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**TESTING PROCESS AND STANDARDS**  
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## CHAPTER 7

### TESTING PROCESS AND STANDARDS

1. INTRODUCTION. The testing process begins after the confirming official has authorized a chemical test. Supervisors play a vital role in the testing process, as they must deal with the employees, collect the samples or coordinate with collection site personnel, represent the Department's interests throughout the process, and ensure the samples are packaged and shipped properly. It is essential, therefore, that supervisors clearly understand their role and are familiar with the following procedures.

2. TYPE OF SAMPLE.

a. Breath. Effective April 7, 2005, the California Department of Human Resources (CalHR) discontinued the practice of obtaining a urine sample for alcohol testing in all state substance abuse testing programs. All alcohol testing will be conducted using evidential breath testing devices in accordance with Federal Department of Transportation Regulations, Part iii, Title 49, Code of Federal Regulations Part 40.

b. Urine. The CalHR rules provide for a urine test as the primary means of determining whether or not an employee has abused drugs. After a drug is ingested, it is carried by the blood throughout the body, reaching all of the internal organs. Upon reaching these organs, the drug begins to break down or metabolize. When this metabolism begins, drug metabolites are excreted in the urine, feces, and perspiration. The urine is scientifically screened to identify the levels of these metabolites, as well as the parent drug. Urine testing is the most widely used method in substance testing today. The following are some of the reasons for its popularity:

- (1) It is less intrusive than blood testing since it does not require extraction from the body.
- (2) The sample can be collected by non-medical personnel.
- (3) Individuals using drugs will test positive for the longest period of time on a urine test.

NOTE: Employees suspected of being under the combined influence of alcohol and a drug(s) are required to submit to both a urine and breath test.

c. Preservation. Once out of the body, urine is subject to decomposition. This requires that the sample be handled in a timely manner and ultimately frozen after the necessary tests have been completed.

### 3. COLLECTION OF SAMPLE.

a. Location. The CalHR rules require the sample collection to occur in a setting which provides for a secure and professional collection process. A laboratory contracted by CalHR will conduct an analysis of the sample provided. Collection may be conducted at the work location or any approved medical or custodial facility by authorized personnel. The supervisor/confirming official should carefully consider the following before deciding where the sample will be collected:

(1) Sex of the employee and availability of a supervisor of the same sex to collect the sample;

(2) Some Memoranda of Understanding prohibit the collection of a sample by the employee's supervisor; and

(3) A breath test will be administered for an employee who is suspected of abusing alcohol.

b. Observation. From the moment reasonable suspicion is developed until the time a sample is provided, the employee should remain under continual supervisory observation. The employee should not be allowed to go to a car, locker, or desk without supervision. Additionally, to secure the best possible sample, the employee should not be allowed to void his or her bladder until the sample is collected. Numerous techniques have been developed to invalidate the test or its results. When warned that they will be tested, employees have been known to drink large quantities of liquids or ingest other substances to either dilute or contaminate the urine sample. Some employees have also hidden substances on their person, such as soap flakes under the fingernails, which they later put into the sample to contaminate it. A contaminated sample cannot be analyzed by the laboratory for substance abuse. In some instances, employees have even provided "clean" urine samples from rubber or plastic bladders which they had strapped to their bodies.

c. Time Frames. Drug metabolites remain in the system for hours or even days; therefore, supervisors should not become overly alarmed if the sample cannot be collected immediately after reasonable suspicion is confirmed. In fact, substance testing experts believe the best time to collect a sample is within two to four hours of the initial observation. This gives the body time to metabolize the drug if it has just been ingested. Time is on the supervisor's side. Thus, if an employee who

uses marijuana sporadically was to be tested while intoxicated, the test most likely would come back negative for marijuana since the drug did not have time to metabolize. Additionally, one expert cites the following time frames for cocaine:

- (1) Intense euphoria - five to 15 minutes.
- (2) Lesser euphoria - three to four hours.
- (3) Remains in the bloodstream - three to six hours.
- (4) Detectable in urine - up to 48 hours.

d. Sample Collection at Work Location. If the supervisor decides to collect the sample, it must be done in an atmosphere of dignity and reasonable privacy. The office restroom could be used in this situation as long as the sample is provided under the supervisor's direct observation with some arrangement so that other employees cannot enter during collection of the sample. Before collecting the sample, the supervisor shall:

- (1) Obtain a sample kit provided by the Department;
- (2) Open the plastic bag and locate the checklist form (Annex A);
- (3) Ensure all required items are included;
- (4) Read the instructions on the checklist;
- (5) Fill out chain of custody form and seal;
- (6) Collect the sample in the container provided in the kit;
- (7) Ensure at least 60 milliliters (approximately two fluid ounces) of urine is collected (to be split into two containers after collected);
- (8) Secure the sample in a locked evidence locker;
- (9) Make arrangements with the designated courier service to have the sample transported to the laboratory.
- (10) Notify the Office of Internal Affairs (Attention: Substance Testing Coordinator) of the sample collection.

NOTE: Supervisors should realize that an employee may not be able to provide a urine sample immediately. A reasonable waiting period should be

allowed for the employee to provide the sample. If, however, after a reasonable period of time the employee is still unable to provide a sample, this will be treated as a refusal, which constitutes a presumption of impairment. Employees are permitted to drink water for the purpose of aiding them in providing a sample, so long as it is supervised. Water consumed this close to the collection of the sample should not adversely affect the integrity of the sample, while liquids consumed well in advance of sample collection may have time to dilute the urine.

e. Transportation. If transportation is necessary, the supervisor who made the initial observation and developed the reasonable suspicion should personally transport the employee to an approved medical or custodial facility. This will help to limit the number of persons involved and also provide the supervisor with more time to observe the employee for additional objective symptoms of substance abuse. If this supervisor cannot provide the transportation, another supervisor must transport the employee. Do not allow the employee to drive. If there is concern for the employee's or supervisor's safety, assistance should be requested for the trip to the medical or custodial facility. Uniformed employees should be given the opportunity, under supervision, to change into civilian clothing before being transported to a collection site.

f. Alternate Collection Site. If the supervisor does not collect the sample at the work location, then the urine sample may be collected by authorized medical or custodial personnel. This individual must be of the same sex and will actually watch the urine leave the employee's body. This is essential to ensure an unadulterated sample and a solid beginning to the chain of custody. The supervisor is to confirm that the sample will be collected under direct observation. If, for some reason, authorized medical or custodial personnel refuse to collect the sample, the supervisor will personally collect the sample, if of the same sex as the employee, or get another supervisor (uniformed or nonuniformed) of the same sex to do so.

g. Courier Service. Upon securing a urine sample, the supervisor is to call the designated courier service to make arrangements for transportation of the sample to CALHR's contracted laboratory. It is not necessary to secure the sample in a refrigerated state while waiting for the pick-up.

h. Lack of Cooperation. Employees refusing to cooperate at any stage of the collection process shall be ordered to cooperate and advised that failure to do so may subject them to disciplinary action for insubordination. Do not attempt or threaten to use physical force to secure a sample. In those instances where criminal prosecution is contemplated, normal arrest and evidence collection

procedures should be followed, consistent with Highway Patrol Manual (HPM) 70.1, *Evidence Manual*.

i. Notification to Substance Testing Coordinator. After the sample has been collected, the command shall make notification to the substance testing coordinator at the Office of Internal Affairs (OIA) using Annex C of this chapter. The notification shall be emailed or faxed to OIA no later than 48 hours after the specimen is collected. The command shall forward the original "Notification to Substance Testing Coordinator" memorandum to the Department's Substance Testing Coordinator through appropriate channels.

#### 4. ANALYSIS OF SAMPLE.

a. Transportation of Sample. Once the sample has been secured, it will be transported to the contract laboratory for analysis. To preserve the chain of custody, the designated courier service will be contacted to transport samples statewide. When the sample arrives at the laboratory, a screening test will be conducted. If the screening test is positive, a more sophisticated confirmation test will be run on the sample.

b. Notification. When the laboratory testing is completed (usually 24-48 hours after the sample's arrival), the results will be communicated directly to the Medical Review Officer (MRO). In addition to telephonic notification, approved test results are posted on a secure website at <https://www.cdtsolutions.com/>. Only the Department's Substance Testing Coordinator or alternate will be authorized to access the test results online.

c. Negative Results. Negative results will be communicated directly to the MRO, who will immediately relay this information to the Department in the following order until the Department receives the notice:

- (1) Directly to the employee's commander; or
- (2) Directly to the Division commander; or
- (3) Directly to the appropriate Assistant Commissioner; or
- (4) Directly to OIA.

d. Positive Results. All positive results will be communicated to the MRO for further evaluation. In this instance, the MRO will attempt to contact the affected employee directly for information (such as legal prescriptions) to determine if there

is a legitimate medical explanation for the positive test. The employee is entitled to representation during any such conversation with the MRO. If, after seven (7) days, the MRO is unable to reach the employee directly (and no exculpatory information was provided by the employee via memorandum), the test will be considered "positive by non-contact." After this evaluation is completed, the MRO will notify OIA following the criteria enumerated in paragraph 4.c. above.

NOTE: While an employee may claim that a test which returns positive for marijuana is the result of a legitimate recommendation from a licensed physician, the MRO will not consider marijuana to be a legal prescription. Accordingly, any test which returns positive for marijuana will be considered evidence in support of a violation of the Department's substance abuse policy.

e. Methods of Notification. The initial contact by the MRO will be by telephone. This will provide the supervisor and employee with the results in the most timely manner. Written confirmation will follow all tests.

## 5. TESTING STANDARDS.

a. Drugs Tested. Under this substance testing policy, testing for the following classes of drugs and/or their metabolites will be conducted:

- (1) Amphetamines and methamphetamines.
- (2) Cocaine.
- (3) Marijuana/Cannabinoids (THC).
- (4) Opiates (narcotics).
- (5) Phencyclidine (PCP).
- (6) Barbiturates.
- (7) Benzodiazepines.
- (8) Methaqualone.
- (9) Alcohol.

b. Drug Test. The drug testing process shall be one that is scientifically proven to be at least as accurate and valid as urinalysis using an immunoassay screening test. All positive screening tests will be confirmed using gas chromatography/mass

spectrometry before being considered positive and forwarded to the MRO. A failure on the confirmatory test will result in the reporting of a negative result, even if the initial screening test yielded a positive result.

c. Cutoff Levels. To compensate for passive inhalation (such as having been at a concert where someone else was using marijuana) and to minimize false positive results, certain cutoff levels have been established for both the screening and confirmatory tests. Any detection of drugs and/or their metabolites below these levels will be reported as a negative result. The cutoff levels established for the screening test are consistent with the National Institute of Drug Abuse standards and the cutoff levels for the confirmatory tests have been established by CalHR.

d. Alcohol Test. The alcohol testing process shall be one that is scientifically proven to be at least as accurate and valid as:

(1) Urinalysis using an enzymatic assay screening test with all positive screening results being confirmed using gas chromatography before the sample is considered positive; or

(2) Breath sample testing using an approved breath alcohol analyzing instrument.

(3) Supervisors shall use the breathalyzer when only alcohol abuse is suspected. If the breathalyzer results are .00/.00% Blood Alcohol Content, a urinalysis test should be secured to determine the cause of impairment.

(4) The *Inconsistent and Incompatible Activities* statement contained in HPM 10.3, *Personnel Transactions Manual*, Chapter 14, *Inconsistent and Incompatible Activities*, Annex A, prohibits an employee from “reporting for or returning to duty when not completely recovered from the effects of alcohol, or with alcohol on the breath.” Any detected level, including the odor of an alcoholic beverage, would be the basis for an adverse action. There is nothing, therefore, precluding administrative action for levels below .04% as determined by a breath sample, citing the Inconsistent and Incompatible Activities Statement as the authority for said action.

(5) In accordance with CalHR regulations and applicable collective bargaining agreements, urine tests will not be tested for alcohol. As previously stated, if both drug and alcohol use are suspected, employees are required to submit to both urine and breath tests. (Refer to paragraph 2 of this chapter.)

## 6. DISPOSITION OF SAMPLE.

a. Negative Samples. All samples initially screened negative, as well as those which test negative on the confirmatory test, will be securely stored by the laboratory for a period of three weeks. After this, the samples will be destroyed.

b. Positive Samples. Positive specimens shall be securely stored and frozen at minus 20 degrees centigrade or lower for one year to assure availability for retesting in case of appeal or litigation. Upon notification of a challenge, the positive sample will be retained indefinitely.

c. Sample Split. At the affected employee's expense, a portion of the sample may be reanalyzed. The laboratory will not release any portion of the sample without departmental approval. The OIA will act as a liaison with the laboratory, and will coordinate release of the sample portion.

## 7. URINE SAMPLE COLLECTION KITS.

a. Collection Kits. The Department has assembled collection kits for distribution to the field. These kits have been assembled to provide the supervisor with all necessary material to collect a valid urine sample. Each kit contains the following:

- (1) Specimen bottle (including two smaller bottles to split the sample).
- (2) Laboratory chain of custody form and security seal.
- (3) Shipping envelope.
- (4) Designated courier service waybill with instructions.
- (5) Substance Testing Action Checklist (Annex A).
- (6) Notification to Substance Testing Coordinator (Annex C).
- (7) Authorization form (CalHR 177).

b. Initial Supply. An initial supply of two kits has been provided to each office. Commanders shall ensure two unused kits are available at all times. Test kits shall be stored in a secure location, such as a file cabinet or locker in the sergeants' office.

c. Reordering of Kits. The kits will be stocked at OIA and will be made available through the Substance Testing Coordinator. Requests for replacement or additional kits may be made via departmental e-mail, telephone, or fax.

## ANNEX A

### SUBSTANCE TESTING ACTION CHECKLIST

#### SUBSTANCE TESTING ACTION CHECKLIST (Rev. 1/2012)

- Was there a criminal violation? If yes, handle as any other criminal case.
  - Reasonable suspicion of on-duty impairment has been established based on specific articulable facts. (Refer to Highway Patrol Manual [HPM] 9.2, *Substance Testing Manual*, Chapter 6, *Reasonable Suspicion*.)
  - Employee is in a classification designated as "sensitive." (Refer to HPM 9.2, Chapter 4, *Sensitive Positions*.) If no, any testing must be based on an unsolicited request from the employee. (Obtain a signed written request for a voluntarily test from the employee.)
  - Confirmation of reasonable suspicion has been obtained from the first available manager in the chain of command. It cannot be the person who made the initial observation.
  - Appropriate memorandum of understanding (MOU) or collective bargaining agreement (CBA) has been reviewed for controlling criteria.
  - Advise the employee that a decision has been made to conduct substance testing, the consequences of a positive test result and/or what action the Department will take if the employee refuses to take a test. (Refer to HPM 9.2, Chapter 7, *Testing Process and Standards*.) The employee is not entitled to representation during the testing process.
  - Secure the restroom during the collection process and instruct the employee to wash his/her hands prior to urination. If testing for alcohol only, use a breath analyzing instrument.
  - Observe the collection of the sample(s) by actually viewing the specimen when it leaves the body. For Unit 5 employees, two samples are required. Use only an approved kit and follow the instructions.
- NOTE:** The supervisor must be of the same gender as the employee. Some MOUs/CBAs prohibit collection of the sample by the employee's supervisor.
- Collect at least 60 milliliters of urine. (If unable to collect 60 milliliters, refer to HPM 9.2, Chapter 7.)
  - Complete the specimen label(s) and security seals. Use the employee's identification number (not Social Security number) to identify the sample. Have the employee initial the label and sample security seal.

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- Complete the chain of custody form and contracted courier waybill. Telephone the contracted courier to arrange for a pickup. (Refer to HPM 9.2, Chapter 7.)
- Store the sample(s) in a secure location with the required forms until picked up by the designated courier.
- If a breath sample is collected (alcohol test only), use only an approved breath analysis machine, and attach the test results to the reasonable suspicion report.
- Prepare a reasonable suspicion report using the CHP 202X, *Workplace Substance Abuse Investigation/Voluntary Testing Report*, form and provide a copy to the employee within 48 hours. (Refer to HPM 9.2, Chapter 11, *Documentation*.)
- Prepare a memorandum to the Substance Testing Coordinator. (Refer to HPM 9.2, Chapter 7, Annex C.)
- Afford the employee an opportunity to prepare a memorandum to the Medical Review Officer, separately sealed and marked "confidential." The employee has the right to have a representative assist him/her to prepare the memorandum, which may list reasons for positive results, etc.
- Arrange for transportation of the employee to a safe location. If drugs are involved, suspend peace officer powers and secure state-owned equipment. Employee is placed on dock time for the remainder of shift whether drugs or alcohol (or both) are suspected. (Refer to HPM 9.2, Chapter 8, *Dealing With The Employees and Employee Rights*.)

## ANNEX B

### SUBSTANCE TEST SPECIMEN COLLECTION INSTRUCTIONS

1. Complete the CalHR 177, *Drug/Alcohol Test Authorization*, form. Retain the original copy at the Area and give one copy to the employee.
2. Have employee wash his or her hands. Ensure employee has no hidden containers.
3. Accompany the employee to the collection area. Afford the employee privacy while maintaining clear visual observation of the employee.
4. The supervisor will open the split specimen collection kit and hand the large cup to the employee. Watch the urine leave the body and enter the collection cup. Collect a minimum of 30 milliliters (**60 milliliters for Unit 5 members**). Upon completion, take possession of the sample.
5. Visually inspect the specimen for signs of contamination. In the presence of the employee, note the temperature of the sample **within 4 minutes** of collection. Keep the specimen in view at all times.
6. Transfer the urine equally into each of the split sample containers (**minimum of 30 milliliters in each vial for Unit 5 members**). Discard excess urine and collection cup.
7. Complete the Custody and Control form, following the instructions included with the form.
8. Prepare and package the specimen as required by the current courier service.
9. Contact the courier service for pickup and place the sample in a locked evidence locker until picked up by the courier service.

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**ANNEX C**

**NOTIFICATION TO SUBSTANCE TESTING COORDINATOR**

State of California

Business, Transportation and Housing Agency

**M e m o r a n d u m**

C O N F I D E N T I A L

Date: \_\_\_\_\_

To: Office of Internal Affairs  
Attention: Substance Testing Coordinator

From: DEPARTMENT OF CALIFORNIA HIGHWAY PATROL  
Division/Area/Section: \_\_\_\_\_

File No.: \_\_\_\_\_

Subject: WRITTEN NOTIFICATION – SUBSTANCE TESTING SAMPLE

For purposes of confidentiality, the following information is being provided regarding a urine sample collected from an employee of this command for substance testing. You will be contacted by the Medical Review Officer with results in the near future.

- EMPLOYEE'S NAME, ID NUMBER: \_\_\_\_\_
- BAR CODE # (OBTAIN FROM CHAIN OF CUSTODY FORM): \_\_\_\_\_
- COMMAND'S TELEPHONE NUMBER: \_\_\_\_\_
- DATE SAMPLE SENT TO LABORATORY: \_\_\_\_\_
- COMMANDER/ALTERNATE TO BE NOTIFIED OF RESULTS: \_\_\_\_\_

\_\_\_\_\_  
Supervisor's signature

\_\_\_\_\_  
Division/Area/Section

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