

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293

EDWARD McCORMACK,
Appellant

v.

D1-12-308

MASSACHUSETTS DEPARTMENT
OF STATE POLICE,
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

Cynthia A. Ittleman, Esq.¹

DECISION

The Appellant, Edward McCormack (hereinafter “McCormack” or “Appellant”) duly appealed to the Civil Service Commission (hereinafter “Commission”), pursuant to G.L. c. 31, §§ 41-45 and G.L. c. 22C, § 13 on November 13, 2012, from a notice dated November 6, 2012 to the Appellant from the Department of State Police (hereinafter “Department”) to terminate his

¹ The Commission acknowledges the assistance of Law Clerk Amanda Belanger in the drafting of this decision.

employment² as a Massachusetts State Trooper for violations of the Department of State Police Rules and Regulations, Article 5. The Department found McCormack guilty of fifty-six (56) charges out of sixty-two (62).³

A pre-hearing conference was held on November 27, 2012 and a full hearing was held on May 29, 30, and 31, 2013. The Appellant submitted a Motion for Directed Verdict and a Motion in Limine. The Motion in Limine related to pharmacy records regarding certain prescriptions for McCormack. The Department submitted written Oppositions to the Appellant's Motions. I denied the Motion for Directed Verdict. The Motion in Limine ruling, dated January 31, 2013, was as follows,

"This motion is allowed in part and denied in part, based on the Superior Court ruling of 4/26/11 in Commonwealth v. McCormack, SUCR 2009-10008 in its Memorandum of Law & Order on Commonwealth's Motion in Limine to Admit Evidence, a copy of which is attached. Specifically, if the evidence admitted by the court's order is offered in the Commission proceeding, it will be admissible if it is related to the Commission proceeding and it is adequately reliable and it will be given the weight it is due. See Order, p. 33[.]

The cited part of the Court Order attached to my ruling states,

"...the court allows the Commonwealth to admit the following evidence:

- Any and all records possessed by the Massachusetts State Police in the defendant's employment files.
- The West Roxbury Pharmacy patient profile obtained on March 14, 2008.
- The defendant's medical records provided to state police detectives by Dr. Lowney on September 9, 2008 and Dr. O'Neill on September 10, 2008.
- The defendant's medical records provided to state police detectives by Dr. Bonano on April 1, 2008
- Testimony from Drs. Bonano, Lowney, and O'Neill, which may not reference the excluded CVS and Walgreen's records and the excluded EDT [Department of Public Health Electronic Data Transfer] reports"

² McCormack did not appeal his suspension in 2008 and the extension thereof in 2009 in a timely manner or otherwise. (See Exhibits 4, 6 and 7)

³ The Trial Board and Superintendent Colonel Alben found McCormack not guilty of Investigation#2010-0007 Charge III, Specifications 1 and 4 (certain alleged untruthfulness during motor vehicle stops of McCormack); Investigation #2011-0016 Charge 7, Specifications 1 – 3 (certain of McCormack's alleged actions at the Barnstable Community Corrections/Probation Department); Investigation#2008-0011 Charge III, Specification 18 (certain allegations that McCormack illegally obtained prescription drugs and/or made false statements and/or misrepresented information related to his back injury).

Commonwealth v. McCormack, SUCR 2009-10008, Memorandum of Law & Order on Commonwealth's Motion in Limine to Admit Evidence, April 26, 2011 ("Court Order, April 26, 2011").⁴

The hearing was separated into four sections reflecting four investigations conducted by the Department: Motor Vehicle Stops (Department investigation ("IAS") # 2010-0007), Barnstable Court Probation (IAS # 2011-0016) , Motor Vehicle Accident (IAS# 2011-0027) and Prescription Drug Abuse and Back Injuries (IAS# 2008-0011). This decision adds a section for general background, sections to separately address allegations regarding McCormack's alleged misrepresentation of his back injuries and/or medical condition and allegations of drug abuse that appear in Department investigations 2011-0016 and 2008-0011, and a section for the Department's Trial Board Findings with notations. The witnesses were sequestered except McCormack. The findings of fact and law regarding each section are cumulative, applying to all sections. As no notice requesting a public hearing was received from either party, the hearing

⁴ McCormack was criminally prosecuted for illegally obtaining controlled substances while he was on leave from the Department following Department investigations initiated in 2008. *See* Department's Opposition to Appellant's Motion in Limine, Exhibit A (Commonwealth v. McCormack, SUCR 2009-10008). In the course of the criminal prosecution, the Defendant (the Appellant here) filed a motion to suppress pharmacy records relating to him. On December 21, 2009 ("Court Order, December 21, 2009"), the Court ruled that prescription records of CVS and Walgreen's relating to McCormack would be suppressed because they were illegally obtained but the suppression did not apply to the records of West Roxbury Pharmacy. The Court's ruling was essentially confirmed in the court's April 26, 2011 ruling on the Prosecution's motion to admit pharmacy records and medical records and testimony ("Court Order, April 26, 2011"). Nearly all of the criminal court charges were dismissed by nolle prosequi and a jury acquitted McCormack of the remaining two charges on or about December 7, 2011. In the case before the Commission, McCormack moved to exclude pharmacy records from all three pharmacies. The Commission ruling on the motion here effectively adopted the Court Order, April 26, 2011, of the criminal court case as may be appropriate here.

The Appellant is, or has been, involved in other proceedings relating to the Department. Specifically, in McCormack v. Col Alben, et al, SUCV 2009-00512, the Appellant sued the Department, seeking injured leave from the Department. The Trial Court heard a motion for judgment on the pleadings on April 23, 2013 in that case and took the matter under advisement. In McCormack v. Col. McGovern, et al, SUCV 2012-00961, regarding the Appellant's request for back pay, the parties advise that the Trial Court has issued a decision which is under appeal. Finally, the Appellant apparently filed an application for disability retirement in October 2012 but the current status of the application is unknown. Counsel for the Appellant here advises that McCormack is represented by different counsel for his disability retirement application.

was declared private. The hearing was digitally recorded and copied onto CDs given to the parties. The parties submitted recommended decisions. This decision finds that the Department had just cause to terminate McCormack's employment with regard to some but not all the Charges and Specifications on which the Department relied. In the interest of a complete record, this decision also finds that the Department had just cause to suspend McCormack with regard to some but not all of the Charges and Specifications on which the Department relied.

Based on Exhibits 1 through 43 entered into evidence and the testimony of:

For the Appointing Authority:

- John Kiley, Jr., Massachusetts State Trooper;
- Scott Lundegren, Detective, Yarmouth Police Department;
- Thomas Fitzpatrick, Massachusetts State Trooper;
- Mary Gibney, Patrol Officer, Yarmouth Police Department;
- Dana J. Pagley, Massachusetts State Police, Detective Lieutenant, Internal Affairs Unit;
- Michael Spellman, Court Services Coordinator, Barnstable Community Corrections;
- Joseph Finn, Court Services Coordinator, Barnstable Community Corrections;
- Kim Larson, Probation Officer, Probation Department, Barnstable District Court;
- Elzy Tubbs, Probation Officer, Massachusetts Trial Court;
- Jennifer Ellis, Patrol Officer, Town of Barnstable;
- Justin Waskiewicz, Patrol Officer, Town of Barnstable;
- Thomas Shannon, Detective Lieutenant, Massachusetts State Police, Drug Diversion Unit
(retired in 2011 after his involvement in this case);
- William Sweeney, Director of Human Resources, Suffolk County Sheriff's Department;
- Dr. Robert O'Neill, Dentist;

- Dr. Brian Morris, Massachusetts States Police Surgeon, All One Health;
- Ms. A

For the Appellant

- Scott McCormack, Massachusetts State Trooper (Appellant's brother);

and taking administrative notice of all matters filed in this case, including, without limitation, the Appellant's Motions and Department's Oppositions thereto and rulings thereon; documents submitted in response to the Commission's oral and written orders before and after the hearing; pertinent statutes, regulations, policies, case law, and pertinent court documents related to McCormack's criminal court case and civil cases; a preponderance of the credible evidence and reasonable inferences therefrom, including a negative inference from McCormack's failure and/or refusal to testify although he was present, I make the following findings of facts:

Background

1. The Appellant, Edward McCormack, attended and graduated from the State Police Academy ("Academy") in 2002 and began employment at the Department shortly thereafter. (*Commonwealth v. McCormack*, SUCR 09-10008, Court Order, December 21, 2009 (Exhibit A to Department's Opposition to McCormack's Motion in Limine at the Commission); see also Court Order, April 26, 2011 in the same court case) There is no indication that the Department disciplined McCormack prior to the events here. (*Administrative Notice*)
2. At the Academy, McCormack injured his back. He went to a hospital and later returned to the Academy. (*Testimony of Scott McCormack*) At the time he applied to become a State Trooper, Edward McCormack was approximately thirty (30) years old. (Exhibit 36)

3. Prior to entering the Academy, McCormack worked in the Suffolk County Sheriff's Office from approximately July 1997 to 2001. (*Exhibit 36*)
4. McCormack injured his back in a November 4, 1998 car accident, which caused him to be absent from work at the Suffolk County Sheriff's Department for six (6) weeks. (*Exhibit 36*)
5. McCormack injured his back when he was assaulted at work in the Suffolk Sheriff's Office on December 8, 1999 as a result of which he submitted a Report and a Medical Report by Stanton Medical Associates, Inc. (dated December 10, 1999) to the Sheriff's Department indicating that McCormack was unable to attend work December 10 through December 12, 1999 and that he could resume working on December 13, 1999 "if feeling better". (*Exhibit 38; Testimony of Sweeney*) If McCormack returned to work prior to December 13, 1999, Mr. Sweeney, Director of Human Resources for the Suffolk County Sheriff's Office, would have been concerned that he was not fit for duty. (*Testimony of Sweeney*)
6. On April 9, 2005, the Department placed McCormack on injured leave and in May, 2005 McCormack had back surgery. McCormack was returned to active duty status on November 13, 2007 but he did not work and, instead, used vacation and sick time to remain out of work. (*Court Order, December 21, 2009*)
7. On April 2, 2008, when McCormack was still using sick and vacation time, Captain Thomas Stewart ("Stewart") served McCormack a notice of Administrative Leave With Pay effective that day and a notice of a Duty Status Hearing to be held on April 3, 2008 due to McCormack's alleged prescription drug abuse. Captain Stewart seized McCormack's firearm, three clips of ammunition, his Department-issued ID, License to

Carry a Firearm, Badge # 3026, and an expired gas credit card when he served the notice on McCormack. (*Testimony of Dana J. Pagley (“Pagley”), Exhibits 4, 5 and 19*)

8. On April 3, 2008, McCormack was suspended without pay, pursuant to Article 6.2.5⁵ of the Department Rules and Regulations, pursuant to a Personnel Order (08PER161) by Mark Delaney, Colonel/Superintendent. (*Exhibit 6*)
9. The Department conducted investigations of McCormack: Internal Affairs (“IAS”) #2008-0011, the Charge Sheet for which alleges that McCormack unlawfully obtained numerous prescription controlled substances and made false statements regarding his medical condition at certain times in violation of cited Rules and Regulations; #IAS2010-0007, the Charge Sheet which alleges that McCormack violated cited Rules and Regulations when he was stopped while driving; #IAS2011-0016, the Charge Sheet which alleges, *inter alia*, that McCormack’s conduct in relation to individuals at the Barnstable Probation Department and Community Corrections Office, in relation to his association with a person involved in illegal activities, and in using narcotics illegally, violated cited Rules and Regulations; and #IAS2011-0027, the Charge Sheet which alleges that McCormack’s conduct, in relation to a car accident, violated cited Rules and Regulations. (*Exhibits 3, 23 and 30; #IAS2008-0011 was filed separately by the Department at the request of the Commission and is included by Administrative Notice*)⁶
10. At the relevant times, Detective Lieutenant (“Det. Lt.”) Thomas Shannon (“Shannon”) was assigned to the Department Drug Diversion Unit, which unit addresses illegally manufactured drugs for illicit purposes, including prescription fraud and deception pursuant, to G.L. c. 94C, §§ 33 and 37. Shannon conducted investigation #2008-0011,

⁵ The Department did not provide a copy of Article 6.2.5, nor was it available in a general computer search.

⁶ The Charge Sheets for each investigation number are undated but it appears that the first four numbers assigned to each investigation indicates the year in which the investigation began.

the Charge Sheet for which alleges that McCormack unlawfully obtained numerous prescription controlled substances and made false statements regarding his medical condition in violation of the cited Rules and Regulations. (*Testimony of Shannon; Exhibits 3, 23 and 30; #IAS2008-0011*)

11. Det. Lt. Shannon was a member of the Department for approximately thirty (30) years, during which time he conducted many investigations and worked in different units. In March 2008, Shannon was assigned by command staff to investigate McCormack's prescription drug use because of a concern that McCormack was obtaining prescription drugs illegally. During the investigation, Shannon interviewed Dr. Bonano with Det. Capt. Butler; Shannon interviewed Dr. Bonano several times. McCormack was a patient of Dr. Bonano. During the investigation, Shannon and others conducted surveillance of McCormack in April 2011. (*Exhibits 27 and 37; Testimony of Shannon*)
12. Det. Lt. Pagley ("Pagley"), of the Department Internal Affairs Unit, conducted investigations: #IAS2010-0007, regarding motor vehicle stops of McCormack; #IAS2011-0016, regarding McCormack's conduct at the Barnstable Probation Department, his association with a person involved in illegal activities, and his use of narcotics illegally; and #IAS2011-0027, regarding McCormack's conduct relating to a car accident. (*Testimony of Pagley; Exhibits 3, 23 and 30*)
13. Det. Lt. Pagley has been a member of the Department for approximately twenty-eight (28) years. At the time of the Commission hearing, he was a Detective Lieutenant. He has been assigned to various sections of the Department. Currently, he is assigned to the internal affairs section, where he has conducted many investigations assigned to him by his supervisor. (*Testimony of Pagley*)

14. Det. Lt. Pagley was assigned to investigate McCormack not long after Trooper Kiley stopped McCormack in his motor vehicle on January 7, 2010. During the investigation, Pagley requested an interview with McCormack but McCormack did not appear. Pagley interviewed Trooper Kiley about his stop of McCormack, as well as Major Graham, who was in charge of Troop H where McCormack had worked. He also interviewed others involved in motor vehicle stops of McCormack in January, 2010, including Yarmouth Police Department (“YPD”) Officers Gibney and Lundegren, Trooper Fitzpatrick, and Mr. G. He also reviewed related documents, including Lundegren’s report. Pagley knows McCormack’s brother, Scott, because Pagley used to work with him. Scott’s rank is “Trooper” and he works at the Crime Prevention and Control (CPAC) Unit in Middlesex County.⁷ (*Testimony of Pagley; Exhibit 20*)
15. McCormack attended the Commission hearing but did not testify; his complexion was strikingly pale.⁸ He neither attended nor testified at the Department’s Trial Board Hearing. (*Administrative Notice; TBD attached to May 23, 2013 Department email*)⁹
16. As of January 12, 2009, following another Duty Status Hearing, McCormack remained suspended without pay because of the indictments, in accordance with Department Rules and Regulations Article 6.2.5, pursuant to a Personnel Order (09PER030) by Mark Delaney, Colonel/Superintendent. (*Testimony of Pagley, Exhibits 7 and 22*)

⁷ Det. Lt. Pagley’s investigation conclusions are not included in the exhibits pursuant to the apparent practice of the Department not to produce them. Therefore, Det. Lt. Pagley was precluded from testifying about the conclusions in his investigation.

⁸ McCormack was near the left end of the bench, allowing me to observe him approximately from the shoulders and up. I observed the complexion of Appellant’s brother, Scott McCormack, when he testified and noticed that his complexion was fair but not strikingly pale, suggesting that this is not necessarily a familial trait. Probation Officer Larson indicated that such pale skin, along with other physical conditions, are signs of opiate drug addiction.

⁹ The Trial Board Finding states, *inter alia*, “Of particular note is the fact that the defendant did not attend any session of the Trial Board, and did not pursue any of the accommodations offered by the Board, including conference calling, “Skype,” or the Internet, in order to participate in his defense.” (*Trial Board Finding attached to May 23, 2013 Department email, Finding #68*) The Trial Board also found, “The defense indicated that Trooper McCormack would testify; however, on that day, a note authorized by Dr. Kramer was presented indicating that Trooper McCormack was unable to testify.” (*Id.*, *Finding #70*)

17. The Massachusetts State Police Trial Board (“Trial Board”) held a hearing on March 6, 2012 and subsequent dates regarding the four separate investigations of McCormack for violations of Article 5 of the Department State Police Rules and Regulations (“Rules and Regulations”). The Trial Board submitted its Findings and Recommendations (“TBD”) to Col. Alben on October 26, 2012 and Col. Alben approved the TBD on November 6, 2012, concluding that McCormack was guilty of fifty-six (56) of sixty-two (62) charges and issuing numerous discipline orders, including multiple terminations of McCormack’s employment effective November 6, 2012. (*TBD (attached to May 23, 2013 Department email); Exhibit 22*)
18. Article 5.2.1, Unbecoming Conduct, of the Rules and Regulations, states, “Members shall not associate with individuals they know or should know are engaged in criminal activities unless in performance of duty or upon official police business.” (*Exhibit 1*)
19. Article 5.3, regarding General Conduct, of the Massachusetts State Police Rules and Regulations (“Rules and Regulations”), states, “Members shall maintain a level of conduct in their personal and business affairs which is in keeping with the highest standards of the law enforcement profession. Members shall not participate in any act which impairs their ability to perform as members of the State Police or causes the State Police to be brought into disrepute.” (*Exhibit 1*)
20. Article 5.4.1, Conformance to Laws, of the Rules and Regulations, states, “Members shall obey all laws of the United States and of any county, state, or local jurisdiction in which the members are present.” (*Exhibit 1*)
21. Article 5.10.2, Alcoholic Beverages and Drugs, of the Rules and Regulations, states, “Members shall not possess or use any controlled substance except when prescribed by a

- licensed medical practitioner for a legitimate medical purpose. When a controlled substance is prescribed that may impair the member's ability to perform their official duties, said member shall notify their duty assignment supervisor forthwith." (*Exhibit 1*)
22. Article 5.15.1, Abuse of Position, of the Rules and Regulations, states, "Members shall not use their official position, official identification cards or badges for (1) personal gain, (2) for obtaining privileges not otherwise available to them unless necessary in the performance of duty, (3) for avoiding performance of illegal acts." (*Exhibit 1*)
23. Article 5.15.2, Abuse of Position, of the Rules and Regulations, states, "Members shall not lend to another person their issued uniform parts, equipment, identification cards or badges nor permit such identification cards and badges to be photographed or reproduced without the specific approval of the Colonel/Superintendent." (*Exhibit 1*)
24. Article 5.15.6, Abuse of Position, of the Rules and Regulations, states, "Members shall not withhold information of any type whatsoever in order to impede or hinder an ongoing investigation, or to delay the start of such an investigation." (*Exhibit 1*)
25. Article 5.17.2, Violation of the Rules and Regulations, states, "Members who are under suspension for five or more consecutive days must turn in their issued badge(s), identification card(s), and weapon to their Division Commander before the commencement of their suspension. Members who are under suspension for thirty or more consecutive days must turn in all their issued equipment to the Supply Section before the commencement of suspension. If any issued equipment is missing or unsuitable because of neglect or willful abuse, immediate full payment must be made to the Fiscal Section. Suspended members shall be deprived of all Massachusetts State

Police powers and privileges and must not represent themselves as members of the Massachusetts State Police.” (*Exhibit 1*)

26. Article 5.27.1, Truthfulness, of the Rules and Regulations, states, “Members and civilian employees shall be truthful at all times.” (*Exhibit 1*)

27. Article 5.27.2, Truthfulness, of the Rules and Regulations, states, “Upon the order of the Colonel/Superintendent, his/her designee, supervisory member, or proper authority, members shall truthfully answer all questions specifically directed and narrowly related to the scope of employment and operations of the Massachusetts State Police which may be asked of them. An invocation of Constitutionally protected Rights shall not be a violation of this Rule.” (*Exhibit 1*)

*Motor Vehicle Stops (Department investigation (“IAS”) #2010-0007)(Exhibit 3)*¹⁰

28. McCormack violated Article 5.3 (Charge 1, Specification 1) when he was “stopped several times over the course of the evening for motor vehicle offenses” on January 28, 2010. On January 28, 2010, McCormack also “acted in a manner as to bring the State Police in disrepute and received a complaint regarding his conduct”. The TBD found this conduct to be a class B violation. A first Class B offense warrants suspension of not less than five (5) days nor more than thirty (30) days; second offenses warrant suspension of not less than ten (10) days nor more than sixty (60) days; third and subsequent offenses warrant suspension of not less than thirty (30) days, up to and including termination. For McCormack’s violation, the Department ordered that he be suspended for ten (10) days without pay. (*Exhibits 2, 3 and 22; TBD (attached to May 23, 2013 Department email)*)

¹⁰ This does not include the Charges and Specifications for which the Department found McCormack not guilty: Charge 3, Specifications 1 and 4.

29. On January 7, 2010, McCormack violated Article 5.4.1 (Charge 2, Specification 1) by failing to conform to the laws of the United States and Massachusetts when he was stopped for motor vehicle offenses in Plymouth, Massachusetts. The TBD found this conduct to be a class D violation. The first offense of a Class D violation warrants a written reprimand up to, and including, suspension of not more than two (2) days; a second Class D offense warrants a written reprimand up to, and including, a suspension of not more than five (5) days; and a third and subsequent offense warrants suspension of not less than ten (10) days and up to, and including, termination. For McCormack's violation, the Department ordered that McCormack be issued a written reprimand.

(Exhibits 2, 3, 11 and 22; TBD (attached to May 23, 2013 Department email))

30. McCormack violated Article 5.4.1 (Charge 2, Specification 2) by failing to conform to the laws when he was stopped several times over the course of the evening on January 28, 2010 for motor vehicle offenses in Yarmouth, Massachusetts. The TBD found this conduct to be a class D violation and the Department ordered that he be issued a written reprimand. *(Exhibits 2, 3, and 22; TBD (attached to May 23, 2013 Department email))*

31. McCormack violated Article 5.27.2 (Charge 3, Specification 2) when he was untruthful to YPD Officer Scott Lundegren ("Lundegren") during a motor vehicle stop on January 28, 2010. The TBD found this conduct to be a class A violation. The first Class A violation warrants suspension of not less than thirty (30) days up to, and including, termination; a second Class A offense warrants suspension of ninety (90) days up to, and including, termination; a third Class A offense warrants termination. For McCormack's violation, the Department ordered that McCormack's employment be terminated.

(Exhibits 2, 3, and 22; TBD (attached to May 23, 2013 Department email))

32. McCormack violated Article 5.27.2 (Charge 3, Specification 3) when he made untrue statements to Trooper Thomas Fitzpatrick (“Fitzpatrick”) during a motor vehicle stop on January 28, 2010 in Yarmouth, Massachusetts. The TBD found this to be a class A violation and the Department ordered that McCormack’s employment be terminated. (*Exhibits 2, 3, and 22; TBD (attached to May 23, 2013 Department email)*)
33. On February 5, 2010, State Police Det. Lt. Pagley was assigned to investigate the motor vehicle stops based on the allegations that McCormack may have violated the Rules and Regulations on January 7, 2010, in Plymouth, Massachusetts and on January 28, 2010, in Yarmouth, Massachusetts. (*Testimony of Pagley; Exhibits 20 and 21*)
34. On January 7, 2010, Trooper Kiley stopped McCormack, who was driving his black pick-up truck at 12:47 a.m. in Plymouth, Massachusetts, because he was driving at 85 mph in a 60 mph zone. At that time, Trooper Kiley was on patrol from the Bourne State Police Barracks (“Bourne Barracks”). Kiley has been a member of the Department for approximately seventeen (17) years. When Kiley approached McCormack’s vehicle, McCormack showed him a Massachusetts State Trooper badge¹¹ and told him “I’m one of you guys”. McCormack told Kiley his name. Trooper Kiley allowed McCormack to leave without a citation. When Kiley returned to his cruiser and checked McCormack’s name on his computer, he saw that there were many drug charges against McCormack and he saw that McCormack was no longer allowed to carry a firearm. (*Testimony of Kiley, Exhibit 3 and Exhibit 11*)

¹¹ At the time of Trooper Kiley’s stop, McCormack did not have his numbered State Police badge as it had been confiscated when the Department suspended him in 2008. Subsequently, during the first two motor vehicle stops on January 28, 2010, as YPD Officer Lundegren and Trooper Fitzpatrick testified, McCormack showed a “replica” State Trooper badge (Exhibit 9). A replica badge looks like the usual State Police badge but it does not have the Trooper’s identification number on it. Therefore, more likely than not, the badge that McCormack showed Trooper Kiley was a replica badge.

35. On January 28, 2010, McCormack was stopped by YPD then-Officer Lundegren at approximately 1:30 a.m. Lundegren is now a Detective in the YPD Narcotics Unit and has worked at YPD for approximately thirteen (13) years. At the time, Lundegren was assisting two other officers with a stop involving an OUI in the vicinity of McCormack's vehicle. During this OUI stop, Officer Lundegren spotted a vehicle driving at approximately 55 mph or greater in a 30 mph zone and passing the OUI police stop in an unsafe manner. Officer Lundegren pulled the speeding vehicle over; it was a black Dodge pick-up, which was being driven by McCormack. McCormack held a silver Trooper badge out to Officer Lundegren. During the ensuing conversation, Officer Lundegren asked McCormack for his police ID and McCormack told him he did not have it because he never carries it. McCormack told Officer Lundegren that he works out of "H-1" in Boston and that his brother "runs the homicide unit". Officer Lundegren did not know what "H-1" was. McCormack also told him that he was going to "help someone out" and that he was "just trying to save a life". Officer asked him if he needed help. McCormack said he did not need help. Officer Lundegren let McCormack leave without a citation. (*Testimony of Lundegren, Exhibit 3, Exhibit, Exhibit 9, Exhibit 12 and Exhibit 15*)
36. Officer Lundegren did not ask McCormack for his driver's license or vehicle registration at any point during the stop. (*Testimony of Lundegren*)
37. After Officer Lundegren let McCormack leave, he called Trooper Fitzpatrick at the Yarmouth State Police Barracks ("Yarmouth Barracks"). Officer Lundegren and Trooper Fitzpatrick discussed a recent break-in at a home in Yarmouth of a retired

Trooper J.J. McCormack (no relation to Appellant) and that his badge had been stolen¹².

As of the Commission hearing, Trooper Fitzpatrick had been a member of the Department for approximately seven (7) years and assigned to the Yarmouth Barracks for approximately four (4) years. Both Officer Lundegren and Trooper Fitzpatrick decided to investigate the theft. Lundegren asked Fitzpatrick if he could investigate and assist in locating the truck that Appellant McCormack was driving. They suspected that the Appellant had stolen the badge from the retired Trooper J.J. McCormack.

(Testimony of Lundegren, Fitzpatrick; Exhibits 3, 15 and 16)

38. Shortly thereafter, at approximately 1:50 a.m. on January 28, 2010, Trooper Fitzpatrick stopped McCormack on suspicion of burglary. Fitzpatrick called Lundegren when he stopped McCormack. McCormack showed Trooper Fitzpatrick a badge without a Trooper number on it and Fitzpatrick asked for his police I.D. McCormack said he did not have his police ID and gave him his driver's license. McCormack told Trooper Fitzpatrick that he was driving his friend, the passenger in his car, home. Trooper Fitzpatrick returned to his cruiser to check McCormack's license and registration. The black Dodge pick-up McCormack was driving was registered to him. Trooper Fitzpatrick called Trooper McCarthy at the Yarmouth Barracks to find out McCormack's status at the Department. McCarthy told Fitzpatrick that there was an Edward McCormack with the State Police and identified McCormack's name and badge number in the log. However, McCarthy told Fitzpatrick that he did not know McCormack's current status. Shortly after the stop, McCormack got out of his vehicle

¹²Although Trooper Fitzpatrick testified that the burglary of retired Trooper J.J. McCormack's badge occurred three weeks before the night of the stops of Edward McCormack on January 28, 2010, his incident report regarding the stops of January 28, 2010 indicate that J.J. McCormack's house was broken into the night before January 28, 2010. (*Exhibit 16*) This appears to be an error of memory, not an intentional false statement.

with a cell phone in his hand and went to Trooper Fitzpatrick's vehicle to tell Fitzpatrick to speak to his (McCormack's) brother on the cell phone. Trooper Fitzpatrick took the phone and spoke to someone who identified himself as McCormack's brother, Scott McCormack, on Appellant's cell phone at this second stop. Trooper Fitzpatrick could not immediately verify with whom he was speaking on McCormack's cell phone but he allowed McCormack to leave after the call. (*Testimony of Fitzpatrick; Exhibits 3, 13, 15, 16 and 42*)

39. During their phone conversation, Fitzpatrick told Scott McCormack that Edward McCormack (Appellant) did not have any police identification. Scott McCormack told Fitzpatrick the reason his brother (Appellant) did not have a police I.D. at that moment was that he (Appellant) was suspended. (*Testimony Scott McCormack*)
40. Officer Lundegren arrived to assist Trooper Fitzpatrick shortly after Fitzpatrick pulled McCormack over. When Officer Lundegren arrived, Trooper Fitzpatrick was in his vehicle and McCormack was in his truck. Lundegren went to McCormack's truck to speak with him. Lundegren asked who the passenger was in McCormack's truck. McCormack replied that he didn't know the passenger. McCormack then asked Officer Lundegren why he was being stopped. Lundegren told him that he and Trooper Fitzpatrick wanted to investigate the theft of a badge since McCormack did not produce a police I.D when he was stopped. Officer Lundegren asked McCormack if he was suspended and McCormack responded that he was not suspended, that he was out on a back injury and that the State Police were trying to force him off the job but that he was fighting it. During this conversation, Officer Lundegren noticed that McCormack was talking to someone on his cell phone. (*Testimony of Lundegren*)

41. A white male in McCormack's car was in the passenger seat during Trooper Fitzpatrick's stop. The passenger was later identified as Mr. G. State Police Det. Lt. Pagley subsequently interviewed Mr. G. Mr. G told Det. Lt. Pagley that McCormack was driving him home because he (Mr. G) got into an argument with his girlfriend. *(Testimony of Fitzpatrick and Pagley; Exhibit 20)*
42. After this second motor vehicle stop on January 28, 2010, Officer Lundegren and Trooper Fitzpatrick went to the Yarmouth Barracks and spoke to Trooper McCarthy about the incidents involving McCormack and they obtained more information about McCormack. They discussed McCormack's suspension in 2008 and learned that McCormack had numerous criminal narcotics charges pending. They also discussed that they would seize McCormack's badge if he displayed it again. At about 2:50 a.m., they received information that YPD Officer Mary Gibney ("Gibney") had stopped McCormack on Route 28 in Yarmouth. *(Testimony of Lundegren and Fitzpatrick; Exhibits 15 and 16)* At the time of the Commission hearing, Gibney had been on the force for approximately three (3) years. *(Testimony of Gibney; Administrative Notice)*
43. At approximately 2:50 a.m. on January 28, 2010, Officer Gibney saw a truck pull out in front of her at a stop sign. Gibney had heard earlier radio transmissions about stops of a truck but she did not pay attention to the details of the earlier stops because they were not in the section of town to which she was assigned for patrol. Gibney saw the driver on the phone at the stop sign and she had to slam on her breaks to avoid hitting him. Officer Gibney followed the driver, later determined to be McCormack, to see if she observed any further traffic violations. She saw no further violations and stopped him roughly one-half mile away from the stop sign. It was not until Gibney stopped the

truck that she realized it was the truck that was stopped earlier that night. During the stop, McCormack told her he was just dropping off a friend and was trying to get home, although there was no one else in the truck. He told her he was a State Trooper but he did not tell her that he was suspended. He did not show her a badge, nor did she tell anyone that he did.¹³ Gibney issued McCormack citations for failure to yield at a stop in violation of G.L. c. 89, §8 and for failure to change his address with the Registry of Motor Vehicles in violation of G.L. c. 90, §26A because she believed that McCormack was living in Yarmouth and not at the West Roxbury address, which was the address found when Gibney checked McCormack's truck license plate. Gibney believed he lived in Yarmouth because she had seen McCormack driving his car in Yarmouth often. McCormack appealed the citations and was found not responsible for them. Gibney was not notified that McCormack subsequently appealed the citations she issued to him and, therefore, she did not have the opportunity to defend the citations. (*Testimony of Gibney, Exhibits 3, 14 and 17*)

44. Trooper Fitzpatrick and Officer Lundegren responded to Officer Gibney's stop when they had heard Gibney call it in to YPD dispatch. During Gibney's stop of McCormack, Fitzpatrick asked McCormack for his badge and seized it. The badge was a replica badge that does not have the Trooper's number on it. Fitzpatrick submitted the replica badge to his superior officer and the badge was secured. McCormack had shown the badge once to Lundegren and once to Fitzpatrick that night. (*Testimony of Fitzpatrick and Pagley; Exhibit 9*)

¹³ Trooper Fitzpatrick testified that Officer Gibney stated that McCormack showed her a badge when she stopped him. Officer Gibney's report states that McCormack did not show her a badge. Thus, Trooper Fitzpatrick erred in this regard. (*Exhibit 17*)

45. Suspended Troopers have no police privileges or powers and are not allowed to present themselves as Troopers pursuant to Article 5. (*Testimony of Pagley, Exhibits 1 and 3*)
*Barnstable Court Probation (Department investigation 2011-0016)(Exhibit 23)*¹⁴
46. McCormack violated Article 5.17.2 (Charge 1, Specification 1) when he “conducted himself in a manner as to violate Massachusetts State Police Rule, Regulation, Policy, Procedure, Order or Directive”, specifically by identifying himself as a Massachusetts State Trooper to Ms. Kim Larson (“Larson”), a Probation Officer at Barnstable District Court, while he was on suspension. The TBD found this to be a class A violation and the Department ordered that he be suspended for thirty (30) days without pay. (*Exhibits 2 and 23*)
47. The TBD, as approved, found McCormack guilty of Charge 1, Specification 2, Violation of Rules, Article 5.17.2, in that McCormack violated Article 5.17.2 (Charge 1, Specification 2) when he “conducted himself in a manner as to violate Massachusetts State Police Rule, Regulation, Policy, Procedure, Order or Directive”, specifically when he identified himself as a Massachusetts State Trooper to Mr. Elzy Tubbs (“Tubbs”), Assistant Chief Probation Officer at Barnstable District Court, while he (McCormack) was suspended. The TBD found this to be a class A violation and the Department ordered that he be suspended for thirty (30) days without pay. (*Exhibits 2 and 23*)
48. McCormack violated Article 5.17.2 (Charge 1, Specification 3) when he “conducted himself in a manner as to violate Massachusetts State Police Rule, Regulation, Policy, Procedure, Order or Directive”, specifically by identifying himself as a Massachusetts

¹⁴ This does not include Charge 7, Specifications 1, 2 and 3 because the Department found McCormack not guilty of this Charge and cited Specifications that allege that McCormack violated the Rules regarding truthfulness when he identified himself as a State Trooper to members of the Barnstable Probation Department and Mr. Finn, of the Barnstable Community Corrections Center.

State Trooper to Mr. Joseph Finn (“Finn”), a Community Corrections Coordinator at the Barnstable Community Corrections Center (“BCCC”), while he (McCormack) was suspended. The TBD found this to be a class A violation and the Department ordered he be suspended for thirty (30) days without pay. (*Exhibits 2 and 23*)

49. McCormack violated Article 5.17.2 (Charge 1, Specification 4) when he “conducted himself in a manner as to violate Massachusetts State Police Rule, Regulation, Policy, Procedure, Order or Directive”, specifically when he identified himself as a Massachusetts State Trooper to Mr. Michael Spellman (“Spellman”), a Community Corrections Coordinator at the BCCC, while he was suspended. The TBD found this to be a class A violation and the Department ordered that he be suspended for thirty (30) days without pay concurrent with the discipline issued for violation of Charge 1, Specification 3. (*Exhibits 2 and 23*)

50. McCormack violated Article 5.2.1. (Charge 2, Specification 1) when he associated with individuals he knew or should have known were engaged in criminal activities between 2007 and 2011, specifically when he associated with Ms. A, who was involved in illegal activities, including a breaking and entering into a property. The TBD found this to be a class B violation and the Department ordered he be suspended for thirty (30) days without pay. (*Exhibits 2 and 23*)

51. McCormack violated Article 5.3 (Charge 3, Specification 2) when he shouted across the office of the Barnstable District Court Probation Office to Probation Officer Larson, “You got your wish”, referring to her requests that McCormack not come to the office with Ms. A during Ms. A’s required probation meetings. The TBD found this to be a

class B violation and the Department ordered he be suspended for ten (10) days without pay. (*Exhibits 2 and 23*)

52. McCormack violated Article 5.3 (Charge 3, Specification 1) when he threatened Ms. A with criminal prosecution and by telling her that he would interfere with the custody of her daughter. The TBD found this to be a class B violation and the Department ordered that McCormack be suspended for thirty (30) days without pay. (*Exhibits 2 and 23*)

53. McCormack violated Article 5.15.1 (Charge 6, Specification 1) when he used his official position and badge for personal gain and for obtaining privileges not otherwise available to him, specifically when he identified himself as a Massachusetts States Trooper to Barnstable District Court Probation Officer Larson, while he was suspended, in order to gain information for, and/or to assist Ms. A. The TBD found this to be a Class A violation and the Department ordered that McCormack be suspended for sixty (60) days without pay. (*Exhibits 2 and 23*)

54. McCormack violated Article 5.15.1 (Charge 6, Specification 2) when he used his official position and badge for personal gain and for obtaining privileges not otherwise available to him, specifically when he identified himself as a Massachusetts States Trooper to Finn at BCCC, while McCormack was suspended, in order to gain information for, and/or to assist Ms. A. The TBD found this to be a class A violation and the Department ordered that McCormack's employment be suspended for sixty (60) days without pay. (*Exhibits 2 and 23*)

55. McCormack violated Article 5.15.1 (Charge 6, Specification 3) when he used his official position and badge for personal gain and for obtaining privileges not otherwise available to him, specifically when McCormack identified himself as a Massachusetts State

Trooper to Spellman at BCCC, while he (McCormack) was suspended, for the purpose of gaining information for and/or to assist Ms. A. The TBD found this to be a class A violation and the Department ordered that McCormack be suspended for sixty (60) days without pay, concurrent with the discipline issued for violation of Charge 6, Specification 2. (*Exhibits 2 and 23*)

56. McCormack violated Article 5.15.2 (Charge 6, Specification 4) when he handed his badge to Ms. A and allowed her to be photographed with it sometime between 2007 and 2011. The TBD found this to be a class C violation. Class C first offenses warrant a written reprimand up to, and including, suspension of not more than five (5) days; second offenses warrant suspension of not less than one (1) day nor more than fifteen (15) days; and third and subsequent offenses warrant suspension of not less than fifteen (15) days up to, and including, termination. For McCormack's violation, the Department ordered that he be issued a written reprimand. (*Exhibits 2 and 23*)

57. McCormack violated Article 5.27.2 (Charge 7, Specification 4) when he made false statements, specifically when he told Michael Spellman at BCCC that he (McCormack), as a Massachusetts State Trooper, was involved in an investigation regarding Ms. A. The TBD found this to be a class B violation¹⁵. For McCormack's violation, the Department ordered that McCormack's employment be suspended for thirty (30) days without pay. (*Exhibits 2 and 23*)

58. The investigation regarding these Charges and Specifications originated with Barnstable Assistant Chief Probation Officer Elzy Tubbs ("Tubbs"), who contacted the Barnstable Barracks. The matter was forwarded to Troop H, which is where McCormack had been

¹⁵ Although the charge sheet regarding the Barnstable Probation matter states that the incident between McCormack and Community Corrections Officers Spellman and Finn occurred in January 2011, Finn's incident report, written a couple months after the incident, indicates that it occurred on May 24, 2011. (*Exhibits 23 and 24*)

assigned. Capt. Shugrue wrote a memorandum regarding McCormack's alleged conduct and Det. Lt. Pagley was assigned to the investigation. (*Testimony of Pagley*)

59. Ms. A grew up in Falmouth.¹⁶ At the Commission hearing, Ms. A was in her mid-twenties and had a six (6) year old daughter. She started using illegal drugs when she was approximately sixteen (16) years old. Subsequently, she became addicted to drugs, using Heroin and pills, including "Oxy", Percocet, morphine, any opiate, and Fentanyl patches. McCormack and Ms. A first met in 2007 or 2008 at Zachary's, a bar in a strip club in Mashpee, Massachusetts, where Ms. A danced. Ms. A is now a recovering addict and appeared to be well at the Commission hearing. (*Testimony of Ms. A; Administrative Notice*)

60. Ms. A and McCormack were friends at first when they met; they had a romantic relationship for some months sometime in 2010 – 2011. (*Testimony of Larson and Ms. A; Exhibits 23, 27 and 28*)

61. For some period of time during McCormack and Ms. A's relationship, they lived together off and on at McCormack's parents' Yarmouth residence.¹⁷ At some point during their relationship, McCormack handed Ms. A his State Police badge briefly. McCormack took a photo of Ms. A that shows her playfully wearing his badge. McCormack told Ms. A that he could get in trouble for allowing her to do that.¹⁸ (*Testimony of Ms. A; Exhibits 23, 28 and 29*)

¹⁶ Ms. A was subpoenaed to testify.

¹⁷ Exhibits 39 – 41 are photographs of McCormack and Ms. A together, although the dates they were taken are unknown.

¹⁸ The badge in the undated photograph is somewhat blurry but Ms. A described the badge as McCormack's official badge, indicating that she obtained it from McCormack.

- a. Ms. A's Board of Probation ("BOP") record entered into evidence at the Commission hearing on May 30, 2013 is dated June 14, 2011. Ms. A has been charged with many offenses, most of which involve breaking and entering a property, drug possession, and assault and battery, and many of the charges have been dismissed. At the time of the Commission hearing, the only charges of which the BOP for Ms. A indicated that she had been convicted, or to which she pleaded guilty, were apparently six (6) counts of breaking and entering into a property with intent to commit a felony for which she was arraigned in April 2010. The conviction or guilty pleading was entered in Barnstable District Court in October 2010, for which Ms. A was placed on probation until October 2012. According to the BOP, Ms. A also had four (two counts of assault and battery and two counts of larceny) open charges in Quincy District Court for which she was arraigned in August 2010. At the time of the Commission hearing, Ms. A was facing a new charge for assault and battery in another court. (*Exhibit 26; Testimony of Ms. A*)

62. When Ms. A was placed on probation in Barnstable District Court in October 2010, she was assigned to Probation Officer Larson. Ms. A met with Larson biweekly during her probation. McCormack introduced himself to Larson when he accompanied Ms. A to an appointment at the Barnstable District Court Probation Department in January 2011. He also showed Larson a business card stating that he was a Trooper; on the card was written "Commonwealth of Massachusetts" as well as his name. McCormack did not tell her that he was suspended. McCormack told Larson that Ms. A was his friend and he wanted to help Ms. A. Ms. A also told Larson that McCormack was a friend. Larson

believed that McCormack was an active Trooper until she found out in May 2011 that he had been suspended or was under investigation. Larson informed McCormack that he would not be able to come into the probation supervision meetings with Ms. A because the meetings were confidential. Nonetheless, McCormack continued to come to the Barnstable District Court Probation Office with Ms. A and ask about Ms. A's status and the progress of her probation. This made Larson feel uncomfortable and she did not want McCormack to attend the meetings for or with Ms. A. If she knew that McCormack was suspended she would not have spoken to him about Ms. A's probation.

(Testimony of Larson)

63. Ms. A was not always honest with Larson about her drug abuse while on probation or about McCormack while she (Ms. A) was dating him. At one point, Ms. A told Larson that she had left the state briefly, which was a violation of her probation.¹⁹ However, Ms. A's working relationship with Larson improved when she stopped seeing McCormack. *(Testimony of Larson)*

64. McCormack accompanied Ms. A to her probation meetings often in 2011, even though Larson said he could not. McCormack was aware of Ms. A's criminal background. McCormack made himself known as a Trooper when he would go to the Barnstable District Court and Barnstable Probation Office with Ms. A. *(Testimony of Ms. A; Exhibit 23)*

¹⁹ Larson testified that Ms. A told her that she had gone to New Hampshire with McCormack. However, Ms. A testified that she distinctly recalled telling McCormack that she could not leave the state because of her probation restrictions, as if she was relieved not to be able to go with him. Ms. A testified that she may have gone out of state with someone else. There being contradictory evidence in this regard, the Department lacked just cause to discipline McCormack for the approved TBD involving Charge 3, Specification 1 and Charge 4, Specification 1 of IAS# 2011-0016, which allege that McCormack took Ms. A to New Hampshire in violation of her probation. The discipline the Department ordered was a ten (10) day unpaid suspension for each of these two charges concurrently.

65. On or about January 2011, McCormack went into the central Probation office where Larson works and yelled to her, “You got your wish”. Larson was shocked at this; she did not respond to him. McCormack’s comment was referencing Larson’s request of her supervisor, Assistant Chief Probation Officer Tubbs (“Tubbs”), that McCormack not attend probation meetings with Ms. A anymore. (*Testimony of Larson; Exhibit 23*)
66. Larson has been a Probation Officer for more than thirty years. She has a bachelor’s degree in Psychology. Larson attends trainings each year related to substance abuse issues, suicide issues, and general mental health issues. Almost all of the probationers she supervises are substance abusers. Larson saw McCormack ten (10) to fifteen (15) times during Ms. A’s probation. Each time Larson saw McCormack with Ms. A, he was pale, irritated, anxious and his hands were a little “twitchy.” These appearances indicated to Larson that McCormack was most likely abusing drugs during that time. Larson learned that McCormack was suspended from the Massachusetts State Police in May 2011. (*Testimony of Larson*)
67. Larson told Tubbs at the time of Ms. A’s probation that McCormack was a State Trooper and Tubbs believed he was a Trooper. At some point, Larson told Tubbs that she was uncomfortable with McCormack attending Ms. A’s office visits and related proceedings. Larson asked Tubbs to speak to McCormack regarding McCormack’s visits to Ms. A’s probation meetings. Larson did not want to discuss it with McCormack because he made her feel uncomfortable. (*Testimony of Tubbs; Exhibit 23*)
68. Tubbs has worked at the Massachusetts Trial Court for twenty years. At the Barnstable Probation Office, Tubbs has supervised five to seven Probation Officers. In 2011, Tubbs began meeting with McCormack when Larson asked him (Tubbs) to speak with

McCormack regarding his (McCormack's) visits to probation meetings and related proceedings for Ms. A. Tubbs wanted to determine the reason McCormack was attending Ms. A's probation meetings and related proceedings. He met with McCormack approximately three (3) times. McCormack told Tubbs that he was a close friend of Ms. A and was looking out for her. Tubbs asked McCormack for a business card; McCormack did not produce a business card but opened his wallet and Tubbs saw an older Trooper badge in the wallet. Tubbs told McCormack that he could not interfere with Ms. A's case. It seemed peculiar to Tubbs that someone had that much interest in a probationer. In one meeting, McCormack admitted to Tubbs that he had a relationship with Ms. A. After these meetings, Larson and Tubbs met to discuss McCormack and his purpose. Tubbs observed during his meetings with McCormack that he (McCormack) appeared to be nervous, disheveled, like he was not well, he spoke very quickly, and his behavior was not normal. (*Testimony of Tubbs*)

69. On May 24, 2011, shortly before 8:00 a.m., McCormack appeared at the BCCC where Spellman and Finn work, both of whom are BCCC Coordinators. Spellman has been employed at BCCC for twelve (12) years. Finn has been a Community Corrections Coordinator for approximately sixteen (16) years; he is a supervisor and he has worked at BCCC for approximately three (3) years. Finn knows Probation Officer Larson because they have worked together. The BCCC is where probationers perform community service projects at the direction of their Probation Officers; sometimes they perform community service instead of paying probation fees. Probationers arrive by 8:00 a.m., Coordinators take attendance, probationers take a seat on the BCCC bus or van, and then the bus brings them to their community service projects. Spellman and

Finn knew that Ms. A was on probation at that time for committing a breaking and entering into a property; Probation Officer Larson referred Ms. A to BCCC. Finn knows that Ms. A showed up to perform community service on February 5, March 15, April 26 and May 17, 2011 but not on May 24, 2011. (*Testimony of Finn, Spellman, Larson and Ms. A; Exhibits 23 and 24*)

70. McCormack arrived at about the time probationers were getting on the BCCC bus on May 24. Spellman and Finn saw McCormack when he arrived; as McCormack got out of his truck, he showed them a silver State Police badge in his right hand and he was wearing a baseball cap that said Mass. State Police on it; he did not show them a police ID. Spellman recognized McCormack because they grew up together in West Roxbury; he observed that McCormack appeared tired. Finn observed that McCormack was slouched over a bit with his hat tipped downward. They believed that McCormack was a State Police Trooper and asked McCormack if they could help him. McCormack said he was looking for Ms. A. Finn told McCormack that Ms. A was not there that day. Neither Spellman nor Finn would have told someone this information if he or she was in plain clothes without first asking more questions. (*Testimony of Finn, Spellman, and Ms. A; Exhibits 23 and 24*)

71. At this point, Finn walked away and Spellman talked to McCormack. McCormack told Spellman that Ms. A had committed crimes at his home, although she had not, that she was supposed to be doing community service, and that he was looking for her regarding an investigation. Spellman noticed that McCormack's demeanor seemed a little strange. McCormack told Spellman that he was out injured but he did not tell him he had been suspended. McCormack gave Spellman his phone number and told him to call him

(McCormack) if Ms. A arrived to perform her assigned community service and then McCormack left the BCCC lot. Spellman knew that McCormack had been suspended previously but did not know if McCormack was still suspended at that time. Shortly thereafter, Finn and Spellman discussed McCormack's appearance at BCCC.

(Testimony of Finn, Spellman, and Ms. A; Exhibits 23 and 24)

72. Finn thought that McCormack's appearance at BCCC meant that there was a warrant for Ms. A's arrest. Subsequently, Finn contacted Larson, Ms. A's Probation Officer, to inform her that a police officer named Edward McCormack was looking for Ms. A. Larson contacted Finn later to tell him that McCormack was suspended from the Massachusetts State Police. On July 5, 2011²⁰, at the request of the State Police, Finn documented his interaction and conversation with McCormack on May 24, 2011. Until that time, Finn did not prepare a written report about McCormack's visit to BCCC because he did not realize that someone flashing a badge would be something the State Police would inquire about. *(Testimony of Finn; Exhibit 24)*

73. Det. Lt. Pagley was assigned to investigate McCormack's activities involving the Barnstable District Court when Assistant Chief Probation Officer Tubbs raised concerns about McCormack to a Trooper at the State Police Department. During an investigation by the State Police Department Internal Affairs Unit, it was revealed that Ms. A was McCormack's girlfriend and that she had a criminal history and was assigned to probation in 2010 for committing a breaking and entering into a property. *(Testimony of Pagley; Exhibits 23, 26 and 27)*

²⁰ Although Finn's incident report indicates he wrote the report on July 5, 2010, the correct date is July 5, 2011. *(Testimony of Finn; Exhibit 24)*

74. Ms. A ended her relationship with McCormack at some point in 2011 because he was behaving strangely. After the break-up, McCormack threatened to interfere with custody of her daughter, report that she had committed certain crimes, and otherwise cause her legal difficulties. The break-up occurred over months because Ms. A had to change her contact information in order to try to stop McCormack from contacting and threatening her. (*Testimony of Ms. A; Exhibit 28*)
75. Ms. A met with State Police Det. Shannon a number of times in 2011 regarding the Department's investigation of McCormack's activities. Det. Lt. Shannon recorded one interview of Ms. A on July 21, 2011; the interview was not conducted under oath. Ms. A never applied for a restraining order against McCormack although Detective Shannon suggested she obtain one in light of McCormack's threats. Ms. A did not testify against McCormack in his criminal court case. (*Testimony of Ms. A and Pagley; Exhibits 28 and 43*)
76. At some point in time, Det. Lt. Shannon accompanied Ms. A to Quincy District Court to address a default warrant that had been issued against her. The default was removed and Ms. A was placed on pretrial probation. (*Testimony of Ms. A*) However, there is no evidence indicating if Ms. A was ultimately convicted of, or pleaded guilty to, the charges in Quincy District Court. (*Administrative Notice*²¹)
77. Approximately one month after Ms. A's recorded interview by Det. Lts. Pagley and Shannon, Ms. A assented to Detective Shannon's application for a search warrant of Ms. A's mobile phone on which it was alleged there was evidence that McCormack was

²¹ Exhibit 26 is Ms. A's Board of Probation record, dated June 14, 2011, which does not indicate how and when the Quincy cases were closed.

abusing drugs. (*Exhibit 43*) There was no indication whether the phone records referenced drug abuse by McCormack. (*Administrative Notice*)

78. In or about June, 2011, Ms. A sent a text message to her boyfriend (not McCormack) that it was possible that the police may help her with the charges against her in Quincy District Court if she would help them with regard to McCormack. Ms. A's boyfriend texted a response encouraging her to cooperate and discuss it with her attorney. Ms. A replied that she would be happy to do it. (*Testimony of Ms. A*)

79. Ms. A admitted she does not recall specific dates due to her history of drug abuse. (*Testimony of Ms. A*)

Motor Vehicle Accident (IAS# 2011-0027)

80. McCormack violated Article 5.17.2 (Charge 1, Specification 1) when he was involved in a motor vehicle accident on May 10, 2011 while suspended and identified himself as a State Trooper to the operator of the other vehicle involved in the accident. The TBD found this to be a class A violation and the Department ordered that McCormack's employment be suspended for thirty (30) days without pay. (*Exhibits 2 and 30*)

81. McCormack violated Article 5.3 (Charge 2, Specification 1) when he conducted himself unprofessionally during a motor vehicle accident incident on May 10, 2011 while suspended. The TBD found this to be a class B violation and the Department ordered that McCormack be suspended for thirty (30) days without pay. (*Exhibits 2 and 30*)

82. McCormack violated Article 5.4.1 (Charge 3, Specification 1) when he failed to conform to Massachusetts Laws during a motor vehicle accident in which he was involved his personal vehicle, he was found at fault for the accident and was issued a warning for following too close on May 10, 2011. The TBD found this to be a class C

violation and the Department ordered that McCormack be issued a written reprimand.

(Exhibits 2 and 30)

83. McCormack violated Article 5.15.1 (Charge 4, Specification 1) when he used his official position for personal gain and in order to avoid the consequences of illegal acts, specifically when he was involved in a motor vehicle accident on May 10, 2011 and attempted to intimidate the operator of the other motor vehicle through his position and display of a badge, while suspended. The TBD found this to be a class A violation and the Department ordered that McCormack's employment be suspended for ninety (90) days without pay. *(Exhibits 2 and 30)*

84. McCormack violated Article 5.15.1 (Charge 4, Specification 2) when he used his official position for personal gain and in order to avoid consequences of illegal acts, specifically when he was involved in a motor vehicle accident on May 10, 2011 and attempted to use his position with investigating officers for personal gain and to avoid the consequences of his actions, while suspended. The TBD found this to be a class A violation and the Department ordered that McCormack be suspended for ninety (90) days without pay, concurrent with the discipline issued regarding the Charge 4, Specification 1 violation. *(Exhibits 2 and 30)*

85. McCormack violated Article 5.15.6 (Charge 4, Specification 3) when he withheld information in order to impede an ongoing investigation when he was involved in a motor vehicle accident on May 10, 2011 and he withheld the details of the accident in order to hinder or delay the investigation, while he was suspended. The TBD found this to be a class A violation and ordered that McCormack be suspended for ninety (90) days

without pay, concurrent with the discipline issued regarding the Charge 4, Specification 1 violation. (*Exhibits 2 and 30*)

86. McCormack violated Article 5.27.2 (Charge 5, Specification 1) when he, while suspended, made untrue statements about the accident on May 10, 2011. The TBD found this to be a class B violation and the Department ordered that McCormack be suspended for thirty (30) days without pay. (*Exhibits 2 and 30*)
87. McCormack violated Article 5.27.2 (Charge 5, Specification 2) when he, while suspended, gave untruthful statements to responding local police officers regarding his duty status and authority to carry a badge following the motor vehicle accident on May 10, 2011. The TBD found this to be a class B violation and ordered that McCormack be suspended for thirty (30) days without pay. (*Exhibits 2 and 30*)
88. McCormack violated Article 5.27.2 (Charge 5, Specification 3) when he, while suspended, gave untruthful statements regarding the actions of the driver of the other vehicle following their motor vehicle accident on May 10, 2011. The TBD found this to be a class B violation and ordered that McCormack be suspended for thirty (30) days without pay. (*Exhibits 2 and 30*)
89. During a car accident on May 10, 2011 involving McCormack, he identified himself as a Trooper to Barnstable Police (“BPD”) Officer Jennifer Ellis (“Ellis”), a veteran with more than ten (10) years on the force, who responded to the accident. He did not show her a badge and told her he did not have a badge with him but asserted that he was allowed to have one. McCormack gave Ellis consent to search his vehicle at the scene of the car accident but she did not do so. (*Testimony of Ellis and Waskiewicz*)
- McCormack told Ellis he was on administrative leave for narcotics issues. He also told

her that he was going to be transferred to the Yarmouth Barracks, his brother is a State Trooper and his father had been a Boston Police Officer, which made Ellis feel as though he was trying to influence or intimidate her. McCormack was agitated and asked Officer Ellis whether he should call his Union Representative in regard to the accident. (*Testimony of Ellis; Exhibits 30, 31 and 32*)

90. Immediately prior to the accident, McCormack's truck was driving behind an older minivan driven by Mr. M. McCormack failed to stop and crashed into the back of Mr. M's vehicle. The accident occurred at an intersection at a traffic light on Route 132 in Barnstable. BPD Officer Justin Waskiewicz ("Waskiewicz") first responded to the accident. Waskiewicz had been on the force for approximately one year at that time. Officer Ellis and BPD Lt. Cameron subsequently arrived at the accident. Waskiewicz and Ellis conducted the accident investigation, with each of them talking to McCormack and Mr. M. McCormack asserted that Mr. M was at fault for the accident because he (Mr. M) backed up into his truck and that when Mr. M got out of his car he (Mr. M) tried to swing at him. McCormack denied showing Mr. M a badge immediately after the accident. Following the investigation, Ellis issued McCormack a written warning²² for following a vehicle too closely and she found him responsible for the accident.

(*Testimony of Ellis; Exhibits 30 and 31*)

91. When both vehicles in the accident initially pulled over, McCormack got out of his car and showed Mr. M a badge²³ that looked like a Sheriff's badge and told Mr. M that he was a Massachusetts State Police Trooper. Mr. M wanted to call the police to report the

²² Written warnings cannot be contested in court. (*Testimony of Ellis*)

²³ McCormack did not show either Officer Ellis or Officer Waskiewicz a badge when they questioned him separately about the accident. Both Officer Ellis and Officer Waskiewicz testified that Mr. M told them at the scene of the accident that McCormack showed him a badge immediately after the accident.

accident but McCormack told Mr. M not to do so. However, McCormack then called the police about the accident and stated that Mr. M tried to take a swing at him. Mr. M also called the Barnstable Police to report the accident. (*Testimony of Ellis, Waskiewicz and Pagley; Exhibits 30 and 32*)

92. Mr. M was fifty-eight (58) years old at the time of the accident; he was suffering from various medical difficulties, and he was considerably shorter than McCormack. (*Testimony of Ellis and Waskiewicz*)

93. BPD Officer Waskiewicz knew McCormack from an incident that occurred about a month before the May 10, 2011 accident, although he did not recall it at the accident scene. Specifically, Waskiewicz was dispatched to a possible breaking and entering in progress at a condo involving Ms. A. Ms. A had left the condo after throwing a rock through a window in it. McCormack returned to the condo with Ms. A. Officer Waskiewicz spoke to McCormack during this incident at Ms. A's condo. It was determined to be a landlord/tenant dispute. There was no criminal activity at the condominium.²⁴ (*Testimony of Waskiewicz; Exhibit 25*)

94. Det. Lt. Pagley was assigned to investigate the car accident that occurred on May 10, 2011 involving McCormack and Mr. M. During the investigation, Det. Lt. Pagley spoke to Officer Waskiewicz, Officer Ellis, and someone at Arbella Insurance (McCormack's insurance company). Pagley interviewed Mr. M, the other driver involved in the car accident, on July 31, 2011 at Mr. M's home in Barnstable. Mr. M's interview was recorded, though not under oath, and transcribed. Mr. M denied that he put his car in reverse and hit McCormack's vehicle. Mr. M also denied that he swung at McCormack.

²⁴ Officer Waskiewicz evidenced no bias against McCormack at the Commission hearing or in his conduct at the car accident.

Pagley spoke with a manager at Arbella Insurance. Arbella Insurance paid for the damage to Mr. M's car and it found McCormack, not Mr. M, at fault for the accident.

Arbella Insurance told Pagley that there was no claim filed by McCormack. .

(Testimony of Pagley; Exhibit 32; Administrative Notice (that Mr. M's interview was not sworn))

False Statements/Misrepresentation of Appellant's Medical Condition (IAS# 2008-0011²⁵)

95. McCormack violated Article 5.27.2 (Charge 4, Specification 2) when he, on or about March 2002 through December 2011, made statements that were false when he misrepresented his medical condition. Specifically,

... McCormack during his Health Resources pre-employment physical gave false answers to questions relative to his medical condition. He indicated he did not miss any time away from work as a result of a back injury and further indicated he was not taking any medication (Exhibit 111). His State Police Application and record of injury at the Suffolk Jail indicate he missed six weeks of employment as the result of a back injury and accident in 1998 and several days of employment as the result of a jail injury in 1999 (Exhibits 109 & 110).

(TBD, p. 18, submitted by Department May 23, 2013 in response to this Commissioner's Order of May 20, 2013; Exhibits 35 and 36)

The TBD found this to be a Class A violation and the Department ordered that

McCormack's employment be terminated. *(Exhibit 2; #IAS 2008-0011)*

96. McCormack completed the Health Resources Back Assessment form for State Police candidates on or about December 14, 2001. *(Exhibit 35)* McCormack completed his State Police employment application on September 16, 1999. *(Exhibit 36)*

97. There is no marking on McCormack's 1999 Employee Attendance Calendar at the Sheriff's Office that indicates his absence in December of 1999 because a new time-

²⁵ This does not include Charge 4, Specification 3, which alleges that the Appellant made false statements about his medical condition on or about March 2002 through August 2002, which time period is reflected in Charge 4, Specification 2.

keeping system was implemented in the last few months of 1999. However, a medical note from December 10, 1999 was submitted to the Suffolk County's Sheriff Office indicating that McCormack was unable to work December 10, 1999 to December 13, 1999 (if McCormack felt he could work on that date) due to a lower back injury he sustained from an assault at work on December 8, 1999. (*Testimony of William Sweeney ("Sweeney"); Exhibit 38*)

98. Dr. Brian Morris is employed by All One Health (apparently called "Health Resources" at the time of McCormack's evaluation as a candidate), which is located in Woburn, Massachusetts. All One Health contracts with the State Police Department to provide medical services. Dr. Morris handles medical matters associated with the State Police. He also conducts medical screenings of candidates before they enter the Academy. The screenings include back examinations because individuals' backs are challenged at the Academy and on the job as a Trooper. On or about December 14, 2001, Nurse Practitioner Lada at All One Health conducted a back evaluation and physical examination of McCormack. By cover letter to McCormack signed by Dr. Morris and dated December 19, 2001, Dr. Morris indicated that McCormack's test results were "within normal limits," adding that McCormack should "see [his] personal physician regarding: weight reduction [,]" and wishing him "good luck with your new career!" (*Exhibit 35; Testimony of Dr. Morris*)

99. After McCormack became a Trooper, Dr. Morris saw McCormack for follow-up appointments every six weeks for a period of time when McCormack was out of work because of a back injury. (*Testimony of Dr. Morris*)

100. State Police candidates fill out medical forms, including a medical form that requires recruits to report if they have had a back injury. McCormack indicated on his Back Assessment form that he was in a 1998 car accident which resulted in back muscle spasms and bruising. On the Form, McCormack reported that he did not miss any time away from work at the Suffolk County Sheriff's Office as a result of the 1998 car accident and that there was no recurrence. He also indicated on the Back Assessment form that his back was not sore. McCormack did not disclose any other such injuries and related issues on these forms. (*Testimony of Sweeney and Dr. Morris; Exhibits 35, 36 and 38*)

101. On McCormack's State Police employment application form, in the Human Resources Section, McCormack indicated that he was in a car accident on November 4, 1998 and that he was out of work for six (6) weeks. McCormack did not reveal on that form that he sustained a back injury at the Sheriff's Office in 1999 that caused him to miss work for approximately three (3) days. (*Testimony of Sweeney and Dr. Brian Morris; Exhibits 35, 36 and 38*)

102. If Dr. Morris had been aware of McCormack's missed time from work resulting from the back injury he sustained in the 1998 car accident, it would have affected Dr. Morris' thinking about McCormack's health. If a patient indicates on the Back Assessment form that he has been injured, Dr. Morris needs more documentation regarding the incident. He would ask the patient for medical records and a note from the treating doctor. The Back Assessment form is a screening tool used to probe for information and Dr. Morris obtains detailed information based on what is in the form, which he was prevented from doing because McCormack failed to disclose that he had

been out of work for six (6) weeks because of the 1998 car accident. McCormack also did not disclose on his Back Assessment form that he missed work for approximately three days in December 1999 due to a back injury he sustained when he was assaulted on the job at the Suffolk Sheriff's Office. Based on related testimony and documentary evidence, I infer that, as a contractor to the State Police, All One Health did not receive State Police employment applications, and the Human Resources section thereof.

(Testimony of Sweeney and Dr. Brian Morris; Exhibits 35, 36 and 38)

Drug Abuse (IAS# 2011-0016)

103. McCormack violated Article 5.4.1 (Charge 4, Specification 2) when he used the narcotic Suboxone on various dates between 2007 through 2011 in violation of Massachusetts law. The TBD found this to be a class A violation and the Department ordered that McCormack's employment be terminated. *(Exhibit 2 and 23)*
104. McCormack violated Article 5.4.1 (Charge 4, Specification 3) when he used the narcotic "Oxy," a controlled substance, on various dates between 2007 through 2011, in violation of Massachusetts law. The TBD found this to be a class A violation and the Department ordered that McCormack's employment be terminated. *(Exhibits 2 and 23)*
105. McCormack violated Article 5.4.1 (Charge 4, Specification 4) when he conspired to purchase Heroin in 2010 or 2011 in violation of Massachusetts law. The TBD found this to be a class A violation and the Department ordered that McCormack's employment be terminated. *(Exhibits 2 and 23)*
106. McCormack violated Article 5.10.2 (Charge 5, Specification 1) on various dates between 2007 and 2011 when he possessed or used a controlled substance not prescribed for him by a licensed medical practitioner for a legitimate medical purpose, specifically

when he used Suboxone. The TBD found this to be a class B violation and the Department ordered that McCormack be suspended for thirty (30) days without pay.

(Exhibits 2 and 23)

107. McCormack violated Article 5.10.2 (Charge 5, Specification 2) on various dates between 2007 and 2011 when he possessed or used a controlled substance not prescribed for him by a licensed medical practitioner for a legitimate medical purpose, specifically when McCormack used “Oxy”, a controlled substance. The TBD found this to be a class B violation and the Department ordered that McCormack be suspended for thirty (30) days without pay. *(Exhibits 2 and 23)*

108. Beginning early in their relationship, McCormack and Ms. A took Oxycodone together as friends. Ms. A illegally obtained Oxycodone that they used off the street illegally. At some point during their relationship, Ms. A was selling Oxycontin and McCormack bought it from her; she also gave him a free one for his birthday.

(Testimony of Ms. A; Exhibits 23 and 28)

109. Ms. A and McCormack drank and took drugs together during their relationship. McCormack used Ms. A’s prescribed Suboxone, a drug used to treat opiate addiction. McCormack also gave Ms. A money to buy Suboxone and she gave him some of the Suboxone. McCormack and Ms. A also used Fentanyl (narcotic) patches and liquid codeine together. *(Testimony of Ms. A; Exhibits 23 and 28)*

110. At some point between 2010 and 2011, McCormack and Ms. A conspired to purchase Heroin. McCormack drove Ms. A to pick up the Heroin and he gave her money to purchase it. McCormack wanted her to shoot him up. Ms. A tried to use the Heroin first

but it was a “burn bag,” meaning that it was no good so McCormack did not use it.

(Testimony of Ms. A; Exhibits 23 and 28)

Drug Abuse – continued (IAS# 2008-0011²⁶)

111. McCormack violated Article 5.4.1 (Charge 3, Specification 13) on August 19, 2005 when he failed to conform to the laws of Massachusetts, specifically when he obtained prescription controlled substances in violation of G.L. c. 94C. The TBD found this to be a class A violation and the Department ordered that McCormack’s employment be terminated. *(Exhibit 2; IAS# 2008-0011)*
112. McCormack violated Article 5.4.1 (Charge 3, Specification 15) on September 30, 2005 when he failed to conform to the laws of Massachusetts, specifically by obtaining prescription controlled substances in violation of Massachusetts General Laws Chapter 94C. The TBD found this to be a class A violation and the Department ordered that McCormack’s employment be terminated. *(Exhibit 2; IAS# 2008-0011)*
113. McCormack violated Article 5.4.1 (Charge 3, Specification 19) in that, between January 2001 and March 2008, he failed to conform to the laws of Massachusetts, specifically by obtaining prescription controlled substances in violation of Massachusetts General Laws Chapter 94C. The TBD found this to be a class A violation and the Department ordered that McCormack’s employment be terminated. *(Exhibit 2; IAS# 2008-0011)*
114. The TBD, as approved, found McCormack guilty of Charge 4, Specification 1, Truthfulness, Article 5.27.1, in that between January 2001 and March 2008 McCormack violated Article 5.27.1 (Charge 4, Specification 1) in that, between January 2001 and March 2008, he obtained prescription controlled substances through

²⁶ The approved TBD found McCormack not guilty of Charge 3, Specification 18 for uttering a false prescription March 19 and April 10, 2007.

misrepresentation, failure to disclose a material fact, and/or fraud. The TBD found this is a class B violation and the Department ordered that McCormack be suspended without pay for thirty (30) days. (*Exhibit 2; IAS# 2008-0011*)

115. At pertinent times, Dr. Robert Bonano (“Bonano”) was McCormack’s primary care physician. Detective Shannon interviewed Bonano several times to ascertain if he was a doctor of record, which he was, and to obtain other information regarding McCormack. Shannon and Det. Capt. Butler recorded an interview of Dr. Bonano which was not conducted under oath. (*Testimony of Shannon*)

116. Det. Lt. Shannon contacted Dr. Bonano for McCormack’s patient history record, which Bonano voluntarily gave him on April 1, 2008.²⁷ The patient history record is eighteen (18) pages long and covers the period 2001 to 2008; it is a chart with columns entitled Issue Date, Drug, Dosage, Quantity, Refills, Instructions, Pharmacy, and another column with no title because the column runs off of each page.²⁸ What is visible in the cells below the last column title is only the first letter in each of the two lines in each cell; the same letters (“B” on the first line of each cell and “R” on the second line of each cell)

²⁷ The Commission’s ruling on McCormack’s Motion in Limine reflects Court Order, April 26, 2011 (in the criminal case), which explicitly allowed consideration of Dr. Bonano’s April 1, 2008 patient history record for McCormack. *See* n.4.

²⁸ Based on an evidentiary ruling at the Commission hearing, Shannon testified about Exhibit 37 based on his memory of it, rather than viewing it. Based on his work in the Drug Diversion Unit and his investigation, Shannon recalled that such a document lists the date and type of drug prescribed, the manner in which it was to be taken, and the number of pills prescribed and that Exhibit 37 indicated that Dr. Bonano prescribed various medications for McCormack between 2001 and 2008, including many narcotic controlled substances such as Oxycodone, Oxycontin, and Fentanyl. Shannon was not cross-examined.

McCormack’s patient history (*Exhibit 37*) includes only medications prescribed by Dr. Bonano. It was redacted to remove the names of the pharmacies that may have filled the prescriptions, pursuant to the Commission’s ruling on McCormack’s Motion in Limine, which was based on Court Orders in the criminal court case. *See* n.4. Therefore, Exhibit 37 does not indicate that Dr. Bonano’s prescriptions for McCormack were actually filled. At the Commission hearing, in response to my inquiry about the incomplete last column of Exhibit 37, counsel for the Department indicated that this was the condition in which Exhibit 37 was received. I indicated to the parties that the document would be confidential and that, if it was to be considered, these factors may determine the weight it was to be given. Post-hearing, I asked the parties to brief the issues of privilege and confidentiality of the medical evidence beyond the briefs they provided regarding the Motion in Limine. Upon review of the parties’ arguments on the Motion in Limine relating to medical evidence and the parties’ post-hearing briefs in this regard, Exhibit 37 is given appropriate consideration.

appear in each cell in the same order in the last column. (*Testimony of Shannon; Exhibit 37*)

117. Among the narcotics and other prescriptions Dr. Bonano issued for McCormack were Oxycodone, Fentanyl and Oxycontin.²⁹ McCormack's Oxycodone prescriptions alone went from doses of 180 tablets (30mg, one (1) to two (2) every four (4) hours), around the time of his surgery in May 2005, to 360 tablets (30mg, two (2) to three (3) every three (3) hours) in March 2008, each being prescribed between approximately one (1) and three (3) weeks apart. Oxycodone is, by far, the narcotics prescription that Dr. Bonano issued most frequently and in the greatest numbers for McCormack. Dr. Bonano also prescribed Fentanyl patches for McCormack off and on beginning with a 75mcg/hr prescription for five (5) patches (one (1) patch every seventy-two (72)), followed by a period of approximately one year in which Dr. Bonano did not prescribe Fentanyl, to a resumption of Fentanyl prescriptions, increasing the dose to 1200mcg/hr at one period in 2007, for thirty (30) patches (one (1) every six (6) to eight (8) hours) and then prescribing mostly 400mcg/hr doses, for twenty-eight (28) patches (one (1) to two (2) every four (4) to six (6) hours) through March 2008. Dr. Bonano's prescription record for this time period shows that he also prescribed Oxycontin for McCormack mostly in the following periods and doses: in the summer of 2005, 40mg or 80mg doses for sixty (60) pills, (one (1) every twelve (12) hours) and November 2005 through May 2006, 80mg doses for sixty (60) pills (one (1) every twelve (12) hours) approximately every three (3) to four (4) weeks, with the last such prescription issued in December 2007. (*Exhibit 37*)

²⁹ Dr. Bonano issued other prescriptions for McCormack during this time for narcotics and non-narcotics but they were not referenced at the hearing.

118. McCormack's West Roxbury Pharmacy patient profile³⁰ shows that a Dr. Lowney prescribed "Hydrocod/Ibuprof 7.5/200mg Tablet" approximately eleven (11) times between February 27, 2004 and July 8, 2004 for McCormack and that the prescriptions were filled.³¹ The time period of Dr. Lowney's prescriptions for McCormack overlaps with the time period that Dr. Bonano issued prescriptions for McCormack. Nine (9) of the eleven (11) prescriptions for Hydrocodone/Ibuprofen issued by Dr. Lowney for McCormack were for sixty (60) pills. Dr. Lowney's instructions generally were to take one (1) tablet every four (4) to six (6) hours. (*Exhibit 34*)
119. In 2005, Dr. Robert O'Neill³² ("O'Neill"), a dentist who has been in practice for twenty-nine (29) years, performed a root canal procedure on McCormack. Dr. O'Neill prescribed Hydrocodone, a pain medication, and Amoxicillin for McCormack. These prescriptions appear on the West Roxbury Pharmacy patient profile along with Dr. Lowney's prescriptions for McCormack noted above. Dr. O'Neill would not have prescribed Hydrocodone for McCormack if he was aware that another physician prescribed pain medications or narcotics for McCormack around that time. (*Testimony of Dr. O'Neill; Exhibit 34*)
120. Specifically, on August 19, 2005, West Roxbury Pharmacy filled a prescription issued by Dr. O'Neill for McCormack for twenty (20) "Hydrocodone/Apap 7.5" taking one (1) tablet every six (6) hours as needed, and for thirty (30) "Amoxicillin 500 mg Capsule" taking one (1) capsule three (3) times per day. (*Exhibit 34*) McCormack paid cash for

³⁰ The West Roxbury pharmacy records were allowed into evidence in the Commission's ruling on the Motion in Limine, which ruling reflects the Court Orders in the criminal case. See p. 3 and n.4.

³¹ Exhibit 34 shows that McCormack was prescribed and filled several other prescriptions as well.

³² The Commission ruling on McCormack's Motion in Limine reflects the Court Orders in the criminal court case, which explicitly allowed consideration of Dr. O'Neill's testimony as long as it did not reference the excluded CVS and Walgreen's records, which it did not. See n.4.

the prescriptions, as well as all of the other eighteen (18) prescriptions filled by West Roxbury Pharmacy between February and July, 2004 and in August and September, 2005. (*Exhibit 34; Testimony of Ms. A*) Thirteen (13) of the eighteen (18) prescriptions McCormack had filled and that he paid for at West Roxbury Pharmacy were for Hydrocodone or medication with Hydrocodone in them. (*Exhibit 34; Testimony of Ms. A*)

121. At pertinent times, Ms. A observed McCormack calling Dr. Kramer, McCormack's therapist, and asking for prescription narcotics; she also observed McCormack filling such prescriptions at CVS. (*Testimony of Ms. A*)
122. On September 14, 2005, West Roxbury Pharmacy filled a prescription issued by Dr. O'Neill for McCormack for thirty (30) "Amoxicillin 500 mg cap" taking one (1) capsule three (3) times per day. On September 30, 2005, West Roxbury Pharmacy filled a prescription issued by Dr. O'Neill for McCormack for fifteen (15) "Hydrocodone/Apap tablet" taking one (1) every six (6) hours as needed. (*Exhibit 34*)
123. Dr. Bonano's patient history record for McCormack indicates that McCormack was receiving prescriptions from Dr. Bonano around the same time that he was filling prescriptions at West Roxbury Pharmacy issued by Dr. O'Neill. Specifically, Dr. Bonano's patient history record for McCormack indicates that Dr. Bonano issued prescriptions for McCormack in the late summer and early fall of 2005 including:

August 2, 2005:

- Oxycodone (30mg, 240 pills, taking two (2) every six (6) hours)
- Fentanyl (100 mcg/hr, ten (10) patches, applying 1 patch every 72 hours)
- Oxycontin (40 mg, 60 pills, take one (1) every twelve (12) hours)

August 22, 2005:

- Oxycodone (30 mg, 240 pills, taking two (2) every six (6) hours)
- Fentanyl (100 mcg/hr, five (5) patches, applying one (1) patch every 72 hours)

August 23, 2005:

- Oxycodone (30 mg, 240 pills, taking two (2) every four (4) hours)

September 13, 2005:

- Fentanyl (75 mcg/hr, 5 patches, applying one (1) patch every 72 hours)
- Oxycodone (30 mg, 360 pills, taking two (2) every four (4) hours)

October 25, 2005:

- Oxycodone (30 mg, 360 pills, taking two (2) every four (4) hours)

Dr. Bonano's patient history record for McCormack has been redacted and the visible information does not indicate if and when these prescriptions were filled. However, based on a preponderance of the documentary and testimonial evidence, and, since it is unlikely a physician would continually prescribe the same medication for such an extended time period, I infer that McCormack filled at least the vast majority of these narcotic prescriptions. (*Exhibits 34 and 37*)

Findings of the State Police Department

124. By memorandum from Department Colonel Alben to McCormack dated November 6, 2012, Colonel Alben indicated that evidence at the Trial Board hearing established that McCormack was guilty of fifty-six (56) charges and that Colonel Alben was adopting the Trial Board's October 26, 2012 Findings and Recommendations. The approved TBD found McCormack guilty of the following charges and indicated the following discipline, with **highlighted** notations added to indicate [1] which Charges and Specifications were not considered by the Commission because related evidence was excluded by the Commission in a ruling on McCormack's Motion in Limine or [2] the charges the Commission finds are otherwise unsupported by a preponderance of the evidence:

Motor Vehicle Stops (IAS# 2010-0007):

- Charge 1, Specification 1, violation of Rule 5.3 (General Conduct)
(ten (10) days suspended without pay)
- Charge 2, Specifications 1 and 2, violation of Rule 5.4 (Conformance to
Laws)
(written reprimands for each)
- Charge 3, Specifications 2 and 3, violation of Rule 5.27 (Truthfulness)
(termination for each)

Barnstable Probation (IAS# 2011-0016):

- Charge 1, Specifications 1 – 4, violation of Rule 5.1 (Violation of Rules)
(thirty (30) days suspended without pay for each, with the
suspension for Charge 1, Specification 4 being concurrent with
Charge 1, Specification 3)
- Charge 2, Specification 1, violation of Rule 5.2 (Unbecoming Conduct)
(thirty (30) days suspended without pay)
- Charge 3, Specifications 1 – 3, violation of Rule 5.3 (General Conduct)
(ten (10) days suspended without pay for each) [2] as to Charge
3, Specification 1 (transporting Ms. A to New Hampshire)
- Charge 4, Specifications 1 – 4, violation of Rules 5.4 (Conformance to
Laws) [2] as to Charge 4, Specification 1 (transporting Ms. A
to New Hampshire)
(for Charge 4, Specification 1, ten (10) days suspended without
pay concurrent with Charge 2, Specification 1)
(for Charge 4, Specifications 2 – 4, termination for each)
- Charge 5, Specifications 1 and 2, violation of Rule 5.10 (Alcoholic
Beverages and Drugs)
(thirty (30) days suspended without pay for each)
- Charge 6, Specifications 1 – 4, violation of Rule 5.15 (Abuse of Position)
(for Charge 6, Specifications 1 – 3, sixty (60) days suspended
without pay for each, the suspension for Specification 3 concurrent
with Charge 6, Specification 2; for Charge 6, Spec. 4, written
reprimand)
- Charge 7, Specification 4, violation of Rule 5.27 (Truthfulness)
(thirty (30) days suspended without pay)

Prescription Drug Abuse and False Information/Misrepresentation of Medical
Condition - Back Injury (IAS# 2008-0011):

- Charge 1, Specification 1, violation of Rule 5.2 (Unbecoming Conduct)
(thirty (30) days suspended without pay – concurrent with same
for Charge 2, Specification 1 below) [1]
- Charge 2, Specification 1, violation of Rule 5.3 (General Conduct)
(thirty (30) days suspended without pay – concurrent with same
for Charge 1, Specification 1 above) [1]
- Charge 3, Specifications 1 – 17 and 19, violation of Rule 5.4
(Conformance to Laws)

(termination for each Specification) [1] but Specifications 13, 15 and 19 are included

Charge 4, Specifications 1 – 3, violation of Rule 5.27 (Truthfulness) (for Charge 4, Specification 1, thirty (30) days suspended without pay and for Specifications 2 and 3 termination each) [1] but Specifications 1 and 2 are included

Motor Vehicle Accident (IAS# 2011-0027):

Charge 1, Specification 1, violation of Rule 5.1 (Violation of Rules) (thirty (30) days suspended without pay)

Charge 2, Specification 1, violation of Rule 5.3 (General Conduct) (thirty (30) days suspended without pay)

Charge 3, Specification 1, violation of Rule 5.4 (Conformance to Laws) (written reprimand)

Charge 4, Specifications 1 – 3, violation of Rule 5.15 (Abuse of Position) (ninety (90) days suspended without pay, with the suspension for Specs. 2 and 3 to be concurrent with Spec. 1)

Charge 5, Specifications 1 – 3, violation of Rule 5.27 (Truthfulness) (thirty (30) days suspended without pay)

(Exhibit 22; TBD, pp. 22-23)

125. Section 4 of Col. Alben's November 6, 2012 memorandum to McCormack advised him of the right of a member aggrieved by the finding of a State Police Trial Board to appeal the decision pursuant to G.L. c. 31, §§ 41 – 45. In addition, Col.

Alben's memorandum revokes McCormack's license to possess a firearm. *(Exhibit 22)*³³

126. The Trial Board and Col. Alben found McCormack not guilty of the following matters:

Motor Vehicle Stops (IAS# 2010-0007):

Charge 3, Specifications 1 and 4, violation of 5.27 (Truthfulness)

³³ Col. Alben's November 6, 2012 memorandum to McCormack also states, "Accordingly, I am, in addition to my approval of the findings and recommendations of the Trial Board and consistent with my authority under law, ordering that you be terminated/dishonorably discharged from the Department of State Police, effective Tuesday, November 6, 2012." (Exhibit 22, p. 3) However, it has been twice adjudicated that the Colonel's discipline authority is not independent of the Trial Board's findings and recommendations and is subject to review under G.L. c. 22C, § 13. Therefore, Col. Alben's order is considered with the Trial Board findings and recommendations. *See Comm. of Mass. Dep't of State Police v. Reilly*, Superior Court C.A. No. 06-2349, May 8, 2008 (MacDonald, J.); and *Comm. of Mass. Dep't of State Police v. Hicks*, Superior Court C.A. No. 07-3766-A, July 25, 2008 (Quinlan, J.).

Barnstable Probation matters (IAS# 2011-0016):

Charge 7, Specification 1 through 3, violation of 5.27 (Truthfulness)

Prescription Drug Abuse and Misrepresentation of Medical Condition

- Back Injury (IAS# 2008-0011):

Charge 3, Specification 18, violation of 5.4 (Conformance to Laws)

(*Exhibit 22*)

DISCUSSION

Applicable Law

G.L. c. 22C, § 13 provides,

“Any uniformed member of the state police who has served for 1 year or more and against whom charges have been preferred shall be tried by a board to be appointed by the colonel or, at the request of the officer, may be tried by a board consisting of the colonel. Any person aggrieved by the finding of such a trial board may appeal the decision of the trial board under sections 41 to 45, inclusive of chapter 31. A uniformed officer of the state police who has been dismissed from the force after trial before such a trial board, or who resigns while charges to be tried by a trial board are pending against him, shall not be reinstated by the colonel.”

G.L. c. 31, § 43, provides:

“If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority’s procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.”

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, *rev.den.*, 426

Mass. 1102 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass.App.Ct. 486, 488, *rev.den.*, 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514, (1983) By virtue of the powers conferred by their office, police officers are held to a high standard of conduct. "Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question, their ability and fitness to perform their official responsibilities." Police Commissioner of Boston v. Civil Service Commission, 22 Mass.App.Ct. 364, 371 (1986).

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36, 133 N.E.2d 489 (1956).

"The commission's task . . . is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision,'" which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823 (2006); *see also*

Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983) and cases cited. The adverse inference is appropriate when the opposing party “ ... has established a case adverse to the party invoking the privilege.” Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006)(citations omitted).

It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [Commission] upon which a court conducting judicial review treads with great reluctance.”

Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003); *see* Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). *See also* Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003). Pursuant to G.L. c. 233, § 21, “[t]he conviction of a witness of a crime may be shown to affect his credibility” with four exceptions for certain dated misdemeanors and felonies, none of which is applicable here. Further, the Supreme Judicial Court has found,

“Our cases have recognized that which common sense suggests: convictions of some crimes may affect credibility more or less than others. For example, in Commonwealth v. Hall, 4 Allen 305, 307, we said, ‘It is obvious that some offences that are not felonies may affect one’s credibility much more than some felonies.’ And, in Quigley v. Turner, 150 Mass. 108, 109, we said, ‘Undoubtedly a conviction for some offences should affect this [credibility] but slightly, perhaps not at all.’”

Commonwealth v. Bumpus, 362 Mass. 672, 683 (1972)

A witness’ prior convictions, like larceny and others that pertain to truthfulness, may be admitted into evidence. Commonwealth v. Pierce, 66 Mass.App.Ct. 283 (2006)(judge did not abuse discretion in excluding certain convictions at criminal trial where defendant impeached witness with convictions, *inter alia*, regarding truthfulness).

The Commission is often called upon to consider medical records in consideration of

appeals. As indicated to the parties in each appeal to the Commission, the Standard Adjudicatory Rules of Practice and Procedure at 801 CMR 1.00, *et seq.*, apply. Although the express terms of the Administrative Procedures Act, G.L. c. 30A, § 1, do not apply to the Commission, the Commission may be guided by them. Pursuant to G.L. c. 30A, § 11, “Unless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law” While Massachusetts has specific statutes protecting certain information as privileged, it does not with regard to the medical information addressed here. Rather, medical records may be the subject of confidentiality, a violation of which is not exclusion. *See Bratt, et al v International Business Machines Corp., et al*, 392 Mass. 508 (1984); Massachusetts Guide to Evidence, 2013 Edition, Supreme Judicial Court Advisory Committee on Massachusetts Evidence Law, Article V, Privileges and Disqualifications, www.mass.gov/courts/sjc/guide-to-evidence; Commonwealth v Senior, 433 Mass. 453 (2001)(results of blood alcohol test on defendant following a motor vehicle accident were properly introduced into evidence as there is no statutory patient-physician privilege per se and even if confidential the law does not require their exclusion); Schwartz v Goldstein, 400 Mass. 152 (1987)(court will not impose extraordinary remedy of excluding physician’s prior inconsistent statements to an insurance agent for breach of confidentiality or privacy at least in civil cases). The parties addressed these issues in regard to McCormack’s Motion in Limine and in multiple post-hearing submissions. Thus, although the medical records in this case may be confidential, that does not preclude their consideration here.

Credibility

Appellant’s Witnesses

Appellant Edward McCormack attended all three days of the Commission’s hearing.

Asked at various points in the hearing if McCormack would testify, his counsel indicated that he had not yet decided. However, by the close of the hearing, McCormack did not testify. The Department having provided sufficient evidence of certain charges against McCormack, we draw an adverse inference from his failure or refusal to testify.

The Appellant's sole witness was his brother, Scott McCormack, who testified that he wants no harm to the Appellant or to anyone in his family. He is nearly one year older than the Appellant and he has been a Trooper for thirteen (13) years. Since 2007, he has been assigned to the Middlesex District Attorney regarding homicides where he has received excellent reviews. Prior to that, he was assigned to narcotics matters. Scott McCormack and Det. Lt. Pagley know each other from having worked together in the Department at some point in time. There appears to be no history of ill will between them. Scott McCormack also knows Retired Det. Lt. Shannon; he attended Shannon's retirement party, where he said that Shannon was not setting up his brother. Scott McCormack confirmed his statement about Shannon at the Commission hearing.

A significant amount of Scott McCormack's limited testimony related to a brief conversation he had with a fellow Trooper on the Appellant's cell phone during one of the motor vehicle stops on January 28, 2010. Scott McCormack and Det. Lt. Pagley have different recollections about whether Scott McCormack accurately stated his rank and assignment. However, the matter is not dispositive of the charges against the Appellant and I make no finding in this regard.

Despite testifying that he has seen the Appellant's documents apparently related to this case, Scott McCormack said that he did not know if the Appellant failed to provide appropriate information about his back injuries in his application or his health and employment forms; that

he did not know about the Appellant's involvement with Ms. A; and that he did not know if the Appellant lost time at work at the Sheriff's Office after the Appellant's back was injured during an incident with a prisoner in 1999. He was not asked about the allegations concerning the Appellant's prescription and other drug abuse, the motor vehicle accident in May 2011, and the Appellant's conduct at the Barnstable District Court Probation Department and the Community Corrections Center. Therefore, the testimony Scott McCormack provided was credible, though the subjects of his testimony was limited.

The Department's Witnesses

Det. Lt. Shannon had been a member of the Department for more than thirty (30) years when he retired in 2011, having spent considerable time assigned to the Department Drug Diversion Unit and conducting investigations. He conducted the investigation regarding allegations that McCormack was illegally obtaining prescription narcotics. His testimony was direct and straightforward but limited to direct examination as there was no cross-examination. It was also limited because evidence supporting many of the allegations in his investigation was precluded by the ruling on Appellant's Motion in Limine here, which mirrored the court's ruling in McCormack's criminal case. Further, his testimony about Exhibit 37, Dr. Bonano's record, was limited to what he could recall, rather than testifying while viewing the document because of privilege and/or confidentiality concerns at the time. McCormack argues that Shannon harbors significant bias against him because Shannon was involved in the unsuccessful effort to prosecute McCormack. I observed no outward appearance of bias in Shannon's testimony and his investigation. Further, evidence of the Appellant's drug abuse was supported by the exhibits as well as the witnesses who have extensive experience working with substance abusers. For these reasons, the limited testimony of Det. Lt. (ret.) Shannon was credible.

Det. Lt. Pagley has been a member of the Department for nearly three (3) decades. He has worked in different units in the Department, most recently in the Internal Affairs Unit where he has conducted many investigations prior to the three he conducted relating to this case. Pagley's responses to examination were direct; his professional appearance and responses to examination belied any suggestion of personal animus toward McCormack. Pagley had worked with Scott McCormack, the Appellant's brother; there was no indication of animus between Pagley and Scott McCormack.

Pagley recalled many significant details of his three (3) investigations in this case, for which he interviewed law enforcement personnel who had been involved in the subjects of the investigations, as well as others, and he reviewed certain documents. He attempted to interview McCormack but McCormack did not appear. Pagley was precluded from testifying about the conclusions of his investigations because the Department did not produce his conclusions. With regard to the matters about which he did testify, Pagley was very credible.

Trooper Kiley, who has been with the Department for approximately seventeen (17) years, is a seasoned and experienced Trooper. He stopped McCormack in his (McCormack's) vehicle briefly on January 7, 2010 and his testimony was limited to the brief stop and his related memorandum. He recalled the details of his encounter with McCormack, including the timing of the stop, the reason he stopped McCormack, the speed of McCormack's vehicle, the area speed limit, checking the record for the vehicle license plate, what McCormack said and did when he was stopped, checking McCormack's criminal justice information system ("CJIS") record for the vehicle license plate, and his (Kiley's) own reactions to the stop. His recollection is supported by the memorandum he wrote a week after the stop in this regard. (Exhibit 11). There is no evidence that Kiley held a bias against McCormack. For these reasons, Trooper Kiley's

testimony was very credible.

YPD Det. Lundegren, is assigned to the YPD Narcotics Unit, was a Patrol Officer during the January, 2010 motor vehicle stops of McCormack, and has been on the force for approximately thirteen (13) years. As an experienced professional, Lundegren clearly recalled the January 28, 2010 motor vehicle stops of McCormack in which he was involved in significant detail, including the road conditions, the adjacent street names, the speed limit in the area where he stopped McCormack, that emergency lights were on in the cruisers of officers he was assisting at an OUI stop at the time he stopped McCormack, his conversations with McCormack, Trooper Fitzpatrick and YPD Officer Gibney that night (whose testimonies supported Lundegren's testimony), the cell phone conversation between Fitzpatrick and McCormack's brother, the timing of events that night, the individual in McCormack's truck at one of the stops, and learning about the criminal charges against McCormack, as supported by the exhibits. For these reasons, Det. Lundegren was very credible.

At the time of the Commission hearing, Trooper Fitzpatrick had been a member of the Department for approximately seven (7) years. He has been assigned to the Yarmouth Barracks for approximately four (4) years. Fitzpatrick was the first Trooper to be involved in a stop of McCormack on January 28, 2010. Specifically, Officer Lundegren called the Yarmouth Barracks and spoke to Fitzpatrick after he (Lundegren) had stopped McCormack that night. Lundegren was suspicious that McCormack showed him a badge when he stopped him but could not produce appropriate police ID. Fitzpatrick told Lundegren that a badge belonging to retired Trooper J.J. McCormack had been stolen, leading to another stop of McCormack to investigate the theft. Fitzpatrick appeared to testify in a professional and sincere manner, recalling a number of details consistent with other evidence about when events occurred that night, conversations he

had with other law enforcement officials and McCormack that night and the information he obtained and the actions he took, which details were generally supported by the testimony of Officers Lundegren and Gibney. However, there were two errors in his testimony. First, he testified that the badge of retired Trooper J.J. McCormack was stolen a couple of weeks before January 28, 2010 when, as his own report (Exhibit 16) indicates, it was stolen the night before. Secondly, Fitzpatrick testified that Officer Gibney stated that McCormack had shown her his badge when she stopped him on January 28, 2010. However, Officer Gibney's testimony and report (Exhibit 17) indicate that she said McCormack had not shown her a badge that night. The first error is of little concern since, either way, J.J. McCormack's badge had been stolen prior to January 28, 2010. The second error is of greater concern since there is no allegation that McCormack showed her a badge. Nonetheless, I detect no bias on the part of Fitzpatrick behind this error and regard it as a flawed memory. Therefore, I find Trooper Fitzpatrick generally credible.

YPD Officer Gibney had been on the force for approximately three (3) years when she stopped McCormack on January 28, 2010 after the stops of Officer Lundegren and Trooper Fitzpatrick. Gibney's appearance was professional and unguarded, responding directly to examination. She did not know McCormack before she stopped his vehicle on January 28, 2010. She spoke with him briefly at the stop. Her testimony was consistent with the timely report she submitted to her superior the day after the stop (Exhibit 17). She testified, as also reflected in her report, that she initially did not know that McCormack's truck was the one stopped by Officer Lundegren and Trooper Fitzpatrick earlier that night, admitting that she had heard of the previous stops. In light of the foregoing, Officer Gibney was very credible.

BPD Officers Ellis and Waskiewicz were at the May 10, 2011 car accident involving McCormack and Mr. M. At the time, Ellis had been on the force for approximately ten (10) years and Waskiewicz had been on the force for approximately one year. They each spoke to McCormack and Mr. M individually to investigate how the accident occurred. They responded to inquiries from the State Police about the car accident. Their respective testimonies at the Commission hearing support what Mr. M reported in his unsworn interview with Det. Lt. Pagley and Det. Lt. David DeBuccia. Ellis, in particular, based on her experience, found McCormack's assertion that Mr. M had backed up his minivan not credible, as she did McCormack's assertion that the much older, unhealthy Mr. M took a swing at McCormack. Ellis found McCormack responsible for the accident, as did McCormack's insurer. Both Officers Ellis and Waskiewicz provided detailed responses to examination questions when they were able, pausing to inquire when they were unclear about the questions. Neither Officer evidenced any bias against McCormack at the Commission hearing nor in their conduct at the car accident. Therefore, the testimony of Officers Ellis and Waskiewicz were very credible.

Barnstable Court Services Coordinators Spellman and Finn met McCormack on May 24, 2011 while at work when McCormack was looking for Ms. A. Both Spellman and Finn have many years of experience in their professions. First they spoke with McCormack together, following which, Spellman spoke with McCormack alone. Their sequestered testimony was mutually consistent and consistent with Exhibit 24. They concurred that McCormack showed them a State Police badge when he arrived, he was wearing a Mass. State Police hat, their conversations with McCormack, and that they answered his questions about Ms. A as a professional courtesy to McCormack as a State Trooper. Since Finn and Spellman have been involved in law enforcement for many years and likely interact with State Police, I credit their

characterizations of the badge that McCormack showed them as a State Police badge.³⁴ If either Finn or Spellman had a bias, it might be a favorable bias held by Spellman since he and McCormack grew up together in West Roxbury. There was no evidence of negative bias on behalf of either Spellman or Finn. McCormack presented himself as a State Trooper doing his job and Spellman's and Finn's uncontradicted testimony is that they responded accordingly, including calling Ms. A's Probation Officer because Finn believed McCormack was at the BCCC because there was a warrant for Ms. A's arrest. In light of the foregoing, both Mr. Spellman and Mr. Finn were very credible.

Assistant Chief Probation Officer Elzy Tubbs has worked at the Massachusetts Trial Court for approximately twenty years where he supervises between five (5) and seven (7) Probation Officers. He testified in a clear, direct and professional manner, taking time to ensure that he was responding to the particular questions asked of him. In addition to his considerable professional experience, Tubbs testified based on his personal contact with McCormack when Probation Officer Larson asked him (Tubbs) to speak with McCormack regarding his (McCormack's) attendance at Ms. A's probation meetings. Tubbs wanted to determine the reason McCormack was attending Ms. A's probation meetings and related proceedings and met with him several times in that regard. Tubbs testified in detail about McCormack's appearance, determining that it was not normal, and about McCormack's responses when he (Tubbs) asked him for a business card and Tubbs saw that McCormack was carrying what he called an "older" Trooper badge.³⁵ He recounted that it seemed peculiar to him that someone had that much

³⁴ By this time, McCormack's numbered badge and replica badge had been seized. Thus, the origin of the badge shown to Finn and Spellman (and to Assistant Chief Probation Officer Tubbs and Mr. M at other times) is unknown. However, I find no conspiracy among these people, some of whom did not know each other, and they saw McCormack each time in different circumstances.

³⁵ Since Tubbs has been involved in law enforcement for two decades and likely interacts with State Police, I credit his characterization of the badge he saw in McCormack's wallet as an older State Police badge, while I note that, by

interest in a probationer. Tubbs' testimony was corroborated by the testimony of Probation Officer Larson. For these reasons, Mr. Tubbs' testimony was highly credible. (*Testimony of Tubbs*)

Probation Officer Larson has been a Probation Officer for more than thirty years and has extensive knowledge and training in this regard, working mostly with drug addicted probationers. She testified in a very professional and consistent manner, without undue effect, on matters about which she has both professional and personal knowledge, including McCormack's physical appearance the many times he was in the Barnstable District Court Probation office with Ms. A. She testified at length that McCormack led her to believe that he was an active Trooper and that he repeatedly tried to inappropriately interject himself into Larson's probation and that she had to tell him repeatedly that it was a confidential matter. Her testimony about McCormack's actions was confirmed by the testimony of Assistant Chief Probation Officer Tubbs, whom she had consulted about McCormack, and by the testimony of Community Correction Officers Finn and Spellman. Consequently, Ms. Larson's testimony was highly credible.

Mr. Sweeney, Suffolk Sheriff Office Director of Human Resources, appeared in response to a subpoena duces tecum for Sheriff's Office documents regarding the 1999 incident in which McCormack was assaulted by an inmate resulting in an injury to McCormack's back. He knowledgeably testified about available time-keeping records for McCormack and explained that such paper records for the end of 1999 are unavailable because time-keeping was transferred to automated systems at the city of Boston and then to the state, amidst the Y2K computer difficulties. However, Sweeney produced a doctor's note, among other documents, indicating

this time, McCormack's numbered badge and replica badge had been seized. Thus, the origin of the older State Police badge that McCormack showed Tubbs is unknown.

that McCormack would be unable to attend work December 10 – 12, 1999 and that McCormack could return to work December 13, 1999 “if feeling better.” (Exhibit 38) He also produced the Appellant’s own report for the December, 1999 incident. Given Sweeney’s detailed testimony and the documents he produced that support his testimony, Sweeney was very credible.

Dr. O’Neill, a dentist for nearly thirty (30) years, acknowledged without hesitation that he treated McCormack in 2005 and that he recalls, and West Roxbury Pharmacy records (Exhibit 34) show, that he prescribed narcotics for McCormack twice at or about the time that he treated McCormack. Asked directly if he knew that McCormack was receiving other prescriptions when he (O’Neill) was issuing prescriptions for him, Dr. O’Neill stated clearly that he did not and that if he did know, he would not have prescribed narcotics for McCormack on August 19, 2005 and September 30, 2005. Dr. O’Neill’s testimony was credible.

Dr. Morris works for All One Health, which provides medical services to the Department. He has worked with the State Police since at least 2001, when McCormack applied for employment at the Department. He testified about the importance of candidates filling out the Back Assessment form completely and accurately as a part of the physical examination process for candidates. He reported, as Exhibits 35 and 36 (in the Human Resources Section filled out by McCormack) indicate, that McCormack did not report on his Back Assessment Form that he had a 1999 back injury and that he missed work time at the Sheriff’s Office; nor did he report that he was out of work for six (6) weeks at the Sheriff’s office as a result of the 1998 car accident in which his back was injured. All One Health does not receive the candidates’ job application forms. Consequently, Dr. Morris’ office did not know that McCormack had been out of work as a result of the 1998 back injury and it had no information about the 1999 injury at all. Even if Dr. Morris’ office did have McCormack’s job application form, it would not have known

that McCormack had been out of work as a result of his 1999 injury. Dr. Morris' testimony shed light on the importance of the Back Assessment form filled out by candidates in helping to screen for back problems because recruits' backs are challenged at the academy and, later, on the job. Having all appropriate information from recruits allows Dr. Morris and his staff to make further inquiries and conduct tests relating to a candidate's physical condition. Dr. Morris' testimony was thoughtful and sincere. Since his office is contracted to the Department, conjecture may suggest that Dr. Morris had a bias in favor of the Department but I found none. Dr. Morris' testimony addressed the professional, medical reasons for having the information that the Appellant did not provide and how the lack of such information hampered his ability to appropriately assess the Appellant's back health. For these reasons, Dr. Morris was very credible.

Ms. A provided testimony about her relationship with McCormack, their various forms of drug abuse, his conduct at the Barnstable Probation Department, and his threatening conduct after she terminated their romantic relationship. She appeared to be physically well and comfortable; she did not exhibit the overt signs of addiction described by Probation Officer Larson. In addition, Ms. A testified openly about her criminal record and history of drug abuse that do not put her in the best light and could negatively affect any open criminal charges against her. Further, she admitted that because of her history of drug abuse, her daughter was in her grandmother's custody, and that she does not recall specific dates and names well.

Other aspects of Ms. A's testimony and background raise questions. For example, Ms. A appeared in response to a subpoena, suggesting that she was not eager to testify against McCormack. On cross-examination, Ms. A stated that she gave the State Police an interview concerning McCormack around the time that Det. Lt. Shannon appeared with her in Quincy

District Court, where a default warrant had been issued for her arrest, the warrant was subsequently removed and she was placed on pre-trial probation. In addition, Ms. A conceded that about this time, she had a phone text message exchange with her then-boyfriend (not McCormack) stating that the State Police offered to assist her if she assisted the Department in its investigations of McCormack. However, the timing of these events is in question.³⁶ Further, Ms. A has been convicted of, or pleaded guilty to a number of counts of breaking and entering into a property with intent to commit a felony in Barnstable District Court in 2010. Ms. A's convictions or guilty pleas for breaking and entering a property in 2010 are not generally considered to be crimes involving truthfulness, such as perjury and larceny, that would directly affect a witness' credibility considerably. Ms. A's BOP record indicates that she was charged with larceny in Quincy District Court at another time in 2010 but the record, dated June 14, 2011, shows that those cases were open at that time so we do not know if she was ultimately convicted or acquitted of the charges or if they were disposed of otherwise. Two similar charges against Ms. A in another court in 2004 were dismissed.

Although many charges against Ms. A have been dismissed, the number of charges raises concern about her credibility generally but there are other factors to consider. For example, even though State Police suggested to Ms. A that she seek an abuse prevention order from the courts in order to protect her from McCormack's threats to implicate her in criminal matters and interfere with her child custody efforts, she declined to do so; instead she changed her contact information in an attempt to avoid any further threats from McCormack. Ms. A did not testify against McCormack in the criminal court case in which he was prosecuted. In addition, Ms. A reported that she observed that McCormack always paid cash for his narcotic prescriptions, as

³⁶ Ms. A's BOP record indicates that a default warrant was issued in the Quincy cases in August 2010 and that the warrant was removed in February 2011, five (5) months prior to Ms. A's interview by the State Police so it is not clear to what default warrant and removal this refers. Exhibit 26.

indicated in the West Roxbury Pharmacy list of his prescriptions. Although Probation Officer Larson found Ms. A's probation conduct questionable while she (Ms. A) was with McCormack, her conduct improved when she ended her relationship with McCormack. Further, Ms. A's observations of McCormack's actions and physical appearance at the Barnstable Probation Department are supported by the testimony of Probation Officer Larson and other witnesses and documents. Ms. A also reported that McCormack had a lot of prescriptions for narcotics, which is supported by Dr. Bonano's report of prescriptions he issued to McCormack and the West Roxbury Pharmacy record. Ms. A also testified that when McCormack allowed her to wear his badge while he took a photograph of her, he accurately told her he could get in trouble with the Department for doing so, which she may not have known had he not told her. State Police surveillance and photographs also documented McCormack's contact with Ms. A for a period of time. Also, it is clear from Ms. A's testimony that in accompanying her to Probation appointments, McCormack was aware that she had been convicted. For these reasons, I find that Ms. A's credibility, while tarnished, is relatively reliable.

Analysis

The Appellant, Edward McCormack, was charged with sixty-two (62) violations of Article 5 of the Rules of Regulations at the Department of State Police Trial Board hearing. The Department found McCormack guilty of fifty-six (56) charges. (*Exhibit 22*) In a criminal prosecution of the Appellant, the Court barred evidence that it adjudicated had been illegally obtained, following which nearly all of the criminal charges were dismissed and a jury found the Appellant not guilty on two remaining charges. At the Commission, the Appellant asked to exclude the evidence excluded in court and more, which evidence is apparently the basis of approximately nineteen (19) prescription drug abuse Charges and Specifications for which the

Department disciplined the Appellant. The Appellant's request was granted such that the prescription records of CVS and Walgreen's were excluded.³⁷

Motor Vehicle Stops

Regarding the motor vehicle stops, McCormack appeals the General Conduct (TBD Charge 1, Specification 1), Conformance to Laws (TBD Charge 2, Specifications 1 and 2), and Truthfulness (TBD Charge 3, Specifications 2 and 3) charges. Although McCormack was suspended during the motor vehicle stops, he is still subject to the Rules and Regulations of Article 5. A preponderance of the evidence has been established, based on the pertinent documents and credible witness testimony, that McCormack failed to obey all pertinent laws, in violation of Article 5.4.1, when he drove 85 mph in a 60 mph zone before being stopped by Trooper Kiley on January 7, 2010. McCormack also failed to conform to the law when he speeded and failed to yield at an intersection on January 28, 2010. McCormack argues that since he was not given tickets or citations for speeding on these occasions he cannot be guilty of TBD Charge 2. Although McCormack was not given citations during these stops, he nevertheless failed to conform to the laws of the United States and Massachusetts. The reason he was not ticketed is that he told the Officers that he was a Trooper, showed them a badge, and failed to state that he was suspended.³⁸ The Appellant was not stopped for a motor vehicle offense at the second stop on January 28, 2010; rather, he was stopped regarding the recent theft of retired Trooper J.J. McCormack's badge.

³⁷ See n.4.

³⁸ On cross-examination, the Officers who stopped McCormack were asked if identifying oneself as a Trooper at a stop is a "courtesy" to fellow Officers, letting them know that she/he is safe because the driver is also an Officer/Trooper. Thus, McCormack appears not to deny that he did so but argues that he did it for the Officers' safety concerns. While his actions may have secondarily benefitted the stopping Officers, it is clear that it primarily benefitted McCormack by allowing him to avoid the consequences of his actions while suspended.

The standard that the Commission follows is whether the Appellant's actions constitute "substantial misconduct". Based on pertinent documents and credible witness testimony, McCormack's actions constitute "substantial misconduct" such that he violated the cited Rules and Regulations when he committed motor vehicle offenses, for which he did not receive citations, during the stop by Trooper Kiley on January 7, 2010, and the stop by Lundegren on January 28, 2010. Furthermore, it is clear that McCormack failed to conform to the laws of Massachusetts in violation of Article 5.4.1 when Officer Gibney stopped him on January 28, 2010. Gibney issued McCormack two citations: one for failure to yield at a stop sign and one for failure to change his address at the RMV. Such conduct constitutes "substantial misconduct" which also violates Article 5.4.1. In addition, General Conduct, Article 5.3 states "Members shall maintain a level of conduct in their personal and business affairs which is in keeping with the highest standards of the law enforcement profession. Members shall not participate in any act which impairs their ability to perform as members of the State Police or causes the State Police to be brought into disrepute." (*Exhibit 1*) There can be no question that McCormack's level of conduct resulting in, and/or during the motor vehicles stops was not in keeping with the highest standards of the law enforcement profession.

McCormack argues that the time frame of the stops on January 28, 2010 indicates that the Officers' stops were not legitimate because they set him up. The first stop by YPD Officer Lundegren occurred at approximately 1:30 a.m. Shortly after, at approximately 1:50 a.m., Trooper Fitzpatrick pulled McCormack over for a second stop, already aware of the first stop by Lundegren. The third stop involved YPD Officer Gibney at approximately 2:50 a.m. When Gibney initially stopped McCormack's black pick-up truck, she was unaware that this was the same truck previously stopped that evening by Lundegren or Fitzpatrick. She only realized it

was the same truck when McCormack told her his name. Although McCormack was stopped three times over a short time-span that night, there is no evidence of inappropriate conduct by the Officers and Troopers. Even though McCormack was not given any tickets during the first two stops, Lundegren and Fitzpatrick's reasons for conducting their stops appear to be legitimate and credible; Lundegren observed McCormack's traffic violations on the first stop, and Fitzpatrick stopped McCormack to investigate retired Trooper J.J. McCormack's stolen badge at the second stop. Furthermore, Gibney's stop of McCormack for a traffic violation the same night is legitimate because she observed the violation and because she was not aware that McCormack was in the vehicle she was stopping. In addition, even if Lundegren and Fitzpatrick contacted Gibney at the time of her stop of McCormack, they were not positive of McCormack's status as a Trooper until they returned to the Yarmouth Barracks and discussed the matter with Trooper McCarthy, which information Gibney did not have when she stopped McCormack. Therefore, the Officers' and the Troopers' conduct at the times in question on January 28, 2010 does not appear to be inappropriate or otherwise suggest that they had improper motives.³⁹

Based on pertinent documents and credible witness testimony, McCormack made false statements to Officer Lundegren, Trooper Fitzpatrick and Officer Gibney regarding his status as a Massachusetts State Police Trooper and regarding his actions on January 28, 2010 in violation of Truthfulness Article 5.27.2. Specifically, McCormack made false statements to Officer Lundegren when he identified himself as a State Trooper and showed a replica badge when in fact he was suspended, and stating that he was "trying to save a life" in his capacity as a Trooper (i.e. who was not suspended). There was a passenger in McCormack's vehicle that night during the second stop, but he was not in apparent life-threatening distress. In addition, McCormack

³⁹ Further, there is no indication that the Troopers in charge of the various Department investigations were involved in these stops.

indicated to Officer Gibney during the third stop that night that he had given a friend a ride home that night and was on his way home. Furthermore, on January 28, 2010, McCormack told Trooper Fitzpatrick that he was out of work only because of a back injury. Although McCormack argues that it is not illegal to possess a state police badge when suspended, he falsely represented his status to Lundegren and Fitzpatrick and a preponderance of the evidence shows he made untruthful statements in violation of Article 5.27.2 in this regard. McCormack also contends that it is not illegal or a violation of Article 5.27.2 to represent oneself as a Trooper if you are suspended. However, Article 5.27.2 states that members “must be truthful at all times”. (*Exhibit 1*) Even though McCormack argues that it is not a direct violation of the Truthfulness Article to represent oneself as a Trooper if you are suspended and there is no explicit language in Article 5.27.2 to this effect, the nature of the statements were untruthful in violation of the Truthfulness Article. Further, Article 5.17.2 specifically provides that suspended members “must not represent themselves as members of the Massachusetts States Police”. McCormack made false statements about his status as a Trooper to both Lundegren and Fitzpatrick. A preponderance of the evidence indicates that McCormack was not truthful in these regards during the motor vehicle stops by Lundegren and Fitzpatrick. Therefore, the Department had just cause to discipline the Appellant for these violations of the Rules and Regulations.

Barnstable Court Probation

McCormack violated Article 5.17.2, Violation of Rules (TBD Charge 1, Specifications 1 through 4) when he identified himself as a State Trooper, while he was suspended, to Probation Officers Larson and Elzy Tubbs, and Community Corrections Coordinators Joseph Finn and Michael Spellman. Article 5.17.2 clearly states that, “suspended members shall be deprived of

all Massachusetts State Police Powers and privileges and must not represent themselves as members of the Massachusetts State Police”. McCormack was suspended during his contact with these individuals and he was not allowed to represent to them that he was a member of the Massachusetts State Police (*Exhibit 1*). Although McCormack was prohibited from identifying himself as a Trooper when he was suspended, a preponderance of the evidence establishes that he did so by showing a silver badge to Elzy Tubbs, Joseph Finn, and Michael Spellman, wearing a Massachusetts State Police hat when he met with Finn and Spellman, and displaying a Massachusetts State Police business card to Probation Officer Larson. Therefore as indicated in TBD Charge 1, Specifications 1 through 4, McCormack improperly identified himself as a Trooper, while he was suspended, in violation of Article 5.17.2 (Violation of Rules).

Furthermore, the approved TBD found McCormack guilty of a Truthfulness charge (TBD Charge 7, Specification 4) pertaining to false statements he made to Michael Spellman. The Trial Board found that McCormack showed Spellman a police badge and then told Spellman that he was looking for Ms. A regarding an investigation of crimes she had committed. McCormack was found not guilty of Charge 7, Specifications 1 through 3 at the Trial Board on the Truthfulness charges for falsely representing himself as a Trooper to Assistant Chief Probation Officer Tubbs, Probation Officer Larson, and Joseph Finn (at the BCCC). In regard to the remaining approved TBD guilty charge involving McCormack’s untruthfulness to Michael Spellman, Spellman’s testimony was credible. Spellman recognized McCormack, recalling that they grew up together in West Roxbury. Therefore, if Spellman had any bias toward McCormack it would more likely be a bias in McCormack’s favor. In addition, given his extensive experience on the job, including cooperating with other law enforcement personnel, it is highly unlikely that Spellman misinterpreted McCormack’s remarks. Thus, a preponderance

of the evidence establishes that McCormack made false statements to Spellman in violation of Article 5.27.2 (Truthfulness) when he said he was looking for Ms. A for an investigation of crimes she committed.

McCormack also used a police badge and police business card in order to acquire information about Ms. A and her probation in direct violation of Article 5.15.1, Abuse of Position (TBD Charge 6, Specifications 1 through 3). McCormack showed a state police business card to Larson and represented to her that he was a Massachusetts State Trooper in order to gain knowledge about Ms. A's probation for his own interest. He repeatedly asked Larson about Ms. A, despite Larson telling him she was unable to relay any such information because it was confidential. McCormack displayed a police badge to both Michael Spellman and Joseph Finn, two Community Corrections Officers, in order to obtain information about Ms. A. At BCCC, McCormack also wore a hat with the inscription "Massachusetts State Police" and represented himself as an active State Trooper. Specifically, McCormack told Spellman he was looking for Ms. A with regard to an investigation of her crimes but it was for his own personal knowledge because he had a relationship with Ms. A. McCormack also showed a badge to Probation Officer Elzy Tubbs and represented himself as a Trooper in order to obtain information about Ms. A. These actions were established by a preponderance of the evidence, including credible witness testimony, as well as McCormack's use of the title "State Trooper," for "personal gain and privileges" not otherwise available in direct violation of Article 5.15.

McCormack was found guilty of Charge 6, Specification 4 by the Department Trial Board for abusing his position when he allowed Ms. A to wear a police badge he handed to her and a photograph of her was taken wearing the badge. Ms. A testified that McCormack handed her his badge and specifically told her that he could get in trouble for doing so. He handed her

the photo nonetheless, whether to impress her or to gain her trust or favor. Exhibit 29 is a photograph of Ms. A playfully wearing the badge. Although the badge in the photograph is not perfectly focused, it sufficiently resembles the badges in Exhibits 9 and 19 that, together with Ms. A's testimony, there is a preponderance of evidence that Ms. A was wearing McCormack's badge in the photograph. Therefore, McCormack abused his position in this regard in violation of Article 5.15.1.

In regard to the allegations that McCormack exhibited Unbecoming Conduct (TBD Charge 2, Specification 1), a preponderance of the evidence establishes that McCormack engaged in activity with individuals that he knew were involved in criminal activities, including "drug possession and breaking and entering" (*Exhibit 23*) in violation of Article 5.2.1. Specifically, McCormack had a relationship with Ms. A, an individual whom he knew, at a minimum, was on probation at the Barnstable District Court for breaking and entering into a property. Based on pertinent documents and credible and consistent witness testimony, McCormack knew about Ms. A's probation status at the time of his relationship with her because, for example, he would often accompany her to the court house and her probation meetings. In addition, McCormack and Ms. A lived together at the Yarmouth residence on and off during their relationship, giving him another reason he would have known about her criminal status. Therefore, a preponderance of the evidence establishes that McCormack engaged in conduct unbecoming of a Trooper.

Furthermore, McCormack failed to "keep with the highest standards of the law enforcement profession and caused the State Police to be brought into disrepute", in violation of Article 5.3, General Conduct (TBD Charge 3, Specifications 1, 2 and 3). Specifically, at the Probation Department he yelled to Probation Officer Larson, in front other others at the

Probation Department, “you got your wish,” referencing her request that he not attend probation meetings with Ms. A. Additionally, McCormack failed to maintain the highest standards of law enforcement when he threatened Ms. A, stating that he would interfere with the custody of her daughter and implicate her in criminal conduct. In addition, Ms. A reported these threats to State Police who suggested she apply for a domestic abuse prevention order. No officer should threaten to abuse the legal process to serve his or her own interest. McCormack’s actions in this regard are established by pertinent documents and credible testimony, constituting a preponderance of evidence, and they clearly dishonor the State Police in violation of Article 5.3.

The approved TBD states that McCormack brought Ms. A across state lines to New Hampshire in violation of her probation, which conduct violates General Conduct (TBD Charge 3, Specification 1), Article 5.3 and Conformance to Laws (TBD Charge 4, Specification 1), Article 5.4.1. Probation Officer Larson testified that Ms. A told her she went to New Hampshire with McCormack during her probation. However, Ms. A testified at the Commission that she specifically recalled, to her relief, that she told McCormack she could not leave the state with him because of her probation. Since the only testimony in this regard is that of Ms. Larson and Ms. A and they conflict, the Department has failed to establish a preponderance of the evidence in this regard. Therefore, the Department did not have just cause to discipline McCormack pursuant to TBD Charge 3, Specification 1 regarding Article 5.3 nor pursuant to TBD Charge 4, Specification 1 regarding Article 5.4.1.

Motor Vehicle Accident

Regarding the motor vehicle accident, McCormack was charged with violating rules relating to: Violation of Rules (TBD Charge 1, Specification 1), General Conduct (TBD Charge 2, Specification 1), Conformance to Laws (TBD Charge 3, Specification 1), Abuse of Position

(TBD Charge 4, Specifications 1, 2, and 3) and Truthfulness (TBD Charge 5, Specifications 1,2, and 3).

The approved TBD, Charge 1, alleges that McCormack violated Article 5.17.2, (Violation of Rules) when he identified himself as a Trooper to Mr. M in the car accident on May 10, 2010 although he was suspended. Although Mr. M was not a witness at the Commission hearing, both Officer Ellis and Officer Waskiewicz, who were present at the scene of the accident, testified at the Commission hearing. They spoke with McCormack and Mr. M separately immediately following the accident and gave credible and consistent testimony in this regard. Both officers testified that Mr. M told them that McCormack got out of his car after the accident to tell him that he was a Trooper, which intimidated Mr. M. Based on the Officers' consistent witness testimony, I find that Mr. M was going to call the police but that McCormack told Mr. M that he was a Trooper in order to intimidate him so that Mr. M would not call the police. Furthermore, the transcript of the interview of Mr. M conducted by Det. Lt. Pagley after the accident is consistent with the testimony of Officer Ellis and Officer Waskiewicz. In the transcript of Mr. M's interview, which was admitted into evidence, Mr. M states that McCormack got out of his vehicle, displayed a badge and told him he was a Trooper. Consistent with this transcript, Officer Waskiewicz testified that he recalled Mr. M telling him at the accident that McCormack had shown him his badge. Although the interview of Mr. M was not under oath, the transcript of it reflects a consistent statement with the witnesses' narratives. Furthermore, in regard to approved TBD Charge 4, alleging an abuse of position in violation of Article 5.15.1, based on Mr. M's interview about the accident (*Exhibit 32*) and the testimony of Ellis and Waskiewicz, I find that McCormack showed his badge in an attempt to intimidate Mr. M so that he would not report the accident to police. Moreover, pertinent documents and

credible and consistent testimony reveals that McCormack used his position for personal gain when he told Officer Ellis that he was allowed to carry a badge, his family members are also in law enforcement, and he lied about how the accident occurred, all in violation of Article 5.27.1, Truthfulness, and Article 5.15.1, Abuse of Position.

In regard to TBD Charge 4, Specification 2 (Abuse of Position), McCormack admitted to Ellis that he was on administrative leave for narcotics issues but also told her that he was permitted to carry his badge. I find that McCormack's statement regarding his ability to carry a badge at that time constituted abuse of his position for personal gain because it shows that he was attempting to convince Ellis not to give him a citation, in violation of Article 5.15.1. To his credit, McCormack also gave Officer Ellis consent to search his vehicle. However, McCormack's assertion that he was allowed to carry a badge and his untruthfulness about who caused the accident, pursuant to approved TBD Charge 5, Specification 2, was also in direct violation of Article 5.27.2 (Truthfulness).

Witness testimony and the Motor Vehicle Crash Report (*Exhibit 31*) establish by a preponderance of the evidence that McCormack's vehicle rear-ended Mr. M's vehicle, causing the accident on May 10, 2011, in violation of Article 5.27.2, (Conformance to Laws). Specifically, based on pertinent documents and the consistent and credible testimony of Officer Ellis and Officer Waskiewicz, I find that McCormack made untrue statements to the responding officers about the accident when he alleged that Mr. M took a swing at him after the accident occurred. Mr. M was described as an older and ailing man by Officer Ellis, Officer Waskiewicz and Det. Lt. Pagley. Furthermore, right after the accident, when speaking to Officer Waskiewicz, Mr. M denied taking a swing at McCormack. In addition, the interview by Det. Lt. Pagley of Mr. M indicates that Mr. M did not take a swing at McCormack. McCormack also

alleged that Mr. M actually backed up into his car, ultimately causing the accident, which no witness testimony or reports admitted into evidence supports. The credible testimony of Officer Ellis, Officer Waskiewicz, and Det. Lt. Pagley, combined with Mr. M's interview transcript (*Exhibit 32*), which is consistent with the Motor Vehicle Crash Report (*Exhibit 31*), establishes by a preponderance of the evidence, that McCormack made false statements about how the accident occurred in violation of Article 5.27.1, Truthfulness and Article 5.15.1, (Abuse of Position).

Misrepresentation of Appellant's Medical Condition and Back Injury

These issues involve McCormack's untruthfulness to the State Police regarding his back injury (approved TBD Charge 4, Specification 2) in violation of Article 5.27.2 (Truthfulness). In regard to approved TBD Charge 4, it is alleged that between March 2002 and December 2011, McCormack made false statements by misrepresenting his medical condition to the Massachusetts State Police Department, specifically on his Massachusetts State Police Application form. McCormack also misrepresented his back condition on the Back Assessment Form during a physical examination at All One Health. Although approved TBD Charge 4, Specification 2 asserts that McCormack's misrepresentation of his medical condition occurred between March 2002 and December 2011, the only evidence admitted at the Commission hearing pertains to McCormack's misrepresentation of his 1998 and 1999 back injuries on his December 2001 Back Assessment Form and his job application. However, the related Charges and Specifications clearly indicate that it is on these forms at the beginning of his State Police career that McCormack was untruthful regarding his medical condition. Specifically, McCormack indicated on his Back Assessment form on December 19, 2001 that he was in a 1998 car accident which resulted in back muscle spasm and bruising. He indicated on the Back

Assessment Form that he did not miss any time from work at the Suffolk Sheriff's Office, where he worked at the time. However, this is inconsistent with his September 16, 1999 Massachusetts State Police application form in which he indicated that a November 4, 1998 car accident caused him to be absent from work at the Suffolk Sheriff's Office for six (6) weeks.

Since this information was not provided on McCormack's Back Assessment Form the Department was not able to have his back assessed adequately. A preponderance of the evidence establishes that McCormack was absent from work for six (6) weeks in 1998 due to a back injury and that he gave false statements on his Back Assessment form in 2001. In addition, testamentary and documentary evidence from the Suffolk Sheriff's Office indicates that McCormack was unable to attend work from December 10, 1999 to approximately December 13, 1999 because of an injury at the Suffolk Sheriff's Office around that time. McCormack's 1999 paper Employee Attendance Calendar does not show any absences in the last four months of 1999. However, Mr. Sweeney, Director of the Suffolk Sheriff's Human Resources Department, was able to explain the matter. First, Sweeney testified that the Sheriff's Office did not use paper attendance calendar for the last four months of 1999 because the Suffolk Sheriff's Office changed its payroll system near the end of 1999 and stopped using paper attendance calendars. In addition, the attendance information was then processed by the city of Boston and, thereafter, by the state. Second, Sweeney testified that Exhibit 38 includes: a physician's report dated Dec. 10, 1999 indicating that that McCormack was unable to attend work from Dec. 10 through approximately Dec. 13 because of a back injury he sustained when an inmate assaulted him on the job, and a report signed by McCormack that describes the inmate assault of McCormack on Dec. 8. In view of this evidence and based on his knowledge and experience, Sweeney concluded that McCormack was absent from work at least Dec. 10 – 12, 1999. In view of the

credible testimony and supporting documentation, the Department has established that McCormack missed work as a result of the 1999 back injury. McCormack did not disclose the 1999 back injury and resulting absence from work on his Back Assessment form when he applied for employment at the State Police Department, which precluded the Department from adequately assessing his back. Thus, a preponderance of the evidence establishes that the Appellant violated the cited Rules and Regulations in these regards.

Drug Abuse

The approved TBD found essentially two spheres of drug abuse by the Appellant: one involving Ms. A and the other involving prescription drugs.⁴⁰ With regard to Ms. A, a preponderance of the evidence establishes that McCormack failed to conform to laws, a violation of Article 5.4.1 (TBD, IAS#2011-0016, Charge 4, Specifications 2, 3, and 4), and violated Article 5.10.2, Alcoholic Beverages and Drugs (TBD, IAS#2011-0016, Charge 5, Specifications 1 and 2). It also establishes that McCormack conspired to purchase Heroin and take narcotics not legally prescribed to him between 2007 and 2011 in violation of Article 5.4.1 (Conformance to Laws). Ms. A testified that her relationship with McCormack included use of narcotics. She specifically recalled an incident in which she wanted to relapse and take her drug of choice, Heroin. Ms. A. recalled that McCormack provided her with money to purchase Heroin and drove her someplace to purchase it. McCormack dropped her off to buy the Heroin and then picked her up after she bought it. McCormack wanted to use the Heroin but he did not because Ms. A attempted to use it first but found that it was no good. Furthermore, a preponderance of the evidence establishes that McCormack used a narcotic called Suboxone, a drug prescribed to Ms. A, not McCormack, and Oxycodone, which Ms. A acquired off street illegally (not for

⁴⁰ The criminal court case docket (SUCR2009-10008) provided by the Department via email on May 23, 2013 in response to the request of the Commission lists eighteen (18) charges as “Drug, Obtain by Fraud c94C s33(b)” and one (1) charge as “Prescription, Utter False c 94C s33(b)”. We do not have information indicating if and/or how the TBD findings reflect criminal charges.

legitimate medical use) a direct violation of Article 5.4.1 and Article 5.10.2 (*Exhibit 23*). Ms. A specifically testified that she recalled taking Oxycodone, Suboxone, Fentanyl patches, and liquid codeine with McCormack.

McCormack contends that Ms. A's testimony about their drug abuse, and otherwise, is not reliable for a number of reasons, including her criminal record, her bad memory from drug abuse, her bias and her cooperation with the Department. On June 23, 2011, Ms. A sent her current boyfriend a text message telling him that the State Police might be able to help her with the charges against her in Quincy District Court if she helped them with the State Police investigation regarding McCormack's alleged illegal drug use. There was a default warrant against Ms. A in Quincy District Court that was removed, as indicated on her CORI in February 2, 2011, well before she sent the text message to her boyfriend on June 23, 2011. Even if the warrant's removal was supported by the Department, we do not know if Ms. A was ultimately adjudicated guilty or not guilty in the Quincy cases. In any event, there is no indication that the information Ms. A provided to the Department was wrong. Further, as indicate in the section above regarding the witnesses' credibility, there are other countervailing issues rendering Ms. A's testimony credible.

With regard to the Department's allegations that McCormack falsely obtained prescription drugs, TBD regarding IAS# 2008-0011, Charge 3, Specifications 13, 15 and 19 state that McCormack obtained controlled substances in violation of Massachusetts General Law, Chapter 94C. In the criminal court case, most of the charges against the Appellant were dismissed via nolle prosequi and the Appellant was acquitted on the two remaining charges. A significant amount of information was suppressed in the criminal case based on the court's determination that it had been obtained illegally. Although the court's suppression ruling was

applied at the commission, the Commission is called upon to assess not whether the Appellant violated a criminal statute but whether the alleged conduct violated Department rules and that the conduct has been proved by a preponderance of the evidence.

McCormack is charged with failing to conform to Massachusetts laws on August 19, 2005 and September 30, 2005 when he obtained prescriptions for Hydrocodone issued by Dr. O'Neill on these dates and filled them at West Roxbury Pharmacy (*Exhibit 34*). McCormack's patient profile from the West Roxbury Pharmacy indicates that he was also filling prescriptions for Hydrocodone from Dr. Lowney around the time he filled Dr. O'Neill's narcotics prescriptions. Furthermore, McCormack's patient profile from Dr. Bonano (*Exhibit 37*), indicates that McCormack was obtaining narcotics prescriptions in August 2005 and September 2005 from Dr. Bonano, which was around the same time that Dr. O'Neill and Dr. Lowney prescribed narcotics for him. A preponderance of the evidence establishes that McCormack violated G.L. Chapter 94C, § 33(b) by not disclosing to his doctors that other doctors had also prescribed narcotic for him. Section 33(b) specifically states that, "No person shall knowingly or intentionally acquire or obtain possession of a controlled substance by means of ... fraud, deception ... including ... the nondisclosure of a material fact in order to obtain a controlled substance from a practitioner." (*Exhibit 33*) McCormack obtained these prescriptions by "fraud and deception" when he failed to tell Dr. O'Neill that he was receiving other prescriptions from Dr. Bonano at the same time. Furthermore, Dr. O'Neill testified credibly that he was unaware of other such prescriptions when he issued his prescription to McCormack and would not have prescribed this medication on these dates if he had known McCormack was getting other prescriptions for narcotics at the same time. Thus, McCormack failed to disclose "a material fact in order to obtain a controlled substance from a practitioner" in direct violation of G.L. c. 94C

(*Exhibit 33*). Therefore, McCormack violated Article 5.10.2 in regard to alcoholic beverages and drugs and Article 5.4.1 (Conformance to Laws).

The number of Charges and Specifications for the Commission's consideration regarding the charges of prescription drug abuse (IAS#2008-2011) has been reduced. First, the Trial Board found McCormack not guilty of Charge 3, Specification 18, which stated that he had violated G.L. c. 94C (specifically section 33(b)) by uttering a false prescription for a controlled substance thereby violating Article 5.4.1 (Conformance to Laws), a Class A violation. Second, the Trial Board found McCormack guilty of Charge 2, Specification 1, stating that McCormack had fraudulently obtained thousands of controlled substances resulting in a criminal complaint being issued against him in violation of Article 5.3 (General Conduct). However, seventeen (17) of the criminal charges were dismissed and a jury found McCormack not guilty of the remaining two (2) charges after the court suppressed pharmacy records from CVS and Walgreen's, having determined that the State Police obtained them illegally.

We discuss the remaining Charges and Specifications of IAS#2008-0011 here. Charge 1, Specification 1, stating that from 2002 to 2011 McCormack violated Article 5.2 (Conduct Unbecoming), when he fraudulently obtained thousands of controlled substances and became addicted to them, preventing his return to full duty, which is a Class B violation. Exhibits 34 and 37 show an extraordinary number of narcotics prescriptions issued to the appellant over extended periods. Dr. Bonano issued more than one hundred narcotics prescriptions for Oxycodone, Fentanyl and Oxycontin alone from around the time of his 2005 surgery to the most recent prescription in 2008 in Exhibit 37. Although Exhibit 37, as redacted, does not indicate if and when McCormack filled the prescription, it is more likely than not that a patient would fill prescriptions that a physician issues repeatedly, month after month, year after year, as in this case

else the physician would not have repeatedly issued them. In addition, Exhibit 34 shows that McCormack did fill all the narcotic prescriptions listed on the West Roxbury record. The West Roxbury Pharmacy record shows that McCormack filled the fifteen (15) narcotics prescriptions for Hydrocodone issued by Dr. Lowney from 2/27/04 through 7/8/04. It also shows that Dr. O'Neill issued McCormack two prescriptions for Hydrocodone on August 19, 2005 and September 30, 2005. There are no prescriptions in the hearing record here beyond 2008, although the testimony of Probation Officer Larson about McCormack's appearance in 2010 and Ms. A's testimony about McCormack's prescription and other drug use make it more likely that not that he was abusing drugs at least through the first half of 2010 when they were in contact with the Appellant.

The first question is whether McCormack obtained the narcotics prescriptions by fraud, keeping in mind that this is a civil proceeding. Common law fraud is a question of fact requiring proof of the requisite intent, which was not explicitly addressed here. Charge 1, Specification 1 does not explicitly refer to G.L. c. 94C, § 33(b), a criminal law, although all nineteen (19) Specifications of Charge 3 do reference the statute. However, Charge 1, Specification 1 references fraud in obtaining controlled substances, similar to the criminal law. G.L. c. 94C, § 33(b) provides,

“No person shall utter a false prescription for a controlled substance, nor knowingly or intentionally acquire or obtain possession of a controlled substance by means of forgery, fraud, deception nor subterfuge, including but not limited to the forgery or falsification of a prescription or the nondisclosure of a material fact in order to obtain a controlled substance from a practitioner.”

(Exhibit 33) Therefore, fraud in obtaining narcotic prescriptions may be established by showing that a person failed to disclose to multiple doctors that he obtained narcotics prescriptions from them. There is no indication that McCormack failed to disclose to Dr. Bonano and Dr. Lowney

that he was receiving narcotics prescriptions from each of them and from Dr. O'Neill. However, Dr. O'Neill testified that McCormack did not disclose to him that he received narcotics prescriptions from any other doctor at the time that Dr. O'Neill prescribed narcotics for him. Dr. O'Neill further testified that if he knew that other doctors were prescribing narcotics to McCormack at the same time that he was prescribing them to McCormack that he would not have prescribed them. The facts establish, by a preponderance of the evidence that McCormack did not disclose to Dr. O'Neill that he was receiving narcotics prescriptions around the same time from another doctor. However, these few instances of fraud by failure to disclose, following his May 2005 surgery, are not "thousands of controlled substances" sufficient to establish that McCormack became addicted to these substances precluding his return to full duty. Therefore, even if the G.L. c. 94C standard is applied to Charge 1, Specification 1, the Department did not have just cause to discipline McCormack in this regard. However, because McCormack did not disclose other narcotics prescriptions to Dr. O'Neill, the Department had just cause to discipline him under Charge 4, Specification 1, which states that McCormack violated Article 5.27 (Truthfulness) when he obtained prescription controlled substances "through misrepresentation, failure to disclose a material fact, and/or fraud" (IAS#2008-0011)

Charge 3 has nineteen (19) Specifications, each stating that McCormack obtained prescription controlled substances in violation of G.L. c. 94C on various dates in violation of Article 5.4.1 (Conformance to Laws), which are Class A violations.⁴¹ Like the court in the criminal case, the Commission suppressed CVS and Walgreen's pharmacy records that were illegally obtained. The only prescription narcotics records here are Exhibits 34 (the West Roxbury Pharmacy record of the narcotics prescriptions issued by doctors O'Neill and Lowney

⁴¹ There is no indication whether these nineteen (19) Specifications are the same as the nineteen criminal charges for which the Appellant was prosecuted.

that McCormack paid for in cash in 2004 and 2005) and 37 (Dr. Bonano's prescription record for McCormack 2001 through 2008). The Specifications stating that McCormack obtained narcotics prescriptions in violation of law on 5/17/05 (Specification 12), 9/8/05 Specification 14), and 11/13/07 (Specification 16) do not appear in either Exhibit 34 or 37 or elsewhere in the record. Therefore, Specifications 12, 14 and 16 do not provide just cause to discipline McCormack. Specification 17 states that McCormack obtained narcotics prescription in violation of law on 1/15/08, which date appears on Exhibit 37 as a prescription issued by Dr. Bonano but there is no indication that McCormack was obtaining narcotics prescriptions from another physician around that time that he failed to disclose to each doctor. Specifications 1 through 11, 13, and 15 state that McCormack violated G.L. c. 94C, in violation of Article 5.4.1 on 2/27/04, 3/5/04, 3/10/04, 3/18/04, 3/30/04, 5/24/04, 6/1/04, 6/9/04, 6/17/04, 6/26/04, 7/8/04, 8/19/05, 9/30/05. Those are the dates that the West Roxbury Pharmacy record indicates that McCormack purchased prescriptions of the narcotic Hydrocodone. The Specifications refer to G.L. c. 94C without referencing the section at issue but Exhibit 33 is a copy of section 33(b) of that statute indicating that is the statute on which the Department relies. As noted above, Section 33(b) bars a person from obtaining a controlled substance by means of, *inter alia*, " ... nondisclosure of a material fact" As further noted above, the only instances in which it has been established by a preponderance of the evidence that McCormack failed to disclose that he was obtaining narcotics prescriptions from different doctors at around the same time was when Dr. O'Neill issued narcotic prescriptions on August 19, 2005 (Specification 13) and September 30, 2005 (Specification 15) and at least Dr. Bonano was issuing McCormack repeated narcotics prescriptions around the same time. Charge 19 states that McCormack obtained prescription controlled substances in violation of G.L. c. 94C on or between January 2001 and March 2008.

Having found, with regard to Specifications 13 and 15 that McCormack obtained narcotics prescriptions by failing to disclose Dr. Bonano's narcotics prescriptions to Dr. O'Neill on dates that fall between January 2001 and March 2008, the Department had just cause to discipline McCormack for Charge 3, Specifications 13, 15 and 19 but it did not have just cause to discipline McCormack on the remaining Charge 3 Specifications.

As noted above, in discipline cases, the Commission determines, " ... whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, *supra*. Police are held to a higher standard. The Department rightfully regards itself as an elite force. While the Commission does not uphold every Charge, Specification and discipline applied by the Department, there remain numerous reasons for the Department to discipline McCormack, including to terminate his employment. There is no indication what steps were taken by the Appellant to reduce, if not eliminate, his drug use but it is clear that it became abuse. Likewise, there is no indication that either party has taken steps to assess McCormack's fitness for duty. Regardless, the Appellant's record of prescription and non-prescription drug abuse, association with Ms. A, threats to Ms. A, misrepresentation of his medical condition, abuse of privilege, violations of law, and untruthfulness, as proved here, all clearly constitute substantial misconduct that adversely affects the public interest by impairing the efficiency of public service warranting appropriate discipline.

Amid the many charges against the Appellant, there were multiple charges for the same conduct. However, the Appellant's conduct violated multiple Department Rules and Regulations where noted herein. Further, the Department found that most of the Appellant's charges were class A offenses. *See* Exhibits 2, 3, 22, 23, 30 and IAS#2008-0011. A first offense of a Class A

violation of Department Rules and Regulations is punishable by suspension of not less than thirty (30) days, up to and including termination. As a result, even though the Appellant appeared to have no prior discipline, the Department could terminate him for the Class A offenses, in addition to taking other disciplinary action against him for other offenses found here. In addition, the Department did not terminate his employment for all Class A violations. Among the Charges and Specifications found here, the Department terminated the Appellant for being untruthful to Officer Lundegren and Trooper Fitzpatrick in the motor vehicle stops on January 28, 2010 (IAS#2010-007, Charge 3, Specifications 2 and 3); use of illegal controlled substances in relation to Ms. A (IAS#2011-0016, Charge 4, Specifications 2 – 4); and obtaining narcotics prescriptions in violation of law (IAS#2008-0011, Charge 3, Specifications 13, 15 and 19 and Charge 4, Specification 2). Termination of employment is most clearly warranted for the Appellants violations relating to controlled substances. While the importance of truthfulness of one law enforcement officer to another is essential, the Commission could come to a different conclusion than the Department's decision to terminate the Appellant's employment for his lack of truthfulness to Officer Lundegren and Trooper Fitzpatrick. However, that the Commission may come to a different result in this regard does not necessarily warrant modification of the discipline. The Commission's decision in this regard is a function of the contexts in which the Appellant was untruthful. Finally, in view of the nature, depth and breadth of the Appellant's breaches of the Rules and Regulations as found here, the related discipline is warranted.

Based on the credible testimony of witnesses and documentary evidence submitted to the Commission and drawing an adverse inference from McCormack's failure or refusal to testify here, extensive Charges and Specifications have been proved by a preponderance of the evidence with the exception of: IAS#2011-0016 Charge 3, Specification 1, General Conduct (Article 5.3)

and Charge 4, Specification 1 Conformance to Laws (Article 5.4) both in connection with allegations that McCormack took Ms. A across state lines to New Hampshire in violation of her probation and that McCormack should be suspended without pay for ten (10) days (two concurrent ten-day periods); and IAS#2008-0011 Charge 4, Specification 3, Truthfulness (Article 5.27.3) alleging that McCormack made false statements regarding his medical condition from March 2002 through August 2002 and that McCormack's employment should be terminated therefor. Therefore, the Appointing Authority had just cause to discipline McCormack with various suspensions without pay as well as termination of his employment for the violations of Rules and Regulations relating to General Conduct, Truthfulness, Violations of Rules, Abuse of Position, Alcoholic Beverages and Drugs, Unbecoming Conduct, and Conformance to Laws of the Rules and Regulations for the Governance of the Department of State Police found here.

CONCLUSION

For the reasons stated herein, the Appointing Authority has established just cause for disciplining McCormack as indicated and the appeal is hereby *dismissed*. However, the Appointing Authority shall assess the number of days the Trial Board suspended the Appellant without pay, adjusting for the Charges and Specifications found unsupported by a preponderance of the evidence above. If the number of days that the Trial Board suspended the Appellant without pay is less than the number of days that the Appellant has been suspended since August 3, 2008, the the Appointing Authority shall compensate the Appellant for the difference.

Cynthia A. Ittleman
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, and Stein, McDowell, Commissioners;) on December 19, 2013.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Joseph P. Kittredge, Esq., Esq. (for Appellant)
Sean W. Farrell, Esq. (for Appointing Authority)