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**Comments by James A. Barnshaw, M.D., Chief Medical Review Officer,
FirstLab on NPRM at the DOT Public Meeting March 20, 2000.**

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First MRO Topic:

I will comment on two issues in the Proposed Rules. The first issue, from a TPA perspective, is 40.145 "How does the MRO notify employees of their right to a test of the split specimen or to a retest of a single specimen?" I will speak to the verbal request issue.

Under © in the second sentence it states "you must provide telephone numbers or other information that will allow the employee to make this request".

FirstLab requests that the phrase "or other information" allow for a company/TPA to require that additional testing be requested by the employee in writing.

Under Subpart H 40.171 it does allow the request to be VERBAL or WRITTEN, Allowing verbal requests, with no option for a company to require written requests, is not consistent with the rule where so many steps in the process require proper documentation. For instance we document that the donor is properly identified before proceeding with the interview. We also verify where appropriate the legitimate medical explanation by seeking validation by the prescribing physician or the pharmacist filling the prescription.

While the proposed rule would require that the MRO be able to receive the request either directly or by use of an answering machine with a time stamp feature, my experience suggests that the request will be given during my initial conversation with the donor. Honoring this verbal request places multiple parties in untenable positions. The donor in the direct conversation with the MRO may feel that he asked for a retest or split analysis but the MRO heard differently. Or the donor asked for, the MRO heard and requested, the company then asks the donor to pay for the testing or share in the cost and the donor denies asking for the additional testing.

A paper trail is obviously important to document the request

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Allowing verbal requests without 8 company option requiring written requests will open the flood gates to many more requests. In my experience many donors who have admitted to illegal drug use as the cause of their positive test still want the retest or split analysis- However when told how to make this request in writing they rarely follow through-

A requirement for a written request for additional testing should not be seen as an unacceptable burden for the donor. Fax machines are readily available, the worksite is available to assist and a letter postmarked appropriately will assure that the testing is performed.

The requirement for a written request for additional testing should at least be available as an option for companies. This will limit the number of requests and the associated cost.

FirstLab requests that the new rules allow the company the option to require a written request from the donor for any additional testing.

Second MRO Topic:

The second MRO topic I will review appears in the MRO Training and Responsibilities section.

FirstLab believes that the Department should take regulatory action to address the potential problem of MROs conducting their function across state lines.

The MRO function is critical to the drug testing process including the protection of the donor from false accusation, Many MROs would state that since the MRO interview does not establish a doctor-patient relationship that one is not really practicing medicine and does not need a medical license. The fact that physicians fight hard to restrict the MRO function to only physicians, presumably licensed physicians, suggests that licensure is part of this agreement

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Currently I am unaware of any state licensing agency taking action against an MRO like myself who is interviewing donors in many states where I am not licensed. There may be no mechanism for action to be taken in this situation by the state licensing agency. I do however worry about some arbitrator taking action against my involvement based on my lack of licensure in that state and the state licensing requirement that all drug tests are to be handled by physicians licensed in that state.

The proper handling of the drug test interview with the donor and the oversight of the entire drug testing process by the MRO is really dependent on the MRO being well trained and dedicated to making the right call. Educational organizations are currently providing training to support the MRO work and physicians who have completed the training and passed certain proficiency tests are better prepared to protect the process. The Department should consider requiring that by a certain date all "regulated" drug tests must be reviewed by these "educated" MROs and that these MROs be allowed to operate across state lines with no requirements for licensure in each state.