

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
24 DOJ 04330

Jonathan Gilyard Petitioner,  v.  NC Sheriffs Education and Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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On November 5, 2024, the North Carolina Sheriff's Education and Training Standards Commission (the "Commission" or "Respondent") submitted a request for the designation of an Administrative Law Judge to determine whether Petitioner was properly denied and prohibited from certification by Respondent. On March 25, 2025, Judge Brian LiVecchi conducted a contested case hearing pursuant to North Carolina General Statute § 150B-40(e).

**APPEARANCES**

A. Grant Simpkins  
Hedrick Gardner Kincheloe & Garofalo, LLP  
*Counsel for Petitioner*

Joy Strickland  
Assistant Attorney General  
Counsel to the Commission  
*Counsel for Respondent*

**ISSUES**

1. Whether Petitioner's application for Justice Officer Certification should be denied based on the Rules set forth in Chapter 10B of Title 12 of the North Carolina Administrative Code.

**STATUTE AND RULES AT ISSUE**

12 NCAC 10B .0204(c)(1)  
12 NCAC 0204(c)(5)  
12 NCAC 09G .0505(2)  
12 NCAC 09G .0505(3)

### **PROCEDURAL HISTORY**

1. On October 15, 2024, Respondent issued a Notification of Probable Cause to Deny Justice Officer Certification to Petitioner. This Notification denied certification based on rule 12 NCAC 10B .0204(c).
2. On October 24, 2024, Petitioner requested an administrative hearing to challenge Respondent's finding of Probable Cause to Deny Justice Officer Certification.
3. On March 25, 2025, the ALJ Brian LiVecchi conducted a contested case hearing pursuant to North Carolina General Statute § 150B-40(e).
4. On May 15, 2025, Judge LiVecchi resigned his appointment as an Administrative Law Judge.
5. Pursuant to N.C. Gen. Stat. §150B-32(c), Chief ALJ Donald R. van der Vaart reassigned this matter to the Undersigned on May 20, 2025.

The undersigned, upon careful consideration of the record in this case, and after having listened to the sworn testimony in the audio recording of the hearing, reading the written transcript of the hearing, and after having carefully reviewed all the documents and exhibits received and admitted into evidence, makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW.

### **FINDINGS OF FACT**

1. Petitioner is a citizen and resident of Durham, North Carolina and currently employed as a security officer at Meredith College. (Tr. p. 59)
2. In the Summer of 2022, after graduating from college, Petitioner applied for a position as a Correctional Officer II with the Division of Adult Correction ("DAC") and Juvenile Justice, North Carolina Department of Public Safety ("DPS"), to be placed at Sampson County Correctional. (Tr. p. 60)
3. As part of the hiring process, Petitioner was interviewed by Catherine Wells, who has worked for the Sampson Correctional Institute for twelve years and has been involved in human resources and a supervisor there for two years.
4. On July 20, 2022, Ms. Wells provided Petitioner with a conditional offer of employment and, on that same date, instructed Petitioner to take a drug screen.
5. On July 20, 2022, Petitioner signed the drug screening form. The form contains two statements about the failure to take the drug screening test. The first statement, items 2, and 3

on the form provide that “[a]pplicant shall be given a maximum of 24-hours’ notice of the exact testing date and time” and “If more that 24-hours elapses, it is considered a refusal to submit to the drug test.” However, Item 3 on page 2 of the form provides that “Failure to keep the appointment may be considered a refusal to submit to a drug test.” (Petitioners Exhibit 3, Respondent’s Exhibit 4)

6. According to Ms. Wells, despite the 24- hour time period listed on the drug form, it is the practice to immediately send the applicant to a testing facility to ensure the applicant will get the job. (Tr. p. 42)

7. Ms. Wells gave Petitioner her cell phone number in case he had any issues after he left the correctional facility. Together they selected which LabCorp location he would go to for the drug screening.

8. On either July 20<sup>th</sup> or the 21<sup>st</sup>, Petitioner called and informed Sampson County that he had decided not to accept the position offered. Petitioner did not recall who he spoke to. (Tr. pp 65-66)

9. Petitioner believed that if he was not accepting the position, he did not need to take the drug screening. (Tr. p. 66)

10. Petitioner received a letter from DPS dated July 22, 2022, indicating that the conditional offer of employment was withdrawn “based on the results of the drug test screening.” (Petitioner’s Exhibit 4). At the time this letter was dated and received, Petitioner testified credibly that he had already withdrawn from consideration. (Tr. p. 67)

11. The letter referenced above purported to impose a three (3) year prohibition on Petitioner’s ability to apply for positions with DPS, beginning on July 22, 2022. The letter does not cite any authority to support the three-year prohibition to apply for a job with DPS.

12. On August 5, 2022, Jeffrey Smythe, Director of the North Carolina Department of Public Safety Criminal Justice Standards Division sent a letter to Petitioner about the Sampson County Correctional application. (Petitioner’s Exhibit 5.) This letter provides that pursuant to 12 NCAC 09G .0505(b)(3), Petitioner was not able to be certified as a corrections officer until after July 20, 2025, based on a “refusal to submit to a drug screening test in a timely manner on July 20, 2022.”

13. The August 5, 2022, letter, similar to the July 22, 2022, letter, does not provide any right of appeal.

14. In 2023, Petitioner began seeking employment with other law enforcement agencies and began working for Durham County in the Fall of 2023. (Tr. p. 71)

15. On June 29, 2023, Petitioner submitted the Form F-3, North Carolina Sheriffs' Education and Training Standards Commission Personal History Statement. (Petitioner's Exhibit 8.) Petitioner submitted this document for employment with the Durham County Sheriff's Office.

16. Question number 26 on the Form F-3 asks: "Have you ever been denied employment by a criminal justice agency after a conditional offer of employment was made?" Petitioner marked "No" as his response to the question.

17. Petitioner marked "No" because he was "the one who initiated the withdrawal first" and therefore believed he was telling the truth with respect to the Sampson County Correctional job offer. (Tr. p. 73)

18. In April 2024, while in the Durham County Sheriff's Academy, Petitioner was notified that he would need to supplement his answer to Question 26. Based on this request, Petitioner provided a written notarized statement explaining that he decided not to accept the job and that, having declined the offer of employment, concluded that he did not need to submit to the drug screening. (Petitioner's Exhibit 6.) This statement, dated April 11, 2024, was consistent with his testimony during the March 2025 hearing.

19. Petitioner later took and passed the drug screening as part of the Durham County Sheriffs' application. (Petitioner's Exhibit 7)

20. On October 15, 2024, Respondent issued a letter to Petitioner for Notification of Probable Cause to Deny Justice Officer Certification. (Petitioner's Exhibit 2.) This letter notified Petitioner that Respondent found probable cause to deny the Justice Officer Certification based on 12 NCAC 10B .0204(c)(1) and (5). (Petitioner's Exhibit 2)

21. 12 NCAC 10B .0204(c)(1) provides that "The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer . . . (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission."

22. 12 NCAC 10B .0204(c)(5) provides that: "The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer . . . (5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission, or a similar North Carolina, out-of-state or federal approving, certifying or licensing agency."

23. The October 15, 2024, letter from Respondent included the following, specific to the Sampson County Correctional drug screening: "You were given a specific date and time to

appear for your drug screening. You failed to report for your drug screen on or about July 20, 2022. Your application with DPS/DAC was withdrawn.” (Petitioner’s Exhibit 2)

24. The October 15, 2024, letter notifying Petitioner of probable cause, incorrectly stated that Petitioner was given a specific date and time to appear for a drug screen and incorrectly stated that Petitioner refused to take a drug screen on July 20, 2022.

25. The October 15, 2024, letter also notified Petitioner of his alleged material misrepresentation for Question 26 on his Form F-3, regarding his prior application for employment and certification with Sampson County Correctional and DPS.

26. According to the October 15, 2024, letter, Respondent purported to deny Petitioner certification through August 5, 2025 “for the denial of certification by the Criminal Justice Training and Standards Commission” and denied for five years based on the response to Question 26.

27. The October 15, 2024, letter included a right of appeal. This was the first opportunity the Petitioner had to challenge the Respondent’s findings about the drug test.

28. Upon receipt of the October 15, 2024, Petitioner timely requested an administrative hearing to challenge the decision by Respondent. (Petitioner Exhibit 1)

29. At the March 25, 2025, hearing, Sirena Jones, Deputy Director of Respondent testified credibly about Respondent’s bases for finding probable cause and its subsequent denial of certification.

30. Ms. Jones presented a memorandum to Respondent’s Probable Cause Committee which included the documentation from DPS related to the Sampson County Correctional application.

31. No inquiry was made to verify the veracity of the Petitioner’s statement that he declined the offer of employment on July 20 or July 21, 2022. (Tr. p. 36)

### **CONCLUSIONS OF LAW**

1. The parties are properly before the undersigned Administrative Law Judge pursuant to N.C. Gen. Stat. § 150B-40(e). Jurisdiction and venue are proper, the Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received proper notice of the hearing in this matter.

2. To the extent that Findings of Fact contain Conclusions of Law, or that Conclusions of Law contain Findings of Fact, they should be considered without regard to the given labels.

Peters v. Pennington, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011); Charlotte v. Heath, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946).

3. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

4. The Respondent's October 15, 2024, NOTIFICATION OF PROBABLE CAUSE TO DENY JUSTICE OFFICER CERTIFICATION specifically provides that the bases for the denial were violations of 12 NCAC 10B .0204(c)(1) [has knowingly made a material misrepresentation] and (5) [has been denied certification]. While these are two separate grounds for denial, they are rooted in the same set of facts, facts surrounding the July 20-21, 2022, conditional offer of employment. Each of these alleged violations are discussed below.

**12 N.C.A.C. 10B .0204(c)(5)**

5. The Respondent's October 15, 2024, letter "Notification of Probable Cause to Deny Justice Officer Certification" states that the Petitioner violated 12 NCAC 10B .0204(c)(5). The October 15<sup>th</sup> letter provided that the basis for this violation is the August 5, 2022, letter finding that the Petitioner violated 12 NCAC 09G .0504(d)(12) by refusing to submit to a drug screen.

6. The record reflects undisputed testimony that the Petitioner contacted Sampson County on either July 20 or July 21, 2022, within the twenty-four-hour period prescribed for drug testing, to decline the offer of employment. Significantly, there is no indication that the Respondent's investigation prior to issuing the letter ascertained whether such a phone call indeed occurred, or to determine the precise timing thereof. Furthermore, it remains uncertain whether, or to what extent, the Respondent's investigation took into account the Petitioner's written statement dated April 11, 2024, wherein he articulated both the reasons for his failure to submit to the drug screening in July 2022, and the rationale underlying his response to Question Number 26.

7. The Undersigned concludes it reasonable that Petitioner, having declined the offer of employment, chose not to proceed with the drug screening. Indeed, submitting to such screening after having decided to reject the offer would constitute an exercise in economic futility. A more formal and documented rejection of the employment offer would have been preferable. However, under the facts presented in this case, the principle of proportionality suggests that telephone communication conveying the rejection of the offer of employment was sufficient, particularly in light of the brevity of the employment interview, which lasted between five and ten minutes.

8. The Undersigned concludes that it was imprudent for Petitioner to have effectively disregarded the letters dated July 22, 2022, and August 5, 2022, particularly in the light of the manner in which he declined the offer of employment. However imprudent, the Petitioner correctly

observed that there was no way to appeal the findings contained in either of those letters. The fact that these letters made findings (i.e., the Petitioner refused a drug screening) and imposed consequences (i.e., a three-year prohibition on certification) but lacked any appeal right is not a trivial matter. Failure to provide appeal rights not only undermines the enforceability of the agency's actions but also preserves the right of the Petitioner to seek review at this stage of the process.

9. The preponderance of the evidence establishes that Petitioner did not refuse to submit to the drug screening in connection with the July 20, 2022, offer of employment, as he had declined that offer. Accordingly, the Petitioner did not violate 12 NCAC 09G .0504(d)(12) and therefore did not violate 12 N.C.A.C. 10B .0204(c)(5).

**12 NCAC 10B .0204(c)(1)**

10. As to 12 NCAC 10B .0204(c)(1), the Commission may deny certification when the Commission finds that the applicant for certification “has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.”

11. Respondent asserts that the Petitioner knowingly made a false statement on Form F-3 when he failed to indicate that he had been denied employment after being provided with a conditional offer of employment. (Form F-3, Question 26 “Have you ever been denied employment by a criminal justice agency after a conditional offer of employment was made?”)

12. Although the regulations do not furnish a specific definition of “material misrepresentation,” North Carolina case law has elucidated the concept in various contexts. For example, in Pittman v. Nationwide Mutual Fire Insurance Co., 79 N.C. App. 431 (1986), the court held that, to establish material misrepresentation, a defendant must demonstrate that the statements in question were false and were made knowingly and willfully.

13. The Respondent’s determination of a material misrepresentation rests upon its conclusion that Petitioner refused to submit to a drug screening. However, having already concluded that the preponderance of the evidence establishes that Petitioner did not, in fact, refuse the drug screening (See *supra*), Petitioner, therefore, did not make a false statement in responding to Question 26 on Form F-3.

14. Moreover, to sustain a violation under 12 NCAC 10B .0204(c)(1), it would be necessary to establish that Petitioner “knowingly” made a false statement. Once again referring to the Findings of Fact and Conclusions of Law related to 12 NCAC 10B .0204(c)(5), there exists undisputed testimonial evidence that Petitioner contacted the Sampson County Correctional Facility and declined the offer of employment on July 20th or 21st, prior to the expiration of the

period allotted for completing the drug screening. Having thus declined the offer, it was reasonable for Petitioner to answer Question 26 on Form F-3 in the affirmative that is, to indicate that he had not been denied employment following a conditional offer because, in point of fact, he had rejected the offer himself.

15. Finally, as already noted with respect to 12 NCAC 10B .0204(c)(5), Petitioner had no legal recourse by which to challenge or correct the record concerning the findings and the attendant consequences namely, the three-year prohibition on eligibility for certification set forth in the letters dated July 22, 2022, and August 5, 2022. This proceeding has furnished that opportunity, enabling Petitioner to clarify the facts surrounding the conditional offer of employment made on July 20, 2022.

16. The preponderance of the evidence establishes that Petitioner did not knowingly make a material misrepresentation of any information required for certification. Accordingly, Petitioner did not violate 12 NCAC 10B .0204(c)(1).

17. The Undersigned offers the following observations in the hope they may prove of some utility to the Commission. First, it appears the issues in this case might have been averted had the correspondence issued in July 2022, particularly the letter dated July 22, 2022, included notice of appeal rights. Such a notice would have permitted the factual questions surrounding the job offer and drug screening to be addressed contemporaneously with the events in question. Instituting appeal rights in such letters would, in the view of the Undersigned, accrue to the benefit of both the Commission and prospective applicants alike. Second, the Undersigned wishes to emphasize that this observation casts no aspersion upon the Commission, nor upon its staff and counsel, who consistently discharge their duties with commendable skill and professionalism in proceedings before this Tribunal.

### **PROPOSAL FOR DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby proposes that the Commission find that Petitioner did not violate the Commission's rules, grant the Petitioner's certification, reflect in its records that Petitioner was not previously denied certification in 2022, and that Petitioner did not refuse to take a drug test in 2022.

### **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).

A copy of the final agency decision or order shall be filed with the Office of Administrative Hearings within thirty (30) days of such an order being issued.

**IT IS SO ORDERED.**

This the 14th day of July, 2025.



John C Evans  
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 N.C. Admin. Code 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 which will subsequently place the foregoing document into an official depository of the United States Postal Service.

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This the 14th day of July, 2025.



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