000 square feet and he was in charge of the day-to-day operation of the lab that operated 24 hours a day. Phamatech started analyzing samples after 2006 and at the beginning they did not have contract with Cook County Sheriff's Office.

██████████ said that they received samples throughout the day; he did know that Respondent's sample was delivered by UPS but did not know if it was delivered with other samples or by itself. They do not take photographs of the samples but if the evidence tape on the specimen bottle was broken, they would have rejected the sample. This did not happen often. Phamatech processed about 100,000 samples a month and rejected less than one a month. Based on the Sheriff's Exhibit 14, ██████████ was the specimen processor that received Respondent's sample. ██████████ explained that when samples arrive at Phamatech, they usually arrived in a lab pack from UPS; these bags were opened in the laboratory by Phamatech's receiving group; within the bags were individual bags containing a sample bottle and a chain of custody form. The normal procedure was to complete the initial testing within one hour of receiving the specimen. The initial testing was performed by ██████████ using Olympus 2700. ██████████ explained that a part of the sample was poured into a bar-coded test tube which was called in laboratory language "aliquots"; the bar-coded test tube was then passed into the laboratory for testing; and the actual specimen bottle remained in the receiving room which was about 4 – 6 ounces. Based on the Sheriff's Exhibit 15, ██████████ took 49 test tubes and placed them into a designated temporary storage window where ██████████ took them for initial testing. ██████████ explained that Sheriff's Exhibit 15 stated THC20 CONF because Cook County Sheriff's Office had a different cutoffs then the normal federal level. Respondent's initial test was performed on July 18th By ██████████ and the confirmation test was performed on July 19th by ██████████ who did the chemical extraction, when the purification and concentration step was completed; and ██████████ placed it on the GC/MS for analysis and pulled off the data. From Sheriff's Exhibit 17, ██████████ explained that the upper case letters for Marijuana was for the initial testing and the lower case letters marijuana metabolite was for the confirmation testing where it looked for one particular compound. ██████████ said that he could not say that a test result would be different if someone who took marijuana was tested one day or 10 days after because of other factors such as metabolism rate of the donor, how much marijuana was introduced to the body, and the amount of food or liquid ingested by the donor. ██████████ said that as far as he knew, ██████████ was a drug treated for ██████████ prescribed by doctors. He was not familiar with any discussion or literature that stated that ██████████ could cause a positive reading for marijuana metabolites. ██████████ said that it was not a requirement for the donors to list their medication because Phamatech's purpose was to provide the results of the testing of the urine specimens. The listing of medication may be important to a medical review officer but not to the laboratory.

On redirect examination, ██████████ said that if Cook County Sheriff's Office provided Phamatech with list of medications a donor was taking and asked to determine whether the medication would cause false positive, Phamatech would have provided feedback regarding the list of medications versus the results of the tests. ██████████ explained that in order to eliminate false positive test, they perform the secondary test to determine how much of the substance was contained in the sample. The reason for placing samples into frozen storage was to stabilize it.

██████████

██████████ (herein after "██████████") testified that she is currently employed by Phamatech as a lab screener performing initial testing for all samples. She had been there for 6 years and had a bachelor's degree in science. She received 3 months training at Phamatech when she first started. She explained that someone at the lab prepared the batch, she would check the batch worklist and when there was a match, she would download it to their system, put it on the

machine, let the machine to the testing, and wait for the raw data. Once she had the results, she would give it to her supervisor for checking and releasing. Sheriff's Exhibit 15 was a copy of the Internal Transfer Chain of Custody that had her name on it as the technician that completed the initial testing. She explained that the purpose of the initial testing was to determine whether the sample had positive or negative result to any drugs including marijuana. On July 18, 2013, [REDACTED] received a specific batch of samples listed on Sheriff's Exhibit 15 from [REDACTED] through a temporary storage pass through. A batch of samples was inside test tube that have lab ID on them. She checked to see that the lab IDs that were on the Internal Transfer Chain of Custody matched the lab IDs on the test tubes. [REDACTED] checked to see if the chain of custody number [REDACTED] matched the laboratory ID number [REDACTED]. [REDACTED] said that it was her belief that when a sample tested positive for drugs, it would undergo a confirmation screening, however, she did not know what happened after her initial testing because that was her only involvement.

On cross-examination [REDACTED] testified that she had not worked at any lab prior to working at Phamatech. She received her degree from De La Salle University in Philippines. After the initial 3 months training, [REDACTED] started as a laboratory accessioner for 1 year and then a laboratory screener for approximately 5 years. [REDACTED] did not have independent memory of testing Respondent's sample and that her testimony was based on her review of the documents presented to her. [REDACTED] was the person who prepared the batch for her but [REDACTED] was not present during that time. The first time she saw the batch was when they were transferred through the temp storage pass through window. [REDACTED] as a laboratory accessioner, had prepared batches prior to working as a laboratory screener. The batch contained 49 samples in 49 separate test tubes in a rack that was placed on the machine at the same time same machine. The machine was called Olympus and the samples were in room temperature. The initial test took 25 to 30 minutes and once the test was completed, [REDACTED] discarded samples in the test tubes in a designed sink.

[REDACTED]

[REDACTED] (herein after "[REDACTED]") testified that he currently is employed by Phamatech and had been so for 3 years and 2 months as GC/MS operator. He has a B.S. in biology from Loyola University in Chicago. He was in a Ph.D. program at U of Illinois Chicago for 5 years but did not complete the program. Prior to working at Phamatech, [REDACTED] was in restaurant business. He was trained for 3 months at Phamatech at the beginning. He did not hold any certifications. [REDACTED] explained that GC was the gas chromatography and MS was the mass spec. Prior to running a sample, [REDACTED] auto tune the GC/MS machine according to parameters that were set by the manufacturer. [REDACTED] received Sheriff's Exhibit 15 from [REDACTED] along with the samples. He first checked to confirm that the samples match and then placed them on the machine. [REDACTED] explained that each folder contained 25 samples that were in 25 vials labeled with lab IDs minus the four controls. Line 6 of the Sheriff's Exhibit 16 had [REDACTED] which was the ID of the vial that [REDACTED] received from [REDACTED] that said 260 THC20 which was the result from the initial screening. Sheriff's Exhibit 19 consisted of 5 pages of which first 4 pages were the control and the last page was the sample ID. This last page contained information that had sample [REDACTED] resulted in 67.56 nanograms per milliliter of marijuana metabolite. [REDACTED] was not familiar with the Sheriff's Exhibit 17. Sheriff's Exhibit 19 was a report that [REDACTED] generated from his analysis of the samples.

On cross-examination, [REDACTED] testified that he had worked at Phamatech for approximately 3 years. Phamatech had 25 GC-MS machines. [REDACTED] explained that he was present when he ran the machine to analyze samples which usually takes 4 to 5 minutes for each test but up to 12 minutes for drugs such as Buprenorphine. He further explained that GC-MS machines were running 24 hours a day with different shifts. [REDACTED] said he usually worked 3:30 to midnight shift. The machines were calibrated once a week to the parameter set by the manufacturer. [REDACTED] received samples from [REDACTED] who was a sample extractor. [REDACTED] handed [REDACTED] the samples with a folder. [REDACTED] would look through the samples that came in a tray with vials that correlate to the batch worklist. [REDACTED] said that all samples came with the batch worklist and the Internal Chain of Custody. [REDACTED] said that the samples were not urine samples but extractions in vials in room temperature suitable for the analyzer. [REDACTED] said that the tray contained about 25 samples. The first 4 pages of Sheriff's Exhibit 19 were controls; [REDACTED] explained that he reviewed them to make sure that the extraction was done correctly. The document stated July 19, 2013 at 7:47 p.m. and 25 seconds, System ID Instrument Number GC #16. [REDACTED] said that this meant that he placed the samples on the number 16 GC-MS machine at that date and time. Based on his review of Sheriff's Exhibit 19, [REDACTED] believed that he ran the test according to the document.

On re-direct examination, [REDACTED] said that if the control was not right, he usually rejected the samples. Sheriff's Exhibit 19 stated Tuning Date, July 15, 2013 7:23 and 6 seconds a.m. meant that the machine was auto-tuned on that date and time. Sheriff's Exhibit 16 was the batch worklist that [REDACTED] received on July 19, 2013 under the Chain of Custody with Sample ID No. [REDACTED] listed under line 6 that matched with Sheriff's Exhibit 19 on the last page with Sample ID No. [REDACTED]

On re-cross examination, [REDACTED] said that Sheriff's Exhibit 19 said that the sample 4359568 was analyzed at 6:24 am on July 19, 2013.

[REDACTED] further explained that the controls were from standards that they purchased and that he ran the 4 controls first to make sure that the machine was working correctly which was documented on the first 4 pages of Sheriff's Exhibit 19. Based on his review of the first 4 pages, [REDACTED] said that the controls were correct and then he ran the remaining 21 vials. 1 of the vials was [REDACTED].

The following witness testified on behalf of the Respondent:

KENNETH PROMISCO:

Kenneth Promisco (herein after "Respondent") testified that he is 55 years old and lived in Elmwood Park. He is currently married and has 3 children ranging in 25 to 21 years of age. He said he started his career with the CCSO in 1982 when he was 23 years old. He finished high school and some college. First 12 years, he was a deputy sheriff and as time passed he was transferred to different assignments and received promotions and current ranking was lieutenant. At the time he was summoned to give urine sample, Respondent was the acting Chief of the Skokie Courthouse, District 2 where he supervised over 40 deputies. Respondent denied ever using marijuana. He said that he had a massive heart attack 17 years ago and underwent [REDACTED]. He learned from his doctor that during his [REDACTED]. He had been taking a medication called [REDACTED]. Respondent explained that when he suffered from an episode where conditions were aggravated, he took [REDACTED] everyday but

usually he took it when needed. When he gave urine for the test, he was taking [REDACTED] every day for about 1 month. Respondent said that his doctors have experimented different drugs on him but that [REDACTED] worked the best for him.

On the date of the urine test in 2013, Respondent was attending an executive management training class. He was informed by Chief [REDACTED] that he was to perform a random urinalysis. He was escorted to the Drug Testing Unit at 31st and California by an officer assigned to the Sheriff's Boot Camp on the same date. Respondent said that he had been with the Cook County Sheriff's Office for approximately 31 to 32 years and had been called for random urine test about 10 to 15 times. Respondent said that at the beginning of the drug test, the Sheriff's Office allowed employees to list their medications on the form but at some point, they refused. The previous form had a box that said, "list medications" but the new forms did not. Respondent said that he asked the technician if he could note on the form with the list of his current medications and the technician told him that he could not do so. Respondent then gave sample and left to attend the remaining training sessions. Approximately 12 to 13 days later, Respondent was summoned to OPR. Once at OPR, Assistant Director [REDACTED] de-deputized Respondent and the processed begun to have a petition filed at the Merit Board. Respondent denied ever using marijuana and said that he had tested positive in the past for using [REDACTED]. Respondent returned to his doctor's office and experimented with 4 to 5 different medication. He is currently on a different medication.

On cross-examination, Respondent testified that the first time he tested positive for marijuana was in 2010. He came back to work and had been taking [REDACTED] on and off for 8 years. Respondent knew that using marijuana was against the Sheriff's Order or General Order. After his initial test of July 17, 2013, Respondent said that he was informed of retesting the sample and chose not to do so under his attorney's advice. Sheriff's Exhibit 10 had Respondent's signature as the donor's signature. Respondent admitted that he did urinate into a bottle with control number [REDACTED] at 10:08 am on July 17, 2013, delivered the bottle containing his urine specimen to [REDACTED] observed [REDACTED] seal the bottle with tamper evidence tape, initialed the tamper proof tape on the bottle, and signed and initialed the Chain of Custody Form. Respondent said that between 2010 and 2013, he had experimented with one medication for [REDACTED] that did not work. Respondent said that Sheriff's Exhibit 2 which was his statement to OPR was signed by him. The statement stated that "Lt. Promisco said his first attempt at changing medication was two weeks ago when his doctor put him on a stronger prescribed version of [REDACTED] which didn't work. He is currently taking [REDACTED] which he had been taking for the last two days." Respondent said that he had tried to tell the investigator that he had experimented with different medication between 2010 and 2013 but was told that they were separate cases and that she did not want to hear about the earlier case.

On re-direct examination, Respondent said that he currently takes [REDACTED] which was a new drug.

Respondent's Exhibit 3 was a copy of the FDA published document regarding [REDACTED]. Respondent's Exhibit 4 was a copy of the Respondent's personnel file containing certificates and letters.

Findings/Conclusion of the Law:

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence including all the exhibits that were admitted, the Board finds preponderance of the evidence that the Respondent did violate Sheriff's Order 11.2.23.0 CCSO Drug-Free Workplace Policy, Sheriff's Order 11.2.20.0 Rules of Conduct, General Order 1009 Staff Responsibilities, General Order 3406 Code of Ethics, and CCSD Merit Board Rules and Regulations Article X Paragraph B.

The witnesses on behalf of the Sheriff's Office testified to the procedures that the Drug Testing Unit followed. In addition to the Sheriff's Drug Testing Unit, the witnesses from Phamatech testified credibly the chain and custody procedures that were in place and the chain and custody procedures that they followed when testing Respondent's specimen. The statement given to OPR by the Respondent was self-serving and unbelievable. In addition, he was not credible when he testified at the Merit Board Hearing.

Order:

Wherefore, based on the foregoing, it is hereby ordered that the Sheriff's request to terminate and remove Respondent from the Cook County Sheriff's Office is granted effective November 26, 2013.

Kenneth D. Promisco #1739



JAMES P. NALLY, Chairman



BYRON BRAZIER, Vice-Chairman



JOHN J. DALICANDRO, Secretary



BRIAN RIORDAN, Board Member



KIM R. WIDUP, Board Member



VINCENT T. WINTERS, Board Member



JENNIFER L. BAE, Board Member



PATRICK BRADY, Board Member

Dated: August 10, 2015