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DEPT. OF TRANSPORTATION  
DOCKETS

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Office of the Secretary, Department of Transportation  
Docket Clerk  
Attention Docket #OST-99-6578 - 12  
Department of Transportation  
400 7<sup>th</sup> Street SW, Room TL401  
Washington, DC 20590.

I have reviewed the Federal Register Volume 64, #236, Thursday, December 9, 1999, and would offer the following suggestions based on my experience in handling over 200,000 drug tests since 1988.

You ask what to call people who, like myself, do drug tests including labs, collection sites, etc. I would call them drug and alcohol testing facilities.

You ask should an employee present results from his private doctor as evidence of non-drug use and I would say absolutely not. All attempts to further dilute the integrity of the program are dangerous.

You asked what kind of collector training is appropriate. In my facilities, the labs train our collectors. The forms are straightforward and I believe expanding the training requirements of collectors would do nothing except increase the cost of the whole system. In our experience, we find most errors occur from collection sites or clinics that do a small number of drug tests or alcohol tests. Given that information, it would be appropriate, that a minimum number of 50 drug tests or alcohol tests or a combination per month would be an appropriate level to maintain staff sharpness.

You ask and state that DOT specimens can be used for no other purpose except testing for the DOT mandated drugs. If the issue here is safety, then any use of DOT specimens that proves someone is not safe would be appropriate.

You ask should if U.S. employers should be permitted to use the foreign-language versions of the forms. No, U.S. employers should not be permitted to use these forms. Using foreign-language based forms will require a multilingual presence in collection sites, MROs and laboratories, raising the cost for drug screening. Safety also becomes an issue if U.S. employees are not able to communicate in our national language (i.e. road signs and directional maps are written in English).

You ask about simplifying records using electronic devices, i.e. computers and electronic signatures. I feel that electronic devices such as computers are a great help and ultimately reduce the cost without interfering with the integrity of the program.

As to the collection process, you ask if a collector should be able to look in the boots of a person. Yes, any change that helps the collection site and the MRO more accurately determine if the individual is altering their drug specimen, sneaking in clean urine, etc. would be helpful.

You ask if the refusal to drink fluids in order to produce urine for testing should constitute a refusal. Absolutely it should. Most shy bladders that I see are either dehydrated workers who come in at the end of the day and need the fluids or manipulative drug users who want to avoid the test.

You ask about repeating diluted or adulterated urine specimens. In the area of directly observed and monitored collections, we frequently find that people, for various reasons, give us a cold urine or a urine which doesn't smell like urine or a urine that obviously has soap or bleach in it. In these situations, I feel it should be assumed they are positive. Jumping through hoops and requiring direct observation and re-urination is time consuming and I think merely gives a dishonest individual another chance when they don't deserve one.

As to an adulterated urine report from the lab, I feel this should constitute a positive test. As to a dilute urine specimen, all dilute specimens should be recollected immediately before the individual leaves the collection facility.

Under the laboratory section, you ask if amphetamine positive tests should be further tested to determine which form of amphetamine is involved, i.e. the legal forms or the illegal ones. This area of testing is problematical for the MRO and the companies, as this test to determine which form is present is expensive. I think it should be required that the labs make that determination.

You ask if the labs should be required to test for adulterants. I believe that that is appropriate since they interfere with the integrity of the test.

You ask about mailing original copies to the MRO. To reduce paperwork, this is unnecessary and faxing is fine.

As to conflicts of interest, I agree that laboratories and MRO's should have an arm's length relationship. Laboratory procedures and reports, I think, can be simplified in that if a lab is unable to maintain the integrity of the test, then they should lose the right to do drug testing. As to the notification to employers that a certain number of adulterated tests were done by the lab, I don't see that that is of any importance.

As to the issue of record retention, with electronic means now, records can be maintained for long periods of time without having to hold hard copies. Hard copies need only be maintained for a short period of time.

The whole area of blind specimens is an added burden for employers and would suggest that it should be the function of NIDA certification or another overseeing organization, not the employer. Employers are now required to send blind specimens to labs. Blind specimens are known to contain drugs and are designed to check lab accuracy. Most employers are not even aware of this requirement.

As to MRO training and responsibilities, training every two years is way too often. I had my original training and have been re-certified every five years and I think the expense of traveling to a distant city and sitting through a course for three or four days is unnecessary. An example of re-certification would be the Federal Aviation Administration's re-certifications for flight examiners, whereby it can be handled in a home study situation with reporting back to the agency. The FAA requires training every three years and every other three-year period, you can do it at home. I would think that once you had your initial training you could do all further refreshers in a home setting with great savings, again in the time and effort involved.

You ask if the MRO's ownership of a collection site is a conflict. I think not. In fact, owning a collection site gives the MRO more control over the collection procedures and improves the quality of the facility.

As to the length of time an MRO must continue efforts to contact a positive employee to discuss results, five working days is more than adequate.

As to the MRO being licensed as a medical doctor in each and every state that a drug test originates in, I think this is unnecessary. There is no doctor patient relationship established by a drug or alcohol test.

In the verification process section, you discuss opiates. Obviously, we are concerned if someone is using opiates, but the problem of poppy seed ingestion and legal opiates from Canada, Mexico and the Bahamas is always present. In the last 11 years, I have only actually had to examine a few individuals to determine if they appeared to me to be medically addicted to drugs, as relates to opiate use. I felt that was sort of a waste of time, as it is often difficult to make that determination by physical examination. A high level, as you suggest, beyond which the poppy seeds, etc. are excluded, may be a good answer to this dilemma.

The area of retesting a positive at the request of the employee at a different lab is problematical. It is my feeling that if an employee requests a retest, then the employee should pay for it and that the employer should pay for it up front. After all, the employee is challenging the test. The MRO, the company and the lab are not challenging anything, so the burden of that additional cost in the system should be borne by the person who feels they may benefit from it. I disagree with retesting for adulterants. If a specimen is diluted or adulterated in any way, it is invalid and I think should be positive. There is no other reason to adulter or dilute a specimen, except to make it appear negative. I further agree that retesting a split specimen that has been determined to be adulterated or diluted is unnecessary, since retesting is only ordered for confirmation of positive tests. Adulterated tests are never positive since they are not done and diluted tests that are negative, in my opinion, are invalid. Diluted tests that are positive are of course valid. You ask if the employer should be submitting blind specimens that are adulterated or diluted. I think that is, for most employers, a burden they don't need. As to requiring employers to retest diluted or adulterated individuals, I don't feel that that is appropriate, since these are obvious attempts to invalidate the drug testing process.

Under employer actions, the stand down provisions seem unsafe. Stand down means to have a person removed from a safety sensitive position while it is determined if they have a positive drug test. This would certainly seem appropriate if our intent were to have a safer work situation. Again, the area of opiates is problematical and a higher level would help there. In the area of amphetamines, it is probably not problematical in that some forms are legal. Further testing of the forms of amphetamines, as mentioned above, would resolve that issue. Air traffic controllers have a stand down provision and I think that is appropriate for all safety sensitive positions. Air traffic controllers stand down because it is very safety sensitive, but so is a 18-wheeler bearing down on a family of four in a car. The ruling that an employee must stand down or have the employee resubmit unsuitable specimens which are adulterated or diluted, seems to be against safety. There is certainly a suspicion and a high percentage of these people, which will ultimately turn out positive and I think it would be appropriate to have them all stand down.

In the area of split specimens, it seems to me that that is a burden throughout the process and I would be in favor of eliminating split specimens altogether.

In the area of problem drug tests, I think explicit wording of what constitutes a presumed positive test and a situation for retest would be in order. Make them clear and concise.

As to shy bladder provisions as to which doctor is able to determine if someone doesn't make urine, any doctor can determine that. If urine were unavailable for whatever reason, then a blood test would be appropriate in all situations.

The area of alcohol testing, the major problem here is to assure that the test administrator follows the rigorous procedures. Properly trained personnel are available and refresher training in the form of an inexpensive refresher course may be in order, but this requirement should be waived in the case of people who regularly perform tests. You should just define what regularly is. If a person does a few tests a week, that is enough to stay current on the procedure.

The definition of substance abuse professionals is somewhat problematic, but I think it can be left to the organizations that certify substance abuse professionals without any DOT intervention.

Provisions related to confidentiality and release of information often become difficult in my practice, i.e. a person tests positive for drugs and is fired from one organization and then appears for a pre-employment physical for another organization where the job is even more safety sensitive than the previous job, i.e. we have had occasion where a person applied to be a police officer and had recently tested positive for cocaine in a different job. It is my feeling that, at some point, confidentiality of drug testing results needs to be waived, i.e. it would be my suggestion that MRO's be given some latitude in this area to inform other employers that an individual has had a positive drug or alcohol test in the past. There are databases for disciplinary action on professionals, i.e. doctors, available on the Internet. If DOT would post the names of drug using safety sensitive individuals so that other employers had access to them in the same or other states, this would certainly lead to a safer environment.

The same rationale applies to doctors or clinics who do not know how to or refuse to follow the procedures for drug testing and alcohol testing under DOT or under any scenario. An employer certainly has the right to personally investigate the available resources in their area, but again a national database of certified good performing drug testing facilities would be advantageous to employers.

As to the relationships of service agent roles and responsibilities, I favor the separation of MRO's from laboratories and would encourage an arm's length relationship.

In addition, there is one area, which you do not consider in your Federal Register, and that is the area of legal dangerous drugs. This would certainly be under public interest exclusions as listed. The situation has arisen on many occasions where a mood altering or performance interfering drug is legally prescribed and shows on a drug test. It is just as dangerous for a person to take legal Valium as it is to take illegal Valium when driving or performing another safety sensitive position. Some provision in the rule that would allow the MRO to report the use of medication(s) to the employer would be appropriate and in the interest of safety. In my practice, I advise employers to have a company policy that requires the reporting of such medications to the employer without drug testing. If there is a question as to performance, then I am asked to make a determination if the use of that drug is safe.

I thank you for the opportunity to submit my thoughts and experiences regarding this important area of safety.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Johnson', written in a cursive style.

Richard F. Johnson, -M.D., M.P.H.

RFJ:sld