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June 7, 2013

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Re: CDPHE Lab Investigation

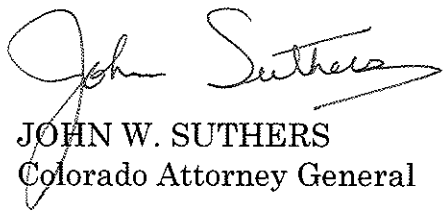
Dear Ladies and Gentlemen:

The Department of Law represents the Colorado Department of Public Health and Environment (CDPHE). It recently came to my attention that CDPHE had requested Mountain States Employers Council to conduct a workplace investigation regarding personnel issues in the Laboratory Services Division of CDPHE. That investigation resulted in a report dated March 18, 2013. A redacted copy of the report is enclosed. Although this document came to the Department of Law as part of our representation of CDPHE in personnel matters, it was apparent

to my office that the report contained information that could be considered mitigating evidence in the prosecution of certain criminal cases in which the CDPHE lab was involved.

Therefore, we presented this issue to CDPHE and they authorized the release of a redacted copy of the report by my office to the district attorneys and to the criminal defense bar. The client asked that names of employees in the report be redacted because of the privacy rights afforded by law to state employees in such situations. Because of such legal concerns, the state will make specific names of witnesses referenced in the report available only upon court order.

Sincerely,



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Colorado Attorney General

Enclosure

CC: Governor John W. Hickenlooper
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INVESTIGATION REPORT
Confidential Information
Not For Distribution

To: Mona Heustis, Human Resources Director, Colorado Department of Public Health and Environment

Subject: Workplace investigation regarding allegations of EMPLOYEE 18

Conducted by: MSEC INVESTIGATOR, Workplace Investigator, Mountain States Employers Council, Inc.

Date of Report: March 18, 2013

Investigation Active: March 1-18, 2013

Procedure: Mona Heustis, Human Resources Director for the Colorado Department of Public Health and Environment ("CDPHE"), contacted MSEC EMPLOYEE of Mountain States Employers Council, Inc. ("MSEC") to perform a workplace investigation of allegations made by a former employee, EMPLOYEE 18. MSEC EMPLOYEE explained the investigation process to Ms. Heustis and clarified the investigator's role and the necessary expectations in this process as communicated to all participants and referenced below.

The undersigned, MSEC INVESTIGATOR, assumed the role of investigator in this matter. I prepared written summary statements for each witness. I communicated similar introductory remarks to each witness. These remarks addressed the purpose of the investigation and my role as a neutral fact finder, the Colorado Department of Public Health and Environment's prohibition against retaliation for participation in the investigation and/or making complaints under the equal employment opportunity policy, and the expectation to be truthful. Each witness reviewed his or her statement with me. I encouraged each witness to make any additions, deletions, or other modifications necessary to accurately reflect his or her beliefs. Each witness was asked to review his or her statement to ensure completeness and accuracy and attest by signing the summary statement.

Except as otherwise noted, all witnesses were interviewed at the CDPHE Laboratory Services Division, 8100 Lowry Blvd. in Denver. On March 1, 2013, I interviewed EMPLOYEE 18 at MSEC's Denver office. On March 5, 2013, I interviewed EMPLOYEE1 and EMPLOYEE 2. On March 6, 2013, I interviewed EMPLOYEE 3, EMPLOYEE 4, and SUPERVISOR 1. On March 7, 2013, I interviewed EMPLOYEE 5 (at the University of Colorado School of Pharmacy, Anschutz Campus in Aurora), EMPLOYEE 6, and EMPLOYEE

7. On March 8, 2013, I interviewed SUPERVISOR 2, EMPLOYEE 8, and EMPLOYEE 9. On March 12, 2013, I interviewed EMPLOYEE 10 and EMPLOYEE 11. On March 13, 2013, I interviewed SUPERVISOR 3.

Attachments:

1. January 27, 2013 Email from EMPLOYEE 18 to Ann Hause
2. February 6, 2013 *Colorado Springs Independent* article
3. Summary Statement of EMPLOYEE 18
   a. Emails provided by EMPLOYEE 18
4. Summary Statement of EMPLOYEE 1
5. Summary Statement of EMPLOYEE 2
6. Summary Statement of EMPLOYEE 3
7. Summary Statement of EMPLOYEE 4
   a. Emails provided by EMPLOYEE 4
8. Summary Statement of SUPERVISOR 1
   a. Emails provided by SUPERVISOR 1
9. Summary Statement of EMPLOYEE 5
10. Summary Statement of EMPLOYEE 6
11. Summary Statement of EMPLOYEE 7
    a. Chronology prepared by EMPLOYEE 7
    b. Emails between EMPLOYEE 7 and SUPERVISOR 3
12. Summary Statement of SUPERVISOR 2
13. Summary Statement of EMPLOYEE 8
14. Summary Statement of EMPLOYEE 9
15. Summary Statement of EMPLOYEE 10
16. Summary Statement of EMPLOYEE 11
17. Summary Statement of SUPERVISOR 3
    a. March 17, 2013 email from SUPERVISOR 3
    b. Emails provided by SUPERVISOR 3

Background and Summary of Issues

EMPLOYEE 18 worked as a laboratory technician in the toxicology lab for the CDPHE Laboratory Service Division from August, 2011 to August, 2012, when s/he voluntarily resigned. On January 27, 2013, EMPLOYEE 18 sent an email to Ann Hause, the Director of Legal and Regulatory Affairs for CDPHE, asserting several allegations regarding the toxicology lab and its supervisor, SUPERVISOR 3. Attachment 1.

The allegations set forth in EMPLOYEE 18's email to Ms. Hause fall into three categories: (1) Training; (2) Security of samples; and (3) Unprofessionalism. The first two categories are straightforward. EMPLOYEE 18 alleges that blood alcohol training for toxicology lab employees is inadequate and that blood and urine samples are not securely stored in the lab. The third category, unprofessionalism, sets forth a number of allegations about the behavior of SUPERVISOR 3. After EMPLOYEE 18's email became public, the *Colorado Springs*

Independent published an article about EMPLOYEE 18's allegations on February 6, 2013. Attachment 2.

Other issues arose during the course of the investigation that EMPLOYEE 18 did not identify. This report addresses some of those issues as additional allegations because they are closely related to the kinds of complaints made by EMPLOYEE 18. The remaining issues that arose during the investigation are more peripheral in nature and are therefore addressed in the Other Issues section of this report.

Each of the pertinent allegations will be addressed individually.

Investigator Findings

This section identifies the pertinent allegations, followed by identification of specific sources of supporting or refuting information. Investigator commentary follows to develop specific areas of concern, address credibility assessment, or provide other subjective comment. *For a comprehensive understanding of the issues presented here it is recommended that each witness statement be reviewed individually.*

Allegation 1: EMPLOYEE 18 alleges that blood alcohol training protocols for toxicology lab analysts are inadequate.

Supporting Information: EMPLOYEE 18 states: "My training in Toxicology started with EMPLOYEE 1. After about one week, EMPLOYEE 6 continued to train me while EMPLOYEE 1 began training someone else for a different machine. My training lasted about three weeks. Prior to working for Toxicology, I had experience working with a gas chromatograph, but no experience working with blood or alcohol. After my training, I began working full-time as a Tech I performing the full duties of that position. The people who trained me were just other analysts. They had not been trained how to train new analysts. EMPLOYEE 6 also trained EMPLOYEE 16."

EMPLOYEE 18 continues: "Despite the fact that I was never trained how to train new lab technicians, I was put in charge of training two new employees in the summer of 2012. I was very uncomfortable performing that role because no one had taught me how to do it. In addition, I was required to handle a full work load while training the new employees, which made it difficult for me to perform my job properly. I ran as many samples as I could, but it was impossible for me to keep up with the work load. EMPLOYEE 4 and SUPERVISOR 3 both emailed me frequently to criticize me for not running enough samples, but I was running as many samples as I possibly could. During the time I was required to train the new employees, I frequently went to EMPLOYEE 4 for guidance because I didn't know what I should be doing. I did not receive adequate guidance from her/him."

EMPLOYEE 18 adds: "I have a friend who works for the Orange County Crime Lab, who underwent an entire year before s/he was allowed to even touch a sample. I also have a friend who works in Florida, and her/his training lasted a year and a half. When I attended the Borkenstein class at the University of Indiana in approximately May of 2012, several other attendees explained that their training periods were much longer and that they were not allowed to start working until after completing the Borkenstein class. I don't think the three-week training I underwent was sufficient to prepare me for the job requirements. When I told EMPLOYEE 4 about those longer training periods after I returned from the class, s/he told me that they didn't have time to train people that long."

EMPLOYEE 18 continues: "When I started working as an analyst, EMPLOYEE 6 and I were running blood ethanol tests. The lab has a Redo book. Anytime we conducted a test that yielded inaccurate results, we were supposed to enter that test in the Redo book and then retest the sample and compare the new results to the old. But I was never told about the Redo book during my training and no one else ever told me about it. There was also no supervision over samples that had to be retested because no one checked the Redo book. In approximately the Fall of 2011, I tested a sample that EMPLOYEE 6 had already tested and put it back in line for a Redo without knowing that it was a felony draw. I made a mistake when I ran the test by possibly pulling the wrong sample and sending a report with the wrong result. Had I known there was a Redo book, I could have compared the results of EMPLOYEE 6's initial test to the results of my test. I was not even aware that I was supposed to compare my results to the earlier results. It is more likely that I would have discovered my own mistake had I been trained properly."

EMPLOYEE 18 adds: "SUPERVISOR 3 reprimanded me after my mistake, acknowledged that I was not properly trained, and told me I could have been fired if the results from my test had been forwarded to the District Attorney, but s/he did nothing to follow up and ensure that I didn't make a similar mistake again or to assure that I was taught everything that was missing from my training. I then spoke to EMPLOYEE 4 and asked her/him what I should do to ensure that I was properly trained. EMPLOYEE 4 had EMPLOYEE 1 watch me do my work about two or three times, but I did not receive any additional training."

EMPLOYEE 7 is a [JOB TITLE] in the [WORK LOCATION] lab who worked as [JOB TITLE] in the toxicology lab from December, 2009 to October, 2010. EMPLOYEE 7 states: "SUPERVISOR 4 trained me when I started working in toxicology in December, 2009, and SUPERVISOR 5 handled all the quality control (QC). My training under SUPERVISOR 4 and SUPERVISOR 5 lasted

about three to five months. SUPERVISOR 5 meticulously reviewed all the data generated by the tests I ran. The training I received was excellent."

EMPLOYEE 7 continues: "SUPERVISOR 4 transferred into [WORK LOCATION] about three months before I did. SUPERVISOR 5 transferred near the time that SUPERVISOR 4 transferred. I continued to work in toxicology for about three or four months before SUPERVISOR 5 retired. SUPERVISOR 5 was an excellent asset for the toxicology lab and made sure everything ran by the book. The toxicology lab fell apart after SUPERVISOR 5 left because no one conducted QC like s/he did."

EMPLOYEE 7 adds: "I saw new employees come into the Toxicology lab after I left, and they were not trained properly. Toxicology and Organic Chemistry share the same workspace, so I saw how the new employees were trained. When I was trained by SUPERVISOR 4, SUPERVISOR 4 sat right next to me for three months, but no one trained the new employees like that after I transferred out. I have never seen anyone in toxicology get trained like I got trained."

EMPLOYEE 6 is a [JOB TITLE] in the [WORK LOCATION] lab who worked as [JOB TITLE] in the toxicology lab from May, 2010 to November, 2011. EMPLOYEE 6 states: "I had very good training for working on the blood alcohol bench. SUPERVISOR 4 and SUPERVISOR 5 trained me. SUPERVISOR 4, who was a [JOB TITLE], had a training checklist that s/he went through with me, but we went above and beyond that checklist. SUPERVISOR 5, who was in charge of quality control for alcohol and drug testing, taught me quality control, such as data packets. SUPERVISOR 5 was extremely thorough. SUPERVISOR 5 retired sometime before I became [JOB TITLE], but I don't recall exactly when. SUPERVISOR 4 left the Department and moved to [WORK LOCATION] after I was trained but before SUPERVISOR 5 retired. SUPERVISOR 4 no longer works for the State."

EMPLOYEE 6 continues: "I was not trained how to train lab techs, but I trained about two lab techs for the blood alcohol bench based on the training checklist that SUPERVISOR 4 used when s/he trained me. The checklist is not a complete training program because there [are] other skills and concepts that people must know to do the job. After SUPERVISOR 4 and SUPERVISOR 5 left, I was the only person who trained lab techs for the blood alcohol bench. I started training EMPLOYEE 16, but left the department before her/his training was complete. S/he may or may not have signed off the training checklist. When I left, there wasn't anyone in toxicology to continue her/his training. I also trained EMPLOYEE 18 and EMPLOYEE 14."

EMPLOYEE 6 adds: "I don't feel like training for the blood alcohol bench was adequate after SUPERVISOR 4 and SUPERVISOR 5 left. SUPERVISOR 5 was

so on top of the quality control that everything I did was checked several times. I also think quality control went down the tubes after SUPERVISOR 5 left. EMPLOYEE 11[1] told me that EMPLOYEE 4 was supposed to completely take over SUPERVISOR 5's job, but I don't think s/he knows enough about blood alcohol to conduct quality control at the same high level that SUPERVISOR 5 did. SUPERVISOR 5 told me that EMPLOYEE 4 had plenty of opportunities to learn about quality control from her/him but that s/he never did. S/he also said something like, 'As soon as I leave, this place is going to fall apart.' I think quality control did decline after SUPERVISOR 5 left. For my own testing, I knew how to do good quality control, but other analysts had problems with quality control because they were so new."

EMPLOYEE 6 continues: "SUPERVISOR 3 hired kids right out of school and left it to me to train them on blood alcohol or EMPLOYEE 4 to train them on blood drugs. I don't think toxicology's training checklist is adequate for training. It includes necessary training elements, but not sufficient training elements. There needs to be more training than just what the checklist includes. The checklist is enough to get a lab tech's feet wet, but the lab tech still needs someone constantly overseeing their work until they master it, and I think that process takes a solid year. SUPERVISOR 5 and SUPERVISOR 4 provided that kind of oversight, but after they left there was no one to do it."

EMPLOYEE 6 adds: "After I left, I think EMPLOYEE 18, EMPLOYEE 16, and other [JOB TITLE] were out there on their own. It takes at least a year to become comfortable doing quality control for blood alcohol because the data is so important."

EMPLOYEE 1 has worked as [JOB TITLE] in the toxicology lab since December, 2010. EMPLOYEE 1 states: "I began training for the blood alcohol bench in approximately May, 2011. That training also lasted approximately one month. EMPLOYEE 6 trained me for the blood alcohol bench. I began by observing her/him and then conducted practice tests. I also had required reading. I attempted to complete that portion of the training but was not able to read all the articles because they were not all available. My trainer did not follow up to make sure I completed the reading."

EMPLOYEE 1 continues: "The Redo Book is part of the alcohol bench. Alcohol tests yield four numbers, which must all be within 5% of each other. If any of the samples are outside that range, we are required to record all four values in the Redo Book, re-test the sample, and then report the re-test results in the Redo Book. EMPLOYEE 6 did not train me on the use of the Redo Book during my

[1] EMPLOYEE 11 has worked for the Laboratory Services Division for over eleven years, where s/he serves as the [JOB TITLE].

alcohol bench training. I first learned about the Redo Book sometime after I completed my training."

EMPLOYEE 1 adds: "All blood alcohol test results are currently reviewed by EMPLOYEE 4. Under our old policy, another analyst reviewed the test results rather than a supervisor. Currently, the analysts are required to flag results that need to be retested by placing a note on the test results that are forwarded to a supervisor after the retest is performed. During my training, I was not taught to make a notation on my test results indicating that a sample had been retested."

EMPLOYEE 1 continues: "I felt that the training for the blood alcohol bench was adequate for purposes of conducting the tests, but I felt like it was inadequate in other ways. I was not adequately trained how to perform daily maintenance or periodic maintenance on the testing equipment. . . . Making a mix of volatile chemicals is required for sample testing at the beginning of each run, before calibrating the machine, but I was not trained how to do that. I was also not taught that the hydrogen generator had to be filled with water. I learned that when the alarm sounded on the generator."

EMPLOYEE 2 continues: "I underwent training for blood alcohol testing subsequent to being trained as a blood drug screening analyst. That training lasted approximately three weeks. I believe I was trained by EMPLOYEE 14, who no longer works here. I also shadowed SUPERVISOR 4 a lot. SUPERVISOR 5, who was in charge of quality control for data packets and reports, also helped me a lot by showing me many of the procedures for the lab. SUPERVISOR 4 and SUPERVISOR 5 taught me how to use the Redo Book. By the time I completed my training, I knew how to use the Redo Book. I feel like my training was adequate. I'm not familiar with the current training is like for the blood alcohol bench because I have not worked there for about a year and a half."

EMPLOYEE 2 adds: "Training should be as comprehensive as possible. Everything, including procedures and instrumentation, should be covered up front so that employees are not unfamiliar with a situation when it arises. Training should include scenarios that are likely to arise while working on that bench and certain kinds of samples that we can and can't test. The training should cover a majority of the kinds of knowledge necessary to work on that bench."

Refuting Information: SUPERVISOR 3 states: "There is a standardized training plan for new toxicology lab employees. Training includes the standard operating procedure (SOP) and literature. New employees are also trained how to use the instruments and conduct replication of samples that have already been run with the oversight

of an experienced analyst. The length of training varies from about three to eight weeks depending on the employee. The trainer uses a checklist that the trainer and trainee must sign before the analyst can perform work independently. In addition to the checklist, the Work Leader assesses whether a newly trained employee is ready to perform work independently. Approximately six months after the checklist is signed, new employees are evaluated again for proficiency. SUPERVISOR 5, the former [JOB TITLE], developed the current training program for the toxicology lab. SUPERVISOR 5 is the one who created the checklist."

SUPERVISOR 3 continues: "Not all the analysts are cross trained on all the instruments in the lab. Senior chemists or other analysts currently train lab techs to test samples. Their qualifications to conduct training are based on their experience and longevity in the position for which they are providing training. When SUPERVISOR 5 worked here, s/he conducted all the training for the blood alcohol bench. After SUPERVISOR 5 left, SUPERVISOR 4 conducted all the training for the blood alcohol bench. I don't think the quality of the training changed after SUPERVISOR 5 left. SUPERVISOR 4 trained EMPLOYEE 6. After SUPERVISOR 4 left, EMPLOYEE 6 trained EMPLOYEE 18 and EMPLOYEE 16. EMPLOYEE 18 trained EMPLOYEE 9 and EMPLOYEE 8. Our current [JOB TITLE], EMPLOYEE 4, does not train employees for the blood alcohol bench because s/he does not have a lot of experience with that bench."

EMPLOYEE 8 has worked as [JOB TITLE] in the toxicology lab since June, 2012. EMPLOYEE 8 states: "I was trained by EMPLOYEE 18, EMPLOYEE 1, [and] EMPLOYEE 9. EMPLOYEE 9 started working for the lab about a month or two before I did. S/he and I are currently the only two employees who run blood ethanol tests. I was trained to use the new redo spreadsheet for samples that need to be retested. I feel that my training was adequate."

EMPLOYEE 6 states: "SUPERVISOR 5 is the one who came up with the concept of the Redo Book, but it is not listed on the training checklist or in any other documentation in the lab. I showed EMPLOYEE 18 how to use the Redo Book when I trained her/him, but s/he told SUPERVISOR 3 later that I had never shown it to her/him."

EMPLOYEE 9 has worked as [JOB TITLE] in the toxicology lab since April, 2012. EMPLOYEE 9 states: "My training for the blood alcohol bench lasted about a month or a month and a half. I was trained by EMPLOYEE 18. I feel like the training was adequate, but EMPLOYEE 18 was not a good trainer. I have not trained any employees in the lab. I did not conduct any actual testing during my training period. All the tests I ran during that time were practice tests."

Comment: Because EMPLOYEE 18 worked only on the blood alcohol bench, this report addresses her/his allegations about the adequacy of training only as it relates to employees who conduct blood alcohol testing. This report does not address training for blood drug and urine drug tests because no one complained about training for those benches.

The investigation reveals two distinct periods in the toxicology lab with regard to blood alcohol training, distinguished by the time when SUPERVISOR 4 and SUPERVISOR 5 still worked there, and the time after they left. By all accounts, SUPERVISOR 4 and SUPERVISOR 5 were excellent employees who provided a remarkably high level of training and oversight. Employees who worked in the lab while SUPERVISOR 4 and SUPERVISOR 5 were still there and also after they left describe a noticeable decline in the quality of both the training and oversight in the lab.

Whereas SUPERVISOR 4 and SUPERVISOR 5 apparently provided a significant amount of personal training to employees learning how to conduct blood alcohol tests, employees who have conducted training since their departure have relied on the checklist developed by SUPERVISOR 5 and appear to have lacked an understanding of how to conduct training beyond the use of the checklist and some observation of trainees. EMPLOYEE 6 described that checklist as necessary but not sufficient. That description is consistent with EMPLOYEE 1's assessment that the training s/he underwent was adequate for purposes of basic proficiency using the instruments, but that the training was lacking beyond that rudimentary function.

One major issue raised by EMPLOYEE 6, EMPLOYEE 18, and EMPLOYEE 1 is that employees who conduct training are not taught how to serve as trainers. As a result, there do not appear to be any standard training procedures beyond the use of the checklist, which, as noted above, has been described as inadequate. One concrete example of inadequate training comes from EMPLOYEE 1 and EMPLOYEE 18, both of whom state that EMPLOYEE 6 did not teach them how to use the Redo Book during their training. Although EMPLOYEE 6 contends that s/he did teach EMPLOYEE 18 about the Redo Book, the fact that EMPLOYEE 1 made the same complaint is convincing evidence that s/he did not do so, or that the training was so cursory that EMPLOYEE 18 did not note its significance. EMPLOYEE 1 also states that EMPLOYEE 6 assigned some reading for her/him to do during her/his training but that not all the reading material was available and that EMPLOYEE 6 did not follow up to ensure that s/he actually read it.

Interestingly, the two employees who currently conduct blood alcohol testing, EMPLOYEE 9 and EMPLOYEE 8, did not express any specific concerns about their own training, though EMPLOYEE 9 did state that EMPLOYEE 18 was not

a good trainer. While it might be tempting to conclude that training for blood alcohol analysts has improved, the fact that EMPLOYEE 9 and EMPLOYEE 8 were trained by employees who still have major complaints about the training program leads this investigator to believe that the problems still exist. It is also important to point out that the complaints about the training program focus on the protocols for training. The fact that some employees might receive adequate training is not necessarily an indicator that the protocols are sufficient. To this investigator, the more important point is that a lack of sufficient protocols can render the training program inconsistent, so that some employees receive adequate training while others do not.

For the foregoing reasons, this investigator finds it more likely than not that employees justifiably perceive that blood alcohol training protocols for toxicology lab analysts are inadequate.

Allegation 2: EMPLOYEE 1 alleges that toxicology lab analysts are not adequately trained to provide fact or expert testimony in court.

Supporting Information: EMPLOYEE 1 states: "The analysis portion of the [blood alcohol] training was also inadequate. I was trained how to perform the analysis after conducting a test, but I was not trained on what the analysis really meant. For instance, in court, I am frequently asked about sodium fluoride and how it affects blood samples, but I wasn't trained on that issue. It was addressed in some of the reading material I was given, but my trainer did not discuss it with me. I feel like I eventually gained an understanding of the sodium fluoride issue before the first time I testified in court, but I did not learn it in my training."

EMPLOYEE 1 continues: "SUPERVISOR 3 has told me and EMPLOYEE 2 that s/he wants us to give expert testimony about toxicology. EMPLOYEE 2 and I have been hesitant because we do not feel qualified, and if we make any mistakes testifying on that subject we won't be credible after that. S/he has told us s/he will train us to do it, but s/he has never set aside any time for training. The limited input we have received from her/him has been inadequate to train us for that role."

EMPLOYEE 5 is [JOB TITLE] at the [WORK LOCATION] and has worked for the toxicology lab on a contract basis, most recently beginning in November, 2012. EMPLOYEE 5 states: "I have not seen any of the training records for the toxicology lab. I did rewrite the training manual for the toxicology lab. One of the additions I made was formal training so that lab techs will be qualified to testify in court regarding not just the values from their testing, but also the effects of the drugs and alcohol they measure. I believe blood alcohol lab techs

in the toxicology lab are currently capable of doing that, but the blood drug lab techs are not yet capable of doing that."

EMPLOYEE 4 states: "S/he [SUPERVISOR 3] has also been pushing us for years to give expert testimony and write expert opinion letters. But s/he has never trained us to do that. We have even told her/him we want to meet with her/him to talk about testifying, but s/he has never met with us to help."

EMPLOYEE 4 continues: "I had a meeting with SUPERVISOR 3 and PERSON 1.[2] Previously, SUPERVISOR 3 always made it seem like PERSON 1 was the one pushing for analysts to give expert testimony. When I raised my concerns at the meeting, PERSON 1 agreed with me and said our lab needs to work out what kind of testimony we will give. It became clear at that point that it had actually been SUPERVISOR 3, not PERSON 1, pushing for us to give expert testimony. PERSON 1 told SUPERVISOR 3 to talk to lab employees and then send her/him an email explaining what kind of testimony we're willing to give. S/he said s/he would then forward that email to the DAs in the state to let them know. The staff met with SUPERVISOR 3 and told her/him we are not willing to provide impairment testimony. We gave her/him a list of the kinds of testimony we are willing to give, but I don't think s/he ever sent it to PERSON 1 because we still receive requests from DAs asking us to provide opinion letters and to give impairment testimony."

EMPLOYEE 2 states: "Lab techs do not receive adequate training to prepare for testifying in court. [W]e are not trained how to respond to questions about how certain instruments work. About two years after I started working here, some District Attorneys reviewed courtroom procedure with us, but it wasn't constructive, and we didn't receive any real training. I know lab techs from other labs who receive three months of training before they're every allowed to even touch an instrument, and they are required to learn everything about the instruments before using them. SUPERVISOR 3 sometimes give me journal articles, but s/he doesn't follow up to discuss them with me or work with me to learn anything useful from them. Instead, s/he basically gives me articles and expects me to testify in court based on them. The information given to me is incomplete and is not adequate to prepare me to testify on that issue."

EMPLOYEE 2 continues: "One of the goals SUPERVISOR 3 added [is to] testify in a court of law regarding the impairment and effects for marijuana. I have no formal training or background on that issue. SUPERVISOR 3 was subpoenaed to testify in a trial after s/he wrote an expert opinion letter about a drug intoxication issue. For some reason, SUPERVISOR 3 did not testify at that trial and instead instructed me to do it. I did not feel comfortable testifying about

[2] PERSON 1 is Colorado's Traffic Resource Prosecutor who works for the Colorado District Attorneys' Council.

the impairment and effects of marijuana, but SUPERVISOR 3 told me the only way to get used to it was to just get on the stand and do it. S/he did not offer any formal training."

Refuting Information: SUPERVISOR 3 states: "To serve as a fact witness, an analyst only has to testify about how an instrument works and what technique the analyst used to conduct the test. To train analysts to perform fact testimony in court, analysts read expert literature from the training book, review Colorado's rules and regulations for testing, and watch another analysts testify in court. In July, 2012, we held a two-day mandatory training put on by the Colorado District Attorneys Counsel that involved a classroom component and a mock trial."

SUPERVISOR 3 continues: "I am the only person in toxicology who gives expert opinion testimony. I have asked employees to give opinion testimony but they have told me they are not comfortable testifying that a person was impaired or under the influence and that they need more training first. We are in the process of developing new training to prepare employees to give expert opinion testimony. I am developing a letter to provide to prosecutors to let them what kind of testimony each employee can provide."

EMPLOYEE 10 is the [JOB TITLE] for CDPHE. EMPLOYEE 10 states: "One thing SUPERVISOR 3 and I did to help toxicology employees prepare to testify in court was conduct joint training with employees from the toxicology lab and the EBAT program about a year ago for which we brought in District Attorneys and Attorneys General staff to assist. The training used a mock court with a judge, prosecution and defense attorneys role playing in scenarios simulating criminal trials."

Comment: Unlike the allegation regarding training employees to conduct tests, which is limited only to blood alcohol testing, this allegation involves all the analysts in the toxicology lab. EMPLOYEE 1, EMPLOYEE 2, and EMPLOYEE 4 all describe a lack of any kind of organized training program to prepare lab analysts to testify in court, particularly with regard to expert testimony. Although SUPERVISOR 3 and EMPLOYEE 10 mention a two-day training session involving Districts Attorney and Attorneys General, EMPLOYEE 2 describes that training as "not constructive."

EMPLOYEE 5 concedes that analysts are not currently qualified to offer expert testimony on drug issues, but s/he does believe that analysts are qualified to offer expert testimony on alcohol issues. However, the information provided by EMPLOYEE 1 suggests that analysts are not currently qualified to offer expert testimony on drug or alcohol issues.

EMPLOYEE 4 and EMPLOYEE 2 both state that they have spoken to SUPERVISOR 3 about their concerns with regard to this issue and that SUPERVISOR 3 told them in response that s/he would send a letter to prosecutors explaining that analysts could give fact testimony but not expert testimony. SUPERVISOR 3 confirmed during her/his interview that s/he agreed to do that. However, s/he admits that s/he has not done so, and analysts continue to receive requests for expert testimony.

For the foregoing reasons, this investigator finds it more likely than not that toxicology lab analysts justifiably perceive they are not adequately trained to provide fact or expert testimony in court.

Allegation 3: EMPLOYEE 18 alleges that refrigerators used to store blood and urine samples are not locked, making them accessible by unauthorized personnel.

Supporting Information: EMPLOYEE 18 states: "Toxicology stores the blood samples that have not yet been tested in an unlocked refrigerator in the lab. Although the lab is locked, the cleaning crew has access to the lab, and therefore the refrigerator and the instruments we use for testing, at night when employees are not present. After we test samples, we store them for one year in a secure storage area. That storage area is more secure than the refrigerator that we store samples in before we even test them. I don't know whether there is any kind of industry standard for storing blood samples before they are tested, but it seems like a poor practice to store them the way Toxicology does. I did not report my concerns to anyone before I stopped working for Toxicology."

Refuting Information: SUPERVISOR 3 states: "Samples are stored in unlocked refrigerators in a locked extraction room that only certain people can access. Every time someone enters the extraction room, a record is made of it. A person must have a work purpose before being allowed to enter the room. For the janitorial staff, only the supervisor has access to the extraction room. I have not felt a need to lock the refrigerators themselves because, in the [NUMBER] years I have worked here, we have never had a sample tampered with and we have never lost a sample. I have decided to have locks put on the refrigerators because we share space with the chemistry lab and were planning on separating the labs at one point but I am not sure that will happen before our ABFT[3] accreditation. The ABFT inspectors want separate rooms or locks prior to their next visit."

EMPLOYEE 10 states: "Our rule requires samples to be kept in a secure facility and that access can only be granted to authorized personnel. I don't even have access to the room where the toxicology lab stores its samples. The fact that the

[3] American Board of Forensic Toxicology.

janitorial staff has access to that room and that the refrigerators are not locked is not something for which I would cite the lab, as the lab has determined that those staff are authorized. I think the probability of someone tampering with the samples under those circumstances is remote. But if the refrigerators are unlocked, it could be used by a defense attorney in court to create doubt about the integrity of the samples regardless of the fact that the room the samples are in is secure and that [the] room is in a secure building with strict access controls."

Comment: The fact that the refrigerators in which samples are stored are unlocked is not in dispute. Although this investigator is not qualified to determine whether the lack of locks on the refrigerators violates any kind of standard for toxicology laboratories, it is significant to this investigator that EMPLOYEE 10 is aware of the current security measures for toxicology lab samples and has no concerns about them other than the potential for defense attorneys casting doubt on the integrity of the testing process. Although the chance of samples being tampered with appears to be minimal, the possibility of such tampering does currently exist because chemistry lab employees and at least one janitorial employee have access to the room where the samples are stored. It also appears that this issue is likely to become moot in the near future because of plans to install locks on the refrigerators.

This investigator finds it more likely than not that refrigerators used to store blood and urine samples are not locked, making them accessible by unauthorized personnel. However, this investigator notes that a plan is in place to install locks on the refrigerators soon.

Allegation 4: EMPLOYEE 18 alleges that SUPERVISOR 3 had several toxicology lab employees help her/him with her/his Master's thesis during working hours.

Supporting Information: EMPLOYEE 18 states: "SUPERVISOR 3 was working on a Master's degree at the University of Colorado in Colorado Springs while I was working in Toxicology. S/he frequently had me help her/him with her/his thesis during work hours, including having me read, edit, and format it. I know s/he also had EMPLOYEE 3 help her/him with it a lot during work hours. SUPERVISOR 3 based much of her/his research on the testing of samples being conducted by EMPLOYEE 4. In total, I probably spent approximately four to six hours helping her/him with her/his thesis."

EMPLOYEE 1 states: "I helped SUPERVISOR 3 with her/his master's thesis to a limited extent by providing some proofreading. I also had to go through her/his thesis and add superscripts and subscripts for the numbers in the report. I know EMPLOYEE 3 worked on charts and graphs and worked on figures for the thesis. I also saw EMPLOYEE 4 doing work on the thesis. All the work we did

on the thesis was during work hours. I probably spent less than an hour working on the thesis."

EMPLOYEE 3 has been [JOB TITLE] in the toxicology lab for about two years. EMPLOYEE 3 states: "SUPERVISOR 3 asked me to help her/him with her/his master's thesis in about May, 2012. For instance, s/he had me recreate a cocaine diagram and reformat almost the entire thesis to comply with style requirements. When s/he submitted drafts to her/his professor and her/his professor returned the thesis with comments, SUPERVISOR 3 had me and other employees edit the thesis. I had to correct a lot of the data in the thesis. To do that, I had to actually find the data myself. I also helped with footnotes. EMPLOYEE 1, EMPLOYEE 4, EMPLOYEE 18, and I all helped with SUPERVISOR 3's thesis over a period of several months. In total, I probably spent more than ten hours helping SUPERVISOR 3 with her/his thesis. I was always on the clock when s/he had me do that work. Helping with the thesis adversely affected my ability to do my regular job."

EMPLOYEE 4 states: "SUPERVISOR 3 emailed her/his master's thesis to me using my work email address and asked me to write part of the extraction methodology section. I spent about thirty minutes working on it while I was at work and on the clock."

Refuting Information: SUPERVISOR 3 states: "I earned a master's degree from UC in Colorado Springs in May, 2012. I asked some employees to help me with formatting for parts of my master's thesis. EMPLOYEE 3 is the only employee who helped me. I asked other employees for help formatting, but they could not help because they were not familiar with the style of formatting. EMPLOYEE 3 spent less than an hour helping me with formatting while s/he was on the clock at work."

Comment: SUPERVISOR 3 concedes that s/he asked EMPLOYEE 3 to help with her/his thesis, but downplays EMPLOYEE 3's role and claims that s/he is the only employee who helped her/him. That account is inconsistent with the information provided by EMPLOYEE 18, EMPLOYEE 1, and EMPLOYEE 4, all of whom state that SUPERVISOR 3 had them help with her/his thesis. SUPERVISOR 3's account is further contradicted by EMPLOYEE 3, who states that s/he spent more than ten hours working on the thesis, while SUPERVISOR 3 claims s/he spent less than an hour. This investigator does not find SUPERVISOR 3 to be credible with regard to this issue and further finds that her/his overall credibility is adversely affected by the inaccurate information s/he provided.

This investigator finds it more likely than not that SUPERVISOR 3 had toxicology lab employees help her/him with her/his Master's thesis during working hours.

Allegation 5: EMPLOYEE 18 alleges that SUPERVISOR 3 has made statements that suggest s/he is "biased" against defendants in criminal trials.

Supporting Information: EMPLOYEE 18 states: "SUPERVISOR 3 is very biased in favor of the prosecution. When s/he returned from testifying at trial, s/he frequently said things like, 'I really stuck it to the defendant today' and 'I'm sure he's going to jail.' S/he also said things like, 'You just have to play the defense attorney's game' and laughed about the process. S/he frequently became visibly excited when s/he learned that defendants had been convicted. When I observed SUPERVISOR 3 testify in a trial once, I noticed that s/he was very friendly and accommodating toward the prosecutor, but very cold and defensive toward the defense attorney. My impression was that s/he favored the prosecution. I feel like the role of an analyst and scientist is to maintain independence and to give unbiased testimony. I never saw any other analysts behave the way SUPERVISOR 3 does by demonstrating her/his bias for the prosecution. It seems inappropriate for an analyst or scientist to be biased toward either the prosecution [or] the defense."

EMPLOYEE 7 states: "I have heard SUPERVISOR 3 make comments like, 'Is that the drunk girl calling?' and 'Karma is going to get these people someday' referring to defendants. SUPERVISOR 3 is very pro-prosecution. In the few times when I testified and the defendant was not convicted, SUPERVISOR 3 said things like, 'He might have gotten off this time, but karma is going to get him.'"

EMPLOYEE 6 states: "SUPERVISOR 3 used to walk in smiling after testifying and say things like, 'I did great on that one. He's going to jail, and it's because of my testimony.' S/he is very obviously biased toward the prosecution. I was always very uncomfortable with that because I always tried to be completely unbiased in my reports and in my testimony. SUPERVISOR 3 used to call me to tell me when defendants in trials I testified in were convicted. I don't think lab techs are here to prosecute people. SUPERVISOR 3's bias toward the prosecution is so obvious that it goes without saying."

EMPLOYEE 10 states: "I think that SUPERVISOR 3 at times may be more pro-prosecution and that s/he may appear that s/he is in it for the win. I do not have specific examples, however I have overheard SUPERVISOR 3 make references to 'Winning the case.'"

EMPLOYEE 1 states: "I feel that SUPERVISOR 3 is very biased toward the prosecution for cases in which s/he has testified. I have heard her/him say things like, 'I wiped the board with the defense attorney' or that s/he made the defense

attorney 'look like an idiot.' I have heard her/him talk about particular defense attorneys s/he does not like. S/he has talked about a few opinion letters s/he has written in cases where s/he did not think the defendant was guilty, but overall I feel like s/he wants defendants to be convicted because s/he thinks they are guilty."

EMPLOYEE 1 continues: "When I go to court, I don't contact the prosecutor to find out the results of the cases in which I testify because I don't care about the results of a trial. But SUPERVISOR 3 frequently contacts District Attorneys to find out the results of the cases in which s/he testifies. I have heard her/him say that a defendant 'looked like a slime ball' and says things about whether s/he thought the jury believed her/him. SUPERVISOR 3 frequently expresses joy when s/he learns that someone has been convicted, and disappointment when s/he learns that someone has been acquitted. I feel like our job is to present the science, not to be concerned whether someone is guilty."

SUPERVISOR 1 has worked for the Laboratory Services Division for over [NUMBER] years and was SUPERVISOR 3's [JOB TITLE] until the summer of 2012. SUPERVISOR 1 states: "When defendants have called in to check the results of their tests, I have heard SUPERVISOR 3 say something like, 'Is that the drunk calling?'"

EMPLOYEE 3 states: "SUPERVISOR 3 often comments about testifying in trial. S/he seems to feed off of DAs getting guilty verdicts. But we're not part of the judicial system. The scientists and I don't feel like we should concern ourselves with the outcomes of trials. SUPERVISOR 3 butts heads with several defense attorneys, and s/he makes comments like, 'I shut them down' and 'They don't know what they're talking about.' S/he also says things like, 'I need to call that DA to find out what happened with that case.'"[4]

EMPLOYEE 4 states: "SUPERVISOR 3 is definitely pro-prosecution. S/he will bend over backwards for DAs. Once when we were in Jefferson County to testify, the judge dismissed the charges against a defendant. After the hearing, I was in the hallway with SUPERVISOR 3 and EMPLOYEE 15 ([JOB TITLE] who used to work in Toxicology and now works in [WORK LOCATION]). SUPERVISOR 3 yelled down the hallway at the defendant and said something like, 'They'll get you next time' or 'You'll be back again.' I thought it was very inappropriate."

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[4] On a somewhat related point, EMPLOYEE 3 states: "Our in-house counsel has told us that our responses to Colorado Open Records Act (CORA) requests must be consistent. The number of CORA requests from defense attorneys has increased dramatically recently because SUPERVISOR 3 has made her/himself such a lightning rod because of her/his testimony and behavior with regard to testifying in court. SUPERVISOR 3 is the custodian of records, but I'm the one who has to do all the work to respond to the CORA requests. Her/his actions therefore affect us directly in the lab."

EMPLOYEE 4 continues: "SUPERVISOR 3 often returns from court and [says] s/he 'put the defense attorney in the ground' or similar comments. S/he also often calls DAs to find out whether defendants got convicted. I think the defense attorneys go after the lab as hard as they do because SUPERVISOR 3 perceives everything in the courtroom as a personal attack on her/him, and now it has become a personal attack on her/him."

EMPLOYEE 2 states: "SUPERVISOR 3 comes back from trials saying things like, 'I really showed him who's boss' and 'I really gave it to that defense attorney.' I don't feel like my job is to take one side in a case and try to win a case for the prosecution. I feel like I should be impartial and unbiased. SUPERVISOR 3 contacts DAs frequently to find out the outcome of cases, and s/he frequently makes announcements to employees like, 'We got a guilty verdict.' S/he also frequently asks me whether I know the outcome of cases in which I testified. I feel like SUPERVISOR 3's priority should be what happens in the lab and with her/his employees instead of being so focused on the outcomes of cases."

Refuting Information: SUPERVISOR 3 states: "I have testified in more than 1300 criminal trials, and one civil trial. I have no idea what percentage of those trials have resulted in a conviction. I sometimes follow up with prosecutors to find out what the verdict was, and sometimes prosecutors contact me to let me know. I sometimes talk about trials after I testify because I think the analysts can learn from my experiences. For instance, I can tell them what kinds of things certain attorney[s] ask about so the analysts can prepare for those questions when they testify. I also talk about how I am treated and what kinds of mistakes analysts should avoid making. I don't care about whether defendants go to jail because science is neutral. I have never said anything like, 'I really stuck it to the defendant' or 'I made the defense attorney look like an idiot.' I have talked about times when I thought an attorney wasn't prepared, asked a stupid question, or made me cry. I have not expressed joy, satisfaction, or happiness after learning that a defendant was convicted. Everyone makes mistakes in life, so I would not express joy that someone got convicted or was going to jail. I have also talked about how prosecutors were unprepared or their lack of experience."

SUPERVISOR 2 has been the Laboratory Services Division [JOB TITLE] for [NUMBER] years. SUPERVISOR 2 states: "SUPERVISOR 3 is not biased, but s/he is proud of the job s/he does. S/he has never said anything to me that makes me think s/he is biased, but s/he is valued as a prosecution witness."

EMPLOYEE 9 states: "I have not noticed SUPERVISOR 3 saying anything suggesting that s/he is biased toward the defense or the prosecution."

EMPLOYEE 8 states: "Based on the nature of our work, it seems to be naturally biased against the defense. I have heard SUPERVISOR 3 comment about testimony s/he has given, but I don't recall any specifics about her/his comments."

EMPLOYEE 11 states: "SUPERVISOR 3 has had a lot of conversations with me about the cases in which s/he testifies. I think s/he works hard to satisfy her/his clients, who are District Attorneys. I have also heard her/him say that s/he tells District Attorneys when s/he thinks they have a weak case. I can't recall any of the specific conversations we have had about her/his cases, but nothing has seemed inappropriate to me."

Comment: Current and former employees of the toxicology lab overwhelmingly report that SUPERVISOR 3 makes statements suggesting that s/he has a strong bias in favor of the prosecution. This investigator has no reason to discount so many consistent stories, particularly given the fact that the descriptions about SUPERVISOR 3's statements come from people who have worked with SUPERVISOR 3 during different periods over an extended span of time. It is also significant to this investigator that the people who report hearing SUPERVISOR 3 make statements suggesting a pro-prosecution bias are employees who would be in the best position to hear those kinds of statements, as opposed to SUPERVISOR 2 and EMPLOYEE 11, who would be less likely to hear such statements because they do not work in close proximity with SUPERVISOR 3 on a regular basis. The only two toxicology lab employees who state that they have not heard SUPERVISOR 3 make such statements are EMPLOYEE 8 and EMPLOYEE 9, both of whom have spent less time with SUPERVISOR 3 than other employees because they are newer.

Thus, this investigator finds it more likely than so that SUPERVISOR 3 has made statements that suggest s/he is "biased" against defendants in criminal trials.

Allegation 6: EMPLOYEE 18 alleges that SUPERVISOR 3 made disparaging remarks about EMPLOYEE 16 and SUPERVISOR 1 in the presence of toxicology lab employees.

Supporting Information: EMPLOYEE 18 states: "After EMPLOYEE 16 [PERSONNEL ACTION][5], SUPERVISOR 3 often made fun of her/him in the presence of Toxicology employees and called her/him names. For example, after s/he read something

[5] According to EMPLOYEE 18, EMPLOYEE 16 "[PERSONNEL ACTION] in approximately mid-March 2012 after s/he sent inaccurate reports for approximately five samples."

attributed to her/him, s/he said something like, 'I bet s/he didn't even write it and that her/his mom wrote it for her/him because s/he can't do anything without her/his mom.'"

EMPLOYEE 18 continues: "SUPERVISOR 3 often said negative things about SUPERVISOR 1, her/his [JOB TITLE] at the time. At one point, someone found a blog that SUPERVISOR 1 kept. SUPERVISOR 3 read excerpts from the blog out loud to the Toxicology staff and made fun of her/him to us while laughing and making fun of it. I think all the Toxicology employees probably heard her/him do that."

EMPLOYEE 8 states: "I have heard her/him talk about EMPLOYEE 16. I believe s/he talked about why s/he was let go and that s/he said s/he didn't have critical thinking skills."

EMPLOYEE 6 states: "It is clear that SUPERVISOR 3 does not like SUPERVISOR 1. I heard SUPERVISOR 3 say that SUPERVISOR 1 is her/his boss but that SUPERVISOR 1 doesn't know what s/he's doing and that s/he has no idea how the department is run. It was obvious that SUPERVISOR 3 had no respect for [SUPERVISOR 1]. Anytime SUPERVISOR 1 tried to intervene in the lab, SUPERVISOR 3 went straight to SUPERVISOR 2 to complain, and SUPERVISOR 1 said that SUPERVISOR 3 does what s/he wants to do and doesn't listen to authority."

EMPLOYEE 1 states: "I have heard SUPERVISOR 3 talk about SUPERVISOR 1. Over the years, SUPERVISOR 3 has made a lot of comments about SUPERVISOR 1's weight. SUPERVISOR 1 has struggled with her/his weight, and when s/he gained some weight recently SUPERVISOR 3 of course commented about it. When SUPERVISOR 1 was SUPERVISOR 3's [JOB TITLE], SUPERVISOR 3 said SUPERVISOR 1 was weak, that s/he was scared of SUPERVISOR 3, and that s/he was not a good supervisor. S/he has also said s/he does not like SUPERVISOR 1 and that SUPERVISOR 3 and SUPERVISOR 1 do not get along. SUPERVISOR 3 does not seem to have any respect whatsoever for SUPERVISOR 1."

EMPLOYEE 1 continues: "After EMPLOYEE 16 stopped working here, I heard SUPERVISOR 3 talk about EMPLOYEE 16's relationship with her/his mother and that it was strange that s/he wore a hat every day and that s/he was into bodybuilding. S/he made those kinds of statements in front of a lot of the lab employees."

EMPLOYEE 3 states: "SUPERVISOR 3 has always seemed to have a chip on her/his shoulder about SUPERVISOR 1. SUPERVISOR 3 was very disrespectful and rude to SUPERVISOR 1. SUPERVISOR 3 also ganged up on

SUPERVISOR 1 with EMPLOYEE 17, another employee here who dislikes SUPERVISOR 1. At one point, SUPERVISOR 3 forwarded SUPERVISOR 1's personal blog to the entire toxicology unit. In the blog, SUPERVISOR 1 had divulged very private information about [MEDICAL INFORMATION]. SUPERVISOR 3 seemed to think the blog was funny. I thought it was inappropriate for SUPERVISOR 3 to find humor in SUPERVISOR 1's personal issues. SUPERVISOR 1's blog referenced 'mean girls/boys' and 'my supervisor' in the blog but it did not divulge anyone's names."

EMPLOYEE 4 states: "When EMPLOYEE 16 [worked here], there were times when I heard SUPERVISOR 3 make fun of her/him because of her/his relationship with her/his mother, saying that s/he was a momma's girl/boy and that s/he and her/his mother were so close. Other employees chime[d] in on that subject, but it seemed inappropriate for a supervisor to engage in that kind of behavior."

EMPLOYEE 4 continues: "I have heard SUPERVISOR 3 say quite a bit about SUPERVISOR 1. SUPERVISOR 3 often excluded SUPERVISOR 1 from what was going on in Toxicology. S/he never wanted to work with SUPERVISOR 1. S/he has also said that SUPERVISOR 1 is crazy."

Refuting Information: SUPERVISOR 3 states: "I have never talked to other employees about EMPLOYEE 16's relationship with her/his mother. One time when EMPLOYEE 16's phone rang, I heard EMPLOYEE 18 say, 'Is that your mommy calling?' Analysts told me that EMPLOYEE 18 used to kid EMPLOYEE 16 about her/his relationship with her/his mother. Employees have told me that EMPLOYEE 16's mom would admonish her/him about her/his spending."

SUPERVISOR 3 continues: "EMPLOYEE 17 made comments to lab employees about SUPERVISOR 1's online blog about weight loss. I have read some of the blog, but not all of it. EMPLOYEE 17 pointed out part of the blog that was directed at me and other [GENDER IDENTIFIER] in the lab, referring to us as 'mean girls/boys.' It did not identify anyone by name, but it did identify EMPLOYEE 17's position. When the blog came up in a conversation, I acknowledged that I had seen it. I know EMPLOYEE 3 and EMPLOYEE 18 were looking at SUPERVISOR 1's blog on a computer and laughing about it. EMPLOYEE 1 may also have been present. I never commented about SUPERVISOR 1's weight to other employees. I have not made disparaging comments to employees about the way SUPERVISOR 1's dresses. I don't recall telling employees that SUPERVISOR 1 is weak or that s/he is scared of me. I have told employees that s/he lacks understanding about the toxicology section."

EMPLOYEE 8 states: "I have never heard SUPERVISOR 3 talk about SUPERVISOR 1."

EMPLOYEE 9 states: "I haven't heard her/him talk about EMPLOYEE 16 or SUPERVISOR 1."

Comment: Several employees who have worked under SUPERVISOR 3 during various periods of time give consistent descriptions of SUPERVISOR 3 making disparaging remarks about EMPLOYEE 16 and SUPERVISOR 1. While SUPERVISOR 3 denies having made such statements, this investigator has no reason to doubt the sincerity of those employees.

This investigator received no information corroborating SUPERVISOR 3's accusation that EMPLOYEE 18 was the person who made disparaging remarks about EMPLOYEE 16, or that it was EMPLOYEE 17 who made disparaging remarks about SUPERVISOR 1. Instead, the information conveyed to this investigator indicates that SUPERVISOR 3 her/himself made the comments initially described by EMPLOYEE 18. And, even if it is true that EMPLOYEE 18 and EMPLOYEE 17 made disparaging remarks themselves, that would not tend to disprove the allegation about SUPERVISOR 3.

For the foregoing reasons, this investigator finds it more likely than not that SUPERVISOR 3 made disparaging remarks about EMPLOYEE 16 and SUPERVISOR 1 in the presence of toxicology lab employees.

Allegation 7: EMPLOYEE 18 alleges that the toxicology lab is not sufficiently staffed to handle the work load.

Supporting Information: EMPLOYEE 18 states: "The Toxicology lab is understaffed and run poorly, which caused a frantic environment when I worked there. I'm not surprised that EMPLOYEE 16 made the mistake s/he made in those working conditions."

SUPERVISOR 3 states: "The toxicology lab does not have enough staff to cover for employees who are sick or who are out testifying. We currently have adequate staffing for the blood alcohol bench. We did have a lot of complaints about the turnaround time for blood alcohol tests because we had a backlog of about 2000 samples caused in large part by EMPLOYEE 18, but EMPLOYEE 9 and EMPLOYEE 8 worked seven days a week to get us caught up. The biggest complaint we receive from prosecutors is the turnaround time for blood drug tests. We need additional staffing for the blood drug bench, but because of instrumentation limits we could only add one person. I can ask SUPERVISOR 2 for new employees, but I must have SUPERVISOR 2's approval before I can hire anyone. EMPLOYEE 11 is the person who determines whether we have

enough money to hire someone. I have asked to hire a new employee for the blood drug bench, but I have been told that some kind of spending authority issue prevents us from doing that."

EMPLOYEE 9 states: "The work load for blood alcohol testing has been very heavy since I started. It has been too much at times."

EMPLOYEE 1 states: "I am currently the only employee trained in blood drug screening. In addition to performing all the blood drug screening, I also confirm urine drug screening, so I am doing the job of two people. We do not have enough people working in the lab currently. We are all overworked and we struggle to keep up with the workload. EMPLOYEE 2 is also doing the work of two people because s/he does all the blood drug confirmations and all the THC confirmations. I don't know whether the work load causes more errors in the lab."

EMPLOYEE 5 states: "An SOP is the complete procedure, like a very detailed cookbook, for completing assays. The SOPs at the toxicology lab had [been] kept more or less up to date with hand-written sticky notes and other hand-written notations, but the entire SOP documents had not been rewritten because no one in the lab had time to do that because the lab is understaffed and the employees are overworked."

EMPLOYEE 3 states: "We have been audited [by the] American Board of Forensic Toxicologists (ABFT) because we were trying to attain national accreditation, but the inspection report they generated in about September, 2010 concluded that the toxicology lab is understaffed. Staffing has not improved since that time, while the work load for our lab techs has almost doubled. My own work load has also increased a lot. For instance, I received about seven litigation packets per month when I started, but now I receive more than two-hundred per month. When the Colorado Springs toxicology lab closed in July, 2010, we told SUPERVISOR 3 that we could not take over the work from that lab, but SUPERVISOR 3 didn't care and accepted all the Colorado Springs lab work without adding any employees here to do the extra work. We also have very high turnover, especially on the blood alcohol bench. SUPERVISOR 3 never explained how s/he expected us to handle all the extra work. SUPERVISOR 3 told us that accepting the Colorado Springs work was a good business opportunity and would generate more money."

EMPLOYEE 4 states: "We have been short-staffed in the toxicology lab the entire time I have worked here. At one point in about 2003 or 2004 I was the only analyst in the lab. Currently, the staff cannot keep up with the work load at a comfortable pace with all the demands that are put on us, such as going to court."

EMPLOYEE 4 continues: "SUPERVISOR 3 puts unrealistic demands on lab techs for the turnaround time for tests. S/he has no idea how long it takes for analyses to be done. S/he doesn't account for instrument problems or other unexpected problems. No one is just sitting around in the lab not doing anything. Everyone is working at capacity, doing as much work as they can, but s/he doesn't appreciate that. Most of us don't have any breaks at work because we always have too much to do. During the summer of 2012, we were even busier for about three to four months because we had to retest a lot of blood alcohol samples after an analyst messed up some samples. We had to retest everything s/he had tested, but there was no formal investigation into the cause of the mistakes. SUPERVISOR 3 put a lot of pressure on us to get them completed and told us we were taking too long, but we were working as fast as we could. We are limited by the instrumentation because only so many tests can be run at a time, and the tests take a certain amount of time that we cannot control. SUPERVISOR 3 does not seem to take that into account when s/he asks about our progress."

EMPLOYEE 2 states: "We have been understaffed in the toxicology lab since the number of samples we process [increased] after the Colorado Springs lab closed. I was working 50-hour weeks trying to get caught up with my own work. We do not have enough staff or instruments to keep up with the work load. If one of us is in court or sick, or if we have instrumentation problems, it is easy to fall behind. I run at least 300-400 drug tests per month. My THC testing has skyrocketed recently. The blood drug bench and THC bench used to be staffed by two different employees, but now I handle them both myself. I feel like testing gets rushed because we have so many samples are getting run. If we had more staff, I could devote more time to problematic tests. We also don't have enough time or the correct instruments to keep up with new kinds of drugs."

Refuting Information: SUPERVISOR 2 states: "SUPERVISOR 3 has told me numerous times that s/he does not have enough staff in the lab to keep up with the work load. But based on my experience, the staff here is not as productive as staff in labs I have had experience with, such as when I worked at [WORK LOCATION]. Also, if the lab has more employees, all those employees can be subpoenaed to testify in court because everyone who handles a sample is subject to being called to testify. Funding is also an issue."

EMPLOYEE 8 states: "There was a backlog of about 2200 blood ethanol samples in about November, 2012. EMPLOYEE 9 and I have been able to get caught up, and now the backlog is about 200 samples. Turnaround time is currently about ten days. It had been as long as about 8-12 weeks when we had a bigger backlog in late 2012."

EMPLOYEE 6 states: "When I worked in toxicology, I think we had enough staff to handle the work load. It seems like they have more than enough people on staff now, but maybe it takes more people to get the work done when they're so young and they're rookies."

Comment: Current toxicology lab employees, including SUPERVISOR 3, overwhelmingly believe that the lab is understaffed, though there is some disagreement about whether the blood alcohol bench is understaffed. The fact that EMPLOYEE 5 believes the lab is understaffed is particularly significant to this investigator because of her/his significant experience in the field. EMPLOYEE 4's opinion is also highly significant to this investigator because of her/his long tenure in the toxicology lab, which gives her/him a unique perspective on issues such as the lab's work load.

There appears to be more concerns about understaffing with regard to the blood drug, urine drug, and THC benches, as reported by EMPLOYEE 1 and EMPLOYEE 2. And while EMPLOYEE 8 explains that s/he and EMPLOYEE 9 have been able to reduce the backlog on the blood alcohol bench to a more manageable level, EMPLOYEE 9 expressed her/his concern that the work load has been overwhelming. Information from EMPLOYEE 3 suggests that the work load is too high not just for analysts, but for the support staff as well.

For the foregoing reasons, this investigator finds it more likely than not that employees justifiably perceive that the toxicology lab is not sufficiently staffed to handle the work load.

Allegation 8: EMPLOYEE 1 alleges that SUPERVISOR 3 imposes unreasonable burdens on toxicology lab analysts by making excessive accommodations for prosecutors and law enforcement agencies.

Supporting Information: EMPLOYEE 1 states: "One of the biggest issues I've always had here is that I feel like SUPERVISOR 3 will do anything to help District Attorneys, but that s/he will not stand up for us. S/he does not understand how things work here, such as how long things take, so s/he will sometimes tell someone that we can get something done right away, when it actually takes longer. It then makes us look bad when we can't get it done as fast as s/he said we would."

EMPLOYEE 1 continues: "Once, a DA had a felony case, which typically requires three samples rather than one. I think EMPLOYEE 18 originally tested the samples. The DA called SUPERVISOR 3 the day before trial because they didn't have an analysis to testify at trial. SUPERVISOR 3 told the DA one of us would run the samples at 6 AM on the morning of the trial and then testify later

that afternoon. Running three samples takes a minimum of two hours, plus an hour of prep time. It was not our fault that the DA didn't do its job properly, so it was unfair to ask us to drop everything to accommodate them. That happens frequently. SUPERVISOR 3 took me and EMPLOYEE 2 to Greeley for a trial once, but EMPLOYEE 2 and I did not even testify, which was a waste of our time. SUPERVISOR 3 will do anything the DA's want, which negatively affects our ability to do our jobs in the lab."

EMPLOYEE 1 adds: "SUPERVISOR 3 sends emails asking why samples aren't done yet and copies DAs on the emails, which makes us look incompetent. S/he does that without talking to us first to find out what's actually going on and why a sample hasn't been tested. For instance, drug tests take about 4-6 weeks to get completed after we receive the sample, so it's not unreasonable that we haven't conducted the test yet. S/he has even sent emails like that to me after I already tested the sample. By copying the DA, it makes it look like we're doing something wrong."

EMPLOYEE 8 states: "[SUPERVISOR 3] probably takes on too much responsibility for her/himself and for lab employees with regard to testifying in court. It seems like s/he's trying to satisfy the prosecutors for some reason."

EMPLOYEE 6 states: "SUPERVISOR 3's instructions about how to handle subpoenas for testifying was inconsistent. S/he told me that the proper procedure is to accept subpoenas for time when I'm available and to inform the prosecutor that they need to let me know seven days in advance if they still need me to testify. S/he said that, if the prosecutor does not give me notice seven days in advance, the procedure allows me to open up my calendar for a different case if there is one. We even have response sticker[s] that we send back to the prosecutor so they know our policy. One sticker is for occasions when I am available, and the second sticker is for occasions when I am not available (see stickers at end of this statement). Frequently, after prosecutors failed to notify me seven days in advance that I was still needed, I followed the procedure and opened my calendar for a different case, but then the prosecutor for the first case called me on the day of the trial and said my testimony was still needed. Then the problem was that I was double-booked at the same time for two different trials. But SUPERVISOR 3 would not support me and insisted that I had to attend the first trial. SUPERVISOR 3 does not back up any of the employees in toxicology; s/he just backs up the DAs."

EMPLOYEE 9 states: "Juggling duties in the lab and testifying in court is very difficult because DAs [do] not follow our subpoena policy and are very disorganized. For instance, when they cancel testimony at the last minute and often make us travel long distances to testify. Sometimes they cancel our testimony after we have already traveled to other cities. Those issues make it

challenging to keep up with our work in the lab and produce quality results. It seems like SUPERVISOR 3 accommodates the DAs and forces us to go testify even when the DAs don't follow our subpoena policy."

EMPLOYEE 4 states: "We sometimes waste a lot of time driving to court and back when our testimony is not needed until later or because the cases get continued but no one lets us know. That kind of thing happens frequently. I've gotten home as late as 10:00 at night after going to court, and then I have to be back in the morning. We have video conferencing equipment, but it seems like SUPERVISOR 3 doesn't want to push for us to be able to use it. When we initially asked for the video equipment, it did not seem like a priority for SUPERVISOR 3, probably because s/he enjoyed going to court. A lot of times, we ask SUPERVISOR 3 whether we can appear by video, but s/he doesn't accommodate us."

EMPLOYEE 4 continues: "On another occasion, a law enforcement agency requested that we provide a value for a particular drug for which we could only identify. Our procedures were not validated to provide values for that drug. But SUPERVISOR 3 had already told the officer that we would provide the value, so I had to talk to the officer and explain why we couldn't do it. It would probably take several weeks for us to validate the method. More recently, SUPERVISOR 3 promised the DAs that we would validate a new benzodiazepine method using a new instrument by January. But because of the problems I had with the software and the instrument, it was impossible to meet that goal. SUPERVISOR 3 didn't know enough about the process to tell DAs that we would have it validated by January."

EMPLOYEE 4 adds: "[SUPERVISOR 3] doesn't even know what is going on in the lab, which is why s/he makes such unrealistic demands on lab employees. SUPERVISOR 3 caters to the DAs at the expense of lab employees, even if employees have to come in on weekends. S/he never thinks of alternative ways of doing things to relieve the burden on employees. Employees, the lab, the samples, and the quality of the work do not seem to be priorities for SUPERVISOR 3. Instead, her/his priority seems to be whatever the DAs want."

EMPLOYEE 2 states: "I told SUPERVISOR 3 recently that I'm not willing to give opinion testimony about intoxication or to write opinion letters. I don't think I should be trying to convince a jury that someone was intoxicated. I feel that, as a scientist, my job is to talk about the scientific principles and let the jury make a judgment about whether a defendant was intoxicated. After I told SUPERVISOR 3 I would not give opinion testimony, s/he sent emails to District Attorneys insinuating that, in the future, I would be willing to give opinion testimony. When I told SUPERVISOR 3 specifically what kind of testimony I'm comfortable giving, s/he wrote down exactly what I told her/him and said s/he

would email it to PERSON 1, who trains a lot of DAs around the state. The understanding was that PERSON 1 would forward that information to DAs around the state to inform them that I'm not willing to give opinion testimony. After a week, I was still being contacted by DAs asking me to write opinion letters and give impairment testimony, so I asked SUPERVISOR 3 about it. S/he said s/he had not sent the email yet. I don't know if s/he ever sent the email. I think this demonstrates how SUPERVISOR 3 caters to law enforcement and DAs and doesn't stand up for employees."

EMPLOYEE 2 continues: "SUPERVISOR 3 does not seem to have the right priorities for the toxicology lab. For instance, s/he is very concerned about pleasing law enforcement agencies and District Attorneys. The turnaround time for blood drug testing cannot be less than a month given my limited resources. SUPERVISOR 3 frequently tells us that we need to perform some of the tests faster because law enforcement agencies and District Attorneys have called her/him asking about the status of test results. I feel like we take a backseat to the law enforcement agencies and District Attorneys, when SUPERVISOR 3 should be sticking up for us and explaining to them that we can't process samples any faster. I have had to rearrange my samples, come in on weekends, and stay late to expedite the testing for certain samples."

EMPLOYEE 2 adds: "My impression is that testifying is more important than the lab to SUPERVISOR 3. When I tell her/him that turnaround time is eight weeks for a test, s/he simply demands that we get the results out faster, but s/he does not seem concerned about the quality of the work, and s/he does not ask any questions about why we have the turnaround time that we have. S/he doesn't support us; s/he just demands a faster turnaround time because that's what the DAs need. But our turnaround time is faster than probably 95% of the labs in the country. It is clear that s/he doesn't know what's going on in the lab."

Refuting Information: SUPERVISOR 3 states: "The amount of testimony by analysts varies and is dictated by defense attorneys and the court's docket. An analyst might testify three or four times per week for a period of time and then not testify at all for a month. Testimony is always in person. If a defense attorney waives their client's right to have the analyst appear in person, the analyst can appear by videoconference, but I am the only one here who has testified by video. Defense attorneys have no incentive to agree to an appearance by videoconference. I have explained to analysts why they have to appear in person."

SUPERVISOR 3 continues: "When an analyst is subpoenaed, the analyst responds by letting the prosecutor know whether s/he or s/he is available. If an analyst is available, the prosecutor is asked to give the analyst seven-days' notice whether the trial is going forward. Sometimes that is not practical because

several jurisdictions around the state do not set the readiness for trials until Monday of the week when the trial will be held. If analysts know they will be testifying later in the week, they can plan for it by getting their work done sooner. Sometimes DAs call on the day of trial to request testimony. Those last-minute testifying requests are a problem because they are more disruptive to the work flow. I tell the analysts that, if they can make it work, then they should go, but that if they cannot make it work, then they don't have to go. I can't make them go, so I let them make the decision for themselves. If it is a felony case, I tell the analyst they should go because it is more serious."

Comment: It seems clear to this investigator that there are certain inherent realities about the criminal justice system that make it impossible to guarantee a predictable work schedule for toxicology lab analysts who must testify in court. The crux of this allegation is that SUPERVISOR 3 exacerbates that already challenging situation by accommodating intrusive and disruptive requests by prosecutors and law enforcement agencies.

Although the toxicology lab has an official subpoena policy, it appears that prosecutors frequently fail to adhere to that policy and that SUPERVISOR 3 does little, if anything, to enforce it. As a result, several employees report significant disruptions of their schedules, making it difficult to complete their work loads. It appears that this situation is further aggravated by the understaffing issue discussed in Allegation 7. Although SUPERVISOR 3 states that employees have the discretion to testify when prosecutors make such requests, employees clearly do not perceive testifying as optional. Furthermore, SUPERVISOR 3's explanation does not take into account the disruptive nature of conducting expedited tests on samples.

Based on the foregoing, this investigator finds it more likely than not that employees justifiably perceive that SUPERVISOR 3 imposes unreasonable burdens on toxicology lab analysts by making excessive accommodations for prosecutors and law enforcement agencies.

Allegation 9: Current and former employees of the toxicology lab allege that SUPERVISOR 3 treats employees disrespectfully and that s/he is a "bully."

Supporting Information: EMPLOYEE 1 states: "SUPERVISOR 3 has a passive management style and does not convey expectations to me. I have received emails from her/him telling me that I was not getting samples tested fast enough, but prior to that I did not even I was not meeting her/his time expectations. Rather than talking to me personally when s/he has an issue to discuss, s/he tends to send mean emails."

EMPLOYEE 1 continues: "It often feels like a hostile work environment, and that s/he tries to eliminate anyone who gets on her/his bad side. People do whatever they can do to stay on her/his good side because s/he will make life hell for anyone s/he does not get along with."

EMPLOYEE 4 states: "It is very hard to work under SUPERVISOR 3. I have tolerated her/him because I like the work I do. I feel like I suffer from [MEDICAL INFORMATION] at work because I have worked in such a dysfunctional environment for so long and I'm used to it being so crazy all the time. SUPERVISOR 3 is a bully. S/he is very abrasive and aggressive toward people."

EMPLOYEE 4 continues: "SUPERVISOR 3's personality affects our ability to hire people. We had a lab assistant position posted a couple months ago and we had a very good candidate in mind, but I was hesitant to hire her/him because I didn't know how s/he would be able to handle SUPERVISOR 3's personality. Instead, I recommended hiring a temporary employee who had already worked with SUPERVISOR 3, and that is who we hired."

SUPERVISOR 1 states: "A lot of employees have complained to me about SUPERVISOR 3. I have brought those concerns to SUPERVISOR 2. SUPERVISOR 2 and I met with SUPERVISOR 3 to discuss those concerns. I also expressed to her/him during that meeting that I felt s/he should step down as a supervisor and limit her/himself to testifying in court and providing expert testimony. SUPERVISOR 3 said, 'The governor will hear about this.' Bill Ritter was governor at that time, and SUPERVISOR 3 had a picture of him on her/his wall. SUPERVISOR 2 said something like, 'Why do you have to behave like this?'"

SUPERVISOR 1 continues: "For some reason, SUPERVISOR 3 did not like EMPLOYEE 7, who was [JOB TITLE] in toxicology. SUPERVISOR 3 told employees in toxicology that EMPLOYEE 7 had the highest internet usage of all the employees in the building. But the only way to obtain internet usage information is to get a manager's approval, and I was the manager, but I never approved anyone obtaining EMPLOYEE 7's internet usage information."

EMPLOYEE 7 states: "SUPERVISOR 3 harassed and bullied me and lied about me when I worked for her/him. S/he is mean, cruel, hateful, and vindictive. Everyone who works for her/him is always trying to find work somewhere else."

EMPLOYEE 7 continues: "In December, 2010, SUPERVISOR 3 told SUPERVISOR 1 that I should still be helping her/him in toxicology because I didn't have anything to do. At the same time, SUPERVISOR 1 told me that SUPERVISOR 3 told her/him that EMPLOYEE 12 had looked at my internet

usage and said that I had the highest surfing usage out of anyone. EMPLOYEE 12 has since retired. SUPERVISOR 1 told me about the accusation and then went straight to EMPLOYEE 12 to ask her/him if s/he told SUPERVISOR 3 that. EMPLOYEE 12 told SUPERVISOR 1 that s/he did not say that to SUPERVISOR 3 and that no one has the ability to monitor someone's internet usage without approval from a Director. . . . I sent SUPERVISOR 3 an email. S/he responded in an email and accused me of harassing her/him, that s/he felt unsafe, that s/he felt threatened, and that s/he would take any action s/he deemed necessary if I did not stop emailing her/him."[6]

EMPLOYEE 6 states: "SUPERVISOR 3 is very hostile, vindictive, and spiteful. I talked to SUPERVISOR 2 several times about SUPERVISOR 3's behavior. I finally told SUPERVISOR 2 that I was going to file a grievance with HR, but SUPERVISOR 2 talked me into having a meeting with her/him and SUPERVISOR 3. SUPERVISOR 3 brought EMPLOYEE 4 to the meeting. During the meeting, SUPERVISOR 3 said I couldn't follow directions and that, more importantly, I couldn't follow directions from [PERSONALLY IDENTIFYING INFORMATION] (in reference to EMPLOYEE 4)."

EMPLOYEE 11 states: "I interact with SUPERVISOR 3 frequently because we both need each other's assistance to get our work done. We get along well. When we have had disagreements, we have resolved them professionally. There was one incident during a conference when s/he insisted that my staff replace errant paperwork for test kits, which would have been very time-consuming. I explained that my staff couldn't do that because they were already too busy. I felt like SUPERVISOR 3 acted unprofessionally on that occasion, but we eventually worked out our differences."

EMPLOYEE 2 states: "SUPERVISOR 3 makes me feel like I'm not doing my job when s/he hounds me about samples that haven't been tested or that need to be retested. I'm already working as hard as I can and frequently working fifty or more hours. I don't need someone patting me on the back all the time, but it would be nice if someone occasionally recognized the hard work I do rather than making me feel like I work in a sweatshop."

EMPLOYEE 2 continues: "We have very high turnover in the lab because employees can't get along with SUPERVISOR 3."

Refuting

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[6] SUPERVISOR 3's response to EMPLOYEE 7's email states: "EMPLOYEE 7, I find your email threatening and I am intimidated by it. Your accusations are unwarranted and untrue. Furthermore, your e-mail is distrubing [sic] and I do not feel safe after having received this type of communication from you. Please do not e-mail me again regarding this matter because I consider this harrasment [sic] by you. If you do not cease this behavior I will take whatever action I deem necessary and proper." Attachment I1b.

Information: SUPERVISOR 3 states: "In about 2011, EMPLOYEE 4 informed me that EMPLOYEE 7 was using the internet too much. I also recall seeing EMPLOYEE 7 using the internet frequently when I walked past her/him."

In response to this investigator's inquiry about the December 6, 2010 email exchange between her/himself and EMPLOYEE 7, SUPERVISOR 3 responds: "I do have some memory of this situation but not enough to accurately describe what was going on back in December 10th [sic], 2010. At this point I would be guessing about facts and details. So I cannot comment because I cannot recall specifics." Attachment 17a.

EMPLOYEE 8 states: "I don't have any complaints about SUPERVISOR 3. S/he treats me well. I have never heard her/him say anything bad about anyone who currently works in the toxicology lab."

SUPERVISOR 2 states: "I believe SUPERVISOR 3 was present during at least one of the meetings with SUPERVISOR 1 about the issue of whether SUPERVISOR 3 should step down as the [JOB TITLE]. I never heard SUPERVISOR 3 say anything like, 'The governor will hear about this.' SUPERVISOR 3 and I have a pretty good relationship, and s/he has never threatened me like that."

EMPLOYEE 11 states: "I don't often see SUPERVISOR 3 interact with her/his employees. I was present once when SUPERVISOR 3 and EMPLOYEE 7 had a conversation because SUPERVISOR 3 asked me to come with her/him to talk to EMPLOYEE 7 about a problem with a sample EMPLOYEE 7 had run. My understanding was that SUPERVISOR 1 had agreed to [PERSONNEL ACTION] EMPLOYEE 7 pending an inquiry into the problem. During the conversation, SUPERVISOR 3 was cordial with EMPLOYEE 7 and did not yell or raise her/his voice."

Comment: This investigator finds the information provided by EMPLOYEE 4 with regard to this allegation to be particularly useful because EMPLOYEE 4 has worked under SUPERVISOR 3 for so long. Her/his allegations about SUPERVISOR 3's personality and management style are consistent with information provided by other past and present employees of the toxicology lab. The fact that so many other employees report being subjected to similar treatment by SUPERVISOR 3 is highly suggestive that this allegation is accurate.

The fact that SUPERVISOR 2 denies hearing SUPERVISOR 3 make a reference to complaining to the governor or that SUPERVISOR 3 has otherwise threatened her/him is not particularly significant to this investigator. This investigator does not find it unusual that SUPERVISOR 3 would treat the [JOB TITLE] differently from how s/he treats subordinates. The incident related by EMPLOYEE 11 when

s/he felt like SUPERVISOR 3 treated her/him unprofessionally is enlightening because it suggests that SUPERVISOR 3 is capable of behaving in an antagonistic manner toward other employees.

This investigator is not in a position to evaluate the merits of SUPERVISOR 3's allegation that EMPLOYEE 7 used the internet too much or EMPLOYEE 7's allegation that SUPERVISOR 3 falsely accused her/him of having the highest internet usage in the department. However, SUPERVISOR 3's response to EMPLOYEE 7's December 6, 2010 email on this issue does seem rather extreme and out of proportion to the severity of the issue. SUPERVISOR 3's references to feeling threatened, intimidated, and unsafe and her/his accusation of being harassed by EMPLOYEE 7 seem hyperbolic given the relatively innocuous nature of the dispute. SUPERVISOR 3's response appears to be an effort to quash discussion of the issue through intimidation rather than a reasonable response to the actual concern raised by EMPLOYEE 7. To this investigator, SUPERVISOR 3's response is evidence of treatment that could reasonably be considered disrespectful and bullying.

For the foregoing reasons, this investigator finds it more likely than not that that some current and former employees justifiably perceive that SUPERVISOR 3 treats employees disrespectfully and that s/he is a "bully."

Other Issues

During the witness interview process, several issues arose that this investigator determined were not relevant for purposes of investigating the allegations discussed above.

1. EMPLOYEE 18 alleges that SUPERVISOR 3 requires former toxicology analysts to testify in court regarding tests they conducted. In her/his case, EMPLOYEE 18 alleges that giving such testimony interferes with her/his school (EMPLOYEE 18 is enrolled full-time at Colorado School of Mines). EMPLOYEE 6 similarly complained about having to testify after transferring to the [WORK LOCATION] Department. SUPERVISOR 3 explained to this investigator that employees are told when they are hired that they will be responsible for testifying even after they leave the toxicology lab, and that being required to give ongoing testimony is typically unavoidable. S/he stated that some judges will allow her/him, as the [JOB TITLE], to testify about test results, but that some judges require the person who conducted the test to testify. S/he also stated that, when the samples are still available, current employees often retest samples originally tested by analysts who no longer work in the toxicology lab so the current employees can testify. EMPLOYEE 9 confirmed that current analysts have retested some samples that EMPLOYEE 18 initially tested while still employed in the lab. However, there does appear to be significant confusion among current and former employees about the nature and extent of their obligations to testify after they cease working for the lab.

2. EMPLOYEE 1 states: "I have watched SUPERVISOR 3 testify in criminal trials on many occasions. At least part of her/his testimony is always incredibly confusing. I have also heard her/him give erroneous testimony. For instance, I once saw her/him misuse the words 'acute' and 'chronic' during a trial by interchanging them and reversing their meaning. S/he has also misused those words in conversations with me and other lab employees."

EMPLOYEE 2 states: "I have testified in court approximately 25-30 times. I have also seen SUPERVISOR 3 testify in court several times. I saw her/him testify about the terms "acute" and "chronic" incorrectly. Outside of trial, s/he gives inconsistent descriptions of those terms. I worry that, when I testify, my testimony will be judged based on incorrect information SUPERVISOR 3 has provided. That is the kind of thing that would follow me around for my entire career."

3. EMPLOYEE 2 states: "As our supervisor, SUPERVISOR 3 should encourage employees to stay current on research and advances in the field. SUPERVISOR 3 often tells us about professional conferences after s/he attends them, but s/he doesn't give us a chance to attend them, and s/he doesn't share anything s/he learns at seminars, conferences, or trainings."

4. EMPLOYEE 2 states: "Toxicology lab employees are the only employees in the entire building who are subjected to annual background checks and random drug testing. It is not fair that we are singled out when employees who conduct other kinds of testing, such as HIV, are not required to undergo annual background checks and random drug testing, nor are biowatch employees."

5. EMPLOYEE 6 states: "SUPERVISOR 3 also used the State car for her/his personal business. S/he bragged to us that using the Prius was so cheap. I know s/he took it to the airport once and left it there for several days, and no one knew where the car was. I have seen her/him drive the State car with her/his kids in it. EMPLOYEE 2 told me that s/he has ridden with SUPERVISOR 3 when SUPERVISOR 3 has driven too fast on the highway on the way to Steamboat Springs while steering with her/his knees and texting on her/his phone."

6. EMPLOYEE 1 states: "I earn $3,575 per month. EMPLOYEE 18 was hired at 10% above base pay rate for her/his job here despite the fact that s/he has no master's degree and no education in toxicology. EMPLOYEE 13 was hired around the same time as EMPLOYEE 18. S/he has a master's degree in forensic science and worked here as an intern for six months before receiving a permanent position, but s/he was hired at just the base pay. EMPLOYEE 2 had interned and temped here prior to working full-time and also has a master's degree in forensic science, but s/he was also hired at the base pay. When I began working here, I received more than the base pay, but only because I transferred here from the [WORK LOCATION]. It seems to me like [GENDER IDENTIFIER] are getting paid less than the [GENDER IDENTIFIER]."

EMPLOYEE 2 states: "When EMPLOYEE 18 was hired, s/he had no toxicology background and had no master's degree. S/he also worked on one of the easiest benches in the lab and didn't have nearly as much of a work load as I had. But s/he got hired at a pay rate at least 5% higher than mine was at the time. EMPLOYEE 4 went to SUPERVISOR 3 about six months ago after researching the salaries for criminalists for the Colorado Bureau of Investigation, because the

work we do is really what criminalists do, not what lab techs do. SUPERVISOR 3 told EMPLOYEE 4 that s/he agreed and that s/he would look into it, but nothing happened. I get paid about half what I should be paid for the kind of work that I do."

7. Several employees allege that SUPERVISOR 3 lacks enough familiarity with lab procedures to offer effective leadership. Although this investigator is not qualified to render an opinion about SUPERVISOR 3's qualifications, the opinions of lab employees on this issue seem significant.

EMPLOYEE 1 states: "I have witnessed SUPERVISOR 3 testify in court that s/he has tested blood drug samples, but I know for a fact that s/he has never tested a single blood drug sample in her/his life. SUPERVISOR 3 has worked for this lab for basically her/his entire career. This lab only started doing blood drug testing in 2006 or 2007, and s/he has been a supervisor since that time. The only testing s/he has done since that time is urine confirmations and blood alcohol tests. I don't believe s/he is even trained to perform blood drug samples."

EMPLOYEE 1 continues: "SUPERVISOR 3 generally testifies as a toxicologist rather than as an analyst. There have been cases when SUPERVISOR 3 wanted to testify about blood alcohol tests themselves, so s/he wanted to run the tests for those samples. In those instances, I had to do all the work for the testing because s/he did not know how to run the tests. The only thing SUPERVISOR 3 did was pipette the sample from the test tube into the vial on the instrument."

EMPLOYEE 1 adds: "Because SUPERVISOR 3 doesn't know how to perform any of the tests her/himself, s/he cannot help with training. S/he also cannot relay accurate information about the testing to other people. We cannot go to her/him for guidance or troubleshooting regarding testing. For instance, our lab uses nitrogen as a carrier, but a lot of labs use helium. SUPERVISOR 3 did not know that we use nitrogen or why we use nitrogen. It appears that SUPERVISOR 4 made the decision to use nitrogen when s/he worked here, but we don't know for certain."

EMPLOYEE 1 continues: "We received a serum sample once, but we conduct our tests on whole blood. I screened the serum sample, but I did not know whether our testing methods could be used on serum. SUPERVISOR 3 thought it was okay for us to test serum based on studies in the field, but our methods are only validated for whole blood, not serum, and SUPERVISOR 3 did not realize that until EMPLOYEE 2 informed her/him that we could not test serum. SUPERVISOR 3 found a lab in Boulder that utilized a methodology that is validated for serum, so we sent the sample there."

EMPLOYEE 4 states: "SUPERVISOR 3 does not provide any leadership in the lab. S/he does not know how to run any of the analyses in the lab, and s/he has never watched anyone perform any of the tests from start to finish. I think her/his unrealistic expectations are caused by the fact that s/he doesn't know how the work is done. I even prepare my own competency assessments. SUPERVISOR 3 just signs them after I fill out the paperwork. Part of my job is to complete competency assessments for lab techs, and when I do that I actually observe them doing their

work to ensure that they are competent. But SUPERVISOR 3 does not do anything to confirm that I'm competent."

EMPLOYEE 4 continues: "There have been times when SUPERVISOR 3 wanted to run tests so s/he could testify about it, but because s/he doesn't know how to run tests her/himself s/he has to have lab techs set everything up and run the tests. All s/he does is put the blood into the test tube. SUPERVISOR 3 also was not even aware that our lab can conduct drug blood tests only whole blood, not serum."

EMPLOYEE 6 states: "SUPERVISOR 3 was incapable of running any of the analyses on her/his own without assistance. On a couple occasions, s/he asked me how to run blood alcohol tests. If s/he were left on her/his own in the toxicology lab, I don't think there is any way s/he could run the analyses."

Conclusion

As indicated above, this investigator finds that the allegations made by EMPLOYEE 18 and other employees of the toxicology lab are accurate based on the information available. Although the allegations cover a broad range of issues, the one thing they all have in common, with perhaps the exception of the issue of understaffing, is that they implicate SUPERVISOR 3, her/his management of the toxicology lab, or her/his supervision of and interaction with current and former toxicology lab employees.

This investigator notes that SUPERVISOR 3 denied conduct that was consistently corroborated by some employees. Her/his denials only served to damage her/his credibility. Also, many people interviewed for this investigation volunteered a great deal of information that casts SUPERVISOR 3 in a negative light. Based on the sheer volume and variety of the complaints about SUPERVISOR 3, this investigator was initially concerned that the personal feelings of current and former toxicology lab employees would interfere with the effort to obtain reliable information about the allegations in this matter. In an effort to ensure fairness, this investigator actively sought out witnesses who might provide alternative viewpoints. However, the consistency of the information provided throughout the course of the investigation is enough to convince this investigator that it is reliable.

Summary of Findings

1. This investigator finds it more likely than not that employees justifiably perceive that blood alcohol training protocols for toxicology lab analysts are inadequate.

2. This investigator finds it more likely than not that toxicology lab analysts justifiably perceive they are not adequately trained to provide fact or expert testimony in court.

3. This investigator finds it more likely than not that refrigerators used to store blood and urine samples are not locked, making them accessible by unauthorized personnel. However, this investigator notes that a plan is in place to install locks on the refrigerators soon.

4. This investigator finds it more likely than not that SUPERVISOR 3 had several toxicology lab employees help her/him with her/his Master's thesis during working hours.

5. This investigator finds it more likely than so that SUPERVISOR 3 has made statements that suggest s/he is "biased" against defendants in criminal trials.

6. This investigator finds it more likely than not that SUPERVISOR 3 made disparaging remarks about EMPLOYEE 16 and SUPERVISOR 1 in the presence of toxicology lab employees.

7. This investigator finds it more likely than not that employees justifiably perceive that the toxicology lab is not sufficiently staffed to handle the work load.

8. This investigator finds it more likely than not that employees justifiably perceive that SUPERVISOR 3 imposes unreasonable burdens on toxicology lab analysts by making excessive accommodations for prosecutors and law enforcement agencies.

9. This investigator finds it more likely than not that that some current and former employees justifiably perceive that SUPERVISOR 3 treats employees disrespectfully and that s/he is a "bully."

Analysis

Decision-makers for CDPHE are responsible for assessing whether the facts of this matter support the allegations presented or otherwise establish unacceptable conduct and corrective action. This investigation report is intended to be the tool for making that analysis by identifying the relevant allegations and addressing corroboration of facts. Subjective comment is also shared, but it is important to recognize that another person, like a judge or juror, might draw a different conclusion from the same or additional facts.

END REPORT

Respectfully submitted,
MOUNTAIN STATES EMPLOYERS COUNCIL, INC.

MSEC INVESTIGATOR
Workplace Investigations