UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND
(Corrected)

No. 1269

September Term, 2014

PRINCE GEORGE'S COUNTY,
MARYLAND POLICE DEPARTMENT

v.

JUSTIN C. LOVE

Leahy,
Nazarian,
Wilner, Alan M.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: October 20, 2015

Justin Love, a Prince George's County police officer, was randomly selected for a drug test, and he tested positive for marijuana. After a follow-up "reasonable suspicion" test and a hearing, the Prince George's County Police Department's (the "Department") Administrative Hearing Board (the "Board") found him guilty of "unbecoming conduct" and terminated his employment. The Circuit Court for Prince George's County reversed the Board's decision on the ground that the Department failed to follow certain procedures in the course of testing Mr. Love. We reverse the judgment of the circuit court.

I. BACKGROUND

Mr. Love had worked for the Department for six years when he was selected for urinalysis as part of the Department's random drug testing program.[1] He went to Concentra Medical Center to provide a urine specimen, and the test revealed the presence of cannabinoid at sixty-four nanograms per milliliter ("ng/ml")—in common parlance, he tested positive for marijuana. Mr. Love was informed of this result through a telephone call to his home several days later. The caller asked if he took any prescription medications (he replied that he hadn't), and he was informed that the results would be forwarded to the Department.

Mr. Love provided a second urine sample a week later (also administered at Concentra), called a "reasonable suspicion test," that reflected a lower level of marijuana—twenty-six ng/ml—that still was considered positive (a subject of some dispute into which

[1] We look to the Board's findings of fact in its September 18, 2013 Memorandum for background, but note below where disagreements arose between the parties.

we will delve below). Another lab, Quest Diagnostics, Inc., conducted a "split sample" test of the original specimen, and Mr. Love was informed that that result also was positive, although the letter that he received did not contain a specific numeric measurement, as the other two test results had.

Based on the test results, the Department brought two administrative charges of "unbecoming conduct" against Mr. Love. He then requested a hearing before the Board under Md. Code (2003, 2011 Repl. Vol.), §§ 3-107 & 3-108 of the Md. Public Safety Code (known as the Law Enforcement Officers' Bill of Rights, or the "LEOBR"). The Board held a hearing on July 17, 2014.

At the hearing, the Department offered the testimony of Dr. Todd Simo, a Board-certified Medical Review Officer ("MRO") who served as the Chief Medical Officer for National Diagnostics, where he was responsible for overseeing the review process for about 1.5 million test results annually. Although Mr. Love objected to the Board's decision to admit Dr. Simo as a medical expert in the field of drug testing and analysis, the Board overruled the objection and allowed Dr. Simo to testify.

Dr. Simo testified that when a test came back positive, their process required that a "Medical Review Officer Assistant would contact . . . the . . . donor, gather medical information . . . to ascertain . . . if . . . the person was on any prescription medications. And upon receipt of those, I would then verify the results, either positive or negative, based

upon that conversation with the Medical Review Officer Assistant."[2] He also explained the significance of the cutoff limit of 15 ng/ml for the reasonable suspicion test:

> [Dr. Simo]: [T]he cutoff number is selected . . . and the determination is made by when you look at a 15 . . . nanogram per milliliter cut-off, . . . that's the same as the Federally regulated level. And the Federal . . . government . . . prior to establishing that level did a considerable amount of studies . . . to basically rule out . . . passive . . . exposures being a reasonable explanation for the result. And that's why they established the level as such.
>
> [Counsel]: . . . Is there a certain . . . scenario where being around people who smoke marijuana could cause someone to have positive test results?
>
> [Dr. Simo]: There isn't . . . a reasonable passive . . . inhalation scenario that would . . . lead to this kind of level.
>
> [Counsel]: What about any other scenario?
>
> [Dr. Simo]: . . . [T]he scenarios which the government did to challenge this level is to get someone over 15 nanograms per milliliter . . . on confirmation testing. Those particular individuals had to be exposed to an extraordinary amount of smoke in a . . . sealed small environment where they essentially were re-breathing the . . . marijuana smoke air and . . . it wasn't ventilated and still in that situation it took four to five hours for the average individual to be positive.
>
> [Counsel]: And in your professional opinion to a reasonable degree of medical probability what does the test result from . . . September 12 demonstrate?
>
> [Dr. Simo]: Again, what . . . it demonstrates is . . . [that Mr. Love] was positive for . . . marijuana at confirmation testing . . . . [T]here wasn't a medical explanation . . . for his . . . results . . . compelling me to verify it's positive. Uh, so you know within a . . . reasonable degree of medical certainty the donor

[2] Dr. Simo later confirmed that the Assistant MRO who would have spoken with Mr. Love worked directly for him.

> either intentionally or unintentionally used marijuana within one week prior to collection of that drug screen.

Dr. Simo testified as well about the split sample test that, according to his October 4, 2012 Memorandum to Sergeant Barry Fox, also came back positive for marijuana. As he explained, the split sample process did not reveal a particular value, but only provided (to Dr. Simo, at least, according to his memorandum) a reconfirmation that the specimen was positive for marijuana:

> [W]e don't get that information [of specific values] so there's no further analysis done. Plus pragmatically it—it wouldn't cause any—i—what you're—is—is—it's like being part pregnant. Either you're pregnant or you're not. And the secondary [split sample] test just says that you're pregnant again.

Sergeant Fox, the Department's drug test coordinator, testified that he advised Mr. Love about his positive drug test and accompanied him to the reasonable suspicion test. Mr. Love's counsel questioned the Sergeant at length about the testing procedures for the reasonable suspicion test—*i.e.*, the names of those present, whether there were any labels or seals tampered with in the course of the test, and the like—and asked him about the process for the split sample test. Sergeant Fox explained that Mr. Love had three days after being informed about the initial test result to request a split sample test. Although Sergeant Fox did not have a file (nor was it clear that a file would have contained a copy of Mr. Love's request for a split sample, if he made one), he testified that the subject of drug testing could ask for a list of laboratories from which to select one to conduct the split sample test, at the officer's expense: "We just provide him with the list of certified labs. He's responsible for the financial part of it."

Mr. Love then testified on his own behalf and claimed that the test results were all "false positives." He offered two alternate explanations for the results. *First*, he explained that when bathing his then-two-year-old son, he had used Aveeno Baby Wash—a product that, he contended, caused infants bathed in it to test positive for marijuana. He provided an unauthenticated copy of a 2012 article he had obtained from the Internet, which the Board admitted in evidence, that discussed a study in which infants washed in this shampoo tested positive. He also claimed to have seen a report in which a child's *parent* also tested positive—"there was an exposé done by several of the newscasts, um, and there was one particular one that I can remember that there was the – the parent was positive, too. The mother and the . . . infant [were] positive"—but he neither identified the report nor offered expert testimony supporting this theory.

Second, Mr. Love offered evidence that he had worked overtime during the weeks preceding the urine test, and implied that he might have been exposed to second-hand marijuana smoke in the course of his job. He asserted that he had not used or smoked marijuana "as it relates to this drug test." He explained that he was not perceived as "a party guy," and did not "hang out at clubs," which evidently bolstered his claim (later forwarded in counsel's closing argument, which we reproduce below) that he did not use marijuana, and that any exposure was unintentional.

With respect to the testing procedures, Mr. Love testified that he submitted a letter (which he did not produce at the hearing) to Sergeant Fox expressing interest in a split sample test, but never received any list of labs from which to choose, and he only knew the split sample had been conducted "when . . . $250 was deducted out of my account." Based

on Mr. Love's testimony, the parties disputed whether he actually had requested a split sample, although he did not suggest an alternate explanation for why Quest would have conducted the testing. His counsel brought up a letter he sent to counsel for the Department in the course of discovery requesting more documentation about both the reasonable suspicion test and the split sample test, and he blamed the Department for not having adequate documentation to back up either. The record does not reflect any independent efforts to secure documentation from the labs.

Counsel for the Department argued at the close of evidence that the test results supported two separate charges of "unbecoming conduct": the September 12 test and the split sample test supported Charge One, and the second, reasonable suspicion, September 19 test supported Charge Two. The Department argued that there were no problems with the chain of custody, and that the Department provided all reports it possessed, and that if Mr. Love had wanted more information from a testing lab with respect to the split sample test, he could have sought it.

Counsel for Mr. Love's closing argument[3] was not lengthy, so we reproduce it in its entirety:

> Thank you. There was, uh, there was an . . . old expression that—that I remember. It . . . takes some mental thought to get through the expression to . . . understand exactly what it means, but the expression is, "You don't know what you don't know if you don't know what you don't know." And

[3] Mr. Love was represented by a different attorney at the hearing than he was on this appeal. His counsel at the hearing before the Board "reserved on opening" at the beginning of the day, opting to wait until he presented his case in chief. Then, when he reached that point in the case he opted to "pass on opening and move right into . . . evidence." His only argument came at the end.

that's sort of where we're at here. You've got—the doctor says, "Look there is a test result," and *we can argue about whether the test result is valid or whether the proper procedures were followed or whether they weren't followed and that's* a whole—that's—*that's one set of arguments.* The second issue is Dr. Simo says, "All it tells me is that there's a positive result, whether intentional or unintentional. Can't tell you how it occurred, only that its present." The Department has charged Officer Love with Unbecoming Conduct because in the test he tested positive. Well, that's not Unbecoming Conduct. That's just a test result that may have shown positive. Unbecoming Conduct is if you have knowingly and intentionally consumed marijuana, that could be Unbecoming Conduct. The Department hasn't proven that clearly. They have no evidence whatsoever suggesting that occurred. The officer can only testify, "I did not consume marijuana. I'm married. I have a 3-year-old. I work. I work overtime. I go home. I work. I work overtime. I go home. I'm not a party guy. I don't party. I don't hang out with people I don't know." You don't know what you don't know if you don't know what you don't know. "I don't know how that became in the system. All I can tell you is I didn't smoke it. I've never acknowledged smoking it." I never have any witnesses that said that they saw him where he appeared to be under the influence of any, uh, thing. That he's known to party. That, uh, he showed up with glassy eyes. That he took a lot of time off from work. Uh, that he was—had high absenteeism. Anything. Nothing. Not a hint—not a suspicion. Nothing. So is a charge that simply says, "You tested positive," adequate? The answer is, "No." I don't charge the officers. I'm not responsible for directing the charges. The Department's responsible for directing the charges. If they wanted a different charge, then they could have drafted a different charge, but they didn't. They said the mere fact that you tested positive is Unbecoming Conduct when it's clearly not. Using marijuana and knowingly using marijuana would be Unbecoming Conduct. The test result itself is not Unbecoming Conduct. The Department has failed to properly charge the officer in this case. As to the testing process itself, the dilemma of course is that it's an out-of-state facility. Um, I have no subpoena power over-over them. The Department is the one that sends the officer for the testing. The Department is the one that pays the bills, uh, for these facilities. The Department is the one that has access, um, to the—the records

should they make such a request. That's why the request is made of counsel. I don't have anything except your conclusion. I don't have anything that supports that conclusion. I don't have any of the test data. I don't have the Medical Review Officer's notes. Um, I don't have the information that may have been given to the officer—any conversation that may have taken place or failed to take place as the officer testifies. I don't know what that—any of that is. Nor—nor does the Board. Would it have shown something different? *I don't know. Possibly. Would have been nice to know, but I don't know. Can you just assume or presume it would show nothing else? No, I don't think you can.* Again, it's the Department's burden to establish the facts in support of their charge. And I believe they have failed to do that in this particular case. Both through the inadequacy of the charging document and through the evidence presented. Um, what you have is it's a numbers game from the testing facility standpoint. You know? "I review a million and a half test results on an annual basis." Well, clearly, you know, he doesn't personally review a million and a half test results. No human being could do that with any level of confidence. Uh, almost like signing off on speed camera tickets, but that's another thing. And so, you know, "well, okay, I only review the positive test results and those are a smaller number." Well, if you only review the positive test results then why'd you tell me you reviewed a million and a half? "No, I only review the positive results." "Well, what do you review? Where's your documentation? Show me what you reviewed." "Well, I don't have that." The Department doesn't have that. Sergeant Fox doesn't have that. Sergeant Fox didn't even bring his file indicating correspondence, uh, as it relates to, uh, Officer Love in the split sample testing, et cetera. Um, you'd think if he's gonna testify to what a document says, he'd at least have the document in front of him to be sure that his testimony is accurate and correct. You don't know what you don't know 'cause you don't know what you don't know. I think under the law, under the charges, the evidence, the obligation of the Board is to fairly, impartially determine whether the Department has proven a case that they have brought and they have not. Find the officer not guilty. Thank you.

After the testimony and closing arguments, then a lunch break, the Board reconvened and announced its finding that Mr. Love was guilty. Mr. Love then petitioned the circuit court for judicial review of the findings, and the circuit court held a hearing on July 17, 2014.

The circuit court reversed the Board's decision and cited several reasons. *First*, the court found that Department failed to follow its own procedures, as set forth in the Prince George's County Police General Order Manual ("GOM"), which required that the Medical Review Officer—*i.e.*, Dr. Simo—consult personally with Mr. Love about his test results, rather than delegating the task to a designee. *Second*, the court concluded that Dr. Simo's review of Mr. Love's test results was "not a meaningful review considering [Dr. Simo's] testimony on the number of test results he reviewed annually." *Third*, the court agreed with Mr. Love that he had a right under the GOM to choose the lab that would test the split sample, and that he was denied that right. *Fourth*, in response to Mr. Love's claim that the Department inappropriately used a screening cutoff that was too low (15 ng/ml), the court "directed" the Board to discard the second, reasonable suspicion test result.[4] The court reversed and remanded the Board's decision to terminate Mr. Love, and the Department filed a timely notice of appeal.

[4] The circuit court did agree with the Department on several issues: (1) that testing positive for marijuana constituted a "conduct-related offense" that could give rise to a charge of unbecoming conduct; (2) that the question of whether the investigatory file was turned over to Mr. Love was a question of fact for the Board; and (3) that the issue of whether the Aveeno bath soap could have contributed to a positive result was an issue of fact not appropriate for consideration on appeal.

II. DISCUSSION

We agree with the Department[5] that the circuit court erred in overturning the Board's findings and conclusions. Our role as an appellate court is to look at the underlying administrative agency decision (and not the circuit court's decision) through what the Court of Appeals has called a "limited judicial-review prism." *Kim v. Md. State Bd. of Physicians*, 423 Md. 523, 536 (2011). Our review is "'limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and

[5] The Department's brief listed the following Questions Presented:

I. Did the lower court err when it concluded that only [Dr. Simo], and not his designee, could contact a police officer who tested positive for marijuana twice, thus inappropriately usurping the Board's right to construe the [GOM]?

II. Did the lower court err when it substituted its own judgment for the [Board], despite the lack of any opposing expert testimony as to the appropriate industry standard, and concluded that [Dr. Simo] conducted a medically insufficient review of a positive drug test result?

III. Did the lower court err when it failed to consider the federally regulated cutoff concentration for a drug test and ruled that the cutoff enumerated in the Code of Maryland Regulations preempted the stricter, federal standard and threshold used by County's testing facility?

IV. Did the lower court err and violate Section 12.04.01.15 of the Code of Maryland Regulations when it overturned the termination of an employee who tested positive twice for marijuana?

V. Did the lower court err when it concluded that a violation of the [GOM] occurred by shifting the responsibility to select the laboratory to perform the split sample marijuana testing from the police officer to the Department?

conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.'" *Bd. of Physician Quality Assur. v. Banks*, 354 Md. 59, 67-68 (1999) (quoting *United Parcel Serv., Inc. v. People's Counsel for Baltimore City*, 336 Md. 569, 577 (1994)).

Our review breaks down into two areas: review of the agency's factual decisions, and the agency's application of the law. When reviewing findings of fact, we apply the "substantial evidence test," and look only to "'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.'" *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512 (1978) (quoting *Dickinson-Tidewater, Inc. v. Supervisor*, 273 Md. 245, 256 (1974)). We "'must review the agency's decision in the light *most favorable to it*; . . . the agency's decision is prima facie correct and presumed valid; and . . . *it is the agency's province to resolve conflicting evidence' and to draw inferences from that evidence*." *CBS v. Comptroller*, 319 Md. 687, 698 (1990) (quoting *Ramsay, Scarlett & Co. v. Comptroller*, 302 Md. 825, 834-35 (1985) (emphasis added) (ellipses in original)). We review an agency's legal conclusions less deferentially: "we 'may always determine whether the administrative agency made an error of law.'" *Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 450-51 (2002) (quoting *Baltimore Lutheran High School v. Emp'ment Sec. Admin.*, 302 Md. 649, 662 (1983)). Nonetheless, we give some deference to an administrative agency's interpretation of the laws it administers because "the expertise of the agency in its own field should be respected." *Banks*, 354 Md. at 69 (citations and footnotes omitted); *see also Kim*, 423 Md. at 535.

We refer to the *agency's* decision here because that is what we review, not the intervening decision of the circuit court. We examine the agency's decision directly, not the lower court's decision. *Jordan Towing*, 369 Md. at 450; *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 244 (2007). In fact, "our role 'is precisely the same as that of the circuit court.'" *Dep't of Labor, Licensing & Regulation v. Muddiman*, 120 Md. App. 725, 733 (1998) (quoting *Dep't of Human Res. v. Thompson*, 103 Md. App. 175, 188 (1995).

A. The Board Did Not Err When It Concluded That Dr. Simo Could Confer With Mr. Love Via His Assistant.

The circuit court found fault with the Board's position, and the Department's procedure, that allowed Dr. Simo to confer with Mr. Love through an assistant rather than doing so himself. The Department concedes that Dr. Simo did not speak directly to Mr. Love, but contends that he was not required to do so. In response, Mr. Love points to the wording in the GOM, and reasons that the order requiring review of a drug test by a MRO "is designed to protect the integrity of the testing and the due process rights of the officer" (but citing no authority for this proposition). We don't disagree that the manual states that an "MRO" must discuss the testing.[6] It does not necessarily follow, though, that Dr. Simo's *assistant's* conversation with Mr. Love is inconsistent with that directive, or that his test results must be thrown out even if it were.

[6] Section 3/743.55 of the GOM provides: "If the MRO determines that the employee's urine contains a CDS or an elevated level of a prescribed medication, the Medical Review Officer *shall contact* the employee directly and confidentially to facilitate a consultation session." (Emphasis added.)

First, we see no evidence in the record that Mr. Love raised this issue to the Board. Though his counsel asked Dr. Simo about it, he did not object to Dr. Simo's testimony or raise this purported non-compliance with the GOM with the Board. (His general, "you-don't-know-what-you-don't-know" argument didn't suffice.) *Second*, and assuming the issue was properly raised, the Board was legally justified in accepting Dr. Simo's testimony, in spite of the relevant GOM provision, because Mr. Love has not shown that he suffered any prejudice as a result of the alleged violation. It is true that, as a general rule, government agencies must comply with their own rules and regulations. *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265-66 (1954); *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 467 (2003). But in *Pollock*, the Court of Appeals held that a petitioner who complains of a violation of agency procedures must also prove that the departure from agency rules was prejudicial. *Id.* at 468-69. In that case, the petitioner was able to show that the correctional facility where he was housed failed to follow its own requirements for collecting and documenting urinalysis testing, *id.*at 466, but the Court of Appeals upheld non-renewal of his parole because he could not show that he suffered any prejudice as a result. *Id.* at 504-05.

Mr. Love's complaint here is the same—he alleges a technical violation of the GOM (and that only arguably—we assume it exists but need not construe the language, because his failure to show prejudice negates his claim under *Accardi*). But we can think of no reason, and he has pointed to none, that a conversation with Dr. Simo might have led to a different outcome. The only purpose of the inquiry for a lab—whether by the MRO or an assistant—is to confirm that a subject is not taking any prescription medication. Mr. Love

does not dispute that he had a conversation with someone from Dr. Simo's office, and he testified that he answered the same question that Dr. Simo would have asked, *i.e.*, whether he had taken any prescription drugs. That conversation would not have been different if Dr. Simo had been on the line, nor was there any evidence that Mr. Love's other explanations would have changed Dr. Simo's actions or findings.

B. Substantial Evidence Supports The Board's Finding That The Test Was Adequately Reviewed.

The circuit court also found that Dr. Simo failed to conduct a "meaningful review" of Mr. Love's urine test, given the number of test results he reviews annually. But this conclusion contravenes the principle that a reviewing court *must* defer to an agency's factual findings without substituting its own judgment. *Gieous v. E. Corr. Inst.*, 363 Md. 481, 496 (2001). The extent of Dr. Simo's review went to his credibility, and the Board—the fact-finder that had the opportunity to see the witnesses and assess the witness's credibility—had sufficient evidence "reasonably . . . [to] have reached the factual conclusion" that it did. *Bulluck*, 283 Md. at 512 (quoting *Dickinson-Tidewater*, 273 Md. at 256). Dr. Simo explained the testing and review procedures, and explained how his office communicated positive test results and conferred with donors. And although Mr. Love understandably disagrees, Mr. Love provided absolutely no testimony to counter Dr. Simo's, only the argument and conjecture of counsel.

In his brief, Mr. Love attacks Dr. Simo's review with arguments about the large volume of tests Dr. Simo was responsible for supervising. Of course, the number of positive tests (and sample of negative tests) that triggered further action on the part of Dr.

Simo and his staff represented a small fraction of the broader universe of tests. But that information was all before the Board, and was unaccompanied by any evidence delete undermining the accuracy of the tests or Dr. Simo's ability to supervise them. Instead, Mr. Love asked the Board, the circuit court, and now us, to leap from his inability to explain his positive test to the conclusion that something must have gone wrong in the testing process. Had the Board resolved the dispute in his favor, that finding would be entitled to deference. But the Board's decision that the sample received an appropriate review is entitled to deference as well, and the circuit court erred in overturning it. *See Bulluck*, 283 Md. at 513.

C. Whether Mr. Love Selected The Lab To Conduct Split Sample Testing Was A Question Of Fact For The Board, And Mr. Love Suffered No Prejudice.

Mr. Love argued in the circuit court that he was entitled to choose a lab to conduct split sample testing and was denied that right. We disagree. *First,* even though Mr. Love frames this question by presenting as a fact that he did not get to select a second lab, the Board had evidence on which it could conclude that Mr. Love *did* in fact select the second lab, Quest, to perform the split sample testing. Sergeant Fox testified that as a matter of course, he would provide a list of labs for a requesting party to seek a split sample. Here, a split sample was conducted, and Mr. Love was charged for it. These two facts could have led the Board to conclude that Mr. Love was mistaken when he said he didn't request the split sample—after all, who else would have requested it?

Second, though, and assuming that he was denied the opportunity to select the lab, Mr. Love cannot point to any prejudice that he suffered as a result. He neither alleged nor

proved that Quest was an unfit or unreliable lab, or that another lab might have produced a different result, or that he asked for the opportunity to select a lab. Because the Department's compliance (or non-compliance) with the lab-selection procedure did not affect Mr. Love's individual rights or obligations—he had the test he was entitled to, from a lab other than the lab that tested his original positive sample—Mr. Love is not entitled to relief in the absence of prejudice. *See Pollock*, 374 Md. at 467. The same is true for his complaint that the split sample test showed no numerical value for the positive result. Dr. Simo explained the purpose of the sample and why the results came in that form, and Mr. Love offered no evidence that challenged or undermined the reliability of the confirmed positive test.

D. The Second Test Result Did Not Violate COMAR.

Finally, the circuit court concluded that COMAR 12.04.01.15(C) set a "minimum testing threshold" that required Mr. Love to test above 50 ng/ml for marijuana in order for the Board to charge him. It directed the Board to "discard the second test result as it failed to meet the standard under COMAR."

We disagree with the circuit court that the Board was required to discard the second test result. *First*, we see no evidence that Mr. Love raised this issue before the Board, so it was not appropriate for him to raise it for the first time in the circuit court. The court deemed the issue to have been raised before the board "when Trial Counsel discussed the less rigorous standards employed by the state as compared to the federal standards." But "discussing" an issue is not the same as objecting to the test result, and Mr. Love did not seek to rebut the Department's testimony about the regulatory thresholds for positive test

results, nor did counsel argue to the Board that a test showing a lower-than-50ng/ml presence of cannabinoids should be considered a negative confirmatory test under COMAR, or anything of the sort.

Second, Mr. Love has provided no reason that the Department was duty-bound to abide by the COMAR standard of 50 ng/ml for the second, reasonable suspicion test. The federal standard set forth in the Code of Federal Regulations provides for a 50 ng/ml cutoff in an *initial* test, but a 15 ng/ml cutoff in a *confirmatory* test. 49 C.F.R. 40.87 (2012). Although Mr. Love argues that there is no reason to look to the federal regulations, COMAR actually is *silent* as to the value required for a confirmatory test, so the Board did not act unreasonably in relying on Dr. Simo's unrebutted testimony about the reasons for relying on the federal standard at that stage in the process.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. COSTS TO BE PAID BY APPELLEE.