



Drug and Alcohol Testing UPDATE



June 2003

What should you do when a MEDICAL REVIEW OFFICER (MRO) calls to speak with one of your employees?

When a laboratory **positive drug test goes to the MRO, the MRO must call and speak directly with the driver before the employer is ever notified.** The MRO names who could be calling your employees are: Dr. Reid; Dr. Ausman; Dr. Villalobos; Dr. McLean; Dr. Ferguson; or Dr. Macdonald. Dr. Ferguson is the chief MRO and Dr. Macdonald is the Medical Director. It would be less likely that either Dr. Ferguson or Dr. Macdonald would conduct a telephone interview with the employee. Dr. Macdonald's name is on all negative drug test results.

When one of the MROs calls an employee, they identify themselves by their name and ask the employee for his/her social security number to ensure they are speaking with the right person. *A member of the Consortium had a concern that the MRO needs to say more before the driver should give his social security number. They cannot because of the confidentiality of the topic to be discussed.*

What can you do to ensure the employee does speak to the MRO when he/she calls? You could list the MROs names and inform the employee to give the information needed to the MRO, if called.

If the MRO cannot get in touch with the employee at the telephone number given on the Custody and

Control Form, the MRO will call the Consortium and then the Consortium will notify IMAWA. Kim or Libby from IMAWA will call your contact person in charge of your drug testing program and inform them to have the employee call the MRO immediately.

After the telephone interview between the MRO and the employee and the documentation is complete, the MRO will call the Consortium to report the drug test result if the result is positive, adulterated or substituted. The Consortium will document the date, time, and to whom (name of MRO) they spoke with, and then contact IMAWA immediately. Kim or Libby will call your contact person in charge of your drug testing program with a verbal drug test result, and a written result will follow.

For the RECORD ...

For those of you who are in our Drug Consortium, our records show the enclosed list of employees are currently participating in your drug program. **Please make sure our records match your records.**

If you have any changes and need to REMOVE employees from our list, you must send (FAX # 217/585-2472) an employee action form to IMAWA in order to remove anyone who is no longer in your program.

For those of you who are NOT in our Drug Consortium and would like more information on "how to do it," call Kim at IMAWA; she'll be glad to get you all set up.

Can't Tinkle?

A driver could not provide approximately a ¼ cup (45 mL) of urine. The shy bladder procedure then started. Three hours went by and the driver still could not provide the 45 mL of urine. Now what happens? Your member should call our MRO immediately at (800) 586-6543 or (800) 830-8519 to find what kind of doctor the driver needs to get a medical evaluation from within the next 5 working days.

After the driver makes the appointment with the specialist, the specialist must call one of the Consortium's MROs so they can tell the specialist exactly what information is needed from

him/her. After the medical evaluation, the specialist must write a written statement of his/her recommendations and the basis for them to the MRO. If the specialist determines the driver has a medical condition that would not allow the driver to provide 45 mL of urine, and the MRO agrees with the specialist's recommendation, the test would be cancelled. If the specialist determines the driver does not have a medical condition and the MRO agrees with the specialist's recommendations, the MRO will report the test result as a refusal to test (positive test). If the driver does not go for the medical evaluation at all, it is considered a refusal to test (positive test), according to the "Refusal to Test" definition in the Federal regulations.

MYTH

about Poppy Seeds

MYTH ABOUT POPPY SEEDS - Eating poppy seeds **cannot** turn a drug test positive for heroin. Poppy seeds contain morphine, however. Eating poppy seeds in some form can result in a true positive result for opiates, specifically, morphine.

However, at the cutoff levels established by the Federal government in testing for opiates and the metabolite that is exclusive to heroin called 6-acetylmorphine (6-AM) during the confirmation testing phase, it is impossible for a false positive for heroin to occur.

NOTE - A driver recently received a positive test result for cocaine and it was interesting that this driver stated he had eaten poppy seeds and that is why he tested positive for cocaine. The fact is eating poppy seeds will not test positive for opiates, let alone cocaine. The stringent testing requirements and the review of the test results by an MRO will not allow for false positive test results to happen.

Cancelled Test Results

As you'll recall in the glossary of terms in your substance abuse manual (XI Appendix), a **Cancelled** (or invalid) **Test** is a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or in which 49 CFR Part 40 otherwise requires a test to be cancelled. A cancelled test is neither a positive nor a negative test.

If the Medical Review Officer (MRO) calls the Consortium and tells them that a drug test result is cancelled and that it does not have to be recollected for one of your employees, the Consortium will notify IMAWA, and then IMAWA (Kim or Libby) will call you. *The types of cancelled tests that do not have to be recollected are random, post-accident and reasonable cause tests.* However, please remember there are some exceptions to this. If the MRO determines that there must be another collection done, regardless of the test type, your employee would be required to give another urine specimen.

Since your employee **must** have a negative drug test result on a pre-employment, return to duty, and a follow up drug test, a cancelled test result would require your employee to have another collection done.

NOTE - The Consortium previously had random tests recollected when they came back as a cancelled test. They will no longer require a recollection unless the MRO authorizes it.

Post-Accident Testing: To test ... or not to test ???

What determines whether you should or should not post-accident test your driver must be determined by your knowledge of the Federal regulations on post-accident testing, and the information that you've been given regarding the accident in which your driver was involved.

If your company's drug and alcohol abuse policy only includes what is required by the Federal regulations for post-accident testing, **you can only post-accident test your driver in these 3 circumstances:**

- when there is a fatality;
- when your driver receives a ticket **and** there is disabling damage to the vehicle where it has to be towed away;
- when your driver receives a ticket **and** there is bodily injury requiring immediate medical treatment away from the accident scene.

That means you **cannot** post-accident test your driver if the above circumstances don't apply. If you insist on having your driver tested anyway, the Consortium is unable to take care of the testing for you (at least in this particular case), and you'll need to make other arrangements for testing.

Here's an example of why you want to follow your drug and alcohol policy to the letter: You have one of your drivers post-accident tested, and

it is not required, and the driver gets a positive test. You terminate the driver. The driver gets an attorney and sues you and wins because you violated their civil rights. Then, you get to pay for the driver's time off, put the driver back in his/her job, and probably pay punitive damages because your policy did not contain anything that says you were going to test the driver regardless of the circumstances of an accident. **Don't set yourself up for unnecessary liability lawsuits!** If you want to post-accident test your driver even though it doesn't comply with the Federal regulations, **you must have it written in your company's drug and alcohol abuse policy under your independent authority, and all your drivers must sign off on the policy to make them aware it.**

Black & White or GRAY?

We just mentioned whether you should post-accident test your driver...or not. To muddy the water, our Consortium recently had a conversation with a special agent at the US Department of Transportation, and discussed some gray areas of the post-accident testing regulations. One actual scenario was a truck hitting a telephone pole. The driver was ticketed. The driver gets back into the truck and drives 20 miles. He hears a noise and then decides the truck needs to be towed away. Should the driver be post-accident tested? The special agent said no because the truck was not towed from the scene of the accident.

The special agent said that the employer has to look at the accident report very carefully to see if the police officer noted on the report that the truck had disabling damage, even if the truck didn't and it was driven away. If the employer does not have the accident report, the employer needs to ask the officer who filled out the accident report whether he/she noted disabling damage on the report. If it is noted on the accident report, the driver must be post-accident tested unless the officer changes the report. If the employer has specific knowledge from the police officer that the driver is going to receive a ticket even if the driver has not received it yet, the employer must have the driver post-accident tested.

If the police officer is unsure whom the ticket will be issued to, or if a ticket will be issued at all; the employer must stay in touch with the police officer up to 32 hours after the accident to find out if his/her driver will be issued a ticket. Why is 32 hours the magic number? The employer has 8 hours after the accident to get the post-accident *alcohol* test done and 32 hours after the accident to get the post-accident *drug* test done. If 32 hours passes before the police officer decides whether the driver will be issued a ticket, a post-accident test would **not** be done.

The special agent knows that some police officers are uncooperative in providing information to employers. He stated the most important thing the employer can do and should do if the time has passed before a ticket is issued to the driver **or** if the police officer is uncooperative is **document, document, document!**



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