

**CHAPTER 10**  
**CONFIDENTIALITY OF RECORDS**  
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## CHAPTER 10

### CONFIDENTIALITY OF RECORDS

1. PRIVACY. Invasion of privacy is one of the key concerns raised by substance testing. Therefore, it is imperative that the testing of an employee, as well as the test results, be kept as confidential as possible. Information shall be released only to the extent necessary for the recipient to administer these rules and/or properly assign and supervise the affected employee. While there will be a natural curiosity in the workplace about whether an employee was tested and the results, the California Department of Human Resources (CalHR) rules and the Department require this information be released only on a strict need-to-know basis.

#### 2. RELEASE OF RECORDS.

a. The Department is required to maintain records of the circumstances and results of any employee tested under these rules. These records, and any other information pertaining to an employee's substance test, must be considered confidential and shall be released only to:

- (1) The employee tested.
- (2) An individual designated in writing by the employee tested.
- (3) The Medical Review Officer.
- (4) The CalHR, as necessary, to effectively administer these rules.
- (5) Individuals who need the records or information to:
  - (a) Properly supervise or assign the employee.
  - (b) Determine, or assist in determining, what action the Commissioner should take in response to the test results.
  - (c) Respond to appeals or litigation arising from the substance test or related actions.

#### 3. PROCEDURES.

a. Negative Test Results. In an effort to minimize the stigma attached to a substance test, negative results should not be included in the employee's personnel file. Therefore, negative test results and the documentation regarding reasonable

suspicion for the test shall be maintained apart from the employee's personnel folder unless the employee requests otherwise. This information shall be forwarded to the Office of Internal Affairs (OIA) as confidential material. This information will be maintained in a separate file for five years or until such time as any litigation arising from circumstances leading to the test has concluded, whichever is longer.

b. Positive Test Results. Positive test results and the documented reasonable suspicion will become part of the request for adverse action file. This information will be maintained for a period of five years and handled consistent with policy contained in Highway Patrol Manual 10.2, *Internal Investigations Manual*.

c. Local Records. Local use of test results must be limited to the instances detailed in paragraph 2.a.(5) above. Except for these purposes and the request for adverse action, no local records of the test results shall be maintained. Supervisors/managers should ensure that only essential personnel are utilized in performing the substance test and preparing the necessary documentation. This will help limit the number of persons familiar with the circumstances and ensure confidentiality.