



RICHARD S. BIEHL – DIRECTOR AND CHIEF OF POLICE

REV. 4/12

**POLICY STATEMENT**

The City of Dayton and Captain John C. Post Lodge No. 44 of the Fraternal Order of Police (hereafter referred to as the "Lodge"), believe that the critical mission of law enforcement justifies maintaining a drug and alcohol free work environment through the implementation and adherence to a reasonable employee drug and alcohol testing program.

The law enforcement profession has several uniquely compelling interests that justify the use of employee drug and alcohol testing. The public has a right to expect that those who are sworn to protect them are at all times both physically and mentally prepared to assume these duties. Employees of the Dayton Police Department also have a right to a drug and alcohol free workplace where every officer can be depended on to perform his/her duties in the most professional manner possible.

Where law enforcement officers participate in illegal drug and alcohol use, which is in violation of this policy, the integrity of the law enforcement profession and public confidence in it is destroyed.

Therefore, in order to ensure that employees are not impaired in their ability to perform their work in a safe, productive manner, maintain the integrity of Dayton Police Department personnel and to preserve public trust and confidence in a drug and alcohol free law enforcement profession, the City of Dayton and the Dayton Police Department shall conduct pre-employment, reasonable suspicion and random drug and alcohol testing.

**The section defining certain terms used in this policy begins on page 9. In order to understand this policy, it is important that this section be read first as these definitions set forth the standards governing the implementation and all testing undertaken pursuant to this policy. Terms listed in the definition section appear in bold face type throughout the text.**

**I. ROLE OF MEDICAL REVIEW OFFICER**

- A. The Medical Review Officer (hereafter referred to as "MRO") is a licensed physician (medical doctor or doctor of osteopathy) knowledgeable of substance abuse and trained in the medical use of **prescription drugs** and the pharmacology and toxicology of all drugs.
- B. The MRO shall not be an employee or agent of or have any financial interest in the laboratory for which the MRO is reviewing drug testing results. The MRO's primary responsibility is to receive laboratory results generated by the employer's drug testing program and review and interpret positive test results obtained through the drug screening process and to evaluate those results together with medical history or any other relevant biomedical information to **confirm positive results**. No other City employee or agent shall be informed of the positive confirmatory drug test results until the verification interview is held. If the employee refuses to participate in the verification interview, or cannot be contacted within 72 hours, the MRO will report the confirmed positive test results to the designated employee representative in Human Resources. In fulfilling these responsibilities, the MRO is to adhere to the U.S. Department of Health and Human Services ("DHHS") mandatory guidelines for federal workplace drug testing programs.

The method of collecting, storing, and testing the split sample will follow the Department of Transportation guidelines. The employee's request for a split sample test must be made to the MRO within five calendar days of the initial test result. Requests after five calendar days will be accepted only if the delay was due to documentable facts that were beyond the control of the employee.



- C. If any question arises as to the accuracy or validity of a positive test result, the MRO shall, in collaboration with the laboratory director and consultants, review the laboratory records to determine whether the required procedures were followed. The MRO will then make a determination as to whether the result is scientifically sufficient to take further action. If records from **collection sites** or laboratories raise doubts about the handling of samples, the MRO will deem the urinary evidence insufficient and no further action regarding the individual employee shall occur.
- D. The MRO must also assess and determine whether alternate medical explanations could account for any positive test result. In reviewing the laboratory results, the MRO shall conduct a medical interview with the employee, review the employee's medical history, or review any other relevant biomedical factors. The MRO shall also review any information provided by an employee attempting to show legitimate use of a drug.
- E. Any medical information provided to the MRO will be treated as confidential and not disclosed. If it is determined with reasonable certainty that there is a legitimate medical or other reason to account for the positive laboratory findings, no information identifying the specific employee will be disclosed and the test results will be reported as negative.
- F. If the MRO has a **confirmed positive test result**, the information related to the confirmed positive test result will be disclosed in writing and in a manner designed to ensure confidentiality of the information to the designated employee representative (DER), in Human Resources. The information will be disclosed to the Lodge President or his designee if a signed, written release is received by Human Resources from the employee.
- G. At the interview, the employee shall be provided an opportunity to provide the MRO with any prescription drug container(s), along with the identity of the prescribing/dispensing physician or health care provider, or any other evidence. The MRO shall then contact the prescribing/dispensing physician or health care provider for confirmation.
- H. The MRO shall contact the testing laboratory in an effort to verify that the prescription drug presented by the employee matches the drug identified in the positive confirmatory drug test. If the prescription drug and the drug identified in the positive confirmatory test match, then the drug test shall be considered as a negative test result and discarded.
- I. Confirmed positive drug test results are for administrative purposes only and shall not be used against an employee during any phase of any criminal proceeding.

## II. LEGAL DRUGS

The appropriate use of legally prescribed medications and non-prescription medications is not prohibited. Employees are required to notify their supervisor of any medication, which may adversely affect their ability to do their work. Employees may be assigned to work that can be safely performed or placed on paid or unpaid sick leave. If reasonable suspicion exists that employees are under the influence of an illegal substance or alcohol, a reasonable suspicion test should be conducted. Such information should be handled in a confidential manner, the same as any other medical information.

## III. PROHIBITED CONDUCT

The following paragraphs, A, B, C, and G, shall apply to all sworn employees on or off duty:

- A. No employee shall possess, sell, purchase, ingest, or use any **illegal or prescription drugs**, as defined in this policy, unless in the performance of their official duties or, unless prescribed by a licensed medical physician and used in accordance with the manner in which it was prescribed.
- B. Employees will not use **drugs** in amounts exceeding the recommended dosage to the extent that said drug may adversely affect the employee's safety or job performance or the safety of others. The burden of responsibility is on the employee to ensure they do not violate this requirement.
- C. Any employee who in the performance of official duties unintentionally ingests or is made to ingest a controlled substance shall immediately notify a supervisor of such.



- D. Employees must not consume alcohol:
1. On the job, during hours of work, during City meal periods (paid or unpaid), or during City rest periods, except in performance of police duty, and then only with the specific written consent of a commanding officer, and never in uniform.
  2. Up to eight hours following an accident or until the employee undergoes a post-accident test, whichever occurs first.
- E. Alcoholic beverages may be served at City organized and hosted functions only with the express written consent of the City Manager or designee. Employees working at these functions are not to consume alcoholic beverages while on duty.
- Employees in approved social attendance at functions where alcohol is served may consume alcoholic beverages so long as it is done in proper moderation and with decorum.
- F. No employee shall consume **alcohol**, such that when they are on duty there is a concentration of (.02) or greater.
- G. Any employee having reasonable suspicion to believe another employee is using, selling or in possession of any controlled substance or abusing any prescription or over-the-counter medication, that is in violation of this policy, shall immediately report this to his/her supervisor.

#### IV. RANDOM DRUG TESTING

- A. Random drug testing will occur at any time during the calendar year. All employees will be randomly selected for drug testing at least once during the 12-month period. All employees will be assigned a confidential identification number different from their PDA or ID numbers. The confidential identification numbers will be entered into a computer maintained by the MRO. Two (2) independent computerized probability sampling processes will be utilized. One process known as simple random selection with elimination, shall select 45 sworn employees throughout each month to receive a random drug test. A second process, simple random selection with replacement, shall select 5 to 10 sworn employees throughout each month to receive random drug testing. These two (2) processes shall ensure that all sworn employees have an equal probability of being selected one or more times per calendar year.
- B. A list of selected identification numbers will be forwarded from the MRO to the (DER) in Human Resources. The selected employees will then be tested within five (5) calendar days of the day the list is received. Notification of testing will be withheld from the selected employees until they report for their regularly scheduled tour of duty on the scheduled date of testing. The randomly selected individuals will be tested during their scheduled shift. Any employee who is off duty on an approved leave status of more than five (5) days during the scheduled testing process will have their number returned to the pool so that they may be tested in a subsequent test.
- C. Random testing for alcohol misuse will not be performed until mutually agreed upon by the City and the Lodge.

#### V. REASONABLE SUSPICION AND ALCOHOL TESTING

- A. Employees may be subject to drug and alcohol testing when there is a belief based on objective facts that an employee has used drugs or alcohol, in violation of this policy, or that drug or alcohol use is adversely affecting an employee's ability to safely and effectively perform the job. Examples of conduct that may constitute reasonable suspicion include, but are not limited to:
  1. Disturbance in gait (walking);
  2. Slurred speech;
  3. Impaired gross or fine motor skills;
  4. Changes in appearance such as flushed face, red or blurry eyes, carelessness in dress or appearance, hand tremors, et al.;



5. Needle marks on the body;
  6. Excessive absenteeism; peculiar excuses for absences;
  7. Excessive use of sick leave;
  8. Excessive tardiness;
  9. Excessive or repetitive vehicular, equipment or workplace accidents;
  10. Inconsistent work patterns or disruption of work patterns;
  11. Decreasing reliability or disruption of work patterns;
  12. A history of friction with co-workers; placing blame on others;
  13. Neglecting details formerly not neglected;
  14. A history of repeated citizen complaints;
  15. A history of lack of cooperation;
  16. A record of decreased productivity or quality of work;
  17. Alcohol odor on breath;
  18. Unusual behavior;
  19. Direct observation of drug or alcohol use or possession, in violation of this policy.
- B. Although the City representative (supervisor or other City employee designated by the Director of Human Resources) is not authorized to reach a conclusion that an employee's job performance impairment is due to alcohol or drug influence, the City representative is authorized to observe and document those job performance impairments consistent with reasonable suspicion characteristics and to require a reasonable suspicion test. The City representative must make a written record of the observations leading to a drug or alcohol test within 24 hours of the observed behavior or before the test results are reported, whichever is earlier.
- C. Any employee who demonstrates job performance impairments consistent with reasonable suspicion characteristics shall be relieved of duty with pay pending an investigation and verification of condition. Management transports the employee to the sample collection location and to his/her home. If the employee refuses transportation but attempts to drive themselves, the Police will be notified. An employee with a negative drug test or an alcohol test below .02 will be returned to the job if not otherwise in violation of the policy.

## VI. POST ACCIDENT TESTING

- A. An employee, on duty or driving a City vehicle, may have caused a traffic accident involving either a fatality or causing "serious physical harm to a person", as defined in Ohio Revised Code, Section 2901.01 (E), or causing "serious physical harm to property", as defined in Ohio Revised Code, Section 2901.01 (F) is subject to drug and alcohol testing.

Some examples may include, but are not limited to:

1. "Serious physical harm", to the employee;
  2. "Serious physical harm" to the subjects in the pursued vehicle;
  3. "Serious physical harm" to a third party;
  4. "Serious physical harm" to property.
- B. If the employee seeks treatment at a local emergency room, they may be required to consent to a drug and alcohol test at the facility. Any employee who refuses to submit to drug and/or alcohol testing after an accident will be considered a positive test. If an employee has no need to seek medical treatment, refer to section VII. Drug Testing Procedures.

## VII. DRUG TESTING PROCEDURES

- A. The Drug Testing Facility

All laboratory contracts shall require that the contractor comply with the Privacy Act, 5 U.S.C. 522a. In addition, laboratory contracts shall require compliance with patient access and confidentiality provisions of Section 503 of Public Law 100-71. The agency shall establish a Privacy Act System of Records such that the employee records will be maintained and used with the highest regard for employee privacy.



## B. Sample Collection

The following procedures will be utilized for all drug testing:

1. When an employee has been directed by a supervisor to provide a urine specimen for any of the reasons detailed in this policy, they will be taken immediately to the **collection site** by an officer of higher rank or from the Professional Standards Bureau.
2. The employee will be required to sign an appropriate "Drug Screen Consent" form at the time they are taken to the **collection site**.

## VIII. REFUSAL TO SUBMIT TO TESTING

- A. Refusals to comply with a request for testing, submission of false information in connection with a test, or attempts to falsify test results through tampering, contamination, adulteration, or substitution, shall be considered a refusal to submit to testing and will be treated the same as a positive result. Refusal can include an inability to provide a specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.
- B. The employee may make arrangements for a Lodge representative to witness the testing procedure; however, the employee must obtain the witness within one-half hour of the scheduled test time. The witness will be prohibited from any action other than witnessing the test procedure.
- C. Specimen collection will be in accordance with the guidelines of the NIDA certified testing facility. In the case of reasonable suspicion, random, and post-accident testing, if the laboratory site is unavailable and the employee is not hospitalized, arrangements will have been provided for collection at an alternative site that complies with DHHS standards.
- D. The employee designated to give a sample must be positively identified with either an Ohio operator's license or police I.D. prior to any sample being taken.

## IX. TESTING STANDARDS

- A. The City shall ensure the following drugs are tested for, and the threshold levels that shall be considered a positive test result are as follows:

<u>Drug</u>	<u>Initial Test ng/ml</u>	<u>Confirmation ng/ml</u>
Amphetamines/Meth	1000	300
Barbiturates	300	200
Benzodiazepines	300	300
Cannabinoids/THC	50	10 *
Cocaine Metabolite	300	150 **
Methadone	300	100
Methaqualone	300	200
Opiates	300	200 ***
Phencyclidine (PCP)	25	20
Propoxyphene	300	200



\* Delta-9-tetrahydrocannabinol-9-carboxylic acid; \*\* Benzoyl ecgonine; \*\*\* 25 ng/ml if immunoassay specific for free morphine.

**A Medical Review Officer (MRO) reviews test results and determines which tests are positive and which are negative.**

**A. Negative Results**

1. If the initial test results are negative, the results will be reported in writing to the MRO and the sample will be discarded.
2. All records relating to a negative drug test shall become a part of the employee's medical record and shall remain confidential and restricted.

**B. Positive Results**

For those specimens that are not negative, a confirmatory gas chromatography/mass spectrometry (GC/MS) test is performed. The test is considered positive if amounts present are above the minimum thresholds established as provided in the previous table.

1. If the confirmatory drug test is positive, the MRO will use their best efforts to notify the employee by telephone for a verification interview. No other City employee or agent shall be informed of the positive confirmatory drug test until the verification interview is held. If the employee refuses to participate in the verification interview, or cannot be contacted within 72 hours, the MRO will report the confirmed positive test results to the designated employee representative in Human Resources.
2. At the interview, the employee shall be provided an opportunity to provide the MRO with any prescriptions drug container, along with the identity of the prescribing/dispensing physician or health care provider, or any other evidence. The MRO shall then contact the prescribing/dispensing physician or health care provider for confirmation.
3. The MRO shall contact the testing laboratory in an effort to verify that the prescription drug presented by the employee matches the drug identified in the positive confirmatory drug test. If the prescription drug and the drug identified in the positive confirmatory drug test match, then the drug test result shall be considered as a negative drug test result and discarded.
4. Confirmed positive drug test results are for administrative purposes only and shall not be used against the employee during any phase of any criminal proceeding.
5. An employee who questions the results of a required drug test may request an additional test be conducted at a different USDHHS-certified laboratory. The test must be conducted on the split sample that was provided at the same time as the original sample. The cost of the second test will be borne by the employee, unless the second test invalidates the first in which case, the City will fully reimburse the employee for the cost of the second drug screen test.
6. The method of collecting, storing, and testing the split sample will follow the Department of Transportation guidelines. The employee's request for a split sample test must be made to the MRO within 5 calendar days of the notice of the initial test result. Requests after five calendar days will be accepted only if the delay was due to documentable facts that were beyond the control of the employee.

If the confirmation test results are positive, the testing laboratory will retain the sample a period of time to allow for additional testing and employee appeals.

**X. DISCIPLINARY ACTION**

- A. Employees who request treatment for legal or prescription drug misuse or alcohol misuse and have not been scheduled for a drug test shall receive treatment in lieu of disciplinary action pursuant to the Employee Assistance Program. Once an employee has been notified to appear for drug testing, a request for treatment will be honored but not in lieu of disciplinary action. The (DER) from Human Resources will



monitor the participation in the treatment program and follow-up tests outlined by the substance abuse professional (SAP). Any employee, who refuses treatment when required, or fails to comply with the regimen prescribed by the substance abuse professional for treatment, aftercare, or return to duty, shall be subject to discipline as defined by C in this section.

- B. The use of the following non-prescribed illegal drugs will result in termination: Amphetamines/Meth, Cannabinoids/THC, Cocaine Metabolite, Opiates, and Phencyclidine (PCP). Disciplinary action will proceed even if an employee requests treatment for abuse of an illegal drug. Tampering with or in any way altering or attempting to alter a drug test sample will result in termination.
- C. Disciplinary action up to and including termination for legal or prescription drug misuse, or illegal use of drugs other than those set forth in paragraph B, above or alcohol misuse will be determined by the totality of circumstances. Disciplinary action as defined in this section does not preclude discipline for activities that are prohibited by other rules or policies.

## XI. RETURN TO DUTY TESTING

Employees who qualify under IX.A., and are afforded the opportunity to return to work, must test negative for drugs or below .02 for alcohol and be evaluated and released to duty by the substance abuse professional and Human Resources prior to returning to work.

## XII. FOLLOW-UP TESTING

Employees are required to undergo frequent unannounced drug and alcohol testing during the period of time recommended by the Substance Abuse Professional. Follow-up testing will be monitored by Human Resources.

## XIII. PAYMENT RESPONSIBILITY

The City of Dayton pays for all reasonable suspicion, post-accident, drug and alcohol tests for employees.

Employees must reimburse the City through payroll deduction for all positive reasonable suspicion and post-accident tests. The employee must reimburse the City through payroll deduction for all return to duty and follow-up drug and alcohol tests, whether positive or negative.

## XIV. EDUCATION OF EMPLOYEES

All employees shall have access to the Police Department's Drug Testing policy. Employees will be provided with information concerning the impact of the use of drugs on job performance, the manner in which these drug tests are conducted, the reliability of the tests performed, circumstances which subject employees to testing, what the tests determine, the types of substances to be screened, and the consequences associated with testing. All new employees will be provided with the information when they are hired. Employees will not be tested until this information has been provided.

## XV. EMPLOYEE ASSISTANCE PROGRAM

- A. The City of Dayton and the Lodge recognize that almost any problem can be successfully treated provided it is identified in its early stages and referral is made to an appropriate modality of care. This applies whether the problem is one of physical illness, mental or emotional illness, marital or family distress, alcoholism, or drug abuse, or other concerns.
- B. The City of Dayton and the Lodge believe it is in the interest of the employee and the employee's family to provide an employee service which deals with such persistent problems. Implementation of the program will be conducted on the basis of urging employees displaying patterns of poor job performance to participate in the program; however, the existing discipline, grievance, and arbitration procedures will remain in effect.
- C. The Employee Assistance Program has helped employees deal with many issues, such as drug and alcohol abuse and other emotional or social problems. If an employee goes to the EAP office, the EAP specialist will discuss with them what the special needs may be, and then will refer the employee to the appropriate



resources for help. Many of the referred services and organizations may be covered by the City's health care providers; however, the employee may have to pay for some services.

- D. In instances where it is necessary, a leave of absence may be granted for treatment or rehabilitation for alcoholism and/or drug abuse on the same basis as it is granted for other ordinary health problems.

#### XVI. OTHER TESTING

- A. An employee fires a weapon at someone whether or not the person is injured.
- B. An employee discharges a firearm in apparent violation of the Department's Firearms policy.
- C. An employee has caused "serious physical harm" to an individual by any means during the performance of their police duties.



## DEFINITIONS

**Alcohol** means beer or intoxicating liquor as defined in Section 4301.01 of the Ohio Revised Code.

**Alcohol Misuse** means the consumption of beer or intoxicating liquor as defined in Section 4301.01 of the Ohio Revised Code resulting in the presence in an on-duty employee of a concentration of two hundredths or one per cent (.02) or more by weight of alcohol in his/her blood or two hundredths of one gram (.02) or more by weight of alcohol per two hundred ten liters of his/her blood or an off-duty employee being under the influence of such intoxicant above the legal limit which is in violation of any state or local law.

**Alcohol Test** means a procedure to identify the presence of a minimum specified level of alcohol in an employee. Breath tests to determine the level of alcohol must be given by a Breath Alcohol Technician (BAT) trained to proficiency and certified by the appropriate state agency in the operation of the Evidential Breath Testing instrument (EBT). If an employee is hospitalized, such blood/alcohol testing shall be conducted in accordance with the guidelines of the medical facility.

**Collection Site** means a place where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs. Such laboratory shall also be used for just causes or reasonable suspicion drug testing if the laboratory is available. If the employee is hospitalized or if the laboratory site is unavailable, the collection site will be either the location where the employee is hospitalized or the alternate site provided for in the contract.

**Confirmatory Drug Test** means a second procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. At this time, gas chromatography/ mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

**Confirmed Positive Drug Test Result** means a positive confirmatory drug test which has been confirmed by the Medical Review Officer (MRO).

**Illegal Drug** means any "controlled substance" as defined in Ohio Revised Code, Section 3719.01 (D), and any "dangerous drug" as defined in Section 4729.02 of the Ohio Revised Code, the possession or sale of which, without a prescription or license, is prohibited by law.

**Illegal Drug Use** means the use of any "controlled substance" or "dangerous drug" which not has been legally prescribed and/or dispensed, or the use of a prescription drug, which is not in accordance with the manner in which, it was prescribed, and to whom it was prescribed to.

**Initial Drug Test** (also known as Screening Test) means an immunoassay test to eliminate "negative" urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation through further testing.

**Legal Drug** means any substance, the possession or sale of which is not prohibited by law.

**Legal Drug Misuse** means the overuse or inappropriate use of any legal drug.

**Negative Drug Test Result** means the absence of illegal drugs in any form or metabolites in sufficient quantities such that the illegal drug or its metabolites is not at or above the specified cutoff level in accordance with the National Institute on Drug Abuse (NIDA) standard or the standards set forth in this policy or the absence of a confirmed positive result.

**Positive Alcohol Test** means the presence in an on or off-duty employee of a concentration of two hundredths of one per cent (.02) or more by weight of alcohol in his/her blood or two hundredths of one gram (.02) or more by weight of alcohol per two hundred ten liters of his/her blood or the presence of a concentration of alcohol above the legal limits under state law in an off-duty employee.

**Prescription Drug** means any "controlled substance" or "dangerous drug" for which possession and use are legal when "prescribed" by licensed medical personnel. "Prescribed" means a written or oral order for a controlled substance for the use of a particular person given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by the United States Drug Enforcement Administration, pursuant to the federal drug abuse control laws.