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OFFICE OF ADMINISTRATIVE HEARINGS
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STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 DOJ 03114

Margaret Rein Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	**PROPOSAL FOR DECISION**

This case came on for hearing on May 10, 2024, before Administrative Law Judge David F. Sutton in Waynesville, North Carolina. This case was heard 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

Petitioner: Margaret Rein, *pro se*
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Hendersonville, North Carolina 28791

Respondent: J. Joy Strickland
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
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ISSUES

Whether Petitioner's application for certification should be denied due to her commission of the felony offenses of 2nd degree robbery and possession of heroin and the combination of the commission and/or conviction of 4 or more class A and B misdemeanors as defined by the North Carolina Administrative Code.

RULES AT ISSUE

12NCAC 10B .0204(a)(1)
12 NCAC 10B .0204(d)(5)
12 NCAC 10B .0205(1)(a)
12 NCAC 10B .0205(3)(d)
12 NCAC 10B .0103(10)(a)-(b)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter "The Commission"), dated May 18, 2023.

2. Respondent, North Carolina Sheriffs' 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, Chapter 10B, to certify sheriffs and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. Petitioner is currently seeking certification through the Commission. (Respondent's Exhibit #1)

4. The Commission's proposed denial of Petitioner's certification is based on the contention that Petitioner committed the felony offenses of 2nd degree robbery and possession of heroin and the combination of the commission and/or conviction of 4 or more class A and B misdemeanors in violation of 12 NCAC 10B .0204(a)(1) and (d)(5). Written notification of the finding of probable cause was provided to Petitioner in a certified letter dated May 8, 2023. (Respondent's Exhibit #12)

5. Petitioner is an applicant for detention officer certification through the Buncombe County Sheriff's Office. Petitioner has not previously held certification through the Respondent or the North Carolina Criminal Justice Education and Training Standards Division. (Respondent's Exhibit #1)

6. North Carolina Sheriffs' Standards Division Deputy Director Sirena Jones testified in this hearing. Ms. Jones has been employed by the Division for over twenty years and has served as the deputy director for about seven years. In her capacity as deputy director, Ms. Jones handles administrative matters for the Commission, oversees alleged rule violation investigations, and is

primarily responsible for presenting cases to the Respondent's probable cause committee. Ms. Jones explained that the Report of Appointment, Form F-4, and Personal History Statement, Form F-3, are two of the required forms that must be completed with an application for certification. (T pp 8-9)

7. Petitioner completed Form F-3, Personal History Statement, as part of her application for certification with the Respondent through the Buncombe County Sheriff's Office. Petitioner's signature was notarized on the Form F-3 on or about August 23, 2021. (Respondent's Exhibit # 2)

8. In response to question #44 on the Form F-3 which asks: Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense? (As used in this question, the term "charged" includes being issued a citation or criminal summons.), Petitioner responded:

Offense Charged:	Robbery
Law Enforcement Agency:	New Castle County
Date of Charge:	2005
Date of Disposition:	2005
Disposition:	18 months of probation
Offense Charged:	Possession of paraphernalia
Law Enforcement Agency:	New Hanover County
Date of Charge:	2014
Date of Disposition:	
Disposition:	
Offense Charged:	Possession of marijuana
Law Enforcement Agency:	
Date of Charge:	2010 ??
Date of Disposition:	
Disposition:	Fine paid [sic]
Offense Charged:	Driving while license suspended
Law Enforcement Agency:	Asheville Police Department
Date of Charge:	2017
Date of Disposition:	
Disposition:	

(Respondent's Exhibit # 2)

9. Deputy Director Jones explained that when a sheriff's office submits the Report of Appointment Form F-4 to the Sheriffs' Standards Division, the law enforcement agency should submit any court paperwork to address any charges or convictions listed by the applicant on his/her paperwork and discovered during the background process. Not all of the necessary paperwork was

submitted by the Buncombe County Sheriff's Office with Petitioner's Report of Appointment Form, so Deputy Director Jones assigned the task of obtaining the court paperwork and police reports to a division field representative, that has since retired. Ms. Jones and the Division staff collected police reports and clerk of court paperwork for Petitioner's criminal charges in North Carolina and Delaware. (T pp 13-14)

10. As is standard practice, Petitioner was offered the opportunity to explain each of the criminal charges and/or convictions on her record. Petitioner provided a statement about each of the charges to the best of her ability.

11. At the conclusion of the investigation, the matter was presented to the Probable Cause Committee of the Sheriffs' Commission. The Committee found probable cause to believe that Petitioner's certification should be denied due to the allegation that Petitioner committed the felony offenses of 2nd degree robbery and possession of heroin and the commission/conviction of a combination of 4 or more class A or B misdemeanors in violation of Commission Rules 12 NCAC 10B .0204 (a)(1) and (d)(5). Written notification of the finding of probable cause was provided to Petitioner in a certified letter dated October 25, 2023. (Respondent's Exhibit #12)

Commission of Felony Offenses

12. The evidence presented shows that on or about November 15, 2004, Petitioner was charged with the felony offenses of "Robbery- 1st Degree Domestic Related," in the State of Delaware in violation of 11 Del. C. §832(a)(4); and "Conspiracy Second Degree- Agreement to Engage in Felony Criminal Conduct" 11 Del. C. §512(1). The Troop 6 State Police report in File # 06-04-130302 provides that on or about November 15, 2004, while in the parking lot of Price's Shopping Center, Petitioner approached a female over the age of 65 years old. Petitioner grabbed the pocketbook from her shoulder and fled the scene in a vehicle with others. Petitioner provided the following statement about this event:

> I was with two friends. We were discussing how to get money to buy marijuana. The two girls said they knew how to get some money but would have to take it from someone. They told me all I had to do was drive my car. They told me directions of where to go. When we arrived at the Price's Corner Shopping Center, we drove around the parking lot and one of them pointed out an elderly lady loading groceries in her car. I pulled my vehicle several spaces away and we all got out of the car. While walking up to the older lady, one said, "I can't grab it Maggie you are going to have to do it" and I said "No! She then replied with "if you want to smoke you will" I said "ok." I walked up to the elderly lady and asked to use her cell phone. When she reached to grab her phone I then grabbed her purse and ran back to my car and drove off.

On or about June 29, 2005, Petitioner was convicted of the lesser included offense of felony robbery in the 2nd degree. The probable cause committee found probable cause that Petitioner committed this felony offense. The court paperwork reflecting the conviction for the felony was not received by the Sheriffs' Standards Division until after the probable cause meeting.

(Respondent's Exhibits # 4(a)-(c))

13. On or about August 1, 2014, Petitioner was charged with the felony offense of "Possession Schedule I Controlled Substance, to wit 2.7 grams of Heroin" in violation of N.C.G.S. §90- 95(a)(3) in New Hanover County, North Carolina, File number 14 CRS 055805. The Wilmington Police Department File # 2014026378 indicates that on that day, Petitioner was a passenger in a vehicle that was stopped by law enforcement. During a search of Petitioner, a piece of red straw which contained a white powdery residue on the inside, and ten individually folded paper strips containing heroin was found inside her underwear. According to the police report, Officer Melissa Harrison indicated that when she began to search Petitioner, Petitioner stated she "was going to make this easy" and pulled a piece of red straw approximately 1/2 inch long from her right front pocket and a bundle of heroin (10 individually folded paper strips containing heroin) from inside her underwear. The straw contained a white powdery residue on the inside. While the charges were dismissed, on or about November 28, 2017, the evidence shows she committed the offense. Petitioner provided the following statement about this incident:

> I was in my friend's car and she was getting stopped by a patrolman. She then told me she had "needles" and "heroin" on her. She then asked me to hide them so we didn't go to jail. I told her to give me the heroin and I shoved it in my underwear. She then threw the needles under the passenger seat where I was sitting. I cannot recall the circumstances that led to being removed from the vehicle. After the officer detained me and escorted me to the county jail, they strip searched me and found the heroin. This case was dismissed and there was no further prosecution.

When testifying about this incident, Petitioner stated that the bundle of heroin was empty but contained residue. Petitioner indicated that the person driving the vehicle was a friend of hers that was known to use heroin and the friend claimed possession of the heroin. According to the supplemental report, Petitioner was cooperative with the investigation and supplied the name of her supplier.

(Respondent's Exhibits # 11(a)-(c)) (T p 50)

Commission of Combination of 4 or more Class A and B Misdemeanors

14. On or around January 2, 2005, Petitioner committed the class A misdemeanor offenses of "Possession of Drug Paraphernalia" in violation of 16 Del. C. § 4771(a) and "Underage Possession/Consumption of Alcohol" in violation of 4 Del. C. § 904(f), and "Loitering," in violation of 11 Del. Code §1320 0000 V. In the police department agency File #02-05-00645, Petitioner was in a vehicle in the rear parking lot of Glasgow High School with the lights off. A law enforcement officer responding to a suspicious vehicle investigation approached Petitioner's car and smelled an odor of marijuana emitting from the vehicle. A search of the vehicle revealed a four-inch pipe containing marijuana residue which tested positive for marijuana. Approximately forty cellophane bags commonly used to package narcotics and six bottles of unopened liquor were also discovered in the vehicle. Petitioner provided the following in her statement about this incident:

> I was in my car parked at or by a convenience store on University of Delaware campus. I had in my vehicle a scale, bottle of liquor and glass pipe. I had no knowledge the scale was in my vehicle. The bottle was purchased by a friend of age and wasn't consumed. I had a glass pipe that I used to smoke marijuana out of. I cannot recollect any other circumstances with this case. The state decided not to prosecute me on this case.

While the charges were dismissed on or about July 12, 2005, there is evidence that Petitioner committed these two misdemeanor offenses which are the equivalent of class A misdemeanors according to the North Carolina Administrative Code.

(Respondent's Exhibits # 5(a)-(c))

15. On or about December 28, 2008 Petitioner was charged with misdemeanor possession of drug paraphernalia and misdemeanor possession of marijuana in the state of Delaware in police agency File #32-08-158452. On or about August 13, 2009, Petitioner was convicted of "Possession of Non-Narcotic Schedule I Controlled Substance," in violation of 16 Del. C. § 4754(b) which is the equivalent of a class B misdemeanor according to the North Carolina Administrative Code. Petitioner provided the following statement about this incident:

> I cannot recall any of the circumstances that led up to me being charged with these offenses.

(Respondent's Exhibits # 6(a)-(c))

16. On or about January 13, 2009, Petitioner was charged with the class A misdemeanor offense of "Possession of Non-Narcotic Schedule I Controlled Substance" in violation of 16 Del. C. § 4754(b). The police agency File #06-09-003812 indicates that Petitioner was stopped by law enforcement for a traffic offense, which ultimately resulted in a pat down search of Petitioner. During the pat down, the law enforcement officer discovered a bag containing approximately 6 grams of suspected marijuana in Petitioner's pants pocket. The substance was tested, and it rendered a positive reading for the controlled substance marijuana. There is substantial evidence that Petitioner committed the offense of "Possession of Non-Narcotic Schedule I Controlled Substance" in violation of 16 Del. C. § 4754(b), a class B misdemeanor according to the North Carolina Administrative Code. (Respondent's Exhibits # 7a)

17. On or about December 24, 2010, Petitioner was charged with and committed the class B misdemeanor offense of "Possession of a Non-Narcotic Schedule I Controlled Substance," in violation of 16 Del. C. § 4754(b). The police report in File #32-10143482 indicates that when law enforcement responded to a domestic dispute between Petitioner and her partner, Petitioner notified the officer of the presence of marijuana inside her vehicle. During a search of the vehicle, the law enforcement officer discovered the marijuana in a glassine type sandwich bag in the center console and a Newport cigarette pack, which housed two partially smoked marijuana filled blunt cigars. Petitioner also had a partially smoked marijuana blunt cigar in her possession. The substances were field tested and resulted in a positive indication for the presence of marijuana. Petitioner provided the following statement regarding this incident:

> I had just broken up with my partner at the time. My mom called me to tell me my ex-partner was at her house packing her things. I knew my ex-partner to steal things from me before, so I drove home to confront her. As I was driving down the street behind my house, I saw her car was leaving. I positioned my car in front of her so she couldn't drive past and got out of my vehicle to approach hers. I saw through her window several of my things. I went to retrieve my property from her vehicle. That is when she got out and started to punch me in the head. My parents saw and called the police and the police arrived to diffuse the situation. They detained me first. I had a grinder and marijuana in my car. I had a pack of cigarettes with a half-smoked marijuana cigar in it. The state decided to no longer prosecute me on this case.

Although the charges were dismissed on or about July 11, 2011, there is evidence that Petitioner committed this offense which is the equivalent of a Class B misdemeanor according to the North Carolina Administrative Code.

(Respondent's Exhibits # 8(a)-(c))

18. On or about January 8, 2012, Petitioner committed the class A misdemeanor offense of "Possession of Drug Paraphernalia," in violation of 16 Del. C. § 4771(a). On this day Petitioner did possess, use, or had intent to use, drug paraphernalia to introduce Percocet powder into the body through the nose. Petitioner provided the following statement regarding this incident:

> I was in my car parked at Deer Park Tavern with my friend Samantha. We were smoking cigarettes, then she asked if I wanted a Percocet since I wasn't drinking much that night. I said "OK". She then proceeded to crush up the pill and handed me a straw with the powder. I then saw two men with flashlights and badges asking me what I ingested.

Although the charges were dismissed on or about August 16, 2012, there is evidence that Petitioner committed this offense which is equivalent to a class A misdemeanor according to the North Carolina Administrative Code. (Respondent's Exhibits # 9(a)-(b))

19. On or about August 1, 2014, Petitioner was charged with and committed the class A misdemeanor offense of "Possess Drug Paraphernalia," in violation of N.C.G. S. § 90-113.22(a) (New Hanover 2014CRS055805). On this day, Petitioner was an occupant in a vehicle that was stopped by law enforcement. During that stop, the law enforcement officer discovered two hypodermic needles, which are used to introduce into the body a controlled substance which would be unlawful to possess. The evidence that supports the possession of drug paraphernalia and this incident is related to the possession of heroin described herein. (Respondent's Exhibits # 10(a)-(b))

Petitioner's Evidence

20. Petitioner presented eight-character references. The letters describe Petitioner as a hard worker, dedicated, dependable, has the best attitude, has a superior work ethic, an exceptional asset to the Buncombe County Detention Facility, honest, and an exemplary employee. (Petitioner's Exhibit #1)

21. Petitioner testified during the hearing of this matter. Petitioner admitted to committing all of the offenses as alleged in the probable cause letter provided to her. She stated that she committed the crimes in order to obtain drugs and has never committed any crimes otherwise. There was a period of her life when she was addicted to controlled substances but has been sober and drug free for nine years. (T pp 45-49)

22. Petitioner became interested in working as a detention officer while she was incarcerated in Delaware. A detention officer encouraged her to get her act together and not let her past define her forever. Petitioner moved to North Carolina in 2012 to live in a halfway house. She remained sober for a period of time but then relapsed. She has been sober and drug free for nine years now. Since gaining sobriety, Petitioner has worked in drug rehabilitation centers and recovery houses as a house manager. Petitioner joined the Buncombe County Sheriff's Detention Center in 2021. She is currently working as the master control operator in the detention center. Petitioner has not been subject to discipline since working for Buncombe County. (T pp 42-45)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter and venue is proper.

2. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions or 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. N.C. Gen. Stat. §150B-40(e) provides that "[w]hen a majority of an agency is unable or elects not to hear a contested case," the agency is to apply to the Office of Administrative Hearings ("OAH") for a designation of an Administrative Law Judge ("ALJ"). In such case, "[t]he provisions of [Article 3A], rather than the provisions of Article 3, shall govern a contested case..." N.C. Gen. Stat. §150B-40(e).

4. In Article 3A cases, OAH, through an ALJ, presides over the hearing in place of the agency, and makes a "proposal for decision" back to the agency. N.C. Gen. Stat. §150B-40.

5. In *Peace v. Employment Sec. Comm'n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998), the North Carolina State Supreme Court addressed the burden of proof. Although *Peace* is an Article 3 case, the discussion of burden of proof is instructive in this instant case. *Peace* states:

> In the absence of state constitutional or statutory direction, the appropriate burden of proof must be "judicially allocated on considerations of policy, fairness and common sense." 1 Kenneth S. Broun, Brandis & Broun on North Carolina Evidence §37 (4th . Ed. 1993). Two general rules guide the allocation of the burden of proof outside the criminal contest: (1) the burden rests on the party who asserts the affirmative, in substance rather than form; and (2) the burden rests on the party with peculiar knowledge of the facts and circumstances.

Id.

6. Neither the North Carolina Constitution nor the General Assembly has addressed the burden of proof in Article 3A cases. Applying the statutory law along with "considerations of policy, fairness and common sense," the Undersigned determines that Respondent should bear the burden of proof in an action where Respondent proposes to deny an individual's justice officer certification based upon its investigation into that individual.

7. The burden of proof is the preponderance of the evidence standard. *See* N.C. Gen. Stat. §§ 150B-23(a); 29(a); and 34(a).

8. 12 NCAC 10B .0204(a)(1) provides that:

> The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of a felony.

9. The sanction for the commission or conviction of a felony is contained in 12 NCAC 10B .0205(1)(a) which provides that:

> When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be permanent where the cause of sanction is commission or conviction of a felony.

10. 12 NCAC 10B .0204(d)(5) provides that:

> The Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of any combination of four or more crimes or unlawful acts defined in 12 NCAC10B .0103(10)(a) and (b) as a class A misdemeanor or a class B misdemeanor regardless of the date of commission or conviction.

11. 12 NCAC 10B .0103(10)(a)(i) and (iii) defines class A misdemeanor to include certain misdemeanors an individual has committed or been convicted of in North Carolina or other states. That rule states, in pertinent part, as follows:

> an act committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a class B misdemeanor pursuant to Sub-item (10)(b) of this rule . . . any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes or ordinances of the jurisdiction in which the events occurred includes imprisonment for a term of not more than six months.

12. 12 NCAC 10B .0103(10)(b)(i)(iii) defines class B misdemeanor to include certain misdemeanors an individual has committed or been convicted of in North Carolina or other states. That rule states, in pertinent part, as follows:

> an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. . . any act committed or omitted in violation of any common law, duly enacted ordinance, or criminal statute of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years.

13. The sanction for the commission and/or conviction of a combination of four or more class A and B misdemeanors is contained in 12 NCAC10B .0205(3)(d) which provides that the denial will be for an indefinite period but continuing so long as stated deficiency, infraction, or impairment continues to exist, where the cause of the sanction is the commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).

14. The preponderance of the evidence produced during this contested case hearing demonstrates that Petitioner committed the felony offenses of 2nd degree robbery and possession of heroin. In addition, the preponderance of the evidence also demonstrates that Petitioner committed and/or was convicted of a combination of four or more misdemeanors that meet the definition of class A and B misdemeanors as defined by the North Carolina Administrative Code.

15. The findings of the Respondent's Probable Cause Committee were not arbitrary or capricious.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, while the Tribunal finds that Petitioner should be commended for the tremendous work she has done to gain her sobriety and earn a well-deserved reputation at the Buncombe County Sheriff's Office, the Respondent's Administrative Code rules are clear regarding commission of offenses. Therefore, it is hereby

proposed that Petitioner's justice officer certification be denied permanently for the commission of the felony offenses of 2nd degree robbery and possession of heroin and denied for an indefinite period for the commission and/or conviction of a combination of four or more Class A and B misdemeanors.

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).

SO ORDERED.

This the 23rd day of August, 2024.

David F. Sutton

David F Sutton
Administrative Law Judge

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:

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This the 23rd day of August, 2024.

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