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2 **BEFORE THE CRIMINAL JUSTICE TRAINING COMMISSION**
3 **IN AND FOR THE STATE OF WASHINGTON**

4 In re the Certification of

NO. 13-479

5 **TED S. SUMMARELL**

DECLARATION OF SERVICE

6 Respondent.

7 I certify that I caused to be served a copy of the **Findings of Fact, Conclusions of**
8 **Law, and Order Revoking Tribal Law Enforcement Officer Certification** on the date
9 below as follows:

10 TO: Ted Summarell, Respondent
11 PO Box 852
12 Poulsbo, WA 98370
13 Email: Ted_Summarell@yahoo.com

US Mail Postage Prepaid
 Certified Mail/Return Receipt Requested
 State Campus Delivery
 Electronically

14 TO: Lisa Elley
15 Assistant Attorney General
16 Counsel for CJTC
17 Mailstop: 40100
18 Email: LisaE3@atg.wa.gov

US Mail Postage Prepaid
 Certified Mail/Return Receipt Requested
 State Campus Delivery
 Electronically

19 TO: John Hillman
20 Assistant Attorney General
21 Advisor to Hearing Panel
22 Email: JohnH5@ATG.WA.GOV

US Mail Postage Prepaid
 Certified Mail/Return Receipt Requested
 State Campus Delivery
 Electronically

23 TO: Chief Joe Orford
24 Stillaguamish Police Department
25 Presiding Member
26 Email: joeo@stillypd.org

US Mail Postage Prepaid
 Certified Mail/Return Receipt Requested
 State Campus Delivery
 Electronically

TO: Tisha Jones
WSCJTC
Certification Manager
Email: tjones@cjtc.state.wa.us

US Mail Postage Prepaid
 Certified Mail/Return Receipt Requested
 State Campus Delivery
 Electronically

TO: Sheriff Jim Raymond
Franklin County Sheriff's Office
Panel Member
Email: jraymond@co.franklin.wa.us

US Mail Postage Prepaid
 Certified Mail/Return Receipt Requested
 State Campus Delivery
 Electronically

TO: Officer Rich Allen
Olympia Police Department
Panel Member
Email: rallen@ci.olympia.wa.us

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 Certified Mail/Return Receipt Requested
 State Campus Delivery
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TO: Lieutenant Alec Wrolson
Puyallup Tribal Police Dept.
Panel Member
Email: alec.wrolson@puyalluptribe.com

- US Mail Postage Prepaid
- Certified Mail/Return Receipt Requested
- State Campus Delivery
- Electronically

TO: Professor Matthew Hickman
Seattle University
Panel Member
Email: hickmanm@seattleu.edu

- US Mail Postage Prepaid
- Certified Mail/Return Receipt Requested
- State Campus Delivery
- Electronically

TO: Chief Carlos Echevarria
Tulalip Tribal Police Services
Former Employer
Email: cechevarria@tulaliptribalpolice.org

- US Mail Postage Prepaid
- Certified Mail/Return Receipt Requested
- State Campus Delivery
- Electronically

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

EXECUTED this 10th day of December, 2015, at Burien, Washington.



Sonja Peterson
Hearing Coordinator

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7 **BEFORE THE CRIMINAL JUSTICE TRAINING COMMISSION**
8 **IN AND FOR THE STATE OF WASHINGTON**

9 In Re The Tribal Law Enforcement
10 Certification of:

11 TED S. SUMMARELL,

12 Respondent.

NO. 13-479

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER REVOKING TRIBAL LAW
ENFORCEMENT OFFICER
CERTIFICATION

13 An administrative hearing in this matter was held on November 12, 2015, at the
14 Washington State Criminal Justice Training Commission ("Commission") facility in Burien,
15 Washington, before the Washington State Criminal Justice Training Commission Hearing Panel
16 ("Hearing Panel") to determine whether the evidence proved by clear, cogent, and convincing
17 evidence that the Respondent, Ted Summarell, was finally discharged for disqualifying
18 misconduct and, if so, whether his tribal law enforcement officer certification should be revoked.

19 The Hearing Panel was comprised of Presiding Member Chief Joe Orford of the
20 Stillaguamish Tribal Police Department, Sheriff Jim Raymond, Franklin County Sheriff's Office,
21 Officer Rich Allen of the Olympia Police Department, Lieutenant Alec Wrolson of the Puyallup
22 Tribal Police Department and Professor Matthew Hickman of Seattle University. The Hearing
23 Panel was advised by Assistant Attorney General John Hillman.

24 The Petitioner was represented by Assistant Attorney General Lisa K. Elley. Respondent
25 was present throughout the proceedings and represented himself.
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I. PROCEDURAL HISTORY

1.1 On April 2, 2015, the Respondent was mailed the Statement of Charges and a request for hearing form.

1.2 The Statement of Charges alleged that Respondent was finally discharged for disqualifying misconduct, specifically that he was discharged for the unlawful use or possession of a controlled substance. RCW 43.101.010(8).

1.3 The Respondent timely requested a hearing to contest the Statement of Charges.

1.4 On July 28, 2015, the Respondent was mailed an Amended Statement of Charges, correcting the spelling of his name and adding citation to the federal drug statute, 21 U.S.C. § 844(a).

1.5 Prehearing conferences were held on August 4, 2015; September 1, 2015; September 15, 2015; and September 23, 2015.

1.6 At the September 1, 2015 prehearing conference the Respondent moved to continue the hearing date and waived the 180 day deadline. The hearing was continued to November 12, 2015, without objection.

II. HEARING

2.1 A hearing was held before the Hearing Panel on November 12, 2015, to decide the merits of the Statement of Charges. The hearing was open to the public.

2.2 The Petitioner presented the testimony of the following employees of the Tulalip Police Department: Chief Carlos Echevarria, Commander Paul Arroyos, and Officer Paul Zoller. The Petitioner also presented the testimony of Terry Tarkenton from PAML Laboratories. Petitioner offered exhibits P1-P16, which were admitted.

2.3 The Respondent testified on his own behalf and presented the testimony of Robert Meyers of Tulalip Fish and Wildlife and Commander Sherman Pruitt of the Tulalip Police Department. The Respondent offered exhibits R1-R6, which were admitted.

1 3.8 Zoller provided the Respondent with a urine collection cup. Respondent filled
2 the cup with his urine and handed it to Zoller, who poured the sample into a test tube that he
3 sealed, marked, and packaged.

4 3.9 The urine sample was provided to Pathology Associates Medical Laboratories
5 (PAML) for testing.

6 3.10 The urine sample that Zoller collected from the Respondent and sent to PAML
7 was not adulterated or tampered with.

8 3.11 On October 3, 2013, the Department was notified by PAML that urinalysis of
9 Respondent's urine sample resulted in a positive finding of THC (Cannabinoids) in the amount
10 of 26 ng/ml. Ex. P-6.

11 3.12 On October 4, 2013, Officer Summarell was provided a copy of the test results.
12 Summarell denied use of marijuana and notified the Department that he was appealing the
13 finding. Officer Summarell was placed on paid administrative leave pending an investigation.

14 3.13 The Department requested a second urinalysis test of the same urine sample,
15 which resulted in a second positive finding of THC (Cannabinoids) in the amount of 34 ng/ml.
16 Ex. P-10.

17 3.14 The disparity between the results of the two tests of the Respondent's urine
18 sample on October 1 and October 8, 2013, are within expected variance under the
19 circumstances and are not indicative of a failed test.

20 3.15 The Tulalip Tribal Police Manual provides at section 7.22.00 that "[t]he
21 possession or use of illegal substances/drugs will lead to termination from the police services."
22 Ex. P-12.

23 3.16 The Tulalip Tribal Police Manual provides at Section 5.04.02 ("Illegal
24 Substances") that "Federal rules apply to officers of the tribal police service in relationship to
25 drug testing." Ex. P-12.
26

1 4.3 The Petitioner bears the burden of proof by clear, cogent, and convincing
2 evidence. RCW 43.101.380(1).

3 4.4 Tribal law enforcement officers who are voluntarily certified by the
4 Commission are required “to comply with all the requirements for granting, denying, and
5 revoking certification as those requirements are applied to peace officers certified under this
6 chapter and the rules of the commission.” RCW 43.101.157(1).

7 4.5 The Commission may revoke a peace officer’s certification when “[t]he peace
8 officer has been discharged for disqualifying misconduct, the discharge is final, and some or all
9 of the acts or omissions forming the basis of the discharge proceedings occurred on or after
10 January 1, 2002.” RCW 43.101.105(1)(d).

11 4.6 A peace officer is discharged for disqualifying misconduct when he or she is
12 “terminated from employment for: (a) Conviction of ... (iii) the unlawful use or possession of
13 a controlled substance . . . [or](b) conduct that would constitute any of the crimes addressed in
14 (a) or this subsection.” RCW 43.101.010(8).

15 4.7 Under federal law, it is unlawful for a person to knowingly or intentionally
16 possess a controlled substance, to include marijuana, a schedule I controlled substance. 21
17 U.S.C. § 844(a); 21 U.S.C. § 802(6); 21 U.S.C. § 812(c)(10).

18 4.8 A majority of the Panel concludes that the Respondent, due in part to his
19 employment with the Tulalip Tribal Police Department, was subject to federal laws regarding
20 the lawfulness of use or possession of controlled substances, including marijuana.

21 4.9 The Panel unanimously concludes by clear, cogent and convincing evidence
22 that cannabinoids (marijuana) was present in the Respondent’s urine on September 25, 2013.

23 4.10 The Panel unanimously concludes that positive urinalysis result proved by clear,
24 cogent, and convincing evidence that the Respondent used or possessed marijuana on or about
25 September 25, 2015.
26

1. 4.11 A majority of the Panel concludes by clear, cogent, and convincing evidence
2 that the Respondent's use or possession of marijuana on or about September 25, 2013 was
3 unlawful.

4 4.12 A majority of the Panel concludes by clear, cogent, and convincing evidence
5 that the conduct described in the preceding paragraphs is disqualifying misconduct under
6 RCW 43.101.010(8).

7 4.13 The Panel unanimously concludes by clear, cogent, and convincing evidence
8 that the acts or omissions forming the basis for Respondent's discharge occurred after January
9 1, 2002.

10 4.14 The Panel unanimously concludes by clear, cogent, and convincing evidence
11 that the Respondent's discharge is final as that term is defined in RCW 43.101.010(10).

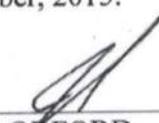
12 4.15 A majority of the Panel concludes that the disqualifying misconduct warrants
13 revocation of Respondent's Washington State tribal law enforcement officer certification.

14 4.16 Any Finding of Fact deemed to be properly considered a Conclusion of Law is
15 hereby adopted as such.

16 **V. ORDER**

17 Based on the foregoing Findings of Fact and Conclusions of Law and considering the
18 totality of the evidence presented, the Hearing Panel hereby ORDERS that the Respondent's tribal
19 law enforcement officer certification is REVOKED.

20 DATED this 9th day of December, 2015.

21
22 
23 _____
24 JOE ORFORD
25 Presiding Member of the Hearing Panel
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NOTICE TO PARTIES

1
2 RECONSIDERATION: Pursuant to RCW 34.05.470, you have ten (10) days from the
3 mailing of this Order to file a petition for reconsideration stating the specific grounds
4 on which relief is requested. No matter will be reconsidered unless it clearly appears
5 from
6 the petition for reconsideration that: (a) there is a material clerical error in the Order,
7 or (b) there is specific material error of fact or law. A petition for reconsideration,
8 together with any argument in support thereof, should be filed by mailing or delivering
9 directly to the Washington State Criminal Justice Training Commission, 19010 1st
10 Avenue South, Burien, Washington 98148, with a copy to all other parties of record
11 and their representatives. Filing means actual receipt at the Commission's office.
12 RCW 34.05.010(6).

13 A timely petition for reconsideration is deemed to be denied if, within twenty (20) days
14 from the date the petition for reconsideration is filed, the Commission does not: (a)
15 dispose of the petition, or (b) serve the parties with a written notice specifying the date
16 by which it will act on the petition. An order denying reconsideration is not a
17 prerequisite for filing a petition for judicial review.

18 STAY OF EFFECTIVENESS: The filing of a petition for reconsideration does not stay
19 the effectiveness of this Order. The Commission has determined not to consider a
20 petition to stay the effectiveness of this Order. Any such request should be made in
21 connection with a petition for judicial review under chapter 34.05 RCW.

22 JUDICIAL REVIEW: Proceedings for judicial review may be instituted by filing a
23 petition in superior court according to the procedures specified in chapter 34.05 RCW,
24 Part V, Judicial Review and Civil Enforcement (RCW 34.05.510 through .598). The
25 petition for judicial review of this Order shall be filed with the appropriate court and
26 served on the Commission, the Office of the Attorney General, and all parties within
thirty (30) days after service of this Order, as provided in RCW 34.05.542.

SERVICE: This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).