

evidence that he did. There was no testimony from Sal, nor any receipts provided. Thus, the ALJ found that the appellant purchased cannabis in violation of CREAMMA. Therefore, the ALJ properly determined that the charges of conduct unbecoming a public employee; insubordination, for failing to follow the New Jersey Attorney General's Law Enforcement Testing Policy and the appointing authority's drug testing policy; and other sufficient cause relating to violations of departmental rules were sustained.

Regarding the appointing authority's exceptions, it maintains that the charges of inability to perform and neglect of duty levied on the appellant should have been sustained by the ALJ since the appellant is legally barred from possessing a firearm by federal law due to his use of marijuana/cannabis. Thus, it maintains that, while removal should be affirmed, the ALJ's decision should be modified. However, as set forth in *In the Matter of Norhan Mansour* (CSC, decided August 2, 2023) and *In the Matter of Omar Polanco* (CSC, decided September 20, 2023), which reversed the removal of the appellants, the Commission agreed with the ALJs that federal law did not preempt CREAMMA; that Mansour and Polanco could carry a service weapon without violating federal law; and that the facts of those matters demonstrated that the terminations violated CREAMMA. Therefore, the Commission, in its *de novo* review, again finds that federal law does not preempt CREAMMA; and that the appellant could carry a service weapon without violating federal law. Accordingly, there is not a sufficient basis to modify the ALJ's initial decision in that respect. Nonetheless, for reasons set forth below, the sustained charges warrant the appellant's removal.

Similar to its review of the underlying charges, the Commission's review of the penalty is *de novo*. In addition to considering the seriousness of the underlying incident in determining the proper penalty, the Commission utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). Further, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the principle of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). In this regard, the Commission notes that even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. As set forth by the ALJ, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. A Police Officer holds a highly visible and sensitive position within the community, whose primary duty is to enforce and uphold the law. The position represents law and order to the citizenry. A Police Officer also carries a service revolver and is constantly called upon to exercise tact, restraint and good judgment in relationship with the public. Thus, a Police

Officer must present an image of personal integrity and dependability in order to have the respect of the public. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). In the instant matter, the appellant's taking of unregulated cannabis was clearly egregious enough to warrant removal. His actions were in direct contradiction of New Jersey Attorney General's Law Enforcement Testing Policy and the appointing authority's drug testing policy. The appellant's actions clearly undermine the public trust. Accordingly, it is clear that removal is the appropriate penalty.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Montavious Patten.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF MAY, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Dulce A. Sulit-Villamor
Deputy Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 12961-23

**IN THE MATTER OF MONTAVIOUS PATTEN,
JERSEY CITY POLICE DEPARTMENT.**

Michael Peter Rubas, Esq., for appellant Montavious Patten (Law Offices of
Michael Peter Rubas, attorneys)

Kyle Trent, Esq., for respondent Jersey City Police Department (Apruzzese,
McDermott, Mastro & Murphy, attorneys)

Record Closed: March 11, 2024

Decided: March 22, 2024

BEFORE PATRICE E. HOBBS, ALJ:

STATEMENT OF THE CASE

Appellant, Montavious Patten ("Patten"), a police officer for the Jersey City Police Department (JCPD), purchased cannabis from an individual who was employed by a liquor store and not a licensed dispensary. Must Patten be terminated because he did not purchase cannabis from a licensed dispensary? "Yes." Under N.J.S.A. 17:30-2.1(b)(1), it is unlawful for any person to obtain or possess a controlled dangerous substance, unless the substance was obtained directly, or through a prescription, from a licensed dispensary.

PROCEDURAL HISTORY

On March 9, 2023, Patten was served a one-page Preliminary Notice of Disciplinary Action (PNDA) and a Notice of Immediate Suspension (NOIS). The PNDA charged Patten with violations of JCPD Rule 3:108 (Conduct), Rule 3:123 (Obedience to Laws, Regulations and Orders), Rule 3:126 (Neglect of Duty), Rule 3:127 (Orders), Rule 3:157 (Rules and Regulations), and Rule 3:169 (Code of Ethics) for being unable to perform an essential function of his position as a police officer, carrying and possessing a firearm and ammunition. Further charges were N.J.A.C. 4A:2-2.3(a) (Insubordination, Inability to Perform Duties, Conduct Unbecoming a Public Employee, Neglect of Duty, and Other Sufficient Cause), as well as N.J.S.A. 40A:14-147 (Incapacity).

On March 8, 2023, because of the PNDA, Patten was interviewed by Internal Affairs. On April 12, 2023,¹ a two-page Amended PNDA was served on Patten. The Amended PNDA had two additional charges, violation of JCPD Rule 3.164 (Narcotics Use) and violation of the Attorney General's Policy on Drug Testing Law Enforcement. On September 14, 2023, a departmental hearing was held, and on October 2, 2023, the JCPD served Patten with a Final Notice of Disciplinary Action (FNDA). In the FNDA, the JCPD alleges that Patten violated N.J.A.C. 4A:2-2.3(a)(2) (Insubordination), N.J.A.C. 4A:2-2.3(a)(3) (Inability to Perform Duties), N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming a Public Employee), N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty), N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause), and N.J.S.A. 40A:14-147 (Incapacity). The FNDA also alleges a violation of Jersey City Police Department Rules: Rule 3:108 (Conduct), Rule 3:123 (Obedience to Laws, Rules and Regulations and Orders), Rule 3:126 (Neglect of Duty), Rule 3:127 (Orders), Rule 3:157 (Rules and Regulations), Rule 3:164 (Narcotics Use), and Rule 3:169 (Code of Ethics). Finally, the FNDA alleges a violation of the Attorney General's Policy on Drug Testing Law Enforcement.

¹ The date was deduced from the FNDA, as the Amended PNDA was not dated, nor is there any indication that it was served by mail or personal service. Service of the PNDA is, however, not contested, as there was a departmental hearing on the matter.

On October 22, 2023, Patten requested a hearing before the Office of Administrative Law (OAL). The matter was filed as a contested case pursuant to N.J.S.A. 40A:14-202(d), and the appeal was perfected on November 14, 2023. On December 6, 2023, a telephone prehearing conference was held, during which a briefing schedule was established for motions for summary decision.

On January 2, 2024, Patten filed a motion for summary decision arguing that termination for testing positive for cannabis is a violation of the NJ Cannabis Regulatory, Enforcement, Assistance and Marketplace Modernization Act (CREAMM Act). Patten's motion for summary decision did not address the termination charges for purchasing unregulated cannabis. On January 22, 2024, the JCPD filed an opposition and cross-motion for summary decision, arguing that termination is warranted for both testing positive for cannabis and purchasing unregulated cannabis. Oral argument was held on February 12, 2024. Summary decision was denied because there were material facts that had to be heard in a full evidentiary hearing. On March 11, 2024, I held the hearing and closed the record.

FINDINGS OF FACT

Based upon the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following **FACTS**:

Patten was born and raised in Jersey City, New Jersey. He served six years in the military and was honorably discharged. After his discharge he entered the Bergen County Police Academy, and in 2022 he was hired as a police officer with the JCPD.

On April 13, 2022, Attorney General Matthew Platkin issued a memorandum to all law enforcement reminding police departments that law-enforcement agencies must not take adverse action against officers who use cannabis off duty under the CREAMM Act. The memorandum also states that law-enforcement agencies should have zero tolerance for unregulated marijuana use, possession, or intoxication at any time. (R-10.) On April 20, 2022, the JCPD police director and deputy chief issued an order

stating that officers were prohibited from using cannabis on or off duty, as it is illegal under federal law for cannabis users to possess, carry, or use firearms. (R-11.)

Patten had been on disability leave for a work-related, left-hand injury on December 28, 2022. (R-5.) He was prescribed pain medication which he felt was not effective. He wanted to try to manage his pain with cannabis. He was not sure if he could just go into a dispensary to purchase cannabis legally. He had a friend, Sal, who worked at the corner liquor store and procured cannabis for Patten. Patten paid Sal \$40 for cannabis, which he consumed sometime between December 2022 and January 2023. On January 24, 2023, Patten was randomly selected for drug testing, and he submitted a urine sample. (R-9.) On March 9, 2023, Patten was served a one-page PNDA and a NOIS. (A-6.) The PNDA of March 9, 2023, charged Patten with violations of JCPD Rule 3:108 (Conduct), Rule 3:123 (Obedience to Laws, Regulations and Orders), Rule 3:126 (Neglect of Duty), Rule 3:127 (Orders), Rule 3:157 (Rules and Regulations), and Rule 3:169 (Code of Ethics) for being unable to perform an essential function of his position as a police officer, carrying and possessing a firearm and ammunition. Further charges were N.J.A.C. 4A:2-2.3(a) (Insubordination, Inability to Perform Duties, Conduct Unbecoming a Public Employee, Neglect of Duty, and Other Sufficient Cause), as well as N.J.S.A. 40A:14-147 (Incapacity).

As a result of the PNDA, Patten was interviewed by Internal Affairs on March 8, 2023. (R-5.) Patten admitted to knowingly and voluntarily ingesting cannabis prior to the January 2023 random drug test. (R-5.) Patten admitted that he knowingly purchased cannabis from an individual by the name of Sal who worked at the corner liquor store. (R-5.) Patten did not have receipts for the cannabis that was ingested. (R-5.) This was Patten's first purchase and use of cannabis. (R-5.) Patten has not purchased or consumed cannabis since his positive test result. (R-5.)

After the Internal Affairs interview, a two-page Amended PNDA was issued on April 12, 2023. (R-1.) The Amended PNDA had two additional charges, a violation of JCPD Rule 3.164 (Narcotics Use) and a violation of the Attorney General's Policy on Drug Testing Law Enforcement. (R-8.) A departmental hearing was held on September 14, 2023. (R-2.) A Final Notice of Disciplinary Action was issued on October 2, 2023,

sustaining the charges in the PNDA. (R-2.) Patten was removed from the Jersey City Police Department effective October 2, 2023. (R-2.) There were no allegations of on-duty cannabis use or impairment.

CONCLUSIONS OF LAW

On February 22, 2021, the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMM Act), P.L. 2021, c. 16, which governs the regulation and use of cannabis, was signed into law. While the CREAMM Act became effective immediately upon signing, some sections of the CREAMM Act, including section 52 that applies to employers, became effective upon adoption of the Cannabis Regulatory Commission's (CRC) Personal Use Cannabis Rules (PUCR), N.J.S.A. 17:30 et seq. The CREAMM Act tasks the CRC with formulating the rules to carry out the Commission's duties and powers with respect to overseeing the development, regulation, and enforcement of activities associated with the personal use of cannabis. On August 19, 2021, the CRC initially issued the PUCR, which made the CREAMM Act operative as of that date. See N.J.A.C. 17:30. I **CONCLUDE** that the CREAMM Act was in effect at the time of Patten's drug screening and subsequent termination in 2023.

The section of the CREAMM Act that applies to employers is codified at N.J.S.A. 24:6I-52(a)(1), and states that an employee shall not be subject to adverse action by an employer solely for testing positive for cannabis. "Adverse employment action" includes the discharge of an employee from employment. See N.J.S.A. 24:6I-3. It is important to note that the CREAMM Act authorizes drug testing of employees by their employer when there is reasonable suspicion of the employee's use of cannabis while working or when there are observable signs of intoxication, and random drug testing is also permitted but only to determine use during prescribed work hours. See N.J.S.A. 24:6I-52(a)(1). The CREAMM Act precludes adverse employment action simply for testing positive for cannabinoid metabolites, or for using cannabis, so long as it is not used during the workday and the employee is not intoxicated or impaired at work. See N.J.S.A. 24:6I-52(b)(1). Here, there are no allegations of cannabis use on duty or signs of intoxication while on duty.

There is no dispute that Patten tested positive for cannabis. There is no dispute that Patten consumed cannabis. The CREAMM Act applies to all employers, and there is nothing contained within the CREAMM Act to suggest that it does not apply to law enforcement or the JCPD. I **CONCLUDE** that Patten's termination for testing positive for cannabis violates the CREAMM Act, and specifically N.J.S.A. 24:6I-52(a)(1).

The JCPD, however, argues that Patten's termination is a violation of the CREAMM Act because Patten purchased and consumed "unregulated" cannabis from an unlicensed person. Patten argues in response that no evidence exists to show that the cannabis was "unregulated." Patten's argument falls short because he does not take into consideration the fact that he did not purchase the cannabis directly from a dispensary. Whether or not the cannabis was regulated or unregulated is irrelevant to the charge. It is the purchase, in and of itself, that is a violation of N.J.S.A. 17:30-2.1(b)(1). The PUCR states that a consumer can purchase, possess, use, or transfer cannabis **without remuneration** where the "cannabis item is obtained **directly from a licensed cannabis retailer.**" N.J.S.A. 17:30-2.1(b)(1) (emphasis added). The purpose for this requirement is stated in the CREAMM Act; it was designed to eliminate the problems caused by the unregulated manufacturing, distribution, and use of illegal marijuana within New Jersey. N.J.S.A. 24:6I-32(c). There is no dispute that Patten purchased the cannabis from Sal. There is no dispute that Sal worked at the liquor store. There is no dispute that Sal is not a licensed cannabis dispensary. Patten's purchase of the cannabis was not directly from a licensed cannabis retailer and is therefore a violation of the law. I **CONCLUDE** that Patten's purchase violated the CREAMM Act, specifically, N.J.S.A. 24:6I-32(c), for engaging in the unregulated distribution of cannabis; N.J.S.A. 2C:35-10a, for the unlawful possession of cannabis which was not prescribed for him or that was not directly obtained from a licensed dispensary or practitioner; and N.J.S.A. 17:30-2.1(b)(1), for the unlawful purchase of cannabis from an unlicensed dispensary.

"Insubordination" has been defined as a failure to obey a lawful order. In re Williams, 443 N.J. Super. 532, 403 (App. Div. 2016). Here, there is a violation of not only the JCPD rules but also the Attorney General's Policy that specifically states that the purpose of the laws is to ensure that cannabis is bought solely from licensed

dispensaries. Therefore, I **CONCLUDE** that the JCPD has met its burden to support a charge of N.J.A.C. 4A:2-2.3(a)(2), insubordination, for failing to follow the JCPD rules and the Attorney General's Policy.

"Inability to perform duties" is not, strictly speaking, a disciplinary charge. An employee must be able to perform his duties physically, intellectually, and psychologically. A charge under N.J.A.C. 4A:2-2.3(a)(3) challenges Patten's ability to perform the duties associated with the position. Here, there was no evidence or testimony to support any claim that Patten was not able to perform his duties physically, intellectually, or psychologically as a police officer. I **CONCLUDE** that the JCPD has not met its burden to sustain a charge of N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties.

"Conduct unbecoming a public employee" includes conduct that "adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Ibid. Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)). Here, Patten admitted to the purchase of cannabis from an individual who was not employed by a licensed cannabis dispensary in violation of the CREAMM Act. I **CONCLUDE** that purchasing cannabis in violation of the CREAMM Act is sufficient to sustain a charge of a violation of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee.

"Neglect of duty" is not defined by the New Jersey Administrative Code. The charge has been interpreted to be an attitude of indifference based on numerous occurrences over a reasonably short space of time which amounted to neglect. West New York v. Bock, 38 N.J. 500, 522 (1962); see also In re Carter, 191 N.J. 474 (2007)

(neglect of duty found where a police officer fell asleep while on duty). Patten is charged with purchasing cannabis from an individual and not from a licensed dispensary. He was not on duty at the time, nor was he scheduled to report for duty. There are no allegations that he has ever purchased cannabis on duty, used cannabis on duty, or was intoxicated with cannabis on duty. I **CONCLUDE** that the JCPD has not met its burden to support a charge of N.J.A.C. 4A:2-2.3(a)(7), neglect of duty.

“Other sufficient cause” stems from a violation of JCPD Department Rules: Rule 3:108 (Conduct), Rule 3:123 (Obedience to Laws, Rules and Regulations and Orders), Rule 3:126 (Neglect of Duty), Rule 3:127 (Orders), Rule 3:157 (Rules and Regulations), Rule 3:164 (Narcotics Use), and Rule 3:169 (Code of Ethics). Used as a catch-all provision in the Code, discipline does not have to be warranted because of a violation of any or all the rules of the department. It can be based upon the “standard of good behavior.” Hartman v. Police Dep’t of Ridgewood, 258 N.J. Super. at 39–40. The JCPD has rules and regulations established not just for the police officers but for the entire department. As stated above, and in totality, Patten completely disregarded the JCPD rules and regulations. As to these inclusive charges, I **CONCLUDE** that the JCPD has met its burden to support this all-inclusive charge of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, because he disobeyed the rules and regulations established by the department for his conduct, cannabis use, and insubordination.

“Incapacity” is not, strictly speaking, a disciplinary charge. It is used as a part of the statute for a reason to discharge an officer. However, it can be inferred, as with inability to perform duties, that the officer is unable to perform his duties physically, intellectually, and psychologically. Such a charge challenges Patten’s ability to perform the duties associated with the position. Here, no evidence or testimony exists to support any claim that Patten was not able to perform his duty physically, intellectually, or psychologically as a police officer. There are no allegations that his cannabis purchase or use occurred while he was on duty or about to report for duty. I **CONCLUDE** that the JCPD has not met its burden to sustain a charge of N.J.S.A. 40A:14-147, incapacity.

The Attorney General issued clarifications to the CREAMM Act on April 13, 2022, (R-10) which specifically stated that there should be “zero tolerance” for unregulated cannabis consumption by police officers. While the Attorney General’s policy and clarifications issued thereto have not been reviewed by the Court yet, they have been held to have the full force and effect of law on police officers in New Jersey. See In re Gen. Disciplinary Hearing of Carberry, 114 N.J. 574, 577 (1989). Here, there was complete disregard and indifference to the Attorney General’s policy for cannabis use as it relates to police officers. The Attorney General’s clarifications were issued over a year after the CREAMM Act was enacted to ensure that all law-enforcement officers understood how the law applied to them, whether they were on or off duty. Patten ignored them. I **CONCLUDE** that the JCPD has met its burden to support a charge of a violation of the Attorney General’s Policy on Drug Testing Law Enforcement for his purchase of cannabis from an unlicensed dispensary.

Penalty

Termination is a major disciplinary action, and the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). On such appeals, the Civil Service Commission (CSC) may increase or decrease the penalty, N.J.S.A. 11A:2-19, and the concept of progressive discipline guides that determination. In re Carter, 191 N.J. at 483–86. Thus, an employee’s prior disciplinary record is inherently relevant to determining an appropriate penalty for a subsequent offense. Ibid. The past record includes a recent history of promotions or commendations as well as any other disciplinary actions or instances of misconduct. West New York v. Bock, 38 N.J. 524. Consideration should also be given to the timing of the most recently adjudicated disciplinary history. Ibid. A past record, or lack thereof, cannot be used to prove or disprove a present charge. However, it can be used for guidance to determine the appropriate penalty. Ibid.

Progressive discipline may only be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the

application of progressive discipline would be contrary to the public interest. In re Herrmann, 192 N.J. 19, 33 (2007). Thus, the issue is whether such “punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness.” In re Carter, 191 N.J. at 484.

It is not necessary that misconduct occur while the officer is on duty. In re Emmons, 63 N.J. Super. at 140. Suspension or removal may be justified even if the misconduct occurred while off duty. Ibid. On- and off-duty conduct is an essential element of the morale and discipline of the force. It is also an essential element of public respect for its officers. Ibid. In the public's eye, a police officer is a model of proper conduct, and it is one of the obligations and duties of voluntary entry into public service. Id. at 142.

New Jersey has long recognized that a police officer is a special kind of public employee who represents law and order and must represent an image of integrity and dependability. Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965). Police officers are held to a high standard of responsibility and conduct. Ibid. They voluntarily agree to being held to this higher standard of conduct when they enter public service. In re Phillips, 117 N.J. 567, 577 (1990). Courts have affirmed terminations of public servants for serious infractions or if they involve the safety of the public. Klusaritz v. Cape May Cnty., 387 N.J. Super. 305 (App. Div. 2006) (affirming dismissal of incompetent CPA despite no disciplinary record); In re Hall, 335 N.J. Super. 45 (App. Div. 2000) (sustaining dismissal for attempted theft); Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191 (App. Div. 1997) (affirming dismissal of police officer who took unauthorized paid vacation); Bowden v. Bayside State Prison, 268 N.J. Super. 301 (App. Div. 1993) (sustaining removal of prison guard who gambled with inmates for cigarettes); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967) (affirming dismissal of police officer based on his multiple instances of insubordination and careless handling of weapon).

When New Jersey enacted the CREAMM Act, one of its primary purposes was to stop the sale of unregulated marijuana. The Attorney General addressed the specific issue that is in dispute in its memorandum to all State law-enforcement officers. This

memorandum stated that there should be zero tolerance for a police officer's use or possession of unregulated marijuana. The facts in this matter are not in dispute. Patten is not just a public employee. He is a police officer who is employed to enforce the laws of the State. Patten argues that he was on disability for an injured left hand. He alleges that the prescription medicine he was taking was not effective. He wanted to try to manage his pain with cannabis. He admitted that he was not sure if he could just go into a dispensary to purchase cannabis legally. However, he admitted that he knew that purchasing it from an individual is a violation of the law. He purchased the cannabis from Sal, who works for the local corner liquor store. Patten knew that Sal did not work for a licensed dispensary. Patten argues that the JCPD cannot prove that the cannabis was unregulated. However, Sal's possession of the cannabis is not the issue here. The salient fact, which is undisputed, is that Patten did not purchase the cannabis directly from a licensed dispensary, which is a violation of the PUCR and the CREAMM Act.

Patten intentionally violated N.J.A.C. 4A:2-2.3(a)(2) (Insubordination), N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming a Public Employee), N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause), JCPD Rules: Rule 3:108 (Conduct), Rule 3:123 (Obedience to Laws, Rules and Regulations and Orders), Rule 3:126 (Neglect of Duty), Rule 3:127 (Orders), Rule 3:157 (Rules and Regulations), Rule 3:164 (Narcotics Use), Rule 3:169 (Code of Ethics), and the Attorney General's Policy on Drug Testing Law Enforcement, and these violations are sufficient to warrant termination. Patten is not an ordinary citizen. He volunteered to be trained as a police officer and serve the public. He agreed to the rules and regulations of the JCPD. His sworn duty is to defend the laws of the State. One of the laws of the State is to purchase cannabis from a licensed dispensary. He knew what the law was, and he knew that he was violating the law when he purchased cannabis from an unlicensed individual. I therefore **CONCLUDE** that Patten must be terminated from his position as a police officer.

ORDER

I **ORDER** that Patten be **TERMINATED** from his position as a police officer with the JCPD.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 22, 2024
DATE



PATRICE E. HOBBS, ALJ

Date Received at Agency: March 22, 2024

Date Mailed to Parties: March 22, 2024

lsr

APPENDIX

Witnesses

For Appellant:

Montavious Patten

For Respondent:

Sargeant Joseph Anzivino

Exhibits

For Appellant:

- A-1 Not in evidence
- A-2 Not in evidence
- A-3 Not in evidence
- A-4 Not in evidence
- A-5 Attorney General's Law Enforcement Drug Testing Policy, February 2023
- A-6 PNDA dated March 9, 2023, and Notice of Immediate Suspension
- A-7 Not in evidence
- A-8 Not in evidence
- A-9 Not in evidence
- A-10 Officer Patten's US Army Certificate of Release

For Respondent:

- R-1 Amended PNDA dated April 12, 2023
- R-2 FNDA dated October 2, 2023
- R-3 Excerpts of JCPD Rules and Regulations
- R-4 JCPD General Order 12-18
- R-5 Internal Affairs Report dated April 3, 2023
- R-6 Drug Testing Officer Acknowledgment dated January 27, 2023
- R-7 Patten Toxicology report
- R-8 Attorney General's Law Enforcement Drug Testing Policy 12/20

- R-9 Attorney General Frequently Asked Questions 2021
- R-10 Attorney General Memorandum on Cannabis dated April 13, 2022
- R-11 JCPD Director Shea Memorandum dated April 20, 2022
- R-12 Recording of IA Interview (CD)