



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Jasmine Govens, South Woods State Prison, Department of Corrections

CSC Docket No. 2023-220 OAL Docket No. CSR 09450-23 (On remand CSR 06558-22)

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ISSUED: FEBRUARY 7, 2024

The appeal of Jasmine Govens, Senior Correctional Police Officer, South Woods State Prison, Department of Corrections, removal, effective July 20, 2022, on charges, were heard by Administrative Law Judge Kathleen M, Calemmo (ALJ), who rendered her initial decision on December 27, 2023. Exceptions were filed on behalf of the appointing authority and a reply was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on February 7, 2024, adopted the ALJ's Findings of Fact and Conclusion and her recommendation to reverse the removal.

As background, on August 15, 2023, the ALJ issued an initial decision in this matter recommending that the removal be modified to a six-month suspension. In remanding the matter, the Commission noted the following:

In the initial decision, the ALJ identified several issues with the chain of custody, which she found did not impact the charges, but she seemingly utilized as a mitigating factor regarding the penalty. In the Commission's view, chain of custody issues should only be utilized when analyzing whether the disciplinary charges should be upheld and do not factor into the penalty. In this regard, it is well-settled that technical deviation from the Attorney General Guidelines regarding the chain of custody for drug samples do not necessarily warrant the nullification of the results of a drug test. See In the Matter of Mario Lalama, 343 N.J. Super. 560 (App. Div. 2001) (Despite flaws in the chain of custody, a drug

test was still valid where the record showed a “reasonable probability” that the integrity of the sample was maintained). In this matter, while the ALJ accepted the expert testimony as to the validity of the sample, the identified concerns regarding the chain of custody were apparently problematic for her. After its review, the Commission remands this matter to the Office of Administrative Law to have the ALJ specifically clarify whether the chain of custody issues served as a basis to invalidate the drug test results. If so, the charges should be dismissed completely, and the removal should be reversed. If not, the ALJ should indicate whether her originally recommended reduction in penalty remains as such absent any consideration of the chain of custody issues. No further hearing proceedings appear necessary, unless the ALJ believes such proceedings will lead to further clarification of the initial decision.

Based on the above, the ALJ further reviewed the matter, and in her December 27, 2023, initial decision, found:

Here, the testimony established that Govens’ sample was brought to the toxicology lab by Nicotera, a DOC employee. The toxicology lab’s document listed Watkins as the courier. This may have been a mistake, except the date of December 6, 2021, is also wrong. Dr. Jackson testified that the specimen was received on December 4, 2021, which was still two days after it was picked up by Nicotera at South Woods. Moreover, Dr. Jackson maintained that the matter could easily be resolved by reviewing the lab’s sign-in sheets. The sign-in sheets were produced and reviewed. There is no indication from the sign-in sheets that Govens’ sample was delivered on any of the dates listed on the documents. The testifying witnesses were questioned about the inconsistent dates, and no one was able to provide any explanation for the errors in the chain of custody records. Therefore, I **CONCLUDE** that respondent cannot show by competent reliable evidence that the chain of custody was maintained.

In its remand Order, the CVS (sic) expressed its view that chain of custody issues should only be utilized when analyzing whether the disciplinary charges should be upheld. The chain of custody issues, involving the inability to account for the whereabouts of the specimens for two days, no sign-in signatures evidencing receipt by the toxicology laboratory, and blatant errors within the Chain of Custody documentation – wrong courier and wrong date (R-15, DOC 143) serve as the basis to invalidate the drug test results of the appellant. Accordingly, I **CONCLUDE** that respondent cannot support the charges against appellant contained in the FNDA by competent evidence.

Based on the above, the ALJ recommended reversing the removal. Notwithstanding the appointing authority's exceptions arguing to the contrary, the Commission agrees.

In this regard, in its *de novo* review of the ALJ's decisions, the Commission concurs that the deviations in the chain of custody invalidated the results of the drug test. In her remand decision, the ALJ clearly differentiated this case from *Lalama, supra*. As detailed above, the ALJ specifically pointed to the numerous and serious deviations from the normal chain of custody, and specifically identified how those issues led to her conclusion that such deviations invalidated the appellant's otherwise positive drug test result. The Commission finds nothing in its review of the record or the appointing authority's exceptions to conclude otherwise.

Since the removal has been reversed, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from the first date of separation without pay until the date of reinstatement. Moreover, as the removal has been reversed, the appellant is entitled to reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to her position.

#### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Jasmine Govens. The Commission further orders that the appellant be granted back pay, benefits, and seniority from the first date of separation without pay until the date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for the appellant pursuant to *N.J.A.C.* 4A:2-2.12. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10 and *N.J.A.C.* 4A:2.12, the parties shall make a good faith effort to resolve

any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 7<sup>TH</sup> DAY OF FEBRUARY, 2024



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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
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Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSR 09450-23

AGENCY DKT. NO. N/A

(ON REMAND CSR 06558-22)

**IN THE MATTER OF JASMINE GOVENS,  
SOUTH WOODS STATE PRISON.**

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**Michael P. DeRose, Esq.**, for appellant Jasmine Govens (Crivelli, Barbati & DeRose, LLC, attorneys)

**Ryan J. Silver**, Deputy Attorney General, for respondent South Woods State Prison, New Jersey Department of Corrections (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: November 10, 2023

Decided: December 27, 2024

**BEFORE KATHLEEN M. CALEMMO, ALJ**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Appellant, Jasmine Govens (Govens), a Senior Corrections Police Officer (SCPO) at South Woods State Prison (South Woods), appealed her removal by the respondent, New Jersey Department of Corrections (DOC), effective July 20, 2022. DOC removed appellant after she tested positive for cannabinoids, 11-Carboxy-THC (THC) on a random urine drug screening. The sustained charges in the Final Notice of Disciplinary Action (FNDA) were violations of 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; Human Resources Bulletin (HRB) 84-17, C-11, conduct unbecoming a public employee; HRB 84-17, C-30, use,

possession, or sale of any controlled dangerous substance (custody); and HRB 84-17, E-1, violation of a rule, regulation, policy, procedure, order, or administrative decision. Govens denied ever consuming illegal marijuana but admitted to daily and repeated use of a hemp-based face cream and other hemp-based/CBD products.

On February 17, 2022, the DOC issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications. (J-1.) Appellant requested a departmental hearing, which was held on June 30, 2022. On July 20, 2022, the respondent issued the FNDA removing appellant from employment, effective July 20, 2022. (J-2.) Appellant filed a direct filing removal appeal to the Office of Administrative Law (OAL), where it was filed on August 3, 2022, as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52: 14F-1 to 13. The appeal was perfected on July 28, 2022.

The hearing was held on December 16, 2022, January 13, 2023, and January 23, 2023. I closed the record on July 7, 2023, after receipt of the post hearing submissions. The initial decision was issued on August 15, 2023.

On September 20, 2023, the Civil Service Commission (CSC) remanded the matter back to this tribunal for clarification. The CSC stated its concern in the remand about the use of identifiable chain of custody issues "as a mitigating factor regarding penalty. In the Commission's view, chain of custody issues should only be utilized when analyzing whether the disciplinary charges should be upheld and do not factor into the penalty." Accordingly, the CSC remanded the matter for clarification of "whether the chain of custody issues served as a basis to invalidate the drug tests results."

After a telephone conference with the parties and upon review of the record, this tribunal is convinced that further proceedings are not necessary. This decision on remand can be accomplished without such proceedings. The review of the record was concluded on November 10, 2023, and on that day the record closed.

At issue is whether the flaws in the chain of custody nullify the results of the drug test requiring a dismissal of the charges and a reversal of the removal.

## **FACTUAL DISCUSSION**

I **FIND** the following as the uncontroverted **FACTS** regarding the chain of custody:

Senior Investigator, Jennifer Pesce, assigned as the urine coordinator in the Special Investigations Division (SID), of South Woods administered the drug test to Govens on November 8, 2021. (R-4.) Govens provided her urine sample on November 8, 2021, at 10:15 a.m. Pesce placed the specimen in the evidence refrigerator at 10:16 a.m., where it remained until December 2, 2021. (R-5 at DOC 416.) Senior Investigator Robert Nicotera received Govens' specimen from Pesce at 8:00 a.m. on December 2, 2021. Id. As part of his duties, Nicotera collected specimens from the three southern prisons on the same day and drove them to the New Jersey State Toxicology Laboratory (toxicology lab) in Newark.

Nicotera testified that when he picked up the samples, he stored the samples from each prison in separate plastic bags. South Woods was Nicotera's last stop in his rotation. After collecting the samples, he drove straight to the lab in Newark, arriving approximately two hours later. Nicotera always went straight to the lab; he never kept samples and delivered them on a different day. Upon entering the toxicology lab, Nicotera would sign the sign-in sheet in the lobby. He waited in the lobby until called. When it was his turn, he would take the elevator up, enter the lab and sign-in. After he gave the samples to the lab technician, his involvement ended. Nicotera recognized the technicians but did not remember any names. He did not recall anyone named Jean Smith. The Drug Testing Policy requires samples to be delivered within one working day or be stored in a controlled access refrigerated storage area until submission. (R-19, DOC 197.) When transporting the samples, Nicotera stated he was not concerned about maintaining temperature control because he went straight to the lab. Nicotera testified that he never transported specimens on the weekend, he only worked Monday through Friday.

Nicotera left South Woods with Govens' sample at 8:00 a.m. on Thursday, December 2, 2021, for transport to the toxicology lab. Nicotera's name does not appear on the sign-in sheets produced by the toxicology laboratory. (R-37.) According to the

records maintained by the toxicology lab, Govens' sample was not recorded as received until Saturday, December 4, 2021. The "RECEIVED AT LAB" section of the chain of custody form was signed by "Jean Smith" and dated "12/4/21." (R-15 at DOC 058.) Equally concerning was the document entitled "Chain of Custody for 21L018157." (R-15 at DOC 143.) This document contained the chain of custody information for Govens' specimen. The information imprinted on the form that "[o]n December 6, 2021, the following specimen was received from WATKINS of the NJDOC South Woods State Prison (SWSP)" was incorrect. According to Pesce and Nicotera, Watkins was a previous courier no longer used by the DOC to transport urine specimens. There is no indication that Watkins had any involvement with Govens' sample. Neither Nicotera's nor Watkin's signatures appeared on the lab's sign-in sheets covering dates from November 30, 2021, through December 8, 2021. (R-37.) According to Dr. Jackson, the executive director of the toxicology lab, the person making the delivery signs the sign-in sheet and writes the date and time of the visit. For Govens' specimen, there is no record of delivery. The toxicology lab's records are inconsistent. Not only are the dates wrong, but the courier was also misidentified, calling into question the reliability of the chain of custody documentation.

Dr. Jackson testified as an expert in forensic toxicology. (R-16.) For all drug testing, the toxicology lab follows the Attorney General's guidelines for the Law Enforcement Drug Testing Program (LEDT). The lab provides an analytical role, securing every sample within a chain of custody in a secure environment. Specimens are received by mail or carrier to a restricted access specimen receiving area. Each specimen is given a unique identifying number. According to Dr. Jackson's testimony, the urine sample bearing the identification number blindly assigned to Govens' sample was received by the laboratory on December 4, 2021, and transferred for processing on December 6, 2021. Dr. Jackson had no explanation for the discrepancy in the chain of custody documents.

The appellant also raised a violation of the Attorney General's Law Enforcement Drug Testing Procedures and the DOC's own drug testing policy because of the length of time it took to transport Govens' specimen to the toxicology lab. The Attorney General's Law Enforcement Drug Testing Procedures provide that "[u]rine specimens should be submitted to the State Toxicology Laboratory as soon as possible after their collection."



(R-20 at DOC 225-226.) Under the DOC's own Drug Testing policy, urine specimens must be submitted to the State Toxicology Laboratory within one working day of collection. (R-19 at DOC 197.) Dr. Jackson testified that he preferred to receive the samples as soon as possible but acknowledged that some samples were transported within a week or a week and a half. Under the policies, if the specimen cannot be transported within one working day, the specimen must be stored in a controlled access refrigerated storage area. South Woods' records showed that after Govens voided at 10:15 a.m. on November 8, 2021, Pesce placed her specimen in the evidence refrigerator at 10:16 a.m. where it remained until 8:00 a.m. on December 2, 2021, when it was transported by Nicotera to the toxicology lab. (R-5 at DOC 416.) The only explanation for the delay of twenty-two days in transporting was convenience. Moreover, there is nothing to suggest how the specimen was stored from December 2, 2021, until December 4, 2021. Nicotera stated that he transported the sample in a clear bag that was not temperature controlled. The whereabouts of Govens' samples from the time they left South Woods on December 2, 2021, at 8:00 a.m. with Nicotera until they were marked as received by Smith on December 4, 2021, are unknown.

The testimony and records show that this specimen was not maintained within a chain of custody after leaving South Woods with Nicotera at 8:00 a.m. on December 2, 2021. The specimen remained unaccounted for until December 4, 2021. The document entitled "Chain of Custody for 21LE018157" is even more troubling. (R-15 at DOC 143.) The document stated that "[o]n December 6, 2021, the following specimen was received from WATKINS of the NJ DOC South Woods State Prison." Id. According to the testimony of Pesce and Nicotera that is simply not true. Dr. Jackson had no explanation other than to reiterate that the specimen was received on December 4, 2021. Given the detailed and meticulous records that the policy demands, the lack of accountability for this specimen is not harmless error. This specimen was not only received well after the time which Dr. Jackson would have liked but there is also no record of the toxicology lab's

receipt of it on December 2, 2021. Accordingly, I FIND that the DOC has not established a clean and sufficient chain of custody for Govens' sample.

### **LEGAL ANALYSIS AND CONCLUSION**

A civil service employee's rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972) (citing Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 145, 147 (1965)).

The appointing authority employer has the burden of proof to establish the truth of the disciplinary action brought against a civil service employee. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); see Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is considered to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro Bottling Co., 26 N.J. 263, 275 (1958).

In the case at bar, appellant was terminated after she tested positive for THC on a random drug test. The proper foundation for admission of a drug test result requires a showing of an uninterrupted chain of possession to avoid any inference that the specimen has changed in important respects. State v. Brown, 99 N.J. Super. 22, 28 (App. Div.), certif. denied, 51 N.J. 468 (1968). Generally, this threshold is met if the trier of fact finds by a "reasonable probability" that evidence has not changed in any significant manner. Id. Reasonable probability does not require proof of an uninterrupted chain of possession or "negat[ing] every possibility of substitution or change in condition." Id. at 27. And one or two departures from stated policy do not require rejection of the chain of custody evidence, provided that the cited departures do not suggest a real prospect for

substitution. In re Lalama, 343 N.J. Super. 560 (App. Div. 2001). The determination whether the chain of custody of a drug sample has been sufficiently established to justify admission of test results is committed to the discretion of the trier of fact. State v. Morton, 155 N.J. 383, 446-47 (1998), affirmed 165 N.J. 235 (2000).

In In re Lalama, 343 N.J. Super. 560 (App. Div. 2001), the court upheld a firefighter's termination for failing a random drug test, despite "broken links" in the chain of custody of the respondent's urine sample. Id. To that end, the failure of the courier who picked up the urine sample from the testing location to sign a required form, and the lack of records related to the time and date the sample was picked up or the sample's mode of transportation were outweighed by other evidence demonstrating that there was a "reasonable probability" that the integrity of the sample had not been compromised. Id. at 567. The other evidence was in the form of competent witness testimony. Armando Crotez, the official responsible for administering the drug test, testified that he saw the courier pick up the sample from the locked box for transport. Id., at 562. The broken links in the chain of custody in Lalama were cured by credible testimony.

Here, the testimony established that Govens' sample was brought to the toxicology lab by Nicotera, a DOC employee. The toxicology lab's document listed Watkins as the courier. This may have been a mistake, except the date of December 6, 2021, is also wrong. Dr. Jackson testified that the specimen was received on December 4, 2021, which was still two days after it was picked up by Nicotera at South Woods. Moreover, Dr. Jackson maintained that the matter could easily be resolved by reviewing the lab's sign-in sheets. The sign-in sheets were produced and reviewed. There is no indication from the sign-in sheets that Govens' sample was delivered on any of the dates listed on the documents. The testifying witnesses were questioned about the inconsistent dates, and no one was able to provide any explanation for the errors in the chain of custody records. Therefore, I **CONCLUDE** that respondent cannot show by competent reliable evidence that the chain of custody was maintained.

In its remand Order, the CVS expressed its view that chain of custody issues should only be utilized when analyzing whether the disciplinary charges should be upheld. The chain of custody issues, involving the inability to account for the whereabouts of the

specimens for two days, no sign-in signatures evidencing receipt by the toxicology laboratory, and blatant errors within the Chain of Custody documentation – wrong courier and wrong date (R-15, DOC 143) serve as the basis to invalidate the drug test results of the appellant. Accordingly, I **CONCLUDE** that respondent cannot support the charges against appellant contained in the FNDA by competent evidence.

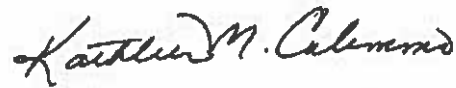
**ORDER**

It is hereby **ORDERED** that the disciplinary action of the respondent, New Jersey Department of Corrections, in removing appellant, Jasmine Govens, from her position as a Senior Correctional Police Officer, is **REVERSED**. It is further **ORDERED** that appellant be reinstated with back pay, along with any other accompanying employment benefits.

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.



December 27, 2023

DATE

KATHLEEN M. CALEMNO, ALJ

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

KMC/tat

**APPENDIX**  
**WITNESSES**

**For appellant**

Jasmine Govens  
Gary Lage, Ph.D.  
Michael Sharp  
Stephen Hunter

**For respondent**

Major Michael Ryan  
Robert Nicotera  
Jennifer Pesce  
Dr. George Jackson  
Dr. Andrew Falzon

**EXHIBITS**

**Joint**

J-1 PNDA  
J-2 FNDA

**For appellant**

P-1 Pictures of CBD /hemp cream  
P-2 Appointment history at Utopia Salon  
P-3 CV of Gary Lage, Ph.D.  
P-4 Report of Dr. Lage  
P-5 copy of CBD/hemp cream box

**For respondent**

- R-3 DOC Master List for Donor Notification
- R-4 Schedule for November 8, 2021
- R-5 Drug Screening Monitor Program
- R-6 Medication Form
- R-7 Toxicology Report
- R-8 Weingarten Rights Form
- R-9 Representative Non-Disclosure Form
- R-10 SID Interview
- R-11 Authorization for release of prescription form
- R-12 SID letter to medical provider
- R-13 SJ Regional Medical Center report
- R-14 SID investigation report
- R-15 New Jersey State Toxicology Laboratory Litigation Packet
- R-16 Curriculum Vitae, Dr. George Jackson
- R-17 Curriculum Vitae, Dr. Andrew L. Falzon
- R-18 HRB 99-01 Drug Testing Policy
- R-19 PSM 01.019 Drug Testing Policy
- R-20 AG's Law Enforcement Drug Testing Policy
- R-21 EO 204
- R-22 AG Platkin Memo April 13, 2022
- R-23 Law Enforcement Personnel Rules and Regulations
- R-24 ADM. 010.001 Standards of Professional Conduct
- R-25 Handbook of Information and Rules
- R-26 Directive Com: 03.003
- R-27 HRB 84-17
- R-28 SCPO CSC Job Description
- R-29 New hire checklist
- R-30 Personnel Rules & Regulations Policy Receipt
- R-31 HRB 99-01 Policy Receipt

- R-32 Annual Ethics Briefing Policy Receipts
- R-33 Training summary.
- R-34 Govens' employment history
- R-35 Govens' disciplinary history
- R-36 Cannabis Regulatory Commission Public Press Releases
- R-37 Toxicology Lab's sign-in sheet