

STATE OF NORTH CAROLINA  
COUNTY OF ROBESON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
23 DOJ 04213

Todd Thomas Petitioner,  v.  NC Sheriffs Education and Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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THIS MATTER was heard on January 9, 2024, before Administrative Law Judge John C. Evans in Fayetteville, North Carolina after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

**APPEARANCES**

For Petitioner: Danny Earl Britt Jr.  
The Britt Law Firm  
216 N. Chestnut Street  
Lumberton, NC 28358

For Respondent: J. Joy Strickland  
Special Deputy Attorney General  
Attorney for Respondent  
North Carolina Department of Justice  
Special Prosecutions and Law Enforcement Section  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

**ISSUE**

Does substantial evidence exist for Respondent to summarily suspend Petitioner's certification based upon a positive drug screen for opiates, if so, should his certification be revoked for a period not less than five years?

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**STATUTES AND RULES AT ISSUE**

(including but not limited to)  
12 NCAC 10B .0204(b)(5)  
12 NCAC 10B .0205(2)(g)  
12 NCAC 10B .0410(a)&(b)  
N.C.G.C. §§ 17E-1, 17E-2, 17E-7, & 17E-9

**EXHIBITS ADMITTED INTO EVIDENCE**

For Petitioner:       Pet.'s Exhibits 1 through 5  
For Respondent:       Res.'s Exhibits 1-10

Based upon careful consideration of the exhibits admitted into evidence, the entire record in this proceeding, and the credibility and believability of witness testimony at hearing including the witnesses' credibility, demeanor, any interests, biases or prejudices, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences about which the witnesses testified, and whether the testimony of the witnesses are reasonable and consistent with other believable evidence in the case, the undersigned finds as follows:

**FINDINGS OF FACT**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received notice of hearing.
2. The Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification.
3. On March 27, 2018, the North Carolina Sheriff's Standards Division of the North Carolina Sheriff's Education and Training Standards Commission, (hereinafter "The Commission" or "Respondent") issued a General Certification as Deputy Sherriff to the Petitioner. (Resp. Ex. 3)
4. On December 16, 2022, Petitioner was involved in a vehicle collision with a deer. The Petitioner was transported to UNC Southeastern for a required post-accident drug screen. On January 12, 2023, the Robeson County Human Resources notified the Sherriff's Office that the Petitioner tested positive for codeine and morphine. (Resp. Ex 5 and 6)
5. Through certified mail in a letter dated July 20, 2023, the Commission informed the Petitioner that probable cause exists to believe that his justice officer certification must be

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summarily suspended. (hereinafter "Probable Cause Letter") The letter stated that the Commission was informed that the Petitioner produced a positive result on a drug screen and that pursuant to 12 NCAC 10B .0204(b)(5) they were required to revoke certification and that in accordance with 12 NCAC 10B .0410, the sanction, in this case the certification revocation, shall be for a period of not less five (5) years. (Resp. Ex 7)

6. The Probable Cause letter further informed the Petitioner that, "...no action to revoke your certification is being taken at this time. Final action on your certification is being deferred to allow you the opportunity to request an administrative hearing to be conducted in this matter." (Resp. Ex. 7)

7. On August 14, 2023, the Petitioner timely appealed and requested an administrative hearing. (Resp. Ex. 8, hereinafter "Appeal Letter")

8. In the Petitioner's Appeal Letter and during the hearing, it was stated that the failed drug screening resulted from the Petitioner having taken prescription medicines, which were not prescribed to him, from his mother's house. The Petitioner explained that upon returning from a cruise, feeling unwell, he resorted to over-the-counter medicine which proved ineffective.

9. The Petitioner testified that to get rid of a cough and COVID-like symptoms, he had taken small doses of the prescription medicines he found in his mother's house for approximately two weeks leading up to an accident that led to the failed drug screening.

10. The Petitioner's mother, Cathy Thomas, testified at the hearing and corroborated the Petitioner's testimony that he had in fact visited his mother's house and asked if there was any medicine in the house and she directed the Petitioner to the medicine cabinet.

11. Petitioner provided pictures of the three (3) prescription medicines he claimed to have taken. According to the labels on each of the three medicines, they were prescribed to the Petitioner's brother Joseph Thomas.

12. At hearing the Respondent tendered the affidavit of Dr. Janet Widerspan. Dr. Widerspan is employed as a physician with the D.R.S., a medical review service and prepared the report of the drug screen results.

13. Dr. Widerspan stated, through her affidavit, that two of the medicines, identified in Attachment 2 to her affidavit, "would NOT have caused a positive result for codeine and morphine." (Pet.'s Ex 11, ¶ 8)

14. However, Dr. Widerspan stated that the medicine identified in Attachment 3 of her affidavit was "Virtussin AC with codeine" and "if taken by donor in a relevant time period prior to his drug screen, could have caused a positive result for codeine and morphine." (Pet.'s Ex 11, ¶ 9)

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## CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, pursuant to Article 3A, N.C. Gen. Stat. § 150B-40(e), and the parties received proper notice of the hearing in this matter.

2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

3. A judge is not required to find all the facts shown by the evidence, but only sufficient material facts to support the decision. *Green v. Green*, 54 N.C. App. 571, 575, 284 S.E.2d 171, 174 (1981); *In re Custody of Stancil*, 10 N.C. App. 545, 549, 179 S.E.2d 844, 847 (1971).

4. Respondent, North Carolina Sheriff's Education and Training Standards Commission, has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code (NCAC), Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification.

5. 12 NCAC 10B .0204(b)(5) states that Respondent shall revoke certification of a justice officer for not less than five years when the Commission finds the certified officer has produced a positive result on any drug screen as specified in 12 NCAC 10B .0410 and 12 NCAC 10B .0205(2)(g).

6. Despite the provision outlined in 12 NCAC 10B .0204(b)(5), in accordance with 12 NCAC 10B .0205(g), the Commission retains the authority to mitigate or suspend sanctions when extenuating circumstances, as revealed during the administrative hearing, justify such action.

7. At the administrative hearing, extenuating circumstances emerged. The Respondent presented an affidavit from Dr. Widerman, the medical review officer, indicating that one of the three medications purportedly taken by the Petitioner, if taken during the relevant time period could have led to a positive screen for codeine and morphine. The Petitioner confirmed consumption of these medications within the two weeks preceding the drug screening.

8. It is evident that the Petitioner exercised poor judgment by ingesting prescription medications not prescribed to him and that there was a positive drug test, constituting a breach of 12 NCAC 10B .0410. However, the testimonial evidence, supported by Dr. Widerman's affidavit, suggests it is more probable than not that the positive drug screen stemmed from the medications consumed by the Petitioner.

## PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioner's certification be REVOKED FOR (FIVE) 5 YEARS; however, that revocation be suspended and Petitioner be placed on PROBATION for a period of FIVE (5) YEARS due to the extenuating circumstances brought out at the administrative hearing, on the condition that during

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that period of probation, Petitioner not violate any law (other than infractions) of this state or any other state, any federal laws, or any rules of this Commission.

### NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a). The undersigned hereby orders that the agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, N.C. 27609.

IT IS SO ORDERED.

This the 15th day of February, 2024.



John C Evans  
Administrative Law Judge

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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Danny Earl Britt  
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Attorney For Petitioner

J. Joy Strickland  
NC Department of Justice  
[jstrickland@ncdoj.gov](mailto:jstrickland@ncdoj.gov)  
Attorney For Respondent

This the 15th day of February, 2024.



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Lisa J Garner  
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