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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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ADMINISTRATIVE
HEARINGS

CRIMINAL JUSTICE STANDARDS
AND TRAINING COMMISSION,

Petitioner,
vs.

DOAH CASE No. 00-1286

LOUIS D. SCARSELLA,

Respondent.

RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO SUPPRESS

COMES now Petitioner, Criminal Justice Standards and Training Commission, by and through its undersigned attorney and responds in opposition to Respondent's Motion to Suppress as follows:

1. Alleged violations of Sections 112.531-112.534, Florida Statutes, Police Officers' Bill of Rights, are remedied **solely** by injunctive relief, therefore suppression would be inappropriate. McRae v. Douglas, 644 So.2d 1368 (Fla. 5th DCA 1994), citing Sylvester v. City of Delray Beach, 584 So.2d 214 (Fla. 4th DCA 1991) and City of Miami v. Cosgrove, 516 So.2d 1125 (Fla. 3rd DCA 1987), as support for the proposition that "the sole remedy for an alleged violation of section 112.532 is injunctive relief provided for in section 112.534".
2. Sections 112.531-112.535, Florida Statutes, address the rights of law enforcement and correctional officers and are procedurally

applicable "[w]henever a law enforcement officer or correctional officer is under investigation and subject to interrogation" and govern the conditions under which the interrogations should be conducted. Section 112.532, F.S. Those sections contain no provisions governing searches or fitness-for-duty drug testing, therefore Respondent's reliance thereon is misplaced.

3. Respondent fails to allege an unlawful search and seizure in violation of either his fourth or fifth amendment constitutional rights as grounds to support the motion, and fails to otherwise state proper grounds for suppression. Rule 3.190, Fla.R.Crim.P. Moreover, urinalysis tests administered in the employment context, and not as part of any criminal investigation, are not, as a matter of law, unreasonable searches. Allen v. City of Marietta, 601 F.Supp 482 (N.D. Georgia 1985)
4. The primary purpose of the exclusionary rule is to deter future unlawful police conduct and to prevent against future violations. Johnson v. State, 660 So.2d 648 (Fla. 1995). Respondent does not allege that Petitioner committed any unlawful conduct, nor can he allege that suppression in this cause of a urinalysis test would serve to deter any future unlawful police conduct by Petitioner.
5. Finally, the Respondent's allegation in paragraph 19 of his Motion, that "[t]he City (of Cape Coral) is trying to decertify the Respondent" is incorrect. The City is not a party to this

proceeding, and saying so does not magically bind the Petitioner in this cause to a collective bargaining agreement between the City and the Florida State Lodge of the Fraternal Order of Police. Respondent alleged misconduct by the City, in violation of a collective bargaining agreement, therefore his only remedy was to file a grievance, which he did, and in which he prevailed through binding arbitration.

6. The Petitioner alone is charged with the responsibility of revoking the certification of law enforcement officers, and is not bound by contracts to which it was never a party. Section 943.12(3), Florida Statutes.

WHEREFORE, based on the grounds as stated above, Petitioner respectfully requests that Respondent's Motion to Suppress be denied.

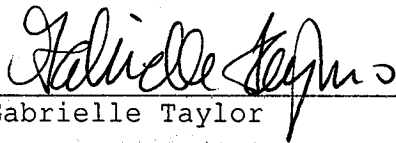
Respectfully submitted,



Gabrielle Taylor
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Florida Department of
Law Enforcement
Post Office Box 1489
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FBN: 0911070

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to Robert B. Burandt, Esquire, Roosa, Sutton, Burandt, & Adamski, 1714 Cape Coral Parkway, Cape Coral, Fl 33904, this 8 day of June, 2000.



Gabrielle Taylor

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