



POLICE DEPARTMENT
NEW YORK, N.Y. 10038
DEPUTY COMMISSIONER-TRIALS

September 23, 2025

Eric Sanders, Esq.
The Sanders Firm, P.C.
30 Wall Street, 8th Floor
New York, NY 10005

Re: Police Officer Frankie Palaguachi
Disciplinary Case No. C-031205

Dear Mr. Sanders,

A draft copy of the report and recommendation in the above-referenced disciplinary matter is enclosed for your review. Pursuant to *Fogel v. Board of Education*, 48 A.D.2d 925 (2d Dept. 1975), you may submit written comments concerning the findings of fact, conclusions of law or recommendations set forth therein. These comments must be restricted to the evidence adduced at trial. See 38 RCNY §15-06(c)

Please be advised that all comments must be emailed to Bhagmatie.hariprashad@nypd.org or hand delivered to the Office of the Deputy Commissioner - Trials, One Police Plaza, Room 920, New York, NY 10038, by the close of business on October 3, 2025. Any extension of the deadline will be granted only upon written application to DCT and for good cause shown.

All comments will be forwarded to the Police Commissioner, along with the Trial Commissioner's final report and recommendation. If any material changes are made in the Trial Commissioner's final report to the Police Commissioner, you will be notified. If you do not wish to submit any comments, or if no response is received from you by the deadline, the decision will be submitted to the Police Commissioner without your comments. The final action taken by the Police Commissioner will become a matter of record.

If you have any questions, please contact DCT at 646-610-5424 or 646-610-5155.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanessa Facio-Lince". The signature is fluid and cursive.

Vanessa Facio-Lince
Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Frankie Palaguachi : ORDER
Tax Registry No. 957932 : OF
Quartermaster Section : DISMISSAL
-----X

Police Officer Frankie Palaguachi, Tax Registry No. 957932, having been served with written notice, has been tried on written Charges and Specifications numbered 2024-30166 (PODS Case C-031205), as set forth on form P.D. 468-121, dated March 8, 2024, and after a review of the entire record, Respondent is found Guilty of the charged misconduct.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Frankie Palaguachi from the Police Service of the City of New York.

HONORABLE JESSICA S. TISCH
POLICE COMMISSIONER

EFFECTIVE:



POLICE DEPARTMENT

-----X

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	C-031205
Police Officer Frankie Palaguachi	:	
Tax Registry No. 957932	:	
Quartermaster Section	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Eric Sanders, Esq.
The Sanders Firm, P.C.
30 Wall Street, 8th Floor
New York, NY 10005

To:

HONORABLE JESSICA S. TISCH
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Detective¹ Frankie Palaguachi, while assigned to the Housing Bureau, on or about and between June 22, 2023, and February 22, 2024, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Detective Palaguachi wrongfully ingested Marijuana and/or cannabinoids without police necessity or authority to do so.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Detective Frankie Palaguachi, while assigned to the Housing Bureau, on or about and between June 22, 2023, and February 22, 2024, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Detective Palaguachi wrongfully possessed Marijuana and/or cannabinoids without police necessity or authority to do so.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT
GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 25 and September 3, 2025. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Danny Tse, Dr. Ryan Paulsen and Dr. Joseph Ciuffo as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I recommend that Respondent be dismissed from the Police Department of the City of New York.

ANALYSIS

On February 22, 2024, Respondent appeared at the Department's Medical Division to provide hair samples as part of a random drug test. Once collected, two of the hair samples were

¹ Respondent was a detective at the time of the incident. He was demoted to the rank of police officer in June 2024.

forwarded to the Psychomedics Lab for testing. It is alleged that those two samples both tested positive for marijuana. Additionally, at Respondent's request, a third hair sample was tested. The result of the third test was also positive for marijuana. Based on these results, Respondent is charged with wrongfully possessing and ingesting marijuana.

Respondent contested the charged misconduct on the theory that Psychomedics' drug testing methodology has been scientifically rejected and legally challenged in multiple venues. Respondent argued that Psychomedics' methodology has been rejected by various scientific authorities and has been shown to disproportionately impact Black officers subjected to this type of drug testing.² He further suggested that Psychomedics drug testing is so unreliable that the results cannot be accepted as valid by this tribunal and cannot be used to support the charged misconduct. In support of his conclusion, Respondent also relied on the results of subsequent drug tests that he took which were negative for marijuana. (Resp. Exs. H, I, J)

Expert testimony presented by the Department Advocate established that Respondent's hair sample submitted to Psychomedics was presumptively positive in the initial screening test using the enzyme immunoassay (hereinafter "EIA") technique, meaning the samples tested above the administrative cutoff of one picogram of carboxy THC for ten milligrams of hair. Once the first sample tested positive, a confirmatory test was conducted, as is standard protocol. The result of the second analysis/confirmatory test, which screens using a method known mass spectrometry, was again reported as positive because the concentration was greater than the administrative cutoff that is applied for testing. (*See* Dept. Ex. 3)

For reasons that will be further detailed below, this Tribunal credits the Department's expert testimony presented at trial. As such, it is the recommendation of the Tribunal that

² It is worth noting that the record is devoid of evidence pertaining to Respondent's race or ethnicity.

Respondent be found guilty of the charged misconduct and that he be dismissed from the Department.

Sergeant Danny Tse

Sergeant Danny Tse, who was assigned to the Drug Screening Unit of the Medical Division for approximately four years, received training to perform drug tests on members of service. Sergeant Tse described the process for drug testing when a member of the service presents themselves to the drug testing unit. He testified that most officers are selected for drug testing through a randomly generated algorithm. Before taking an officer's samples, Sergeant Tse follows preliminary procedures, including verifying the identity of the person being tested and having the member of service (hereinafter "MOS") fill out the Medical Division Drug Screening Questionnaire. Each subsequent form is assigned a unique, automatically generated drug screening number. (Tr. 33-35, 45)

Sergeant Tse testified that he was working on February 22, 2024, when Respondent was randomly selected to be drug-tested. Following procedures, he verified Respondent's identity and had Respondent fill out a Drug Screening Questionnaire (Dept. Ex. 1) In that questionnaire, Respondent indicated that he had not taken any prescription medications in the past three months. Sergeant Tse further explained that pages two through four of the questionnaire are Psychomedics' custody and control forms, completed by both him and Respondent. Sergeant Tse added that the fifth page of the forms is the Drug Screening Unit Attendance Verification form, which records the time taken to collect the sample. Each form is linked by a barcode to identify the three samples that are collected and authenticated with Respondent's signature and fingerprint. (Tr. 36, 39-40)

According to Sergeant Tse's recollection, Respondent was given a choice as to whether he wanted the hair sample collected from his head or body. Respondent chose to have the hair samples taken from his leg and arm. Sergeant Tse stated that he used a new disposable razor to collect the samples. He further asserted that in Respondent's presence, Sergeant Tse divided the shaved hair samples into three parts, which he placed into three foils. He then placed the foils into three separate envelopes with tamper-proof seals and had Respondent sign them. The envelopes were then placed in a Psychomedics plastic bag, which Respondent initialed and dated. Pursuant to established Department protocol, Samples A and B were sent to Psychomedics, while Sample C remained at the Medical Division for potential independent testing. The samples were then placed in a storage bin before being shipped to Psychomedics. Sergeant Tse confirmed that he was the only person in the collection room with Respondent and Respondent did not raise any objections or concerns regarding the testing procedures employed. Sergeant Tse added that if there had been an objection, a supervisor would have been required to intervene, and the objection would have been documented. (Tr. 41-42, 44, 49-50)

On cross-examination, Sergeant Tse testified that he was unfamiliar with the Uniform Guidelines on Employee Selection Procedures (UGESP).³ Although he received training from Psychomedics on a computer system, he could not confirm how often the Department audited his compliance and, to his knowledge, Psychomedics never conducted an audit. He asserted that in Respondent's case, he gave Respondent a choice of where the samples should be collected but did not know whether this choice was consistent with Psychomedics collection methods. (Tr. 51-55)

³ In his opening statement, Respondent's counsel explained that The Uniform Guidelines on Employee Selection Procedures (UGESP) is a federal standard for determining the proper use of employment tests and other selection procedures. (Tr. 27-28)

Dr. Ryan Paulsen

Dr. Ryan Paulsen testified that he is the Psychomedics Laboratory Director. In this role, he has “oversight of the full laboratory operation with more granular oversight of the confirmation and mass spectrometry areas.” (Tr. 65) Dr. Paulsen holds a bachelor's degree in chemistry and a PhD in medicinal chemistry. He has written several peer-reviewed publications on drug testing and has vast practical experience in forensic toxicology. Dr. Paulsen has testified and been qualified as an expert in workplace drug testing and forensic toxicology in several venues and jurisdictions. Based upon the above-mentioned testimony and the qualifications cited in his curriculum vitae (Dept. Ex. 2), Dr. Paulsen was deemed an expert in the field of forensic toxicology, specifically as it applies to workplace drug testing. (Tr. 71-72)

Dr. Paulsen's testified that Psychomedics holds a certificate of accreditation from the College of American Pathologists that conducts on-site inspections and audits, on a regular basis, to review all their systems and “proficiency test performance.” (Tr. 68) Additionally, Psychomedics is licensed by the New York State Department of Health in forensic toxicology with a particular emphasis on workplace drug testing. Psychomedics also holds a certificate of accreditation for forensic testing and calibration from the International Standards Organization, also known as an “ISO 17025 accreditation.” (Tr. 68-70)

Dr. Paulsen described the general process whereby samples that are received at the lab are tested. He explained that when Psychomedics receives a sample, technicians review it to ensure all the tamper-evident seals are still intact and that the proper chain of custody had been followed. After that review, the sample is assigned a laboratory accessioning number (hereinafter “LAN”), which is different from the donor identification number used on the Custody and

Control Form. The LAN is used, together with a bar code, to track the sample throughout the testing process. (Tr. 81-82)

Dr. Paulsen then explained the testing process. He stated that a portion of the sample is weighed and analyzed using an enzyme immunoassay (“hereinafter “EIA) test which detects the presence of cannabinoids – the chemical components of marijuana. Psychemedics receives two samples from the Department, an A and B sample, but only the A sample is tested initially. A portion of “Sample A” undergoes an extensive wash procedure in order to remove surface contamination from the hair before it is tested. If the first EIA screening produces negative results, it will be reviewed by a “negative certifying scientist” and reported to the client as negative. Conversely, if the immunoassay test reveals a presumptively positive result, Sample A is then analyzed through mass spectrometry for confirmation. (Tr. 82-85)

If the mass spectrometry test result is negative, then no additional testing is done. However, if the analysis finds that Carboxy Tetrahydrocannabinol (hereinafter “THC”) is present at or above an administrative cutoff level of one picogram of carboxy THC for ten milligrams of hair, then a portion of hair from the second sample (“Sample B”) is washed and then tested for confirmation purposes using mass spectrometry. Dr. Paulsen explained that this administrative cutoff level was established by Psychemedics, cleared by the FDA and adopted by the NYPD. He added that “the cutoff is designed to give you a threshold above which you can confidently state that the individual in question was using the drug repeatedly during the time frame of the hair growth.” (Tr. 89) Only where both the A and B hair samples test positive for Carboxy THC at or above this administrative cutoff does Psychemedics report a positive finding to the Department (Tr. 85-86, 90)

At trial, Dr. Paulsen testified that THC, the active ingredient in marijuana, is metabolized into carboxy-THC. Once the carboxy-THC enters the bloodstream, it interacts with a person's hair at its root; as the hair grows out, the drug will remain incorporated in the hair shaft. Samples of a person's hair can then be tested for the presence of carboxy-THC, which would indicate that marijuana had been ingested and metabolized through the liver. In the case of hair samples taken from a person's body, carboxy-THC can generally remain trapped in the hair for approximately six to eight months after ingestion. Head hair, conversely, has a different growth pattern and therefore if the hair sample is taken from a person's head, the test will only confirm marijuana use within the last 90 days. (Tr. 86-89, 106)

For this case, the Laboratory Data Package for the testing of Respondent's samples by Psychemedics was introduced into evidence as Department's Exhibit 3. From his review of the data package, Dr. Paulsen testified that the preliminary immunoassay screening yielded a positive result, and therefore additional tests were performed on Respondent's samples. Specifically, Respondent's Sample A indicated the presence of 5.4 picograms of carboxy-THC, while the test of Sample B yielded a result of 5.1, both positive for marijuana. This is well above the administrative cutoff. (Tr. 100-01)

The third sample, Sample C, was submitted for drug testing upon Respondent's request, and sent to Psychemedics. Dr. Paulsen explained that this sample went through the same process of decontamination before testing as the previous samples and was subsequently analyzed by tandem mass spectrometry. Sample C tested positive at 6.6 picograms of carboxy THC per 10 milligrams of hair – six times above the administrative cutoff. (Tr. 103-05)

Dr. Paulsen testified that Respondent's test results from Psychemedics are "consistent with what's known about deliberate consumption of marijuana on a regular basis." (Tr. 101) In

sum, Dr. Paulsen's expert opinion is that Respondent's hair test results indicate that marijuana, in some form, was ingested by Respondent, on more than one occasion, during the six months preceding the sample collection. Dr. Paulsen further opined, based upon scientific studies conducted, that these test results cannot be explained by Respondent simply coming into close physical contact with marijuana. Dr. Paulsen testified that even if Respondent had been passively exposed to secondhand smoke for a period of time, it would not yield readings that would reach the 1.0 cutoff. (Tr. 89, 107-110)

On cross-examination, Dr. Paulsen was asked about the EIA testing technology used in this case and he reiterated that the testing was developed in-house by Psychemedics and certified by the FDA. When asked whether research institutes or professional associations such as the National Institute of Drug Abuse (NIDA), International Organization for Standardization, the Society of Forensic Toxicologists (SOFT), had ever validated Psychemedics EIA hair testing, Dr. Paulsen replied that he has never heard of them approving, or disapproving, of anyone's EIA testing. He further acknowledged that the Substance Abuse and Mental Health Services Administration (SAMHSA) has not promulgated rules that apply to all forensic laboratories regarding the standard for hair testing. (Tr. 114, 118-21)

When Dr. Paulsen was also asked whether there is an "agreed upon standard" as to how to test for marijuana, he replied:

For drug testing in general, the standard of practice for decades has been an immunoassay screen followed by a mass spectrometry confirmation. That's true for urine, oral fluid, hair, blood. Anybody doing forensic testing is usually doing something like that. The only exceptions are some labs are doing like a mass spectrometry screen followed by a mass spectrometry confirmation. (Tr. 127)

After finding out that his Psychemedics results were positive, Respondent procured three independent drug tests (all of which yielded negative results) and offered them in evidence as

Respondent's Exhibits H, I, and J. At trial, Dr. Paulsen was asked to review Respondent's negative test results and comment on them. Regarding Respondent's Exhibit H (a laboratory data package produced by Psychemedics) this sample tested "negative," meaning that THC was not detected in an amount that meets or exceeds the administrative cutoff. Dr. Paulsen explained that Respondent submitted a head hair sample for this independent test on March 11, 2024, several weeks after the original sample was taken. This head hair sample, which was collected by LabCorp from Respondent, was only 3.0 centimeters (less than the 3.9-centimeter sample needed for a 90 day look-back period) and therefore the look-back period for this sample would be shorter than 90 days. Moreover, this head hair sample was screened using EIA only and not submitted for testing using mass spectrometry, which provides highly specific and sensitive confirmation regarding the presence of marijuana (Tr. 138-40)

Dr. Paulsen also testified about his review of Respondent's Exhibit I (another laboratory data package produced by Psychemedics). On March 15, 2024, Respondent submitted another head hair sample to be drug tested by LabCorp. The hair sample, which was 3.2 centimeters in length (again shorter than the 3.9 length preferred for a 90-day look-back period), was received by the laboratory for testing on March 22, 2024. This sample was also analyzed using EIA testing and again yielded negative results. Again, like Respondent's H, the negative result only means that THC was not detected in an amount that met or exceeded the administrative cutoff. (Tr. 141-42)

Unlike Respondent's Exhibits H and I above, Respondent's Exhibit J is a laboratory data package from Omega Laboratories. This data package indicated that the hair sample was collected on March 11, 2024, and tested on March 12, 2024. The sample collected was Respondent's armpit hair. This test also produced negative results. Although Dr. Paulsen

reviewed this data package, he did not have sufficient familiarity with the testing methodology employed by Omega Laboratories to comment with certainty on the results. According to Dr. Paulsen, Omega does not publish much regarding their testing methods, and he does not have knowledge concerning the efficiency of their extraction procedure. He could only conclude, with certainty, that this hair sample did not undergo mass spectrometry testing to confirm the presence of THC metabolites. (Tr. 143-44)

Dr. Joseph Ciuffo

Dr. Ciuffo testified that he has been employed by the Department for the past 22 years and currently holds the title of Deputy Chief Surgeon. He also holds the role of Medical Review Officer for the Department, a role first created by the federal government in connection with workplace drug tests. A Medical Review Officer (hereinafter “MRO”) is a licensed physician, certified in the area of workplace drug testing, who acts as an independent reviewer of test results to explore legitimate alternative medical explanations for positive drug tests. In his role as MRO, Dr. Ciuffo reviews all positive drug tests for the Department. In addition to his role in this Department, Dr. Ciuffo serves as an MRO for private clients (corporations that have drug-free workplace programs). He is certified to perform this role and must re-certify periodically. (Tr. 197-99)

Dr. Ciuffo examined Department’s Exhibit 4 and identified it as the Medical Review Officer’s report that he prepared addressing Respondent’s reported positive drug test. He testified that once Respondent’s drug test results were reported, he contacted Respondent by telephone to explore whether there was an explanation for the positive result. Prior to speaking with Respondent, however, Dr. Ciuffo reviewed the chain of custody of Respondent’s sample to confirm it was intact. He also reviewed the questionnaire filled out by Respondent regarding the

ingestion of any potential medications. Dr. Ciuffo then spoke with Respondent about the positive test results. Respondent informed him that his wife “vapes marijuana,” but assured Dr. Ciuffo that he does not use her vape. After reviewing his notes from this conversation, along with all documents pertaining to his test, Dr. Ciuffo made a final determination that there was no alternative explanation for Respondent’s positive test. (Tr. 200-02)

Respondent

Respondent testified that on February 22, 2024, he was notified to submit to a Department-ordered random drug test at the Medical Division. He recalled providing a hair sample from his leg and arm, collected by Sergeant Danny Tse. He explained that at no point was he shown the drug testing policy or advised of the advantages or disadvantages of collecting hair from different parts of the body. Nor was he given a choice as to the location of the sample; when he arrived, he was instructed, “show your legs,” and the sample was taken. On March 7, 2024, he was directed to an IAB GO-15 interview, where he was informed that he had failed the Department’s random drug test. (Tr. 176-77, 184)

During the interview, Respondent was told he would also speak by phone with the Department’s MRO, Dr. Ciuffo. He stated that Dr. Ciuffo asked whether he ingested marijuana, which he denied. When asked what might explain the positive result, Respondent said that he works Transit overtime where “people smoke marijuana,” and suggested possible exposure through his wife, who vapes THC. He testified that he was never informed of an opportunity to challenge the positive result. Nonetheless, on his own accord, within a week and a half of learning of the result, he submitted independent negative hair test results to the Department. (Tr. 178-79)

At trial, Respondent testified that he subsequently took three independent drug tests to “prove [his] innocence.” On March 11, 2024, he went to LabCorp and Omega to get drug tested. He chose those labs based on proximity to his home. He then took a third drug test on March 15, 2024, at LabCorp. In total, Respondent took three drug tests: two through LabCorp, which unbeknownst to him were sent to Psychemedics for analysis, and one at a facility affiliated with Omega. All three tests yielded negative results. (Tr. 179)

Respondent explained that his independent drug test results directly contradicted the Department’s positive test. Despite submitting them to the Department, Respondent was demoted from detective to police officer, which he testified affected him financially and personally. He stated that his promotion to sergeant was stalled and that he is now “looked at as a person who smokes.” Respondent added that as a result of the Department’s positive result, he filed an EEOC complaint “because this hair testing is not valid, never been approved. And also, to prove my innocence.” (Tr. 180, 182)

On cross-examination, he was confronted with having denied knowledge of what was in his wife’s vape pen during the IAB interview, but admitting to Dr. Ciuffo that his wife smokes THC. He responded that he intentionally gave conflicting information, explaining, “my wife takes THC for medical reasons, and I will not disclose that with an IAB investigator compared to a doctor.” (Tr. 184) He also testified that after learning of the failed test, he went to LabCorp and Omega on March 11, 2024, requested a five-panel test, and asked that his samples be tested at the “limit of detection.” Respondent did not, however, disclose to the technicians the reason for requesting the tests. (Tr. 183, 187)

FINDINGS

Respondent is charged with possessing and ingesting marijuana without police necessity or authority after a random drug test revealed the presence of the metabolite carboxy THC in a hair sample collected by the Department. Respondent defended against these charges by denying that he has ever ingested marijuana and questioning the reliability of Psychemedics hair testing methodology. After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of the witnesses, this tribunal finds that the preponderance of the credible evidence established that Respondent engaged in the charged misconduct.

In this case, there is ample evidence that Respondent's sample was properly obtained, that the Psychemedics laboratory technique was sound and that they were careful and accurate in their use of the hair sample. This Tribunal was unpersuaded by Respondent's suggestion that he was passively exposed to marijuana due to his wife's vaping of THC or his work in Transit. Therefore, based on the totality of the credible evidence presented at trial, I find that the Department Advocate has proven Respondent's guilt on each of the two charges.

Sergeant Tse testified credibly about how he collected the hair samples from Respondent's leg and arm on February 22, 2024. After verifying Respondent's identity, he followed the standard procedures, using a new razor to shave hair from Respondent's leg, and dividing the hair samples into three packages for testing. Contrary to Respondent's arguments, Sergeant Tse's testimony casts no doubt on the integrity of the sample collection process or the handling of the evidence as it was packaged and sent to Psychemedics to be tested.

This Tribunal also weighed the testimony of Dr. Paulsen and found him persuasive. Dr. Paulsen, an experienced forensic toxicologist, testified credibly about the testing of Respondent's hair samples, and the implications of the results. He provided background information on the

reliability of the process itself: he testified about the conservative nature of the 1 picogram per 10 milligrams cutoff level and convincingly explained how test results for carboxy-THC above that cutoff point reveal multiple occasions of marijuana ingestion, as opposed to one-time or passive exposure.

In this case, the test of Respondent's Sample A revealed 5.4 picograms of carboxy-THC. The test of Respondent's Sample B was similarly positive, yielding a result of 5.1. Dr. Paulsen testified that these results indicate that Respondent ingested marijuana, on multiple occasions, in the months leading up to the test. Sample C, which was also tested by Psychemedics, indicated a positive result, above the administrative cutoff, as well.

First, it should be noted that hair testing has been held reliable by New York State courts and by this tribunal in establishing an officer's use of marijuana. Despite his assertion to the contrary, once the Department presents evidence that proper testing procedures have been followed, the onus is on Respondent to present convincing and sufficiently detailed evidence supporting his claim that Psychemedics hair testing is inadequate to reliably determine that an officer illicitly ingested drugs. *See Disciplinary Case No. 2017-16897* (June 21, 2018); *Disciplinary Case No. 2016-15832*, (Feb. 16, 2018)

In this case, Respondent did not call his own expert or submit any reliable, credible evidence to rebut Dr. Paulsen's testimony that Psychemedics drug testing is reliable or "generally accepted" in the scientific community pursuant to *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). Instead, Respondent simply relied upon uncorroborated assertions about the scientific validity of the methodology employed by Psychemedics. Based upon the foregoing, the Tribunal finds that the use of scientific hair testing to determine the presence of marijuana, in this case, to be reliable within the spirit of *Frye*.

Second, Respondent's purported theory of inadvertent, passive exposure is highly speculative. The only evidence Respondent offered to support his contention was his testimony that he works Transit overtime and people smoke marijuana and that his wife vapes THC for medical reasons. The evidence established through Dr. Paulsen's testimony, however, demonstrates that Respondent's hair samples contained Carboxy THC at a concentration five times above the administrative cutoff level. Respondent's speculative arguments about passive exposure shed no light on why three of his hair samples tested by Psychemedics reported Carboxy THC in Respondent's hair at levels five times the Department's administrative cutoff of 1.0 pg./10 mg.-- a standard which has long been established in this tribunal as representative of multiple ingestions of marijuana rather than passive or inadvertent exposure. *See Disciplinary Case No. 2014-12194* (Oct. 9, 2015) (crediting expert testimony about the "conservative nature of the Department's 1pg/10mg cutoff level," and convincing explanation regarding "how test results above that cutoff point reveal active use of marijuana as opposed to one-time, passive exposure"); *Disciplinary Case No. 2014-12161* (July 30, 2015) ("the administrative cutoff is set high enough to ensure that a positive test result is recorded only for those that have ingested marijuana multiple times during the look-back period. It follows that [the officer's] 1.3pg and 1.4pg test results, while only 0.3pg and 0.4pg above the cutoff respectively, rule out passive, accidental or casual exposure.") In the face of such persuasive and unrebutted evidence, this tribunal cannot credit Respondent's self-serving claim that he never ingested marijuana and that the results are attributable to passive exposure.

Respondent also argued that the negative results of additional hair samples, collected by LabCorp and Omega, almost three weeks after the Department's test, is another reason to question the accuracy of the Psychemedics test results. (Resp. Exs. H, I and J) That the samples

were taken almost 3 weeks after the Department samples were retrieved, in itself alters the test's look-back period. After reviewing Respondent's Exhibits H, I and J, Dr. Paulsen explained that hair from different areas of the body grows at different rates and thus represent different look-back periods. The length of a hair sample also affects the look-back period. As such, differences in length and source of the hair can potentially explain disparate results even where there is an expectation of consistency because the tests were conducted relatively close to one another in time. Respondent's hair samples in this case were collected several weeks after his original sample, and they were taken from his head and armpit. This Tribunal finds that the samples collected at Respondent's request weeks after the Department test lacked probative value as they could not be compared with Department test results because the hair was cut from a different area of the body, the length of hair tested was shorter than the preferred length for a 90-day look-back period and the negative test was subject to a different cutoff.

Moreover, Dr. Paulsen pointed out that the independent drug tests taken by Respondent were immunoassay screens for cannabinoids, subject to a cutoff, whereas the samples collected by the Department and sent to Psychomedics underwent a confirmatory mass spectrometry analysis to detect the exact amount of the Carboxy THC metabolite in the hair sample. In cases where there is a positive report from Psychomedics and the C sample is tested, the Department requires that the C sample be analyzed using mass spectrometry analysis at a limit of detection of the substance without regard to a cutoff. Thus, the negative result for subsequent samples collected by LabCorp and Omega did not necessarily mean marijuana was not present in the hair; it could also mean that it was not present at the same level of detection and was therefore reported as a negative test. As such, the subsequent negative test results do not cause this tribunal to doubt the reliability or accuracy of the Psychomedics results.

This tribunal has considered and rejected all other arguments raised by Respondent.⁴ In the absence of credible proof countering the convincing evidence supporting the reliability of the Psychemedics results, those results stand. *See McBride v. Kelly*, 215 A.D.2d 161 (1st Dept. 1995) (substantial evidence that officer ingested cocaine was provided by immunoassay and mass spectrometry). Accordingly, the Court is left with no other choice but to find Respondent guilty of the subject charges.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history was also examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 7, 2015, has been found guilty of ingesting and possessing marijuana. The Department Advocate, noting the Department's "zero tolerance" in marijuana cases, recommends that Respondent's employment be terminated. The Department has a strong interest in not employing persons who ingest and possess prohibited substances, even where those individuals have long and unblemished service

⁴ Respondent's counsel noted that the Massachusetts Civil Service Commission has rejected certain Psychemedics lab results. In that case, ten appellants appealed to the Civil Service Commission seeking reinstatement following decisions of the Boston Police Department terminating them from employment as tenured police officers after they tested positive for the presence of cocaine in hair samples collected from them. There is little evidence, however, linking those facts to the details of the case at hand. The Massachusetts decision addressed the testing for cocaine and not marijuana, an important factual distinction not addressed by counsel. Likewise, Respondent's reliance on *Jones v. City of Boston*, a 2016 decision from the United States Court of Appeals for the First Circuit, is similarly misplaced as that case dealt primarily with testing for cocaine.

records. Respondent testified that he had no idea how his hair could have tested positive for marijuana. He alleged passive exposure and/or an unreliable testing method, but presented no convincing proof or corroboration to support these defenses. As such, this Tribunal concurs with the Department's recommendation.

The NYPD is a drug-free workplace, and its employees are prohibited from using controlled substances, including marijuana, as indicated by Operations Order 41.⁵ The Disciplinary Guidelines provide that the presumptive penalty for having a positive test result for use of a Schedule I drug, such as marijuana, is Termination. Taking into account the totality of the facts and circumstances in this matter, the Department's policy regarding marijuana use and case precedent, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

⁵ Operations Order 41, issued on August 20, 2021, provides notice to all members of service that "[T]he New York City Police Department follows a ZERO TOLERANCE drug policy as a condition of employment. No member of the service shall possess and or ingest illegal or illicit drugs such as cocaine, opioids, phencyclidine (PCP), amphetamines, and marijuana."



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER FRANKIE PALAGUACHI
TAX REGISTRY NO. 957932
DISCIPLINARY CASE NO. C-031205

Respondent was appointed to the Department on January 7, 2015. On his three most recent annual performance evaluations, he was rated “Exceeds Expectations” for 2024 and “Exceptional” for 2022 and 2023. He has been awarded one medal for Excellent Police Duty.

Respondent has no formal disciplinary history. In connection with the instant matter, Respondent was suspended without pay from March 7, 2024, through April 7, 2024. He was also placed on Level 2 Discipline Monitoring in June 2024; monitoring remains ongoing.

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials