

**BEFORE THE CIVIL SERVICE BOARD  
OF THE CITY OF PHOENIX**

**Carl Ramirez**

**vs.**

**City of Phoenix  
Police Department**

THIS MATTER having come for hearing before the Hearing Officer on January 13 and 15, 2010, pursuant to the appeal of the employee above named, from disciplinary action taken against him/her by the City of Phoenix, and the Board having considered all matters presented to it, now makes its Findings and Order, with respect to the specific charges made against said employee, as follows:

**CHARGES**

That the employee is subject to a dismissal effective November 5, 2009, for violation of the following Personnel Rules:

**21b3**, "That the employee has violated any lawful or official regulation or order, or failed to obey any lawful and reasonable direction given him by his supervisor, when such violation or failure to obey amounts to insubordination or serious breach \*of discipline which may reasonably be expected to result in lower morale in the organization, or to result in loss, inconvenience, or injury to the City or the public."

**21b18**, "That the employee has been guilty of any other conduct of equal gravity to the reasons enumerated in 21b1 through 21b17."

Mr. Ramirez was dismissed for testing positive for an illegal substance during a random drug/alcohol test that exceeded the acceptable threshold for the PPD. (Nandrolone metabolite - anabolic steroid and synthetic drug).

**FINDINGS**

The recommendations of the Hearing Officer have been received by the Civil Service Board and are fully incorporated by reference into this decision and attached hereto as an exhibit. After a review of the recommendations of the Hearing Officer, it is the finding of the Board that the employee did violate Personnel Rule 21b3, but did not violate Personnel Rule 21b18. The discipline imposed was found to be excessive.

Carl Ramirez.  
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ORDER

Based on the above findings, it is the decision and order of the Civil Service Board that the dismissal be reduced to a 240-hour suspension with no back pay. The Board also struck # 16 in the conclusions of the Hearing Officer's report.

(Aye) Nay  Absent

Robert L. Cannon, Ph.D., Chair

(Aye) Nay  Absent

Richard Arroyo, Vice Chair

(Aye) Nay  Absent

Gayle Starr, Member

(Aye) Nay  Absent

Betty Doran, Member

(Abstained) Aye Nay  Absent

Elisa de la Vara, Member

Dated: March 11, 2010

## HEARING REPORT

DATES OF HEARING: January 13, 2010 and January 15, 2010

APPELLANT: Carl Ramirez

DISCIPLINE APPEALED: Dismissal

APPELLANT'S REPRESENTATIVE: Katherine Baillie, Attorney at Law

CITY'S REPRESENTATIVE: Heidi Gilbert, Assistant City Attorney

PERSONNEL RULES CITED:

1. 21b3 - That the employee has violated any lawful or official regulation or order, or failed to obey any lawful and reasonable direction given him by his supervisor, when such violation or failure to obey amounts to insubordination or serious breach of discipline which may reasonably be expected to result in lower morale in the organization, or to result in loss, inconvenience, or injury to the City or the public.
2. 21b18 - That the employee has been guilty of any other conduct of equal gravity to the reasons enumerated in 21b1 through 21b17.

OPERATIONS ORDERS:

1. 3.13.5C(7) - Employees will not unlawfully use narcotics, marijuana, or dangerous drugs.
2. 3.13.6A(2) - Employees will not lie during any criminal and/or administrative investigation or in matters of legitimate concern to the department.
3. 3.20.2B(1)(a) - Employees will not use ... dangerous drugs, including anabolic steroids, ....

This was a public hearing at the Appellant's request.

PRIOR DISCIPLINE:

1. Written Reprimand - August 21, 2009 - Failure to properly secure City equipment.
2. Written Reprimand - November 28, 2005 - Failure to maintain a professional approach to duties at all times.

Pre-Hearing Motions:

Two evidentiary matters regarding the Appellant's intention to introduce proposed exhibits (F and I), one of which involved questions of relevance and the other involving a failure of discovery were argued. The Assistant City Attorney objected to both of the proposed introductions. The relevance question is decided in favor of the City denying the admission into evidence of Appellant's Exhibit I; the objection regarding Appellant's Exhibit F was resolved during the hearing.

**WITNESSES:****For the City:**

Carl Ramirez  
Chief Jack Harris  
Commander Kim Humphrey  
Sergeant Tadd Cline  
Dr. Gary Carmack

**For the Appellant:**

Carl Ramirez  
Christopher Ramirez  
Dr. Don H. Catlin

**EXHIBITS:****For the City:**

1. Discipline Notice
2. Employee's Notice of Inquiry (NOI), Investigative Review Control Form, and Notice of Findings for Internal Investigation (PSB09-0034)
3. Internal Investigation Report (PSB09-0034)
4. Memo dated September 3, 2009, Subject "Work History for Officer Carl Ramirez Reference PSB09-0034"
5. CD containing investigation (PSB09-0034) materials in their entirety.
6. Directive to Appear for Controlled Substance Screening issued to Officer Ramirez on March 13, 2009
7. Weekly Notification Lists and Reports dated March 11, 2009, for "Three Year List" and "One List"
8. Results of Controlled Substance Test for Officer Ramirez verified by Dr. Baber on April 2, 2009.
9. Laboratory Report for Officer Ramirez from Southwest Laboratories dated April 9, 2009.
10. Chain of Custody form signed by Officer Ramirez.
11. Transcript PSB interview: Carl Ramirez.
12. List of vitamins and supplements provided by Officer Ramirez.
13. Transcript PSB Interview: Gary Carmack, Ph. D.
14. Transcript PSB Interview: Dr. James Baber, M.D., J.D., including Dr. Baber's "Educational, Medical and Professional Background"
15. Transcript PSB Interview: Dr. Robert Jones, M.D.
16. Transcript PSB Interview: Ms. Tina Esparza.
17. Transcript: First Anonymous call, Caller later identified as Officer Carmen Montoya.
18. Transcript: Second Anonymous Call, Caller later identified as Officer Carmen Montoya.
19. Transcript PSB Interview: Carmen Montoya
20. Memo from Officer Ramirez to Sergeant Wamsley dated June 15, 2009, Subject

- “Testing Positive for Steroid Nandrolone.”
21. Memo from Officer Ramirez to Sergeant Wamsley dated June 17, 2009, Subject Testing Positive For Steroid Nandrolone - Additional Information.”
  22. Memo from Officer Ramirez to Sergeant Wamsley dated July 10, 2009, Subject “Testing Positive for Steroid Nandrolone - Blood Analysis.”
  23. Notice of Loudermill Hearing
  24. Operations Order 3.13, Rules and Regulations.
  25. Arizona Revised Statutes Section 13-3401, Definitions.
  26. Operations Order 3.18, Discipline Procedures and Review Boards - Pilot Policy ( Temp. 01/07).
  27. Operations Order 3.18, Addendum A, Discipline Matrix - Pilot Policy (Temp. 01/07)
  28. Operations Order 3.20, Substance Abuse.
  29. Operations Order 3.21, Controlled Substance Screening.
  30. Administrative Regulation (AR) 2.324, Policy on Substance Abuse
  31. Excerpt from Employee Manual Regarding Drugs and Alcohol
  32. Performance Management Guides, PMGs (2005-2008)
  33. Training Records.
  34. Molecular Charts

For the Appellant:

- A. Dr. Catlin, M.D. CV and Article about Dr. Catlin
- B. Dr Catlin, M.D. Medical Journal Article
- C. March 19, 2009 Article, Norandrostenedione Articles
- D. July 27, 2009, Warning Letters from FDA
- E. Photographs of Supplements Ingested by Ramirez.
- F. Dr Catlin, M.D. Opinion on Lab Results August 23, 2009
- G. Dr. Richard Alm, M.D. Letter April 27, 2009
- I. United States District Court Search Warrant 9/24/09 - Not admitted into evidence
- J. Character Letters of September 2009
- K. Commendations
- L. Performance Review
- M. ARS Section 13-3401
- N. Phoenix Police Department Operations Orders 3.13.5C(7), 3.20.2B(1)(a), 2C(1)(b), 3.21.6B(2), AR 2.324 3L.
- O. Memos from Carl Ramirez.

All exhibits except Appellant's exhibit I were admitted.

ISSUE PRESENTED

Did Carl Ramirez violate the above cited City of Phoenix Personnel Rules and Phoenix Police Department Operations Orders when his test results from a random drug test on March 13, 2009, showed that he was positive (5.1ng/ml) for a Nandrolone metabolite which is a dangerous drug

and controlled substance, and if he did, was the discipline appropriate?

### FINDINGS

Appellant was a full time employee of the City of Phoenix Police Department, initially hired on August 30, 2004, and he was appointed to his most recent employment class on January 10, 2005.

The Appellant was issued a Directive to Appear for a controlled substance screening test as part of the Phoenix Police Department's random drug screen program on March 13, 2009. He reported to the ~~Concentra~~ Health Clinic where he provided a urine sample for the drug screen testing. His sample was analyzed by Southwest Laboratories, which detected the presence of a Nandrolone metabolite, which is an anabolic steroid and synthetic drug. The Laboratory Director reported that the Appellant's test results showed a presence of 5.1ng/ml of the substance from one metabolite in his body and that that amount exceeded the acceptable cutoff that is used for Phoenix Police Department employees' random test results. The positive drug test was forwarded to a Medical Review Officer (MRO) who said the test was positive due to being over the established threshold of 5ng/ml. He also stated that a person with a Nandrolone metabolite count of more than 5ng/ml without a prescription would have to be taking it illegally. The Appellant told investigating officers from the Professional Standards Bureau (PSB) that he had never ingested the anabolic steroid Nandrolone, and that he had no idea how the drug got into his body. His statements were at variance with the test results.

The Appellant was the first witness in this hearing, indicated that he had been a Phoenix Police Officer for four years, and at the time of this incident he was assigned to the Cactus Park Station. He had previously worked for the Arizona Department of Environmental Quality as an investigator for nine years. He had experienced random drug testing on two prior occasions, one for pre-employment and one time after joining the Police Department. The Appellant was assigned to the Cactus Park NET squad out of which he was assigned to the three year random drug screen pool.

The Police Department PSB received an anonymous telephone call from a female on March 9, 2009, indicating that her son had visited the Appellant's home recently and noticed some syringes there. A second telephone call and some voice recognition by some officers reflected that the anonymous caller was the Appellant's ex-wife who was also a Phoenix Police Officer. PSB called the Appellant's sergeant and asked him about the Appellant; the sergeant told the Appellant about the call, and told him that he reported to PSB that he had not noticed any change. On March 13, 2009, he was noticed for the subject random drug testing, reported for the test, and left his sample. A couple of weeks later, he was contacted by the Medical Review Officer's (MRO), Dr Baber's, nurse. He was informed of the positive reading during the conversation with the MRO and asked if he was on a prescription or taking anything which would result in the positive result to which he answered over-the-counter supplements. The MRO indicated to him that his test results had come back showing "male enhancements", but the

term "steroid" was not used.

The Appellant reported to PSB on April 3, 2009, for this interview where he received his NOI and drug test results reflecting a failure because of an anabolic steroid, Nandrolone metabolites. He related that he took nutritional supplements to assist him with his body building activities. He stated also that he had not had any Anadrol with protein drinks since about a week before the test, but nothing else for about two to two and a half months because of the expense of replacing all of the supplements which he was taking. There was one other supplement he took with the protein drinks, Red Line, but he could not describe it. It was his understanding that he was being disciplined for injectable steroids while at the same time he was not asked about nutritional supplements.

After the interview, the Appellant went home and rounded-up seven supplement and vitamin bottles from which he had taken pills, in some instances months earlier, and carried them to his union representative to take to the PSB which the representative did. Those seven supplement bottles included Tokkyo Tren, DHEA which has been identified as a steroid, Di-Methal X, CLA, Yohimbe, Glucosamine, and One-A-Day vitamin. He indicated that he was still taking "Tokkyo Tren", a supplement which he purchased at Cynergy and Tommy's Nutrition for \$70.00 a bottle. The suggested dosage of this supplement was six pills a day, but the Appellant took eight pills a day. He believed that "Tokkyo Tren" might have been the vehicle by which the Nandrolone metabolites entered his body based upon conversations which he had with Dr. Don Catlin. The Appellant did not mention any of these supplements during his PSB interview.

He went to the fitness center and worked out with friends, some of whom are power lifters and from whom he received information about which supplements to use, having done so recently at Fitness West. He purchases protein drinks at the gyms and has had supplements added to them from packets which the trainers add in. When questioned specifically about the contents of the packets which are added to the protein drinks, the Appellant is unaware of what the substances are or how they metabolize. He went to GNC, High Health, Tommy's and Cynergy to purchase some of the supplement products. Five to six years ago, he ordered some supplements which were marketed as "legal steroids" in a muscle fitness magazine, but he has not done so since he joined the Police Department. Likewise, he is also familiar with internet locations where supplements can be purchased. He has also taken several other supplements over time - Anadrol, a powder substance; Tribbles 3, Androstene, and Probonol - all pills - which are names on the respective bottles but none of these substances have Nandrolone in them nor do they metabolize into Nandrolone Metabolites as far as he knows. He has never heard of Trenbolone which may metabolize into Nandrolone.

Appellant is divorced, his two children live with him, and he surmised that his ex-wife was the reason for the PSB inquiry as soon as he heard of it.

Phoenix Public Safety Director and Police Chief Jack Harris has been with the police department for thirty eight years and is the responsible police executive for making the final disciplinary

decision. He conducts a hearing in the disciplinary process called a Loudermill Hearing during which an officer is given the opportunity to make a presentation to the Police Chief presenting evidence in response to the allegations against him/her with or without representation. It can be an in-person presentation-oral or written, or submitted through a written presentation. The hearing in this matter was conducted on September 22, 2009, at which time the Appellant emphasized the role which he thought Tokkyo Tren had in his Nandrolone metabolite reading. The Appellant indicated that he thought the supplement might have been laced with it although it was not listed as an ingredient on the bottle and that the supplement had been purchased locally over the counter. There were no other substances found which could have caused the higher than acceptable reading.

Chief Harris took the matter under advisement, which he doesn't normally do when considering terminations, because of this presentation which provided sufficient information about it to warrant further consideration and review. He subsequently determined that the proposed discipline was appropriate. Chief Harris stressed that it is important, even necessary to have an absolute limit on what is acceptable with regards to drug test scores so that there can be consistency in the decision making process. He was aware of the rumor about needles, but it didn't weigh in the decision which he made. Also, he heard nothing definitive about Tokkyo Tren causing the reading, but also he didn't have anything which said that it would not cause the reading.

Chief Harris is familiar with the various Police Department Operations Orders which speak to drugs and include Ops Orders 3.20 and 3.21. Nothing in those policies set forth information about anabolic steroids. Likewise, he is familiar with ARS section 13-3401 and is not surprised that the substances which are a part of this matter are not listed in section 13-3401.

Commander Kim Humphrey has had experience with developing the drug policy and setting out testing procedures over his 27 years as a member of the Phoenix Police Department including a stint with the PSB. He was involved with the Southwest Laboratory and City Personnel in drafting standards, procedures, and developing policy for drug abuse testing. He went on to state that if Southwest Laboratories developed a test for every steroid, the costs would be prohibitive because there would be hundreds of tests. Such things as designer drugs which change the molecular structure of substances just enough to have a new compound create some of these circumstances. He acknowledged the differences between For Cause Testing - Ops Order 3.20 - and Random Testing - Ops Order 3.21 - where one is based upon observations of suspected use and the other is an organized, methodical approach to obtaining drug testing for everyone in the police department. He agreed with Chief Harris that there is no reference to anabolic steroids in the Ops Orders. He has read and attended educational fora which had steroids as their focus including one in which he participated concerning steroids and police. His definition of anabolic steroids is a substance which is involved with muscle building and affects male characteristics; they are allowed as prescribable drugs for such problems as hypogonadism for lack of testosterone production. If anabolic steroids are used as a replacement therapy, they are not likely to show up in testing.



He noted that the cutoff for the City's testing is significantly higher, 5.0, than for Olympic athletes, 2.0, which wanted very low levels. The City's scale has the "benefit of the doubt or risk factor" built in at 5.0. Among drug level readings, anabolic steroid readings were very cumbersome and required greater delineation than other substances. A reading outside of the standards is not accidental. They are synthetic drugs and intentionally ingested which is the only way to get them into your body.

Humphrey related that testosterone and epitestosterone should have a 1:1 ration (TE ratio) in the male body and that the test looks for the balance between the two. The Southwest Laboratories Director indicated that the TE ration was not elevated in this matter. The decision on which steroid tests should be developed for steroids is accomplished by the laboratory based upon the most common ones found in its experience and from research. If a referral is made on an anabolic steroid which is not normally tested, a number of factors would be considered to come up with a test. The sporting world lists all of the drugs which are prohibited and has a low test result number. Steroid promoters and many body builders modify molecules in substances just enough often times so that a new compound is created and they may give the compound a name very close to or one which sounds like or mimics a steroid, i.e., Norandestra and Nandrolone, and sometimes the new compounds metabolize into anabolic steroids.

Sergeant Tadd Cline is the lead investigator on this matter and conducted a number of the interviews after assuming that responsibility. He has been an officer with the Police Department for sixteen years and has been assigned to PSB for sixteen months. PSB handles all complaints which come into the department and he began its involvement in this matter on March 10, 2009, when an anonymous telephone call came into the office. There was a second call and Carmen Montoya, the Appellant's ex-wife who is also a member of the Phoenix Police Department, was recognized as the person calling in. Coincidentally, the Appellant received a Directive to Appear for Controlled Substance Screening on March 13, 2009, because he was in the three year testing pool which is managed by employment services and his name had come up for random drug screening. The Appellant was interviewed on April 3, 2009. Cline said that the calls had nothing to do with Appellant's drug testing designation.

After the investigators explored various possibilities, Cline said that there was no plausible explanation for the Appellant's Nandrolone metabolite reading. He stated that they were fairly thorough in reviewing the possibilities for how the substances were introduced into the Appellant's body concluding that there was no intravenous injection, no oral ingestion of substances which contained the drug, the Appellant didn't have a prescription which contained an anabolic steroid, and in fact, the Appellant had not taken supplements from six of the seven supplement bottles which he sent to the investigators for two to two and a half months beforehand, and he had no explanation for the reading. The one which he admitted later in the investigation that he had taken within that period was Tokkyo Tren which he had bought over the counter in the Phoenix metropolitan area. Parenthetically, Cline said that he had never seen a representative bring in additional evidence as was done during this investigation with the bottles. The Appellant prepared some memoranda which were expositions of this position and

discussions of matters which he had come upon while reviewing this matter. He tendered them to PSB, but they were not accepted, and Cline said that a time came when he had to stop accepting information thus ending the investigative phase and moving to preparing his report. This effort was after that time.

He indicated that he followed the Medical Review Officer's (MRO) lead on accumulating information about Nandrolone Metabolites and other supplements and steroids. One conclusion which he drew from the MRO was that the Nandrolone metabolite would not be in the Appellant's system for ninety days whether it were taken orally or intravenously even though intravenous lasts longer.

Cline also interviewed the Southwest Laboratories Director, Dr. Gary Carmack, in person and on the telephone and was informed by him that the actual reading was 5.1ng/ml which exceeded the 5.0ng/ml cutoff for City of Phoenix Police Officers. Dr. Carmack gave him two readings (5.2ng/ml, also), but continued by indicating that the test was highly reliable and that there are four variables which are a part of determining the final reading. They are: the amount ingested, the last time some the supplement was consumed, the individual's metabolism, and what is found in the test. No charts and graphs were provided to him by the laboratory. With all of this information in hand, he concluded that the two to two and a half months answer was not a reasonable explanation for the presence of the Nandrolone metabolite in the Appellant's body and that he was not credible. Cline believes that termination is warranted in this kind of a matter. Lastly, Cline said that he would be very cautious about what he ingests because of the prudence required to handle the unknowns.

Dr. Gary Carmack analyzed the random drug test which was administered to the Appellant. He is a Toxicologist and has worked in this field for thirty years having accomplished thousands of tests over the last twenty years. He and his laboratory are federally certified - SAMHSA, but his laboratory is not certified by the World Anti Doping Association (WADA) which is more sports focused. The tests which he administers are limited to common, frequent substances which are more common in the workplace which is his expertise. He rarely looks for the parent drug. A panel of six to eight constitutes the standard tests. (Tests and results are displayed in City's Exhibit 9)

He is familiar with Nandrolone and its metabolites as well as testosterone and epitestosterone. He indicated that the Appellant showed two results for Nandrolone Metabolites but only one was over the cutoff of 5.0ng/ml, Nandrolone metabolite 2, 19 Nor Androsterone. Up to 4.9ng/ml, the test results would have been negative. After all of the laboratory materials were prepared, no one requested a litigation packet which would have provided the laboratory test details. The reading was right at the cutoff which also is the industry cutoff and even a 5.0ng/ml reading would have been a positive reading. Nandrolone and its metabolites do not occur naturally in men at the level which was recorded in this test, but have to be intentionally introduced to get a reading like this one. Some women can have readings up to 5.0ng/ml.

This was a valid test which was subjected to all of the protocols in use and it utilized the regulatory cutoff. The ability to control factors which affect the test results create risks which are a part of the calculations that give the final drug test score. The City's score is set such that the risk factor for this test is zero. Opportunity for split collections are provided the urine donor for replicate testing, but no request was received to have the second sample tested in this matter. Had the second test been accomplished and the results been negative, then the Appellant's result would have been reported out as negative. The Appellant did subsequently go into Southwest Laboratories for two more self tests, however.

Dr. Carmack discussed a phenomenon called "stacking" where supplements are mixed with testosterone for greater effect and another one in which it wasn't unusual for an individual to take ten tablets a day of Tren - 500 mg - to get the proper effect. Injection provides a more concentrated dosage except when very large pill dosages, i.e. the 10 pill dose, are taken. There is no uniformity in dose sizes. The "Tren" products - "X treme Tren" and "Tren 250" and related supplements - usually come from China and are sold under a variety of names. The FDA has concluded that "Tren" products may have some anabolic steroid effects. There is no biological pathway to Nandrolone or Nandrolone metabolites from "Tren" because it is against all normal chemistry. Consequently, it could not have been the source of the result here. He went on to state that there are no restrictions on the manufacturers of "Tokkyo Tren" from putting Nandrolone in the bottle with the supplement and this is the first time that he has encountered "Tokkyo Tren". He indicated that purchasing supplements in a vitamin store does not reveal the chemical compounds which compose it, but you have to look for metabolites rather than traces of the drug.

Dr. Carmack doesn't have a specific memory of who called him about this matter, but he does remember talking with someone more than once about data which the laboratory had on hand. If he had been asked more specifically about these results, he would have given the detailed information to the MRO and direct the inquirer to him for clarification. He just takes the raw data and uses it for interpretation. He has had about twelve Nandrolone matters over the last twenty years, mostly dealing with high school situations. He has tested supplements which have been laced which were mostly from Mexico, but production and re-labeling make the origins of supplements difficult to determine. Nandrolone can be purchased over the internet where a purchaser takes a chance, but not over the counter because it is an illegal drug and it maybe put into another drug. The possessor needs a prescription for it.

Christopher A. Ramirez is the older of the Appellant's two children and spends time with his father while living with his mother. He is the youth about whom his mother spoke when she made the anonymous calls to the police talking about syringes. He never told his mother that he saw syringes at his father's home nor did he ever feel that his father was a diabetic. His mother did tell him that PSB investigators wanted to talk to him, but she warned him against it. In fact, he has reviewed his mother's statements and she was lying in his opinion. He gets along well with both of his parents, but he is not sure why his mother would say what she did. He has never seen needles in his father's home, but did see them in the house when his mother was at home, but they were not open. She competed in body building contests, but his father was not a

professional body builder, as was his mother.

Dr. Don Catlin is a Medical Doctor who has practiced medicine for over 35 years and who is also a world renowned laboratory director having established and directed the UCLA Olympic Analytical Laboratories to support the 1984 Olympics in Los Angeles, California at the behest of the International Olympic Committee. The UCLA Laboratory was the first one to be accredited in the United States, provided support for the Atlanta games and was followed by the establishment of one in Salt Lake City, Utah to support the Olympic games there. He recently left the UCLA Laboratory and established his own independent laboratory at which he is doing special work and research. He accomplished some of the first laboratory testing on Nandrolone as well as on a number of other substances and has written extensively and published materials in a number of medical journals including the Journal of the American Medical Association. Sports and steroids are where the focus of his work has been centered and he has testified previously in a number of sport's arbitration matters. These appearances have generally occurred where positive results have resulted from testing.

Dr. Catlin indicated that there are a number of organizations which certify laboratories, among which are SAMSHA, WADA, and FSQ. He also indicated that the certifying agencies stress tests for different purposes with SAMHAS focusing on the workplace, but not on anabolic steroids and WADA focusing on athletes and athletics and their use of anabolic steroids.

He expressed some reservations about these tests and results because he did not receive any of the raw data produced during the tests which would be evidenced in charts, graphs, and information on spectra to indicate from where the metabolites might have come. He expected about thirty pages of underlying documents for Nandrolone testing when all that was made available to him was a single page containing the test conclusions referring to Nandrolone Metabolite 1 and Nandrolone Metabolite 2. He believed that these materials were insufficient to show that the Appellant had Nandrolone or a Nandrolone metabolite in his body when tested, because the results didn't tell what the Appellant took to determine the result nor was the exact compound set forth. He indicated that these matters should not be truncated as they were for this reporting.

The testing in this matter was represented to Dr. Catlin as industry standards with a cutoff of 5.0ng/ml with which he was unfamiliar. He was also asked about the concepts of industry standards vs. random cutoff, but lacked familiarity with that dichotomy. Specifically, he indicated that the standards for Nandrolone, an anabolic steroid, are governed by WADA while marijuana and cocaine are the focus of SAMHSA standards. Testing for Nandrolone should be accomplished within the first one-half hour of ingestion as it cannot normally be detected in human urine because it metabolizes very, very quickly after which you would only find the metabolites. While Dr. Catlin had reservations about these tests, he did agree that the use of the nomenclature for Nandrolone Metabolite 1 and Nandrolone Metabolite 2 as standards was okay.

Another area of concern for Dr Catlin about the test results was a concept denoted the

"uncertainty factor" which is essentially looking at the risks which surround the tests and their processes. He was very strong in his representations that there is always evidence of an "uncertainty factor" accompanying quantitative work which is the focus of analytical chemistry and that you have to know it. He took exception to Dr. Carmack's representation that the uncertainty or risk factors for these tests were zero even though Dr Carmack indicated that the cutoff was set at a level high enough that those factors would be neutralized resulting in a zero "uncertainty factor". He did acknowledge that the Nandrolone cutoff for athletes and the testing with which he was more familiar was 2.0ng/ml, a standard substantially below the one in question here and with which he considers "uncertainty" factors. He questioned the result being displayed as a designated cutoff indicating that the more realistic and probably more accurate reading for a test such as this would be a range also reflecting the risk factor calculations over a period of time. The range of values for this test is unknown, and part of the range could have been under 5.0ng/ml resulting in a negative reporting. His answer to this situation was to indicate that a reading should not be reported out as positive unless it surpassed the cutoff plus the "uncertainty factor".

Dr Catlin has tested approximately ten "Tren" products, but has not tested "Tokkyo Tren" and he indicated that all of the products which he tested had some trace or level of anabolic steroid in them. All of the tren products which he has tested are the same and are promoted by one or maybe two companies which are trying to advertise products that very closely resemble trenbolone, an anabolic steroid. He discussed another factor which bears on the testing - dosage. He stated that knowing how much, how frequently, how long, and how ingested all bore heavily on a laboratory result. He stated that two months is at the far, far end of the possibility of showing positive with a long usage (one year). He surmised that the product would be out of the body in four to six weeks, but he knows of no studies that would validate this. Oral ingestion is less discernible than intravenous. Nandrolone Decanoate, an injectable, would remain for a year after injections ceased. Dr. Catlin responded that two months separation between tests is an acceptable period for not showing a positive on the second test. He answered in this manner because the Appellant had self tested negative at Concentra in June 2009 after his March 2009 positive test and he continued that this showed that the supplement was probably not injectable. He could not explain how the Appellant's test resulted in Nandrolone metabolites in his system.

He found 19 Norandrostene diene which was listed on the bottle also known as Androstra along with other substances in Tren during his testing. He doesn't know that the substance is in "Tokkyo Tren". The only violation alleged here is Nandrolone Metabolite 2 which he identified as, 19 Nor Androstene, which would have been in the ingested Tren. He nonetheless concluded that when the Appellant stopped ingesting the supplements two to two and a half months prior to the tests, he would not have had positive results for this test.

## POSITIONS OF THE PARTIES:

### City's Argument:

1. The Appellant violated Personnel Rules 21b3 and 21b18; and, Operations Orders 3.13.5C(7), 3.13.6A(2), and 3.20.2B(1)(a) when he tested positive for a Nandrolone Metabolite on March 13, 2009.
2. Nandrolone is an anabolic steroid and dangerous drug listed as a controlled substance under both federal laws and the Arizona Revised Statutes, ARS section 13-3401 6(d)(xiv).
3. Nandrolone and its metabolites are only legal when possessed pursuant to doctor provided prescriptions for specific medical treatments, such as hypogonadism. The Appellant did not have such a prescription.
4. The Appellant took his drug test on March 13, 2009, pursuant to the Phoenix Police Department's Weekly Notification Lists and Reports dated March 11, 2009, from the "Three Year List" and "One Year List, out of which he tested positive for a Nandrolone Metabolite.
5. The anonymous telephone calls which the PSB received concerning syringes and other indicia at his home of anabolic steroid usage had no bearing on the timing of the random drug testing.
6. The regulatory cutoff for Nandrolone and its metabolites is 5.0ng/ml which the Appellant exceeded with a 5.1ng/ml result on this test.
7. The Appellant who was involved in weight lifting and body building acknowledged that he took supplements as a part of his efforts, including a product named "Tokkyo Tren" which he said that he used until fairly close to the test.
8. He mentioned the use of supplements and turned in seven empty supplement bottles to PSB on April 3, 2009, some of which he indicated were ones which he had previously taken but not in the last two to two and a half months, but he never mentioned during his interview that he had taken "Tokkyo Tren".
9. He has worked out at several fitness centers including Fitness West and while there he frequently consulted trainers and others in the body building community on ways to improve himself. Among the advice he received is information on the benefits of protein drinks which he consumed with unknown supplements added at his request.
10. The Appellant did not make reasonable inquiry into what is in the compounds which he consumes and hides behind the "innocent" purchases on the advice of trainers.
11. He admitted consuming "legalized steroids" purchased from a body building and fitness magazine five or six years ago prior to joining the Police Department.
12. The Medical Review Officer became involved in this matter as a result of the reading and interviewed the Appellant. Among the questions he asked the Appellant were:
  - Was there an explanation for the reading and whether he had a prescription for the drug to which the Appellant answered "No" to each question.
13. The Appellant has denied ingesting Nandrolone or any substance which might contain it and there is no explanation for the supplement showing up in his drug test results.

14. Two physicians, including Dr. Catlin, the Appellant's expert, and the Laboratory Director for Southwest Laboratories have all stated that the Appellant's test in March 2009 would not have resulted in the traces of metabolite in his body from his last stated ingestion of supplements. Tren wasn't the cause of the test result.
15. "Ignorance vs. Living in denial" have distinctions for this matter.
16. The test result was not an accident because Nandrolone is not a compound which which occurs naturally in the body. It is a exogenous.
17. The raw data which Dr. Catlin referenced through out his testimony was never requested of Southwest Laboratories.
18. Why would the Appellant return to the laboratory twice for tests after he was tested in March, if he had complaints about the laboratory?
19. The Appellant's story has changed during this investigation resulting in a shorter period of non-use and consequently coverage for the metabolite.
20. The termination should be sustained because the Appellant tested positive for the Nandrolone metabolite.

#### Appellant's Arguments:

1. The Appellant did not violate the City of Phoenix Personnel Rules and Police Department Operations Orders as alleged in the matter.
2. Dr. Catlin believes that the test may be invalid with the Appellant possibly having had a score below 5.0ng/ml resulting in a negative test result for him. He stated that the test results are best displayed in ranges which did not occur here.
3. Dr. Catlin also questioned the reliability of the test because he did not have the opportunity to review the test's raw or underlying data consisting of charts, grafts, and spectra materials which they requested.
4. The Appellant is not taking steroids, but he did admit taking supplements to assist his fitness and body building efforts.
5. He acknowledged that he was taking "Tokkyo Tren" which is sold over the counter and it can also be purchased by youth. Dr. Catlin believes that it was possibly the supplement which caused the positive result.
6. Dr. Catlin has researched steroids extensively including approximately ten Tren products and written articles on his test results, but not "Tokkyo Tren".
7. Purchasing supplements on the internet is questionable and there are some Tren products which are illegal under the Arizona statutes, but "Tokkyo Tren" is not one of them.
8. Some of the Tren products are dangerous, unavailable on the over the counter market, and are prohibited pursuant ARS section 13-3401, et seq.
9. The Appellant may not have discussed everything with the investigating officer which he should have because going to PSB weighs heavily upon officers under investigation.
10. There were no syringes at the Appellant's home and Carmen Montoya misrepresented her son's statement to the police department.
11. No charts, grafts, and spectra materials which they asked for have been reported out by

Southwest Laboratories and the Nandrolone Metabolites 1 and 2 have names which were not used in the test result report.

12. The concept of an industrial standard for a cutoff is questionable and Dr. Catlin says that there is no such thing.
13. The Appellant attempted to join a class action law suit in California based on false advertisement - failure to warn - against "Tokkyo Tren" which victimized consumers, apparently because the pills were laced with Nandrolone which produced Nandrolone metabolite when consumed.
14. The City has not met its burden of proof and there is a lack of evidence as a result.
15. The Appellant told the truth during the investigation of this matter.

### CONCLUSIONS

1. The Appellant violated City Personnel Rule 21b3 and Police Department Operations Orders alleged in this matter when he tested positive for a Nandrolone metabolite on March 13, 2009.
2. The Appellant's consumption of "Tokkyo Tren" did not cause the positive reading which he received for the drug test accomplished on March 13, 2009, because his last consumption occurred so far in advance of the test that the drug would have been out of his system by the test. Also, there is no biological pathway to Nandrolone or Nandrolone metabolites from "Tren" because it is against all normal chemistry.
3. The Appellant has consumed protein drinks while at the fitness centers which are supplemented with compounds about which he knows nothing and one or more of them could very well have contained a compound which produced the Nandrolone metabolite.
4. The Appellant maintains that he did not consume Nandrolone or anything which had Nandrolone in it, but it is clear that he had the Nandrolone metabolite in his body when he was tested on March 13, 2009.
5. Three medical doctors and the Laboratory Director at Southwest Laboratories reviewed this matter and all concluded that the supplements which the Appellant stopped taking approximately two to two and a half months prior to the random drug test would not have shown in the test results in any form.
6. Dr. Catlin has not found Nandrolone in "Tokkyo Tren" and cannot explain how the Appellant's drug test resulted in showing a Nandrolone metabolite in his system.
7. The Medical Review Officer, Dr. J. R. Baber, indicated that:
  - a. The substance is a Schedule II drug and a prescription from a doctor is the only reason that a person would test positive for it.
  - b. The Appellant didn't have a prescription or other medical reason for the substance in his body.
  - c. A person with greater than 5.0ng/ml reading without a prescription would have been taking it illegally.
8. Nandrolone is not a natural compound found in the body, but is man made and introduced to the body through ingestion.

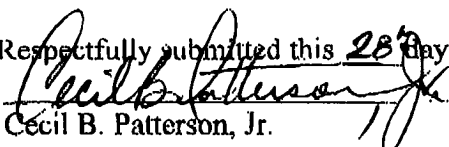


9. The Appellant consumed Nandrolone itself, something which was laced with Nandrolone, or he ingested a substance which metabolized into a Nandrolone metabolite.
10. While Dr. Catlin questioned the validity and process of the test administered to the Appellant because he did not receive the underlying data, no evidence was introduced which discounts the test nor invalidates its processes and thus for these purposes the test is valid and acceptable.
11. Dr. Carmack, the Southwest Laboratories Director, explained the drug test protocol and he explained that the underlying data was available in the form of a litigation packet but no requests were made for one.
12. In spite of all of the evidence against his position, the Appellant maintained that he didn't know what Nandrolone was, didn't consume any of it, and didn't know what it does. The Appellant educated himself on the drug subsequent to the test and crafted three extensive memoranda to his supervisor detailing a number features about Nandrolone.
13. Nandrolone is listed in the Criminal Code of the Arizona Revised Statutes at section 13-3401 6(d)(xiv) as a Dangerous Drug.
14. The Appellant did not exercise enough due diligence to determine what compounds were in the supplements which he consumed nor did he attempt to learn or understand what is in the compounds which he had added to his protein drinks while at the fitness centers.
15. The Appellant did not violate City Personnel Rule 21b18.
- ~~16. The recommendation for termination should be sustained.~~

#### RECOMMENDATION

It is recommended that the Board sustain the termination in this matter.

Respectfully submitted this 28<sup>th</sup> day of February, 2010.

  
Cecil B. Patterson, Jr.  
Hearing Officer