



***WELCOME!***

# **Recovery Friendly Workplaces ECHO**

*Win-Win Strategies to Address Employee Substance Use & Mental Health*

**Session 1- Understanding Substance Use Disorder and Eliminating Stigma**

*April 17, 2024*

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## Series Learning Objectives

- Increase understanding of substance use and recovery in order to improve management of substance use challenges in the workplace
- Appreciate how individuals in recovery can strengthen the workforce

# Series Sessions

1. [Understanding Substance Use Disorder and Eliminating Stigma](#)
2. [Benefits and Challenges of Hiring Workers in Recovery](#)
3. [Distinguishing Impairment from Other Performance Concerns](#)
4. [Supportive Conversations and the Law](#)
5. Return to Work Agreements
6. Drug Testing Best Practices
7. Considerations Workplace Culture for Safety and Mental Health



# Understanding Substance Use Disorder and Eliminating Stigma

*Jeanne Venuti*

*Director of Workforce Development, Recovery Friendly Workplace*



# Learning Objectives

- What is Substance Use Disorder (SUD)?
- What is Recovery?
- Stigma & Discrimination
- Person-Centered Language
- Resources



# What are Substance Use Disorders (SUD)?

The American Society of Addiction medicine adopted the following definition of addiction (e.g., severe substance use disorder) in 2019:

**“Addiction is a treatable, chronic medical disease involving complex interactions among brain circuits, genetics, the environment, and an individual’s life experiences. People with addiction use substances or engage in behaviors that become compulsive and often continue despite harmful consequences.”**

**They also note, “Prevention efforts and treatment approaches for addiction are generally as successful as those for other chronic diseases.”**

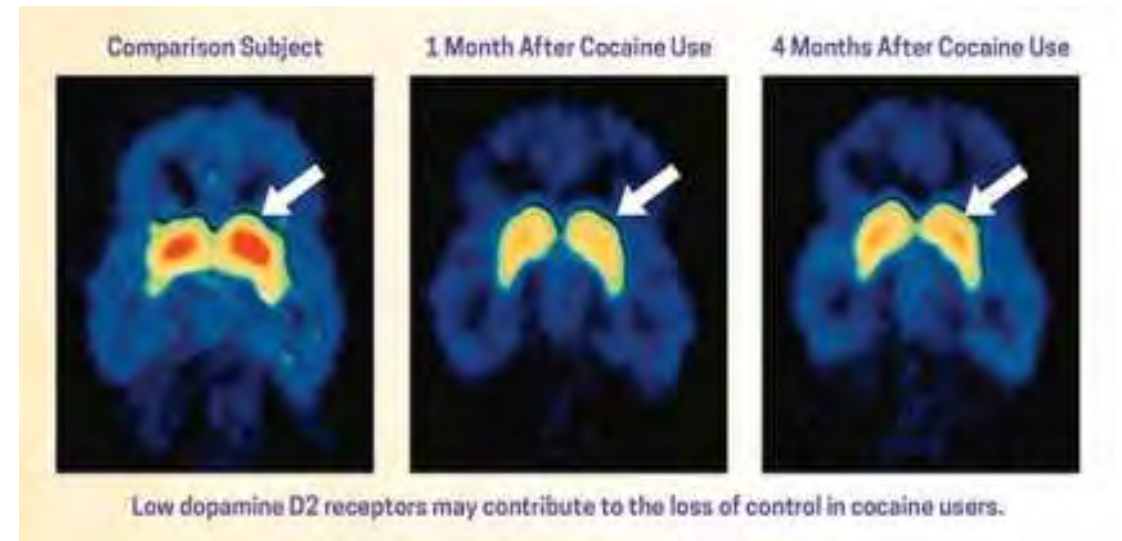
*Raj Mehta: “The main symptom of addiction is the inability to get high successfully.”*



# History of Understanding SUD

- 1956 – Alcoholism as an illness
- 1987 – Addiction as a disease with the understanding that it:
  - Is a chronic brain disorder
  - Interferes with relationships/work
  - Falls on a continuum
- What is dopamine? What purpose does it serve?

(Source: *Understanding the Disease of Addiction*, 2010)



(Source: *Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health*. Modified with permission from Volkow et al., 1993.)

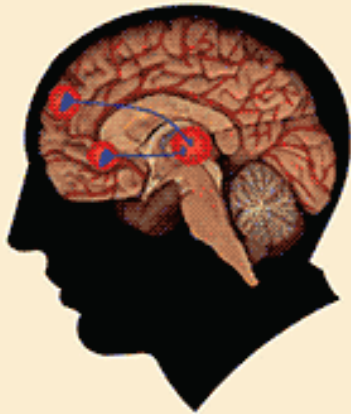




# Understanding SUDs

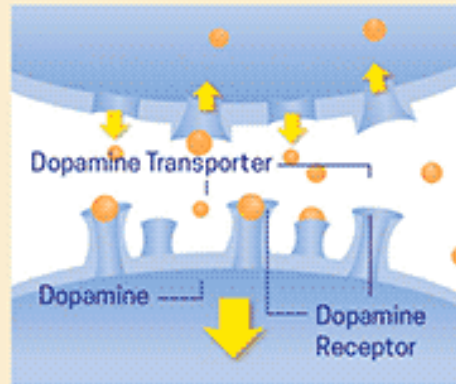
## Some drugs target the brain's pleasure center

Brain reward (dopamine pathways)



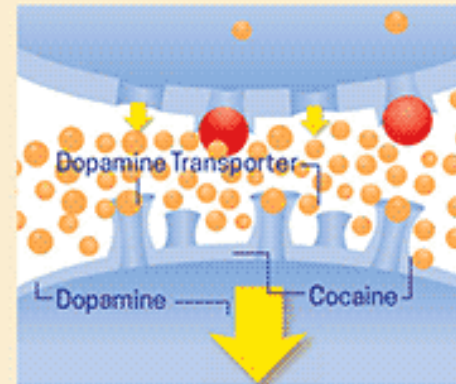
These brain circuits are important for natural rewards such as food, music, and sex.

How drugs can increase dopamine



While eating food

Typically, dopamine increases in response to natural rewards such as food. When cocaine is taken, dopamine increases are exaggerated, and communication is denied.



While using cocaine

(Source: National Institute on Drug Abuse, 2018)



# What is Recovery?

Collective wisdom of people in recovery, researchers, thought leaders:

*Recovery is a **process** of change through which people improve their health and **wellness**, live self-directed lives, and strive to reach their full potential. (SAMHSA, 2012)*

*Recovery is an individualized, intentional, dynamic, and relational **process** involving sustained efforts to improve **wellness**. (Ashford et al., 2019)*



## What is Stigma?

- Stigma is the combination of a label and a stereotype generalized to a group of people without regard to their individuality
- Substance use disorders are one of the most stigmatized conditions in the world
- Impacts public support and opinion, and can be internalized by an individual

*“Reducing a person to nothing more than their difficulties is one of the most damaging and dehumanizing forms of language. It denies the existence of any facet of the person, any relevant roles or characteristics, other than their diagnosis.” (Perkins & Repper, 2001)*

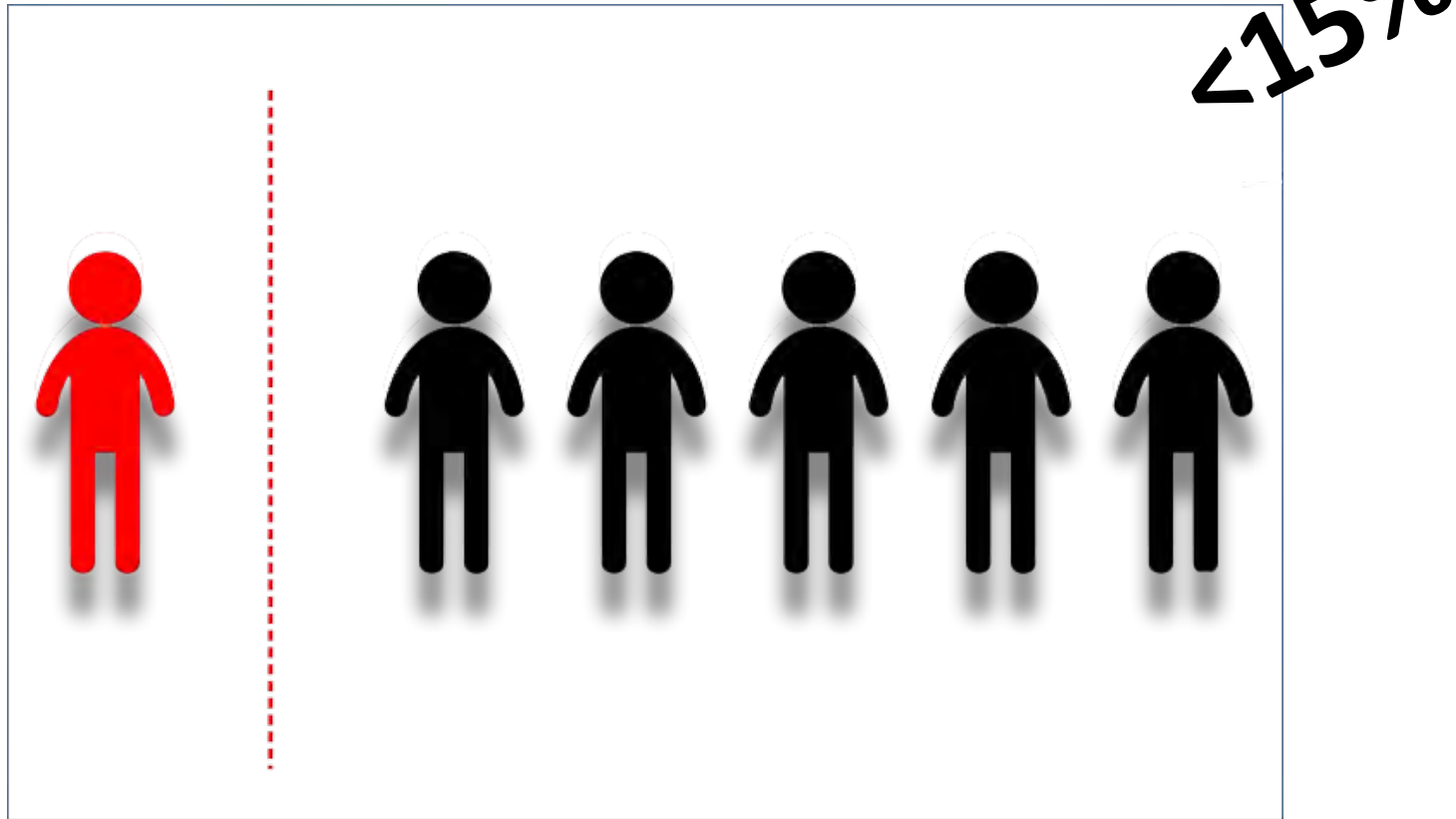
**Stigma**



**Discrimination**



# Impact of Stigma



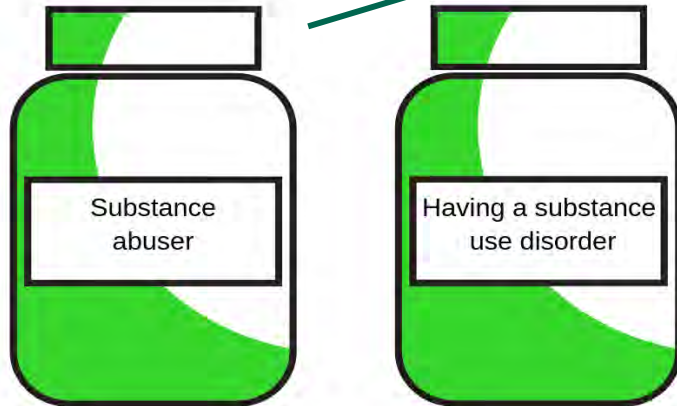
(Source: Dianova, *Consequences of Addiction Stigma*, 2018)



# Stigma Example

## *International Journal of Drug Policy* (2010)

- Two people “actively using drugs and alcohol”



### **“Substance abuser”**

- Personally responsible for condition
- Punitive measures should be taken
- Violence towards self and others
- Solution moral vs. medical

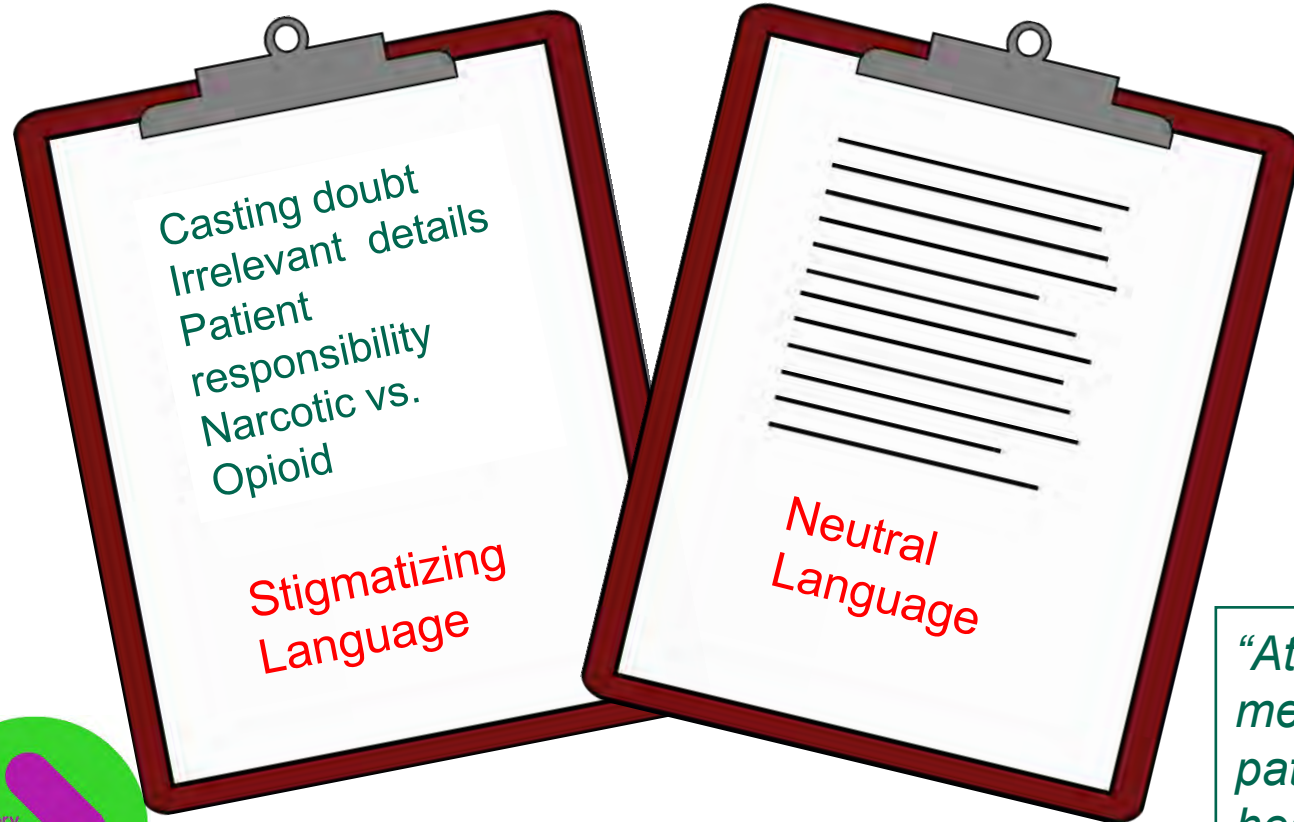
(Source: *Recoveryanswers.org*, 2018)





# Language Matters Study

Journal of General Internal Medicine (2018)



## Results

For the patient described with stigmatizing language:

- Attitudes
  - More negative
- Pain Management
  - Less aggressive

*“Attention to the language used in medical records may help to promote patient-centered care and to reduce healthcare disparities for stigmatized populations.”*



# Language Matters

## Consider using this language

- Person with a substance use disorder
  - Person with an alcohol use disorder
- Person in recovery
- Person living with an addiction
- Person arrested for a drug violation
- Person with a felony
- Choose not to at this point
- Medication is a form of treatment
- Had a recurrence of substance use
- Maintained recovery
- Positive/negative drug screen
- Substance use/misuse

## Instead of this language

- Addict, junkie, druggie
  - Alcoholic
- Ex-addict
- Battling/suffering from an addiction
- Drug offender
- Felon
- Non-compliant
- Medication is a crutch
- Relapsed
- Stayed clean
- Dirty/clean drug screen
- Substance abuse



*(Adapted from drugfreenh.org, 2016)*

# Resources



Get Connected. Get Help.™  
An Initiative of Granite United Way



2-1-1 NH: <https://www.211nh.org/>

1-866-444-4211 or 2-1-1

The Doorway NH: <https://www.thedoorway.nh.gov/>

9-8-8 National Suicide & Crisis Hotline:  
<https://988lifeline.org/>

NH Rapid Response: <https://www.nh988.com/>  
833-710-6477

NH Public Health Networks:  
<https://www.dhhs.nh.gov/programs-services/population-health/regional-public-health-networks>



# Recap

- What is Substance Use Disorder (SUD)?
- Understanding SUDs
- What is Recovery?
- What is Stigma and How Does it Impact Those with SUD?
- Why Language Matters
- Person-Centered Language
- Resources Available in NH and Nationwide



# Contact Us

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## Recovery Friendly Workplaces ECHO

*Win-Win Strategies to Address Employee Substance Use & Mental Health*

Session 2-Benefits and Challenges of Hiring Workers in Recovery, May 1, 2024



# Benefits and Challenges of Hiring Workers In Recovery

*Dana Lariviere*

*President & CEO – Chameleon Group LLC*



# Learning Objectives

- Background – Who We Are & How We Arrived Here
- The Decision-Making Process
- Stigma
- Gainful Employment & The Recovery Process
- Benefits
- Resources



# Background

- Who we are
  - Call Center (40 +/- employees)
  - Founded in 2002
  - Based in Dover, NH
  - Challenges Around Recruitment & Retention



# How We Arrived Here

- How Did We Decide to Become A RFW?
- One Employee's Story
  - Part One
  - The Sequel



# Stigma

- Internal Resistance
- External Concerns





# Gainful Employment & The Recovery Process

- Connection Between Employment and Recovery Goals
- Dignity & Self Worth
- FUD Factor
- Evolution



# Benefits

- Pool of Candidates
- Open & Transparent Communication
- Ability to Face Other Challenges
- Connections With Peers
- Fulfilling
- Good For Business

*(Source: National Institute on Drug Abuse, 2018)*



# Resources



Get Connected. Get Help.™  
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THE DOORWAY



2-1-1 NH: <https://www.211nh.org/>

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# Contact Us

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# **Recovery Friendly Workplaces ECHO**

*Win-Win Strategies to Address Employee Substance Use & Mental Health*

**Session 3- Distinguishing Impairment from Other Performance Concerns,  
May 15, 2024**



# Distinguishing Impairment from Other Performance Concerns

*Robert K. McLellan, MD, MPH, FACOEM*

*May 15, 2024*

# Objectives

- Define fitness for work
- Review types of fitness exams
- Explain performance-initiated exams
  - Policies
  - Roles of the employer and supervisor
  - Role of the employee
  - Role of the examiner
- Begin discussion of return-to-work exams, drug testing, and contracts



## Who is fit to work according to the ADA?

- A **qualified** individual who is **able to safely** perform the **essential functions** of a specific job (with or without reasonable accommodations.)





## Spectrum of Work Fitness Evaluations

- Pre-employment
  - Self-selection
  - Drug screening
  - Functional and skill testing
- Preplacement
  - Post-offer
  - Pre-transfer
- Job conditions change
- Health status changes
- Medical surveillance
- Return to work
- **Performance initiated**
- **Substance use detection**

# Theme Common to All Work Fitness Exams

- What is the individual's **work capacity**?
- Can the person **do** the job **safely and professionally**, without an imminent, direct threat to self or others



## Potential Impaired Performance Scenarios

- Employee provides a note from their treating provider requesting work restrictions or advising of disability due to an impairment.
- Employee voluntarily agrees to evaluation and treatment at the suggestion of employer.
- Employer mandates an FFD examination as a condition of employment.



## Purpose of Mandated Performance Initiated Exams\*

- Is there a medical or psychological problem that explains an employee's inappropriate behavior or inadequate (change in) job performance?
  - Is it treatable?
  - Would accommodations “fix” the work problem?
- Is there a violation of the drug and alcohol policy

\* Commonly known as Fitness for Duty (FFD) exams by occupational medicine providers

## Role of the Employer

- Have a **policy and procedure** for both substance use and other impairment-triggered exams
- **Inform and train** all employees of the policies and their role
- **Periodically train** supervisors about their **role and process** for initiating medical evaluations



# Substance Use and FFD Policy Considerations

- Comply with laws
- Scope
- Prohibited behaviors
- Supervisor Responsibility
- Employee responsibility
- Voluntary, self-reporting
- Reasonable concern
- Property Inspections
- Mandated FFD evaluation procedures
- Confidentiality
- Results and consequences of evaluation
- Reporting to licensing boards, agencies, or contractor/school administrator
- RTW contracting

# Scope of Policy Coverage

## Who?

- All employees or some (e.g. safety sensitive jobs)
- Contractors
- Interns/Students
- Volunteers

## When?

- On the clock
- Hours before work
- Business functions
- Social events

## Where?

- In business facilities
- At home (virtual)
- On business travel

## Why?

- Prescribed medications
- Illicit use
- Entertaining clients

# Prohibited Behaviors and Reasonable Concern That *May* Trigger a Mandated FFD Exam

- Unprofessional, inadequate, unsafe work performance, especially changes
- Working under the influence of alcohol and/or other substances *except when prescribed (consider marijuana)*. If using a prescribed med, *must* be able to meet job expectations
- Unlawful acts related to controlled substances, inhalants or illicit drugs on or off duty
- Legal intoxicant decisions
  - Alcohol before (to avoid ETOH level > 0.02) or during work hours
  - Recreational marijuana
- Drug diversion



# Role of the Employer: Behavioral Observation

- Delegates responsibility of identifying inappropriate work performance and behaviors to non-clinical employees to flag **“Reasonable Concern”**
  - Recurrent absenteeism and tardiness
  - Unacceptable work performance
  - Impaired performance
  - Unsafe acts
  - Odor of alcohol
  - Observation of drug paraphernalia, diversion
  - Behaviors characteristic of substance use

# Voluntary, Self-Report

- Encourage self-referral if no immediate safety or intolerable performance
- Avoid “diagnosing” or “therapeutic” involvement
- Direct to resources
  - Inform that any aspect of the FFD policy *may* be applied, including FFD evaluation, RTW contracting, and report to a licensing board or justice agent

## Behavioral Observation

- Is Not ...
  - a license to practice medicine!
  - a system for tattling!
- Is ...
  - a key component of any FFD program
  - a broad, just-in-time system of detection superior to relying only on drug testing
  - An opportunity to protect someone's life, safety, well-being and even save someone's life

# Supervisor Responsibility - 1

- Directly observes or receives a report which raises a *reasonable concern* that the employee has engaged or is engaging in prohibited conduct, *shall not permit the employee to work until the matter has been thoroughly assessed and resolved.*
- Consider source of report and based on the seriousness of report, whether more than one person reports the behavior



# Supervisor Responsibility - 2

## Discuss concerns with the employee

- *Encourage self-referral* if no immediate safety or intolerable performance concern
- Avoid “diagnosing” or “therapeutic” involvement

## Direct to resources

- Inform that any aspect of the FFD policy *may* be applied, including FFD evaluation, RTW contracting, and report to a licensing board, agency, or school contact as required by law or policy



## Supervisor Responsibility - 3

- Engage HR or other designated personnel and potentially an FFD provider for initial assessment for the decision about **mandating** an FFD exam.
- Arrange for timely FFD referral.





# Employee Rights and Responsibilities

- Rights
  - Legal and contractual protections
- Responsibilities
  - Know and abide by expectations of job
  - Know and abide by laws and procedures for work and for use of prescribed, recreational, and illicit substances
  - Report knowledge or reasonable concern about another employee engaging in prohibited conduct to appropriate supervisor



# Cautions and Pitfalls

- Absent or unclear policies and procedures
- Failure to inform and train
- Tattling
- “Medicalizing” a performance problem in lieu of good management/supervision
- Inconsistent application of policy
- Assuming a “diagnosis” and/or engaging in a “therapeutic” relationship





# Referring an Employee for an FFD Exam

- Choosing the right provider
- What does the provider need to do their job?
- What goes on in the evaluation?
- What communication should you expect from the FFD exam?



# Choosing the Right Provider

- Few health care providers have training or experience in performing FFD exams
- Consider
  - What specialty is needed?
    - Some professions and trades have supportive programs for self-referral or mandatory fitness exams, e.g. health professions, legal professions, unions
    - Occupational Medicine – almost all OM physicians have extensive FFD experience)
    - Physiatry (depends on their practice focus)
    - Some psychiatrists and behavioral health professionals (especially forensic psychiatrists, EAP professionals, SUD providers)
    - Others (clinicians from many other specialties *may* have had experience)
    - Identify and talk to specialists BEFORE you need them
- Timeliness – evaluation and report
  - Should not serve as the “treating” provider

## What Does the Provider Need?

- Pre-notification of the **provider** of the specific concerning observation
- Referral for a mandated FFD exam (v.s. clinical evaluation for treatment)
- Escort to the appointment and supervision while waiting
- Documentation of specific concerns
- Functional job description
- Contact person for reporting results
- Employee consent to proceed

# What Goes On During an FFD Exam?



Review of supervisor concerns and behavioral observations with employee



Interview



Physical examination



Decision regarding drug testing and which panel of drugs and body fluid/tissue to test



Drug testing



Also possible on a case-by-case basis

Review of medical records

Conversations with treating providers, supervisors, HR

Referral for additional testing or other specialist evaluations

# Decision to Conduct Drug and Alcohol Testing

## Specific observations

- Admission
- Suspicion or evidence of diversion
- Symptoms consistent with use

**Physical findings consistent with substance use or impairment**

**Or, routinely (per policy)**



## Communication From Clinician After FFD Exam

- Fit for Duty (no medical, mental, substance use issue that explains behavior)
- Fit for Duty with accommodations
- OOW pending medical treatment (estimate of time frame)
- OOW, pending further medical evaluation (estimate of time frame)
- Refusal to cooperate with evaluation
- **NEVER ANY MEDICAL DETAILS (Protected Health Information), WITHOUT CONSENT (or rare exception per Public Health Provisions of HIPAA Privacy Rule)**

## Return to Work After Mandatory FFD Exam

- Employer requests FFD Provider to re-evaluate for readiness to RTW
- FFD provider
  - Reviews RTW recommendations of treating providers
  - Reviews treatment plan and compliance
  - Communicates RTW recommendations to employer
- Employer creates RTW contract

## Monitoring after Return to Work

- Behavioral observations by supervisor
- Periodic communication from providers about compliance with treatment and other aspects of RTW contract
- Consider
  - Random drug testing
  - Assign peer for support and potential confidential recommendation to see further treatment and time out of work



# Take Home Points

- Meaning of “Fitness-for-Duty”
- Importance of policies and procedures for performance-initiated exams
  - Inform all employee about the policies and their roles
  - Periodically train supervisors about their roles
- Creation of an environment that supports voluntary self-referral
- Avoid medicalizing management problems
- Engage HR or other designated personnel and clinician to discuss mandating an FFD exam
- Remove from work pending FFD evaluation
- Require RTW evaluations and contracts after absence required by FFD evaluation

## Resources

- Taylor, T. What is Fitness for Duty? available at [ohguides.acoem.org/04-fitness-for-duty-introduction/](https://ohguides.acoem.org/04-fitness-for-duty-introduction/)
- When Fitness for Duty Examinations are allowed. Available at [When Fitness-for-Duty Examinations Are Allowed \(shrm.org\)](https://www.shrm.org/resourcesandtools/hr-topics/employee-relations/articles/when-fitness-for-duty-examinations-are-allowed.aspx)
- Confidentiality Exceptions
  - Available at <https://www.hhs.gov/hipaa/for-professionals/faq/301/does-the-hipaa-public-health-provision-permit-health-care-providers-to-disclose-information-from-pre-employment-physicals/index.html>



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# Recovery Friendly Workplaces ECHO

*Win-Win Strategies to Address Employee Substance Use & Mental Health*

Session 4- Supportive Conversations and the Law,  
May 29, 2024



# **Supportive Conversations and the Law**

Presented by:  
Charla Bizios Stevens, Esquire  
Elizabeth A. Bailey, Esquire  
May 29, 2024



# Signs and Symptoms of Problem Substance Use

- Frequent absences from work or tardiness
- Decreased work performance
- Changes in behavior
- Recurring complaints of physical symptoms
- Social withdrawal
- Demonstrated anxiety or sadness
- Variations in mood





# What Are the Barriers to Seeking Help?

Denial

Stigma

Financial

Fear of Job Loss





# THE ROLE OF LEADERSHIP

- Recognize employee mental health as a top priority
- Reinforce leadership's commitment to mental health and well being in all communications and actions
- Commit to leadership training on mental health, SUD, and stigma
- Shift to inclusive and person centered language
- Create a culture where everyone feels safe to speak openly about these issues



# What should Betty do?



Robert is a newly hired employee still in his 90 day introductory period with a marketing firm. His immediate supervisor, Betty, invites him to a client event.

Betty is giving the client an overview of the timing of the planned presentations. Robert continually stands in front of her and interrupts her. She pulls him aside after the discussion and says, "What was that about? That was extremely rude and inappropriate."

Robert shrugs his shoulders and apologizes and tells Betty he is in recovery and is having a bit of a hard time adapting to his new job.



# WHAT CAN I SAY ?



Appropriate to make caring overtures but assure employees of privacy



Do not insist on receiving medical information other than for proper reasons like FMLA leave or ADA accommodation and keep that information confidential



Do not share reasons for leaves of absence or accommodations with other employees without a clear need to know



# Start the Conversation

- Don't ignore the signs.
- Encourage the employee to recognize problem behaviors or issues.
- Be open to the possibility you may be wrong.
- Be aware of the resources your company has.
- Work to get the employee to those resources.





# If the Employee Comes to You

- Listen without judgment
- Give reassurance and express appreciation that the employee trusted you
- Encourage the employee to seek available help
- Review resources available, such as EAP and other treatment and recovery supports
- Review company policies and benefits around insurance, time off, and any applicable accommodations



# If You Have to Approach the Employee

- Objectively review your observations with the employee from a place of concern
- Ask if there is something the employee would like to share or inquire how you can assist
- Keep discipline/performance issues separate from conversations about employee's mental health
- Let employee know that there are resources for which he/she may be eligible such as leaves of absence with job protection
- If employee does not wish to give information, do not force them to share
- Have a performance conversation later IF it is warranted



# ADA BASICS

- **Covered Employers**
  - Private businesses or state agencies with 15 or more employees in 20 or more calendar weeks
  - Employers with 6 or more employees are covered by comparable state law (RSA 354-A)
- If a covered employer, then all employees, applicants, former employees, and apprentices/trainees are covered

# ADA BASICS

Prohibits discrimination against a qualified disabled employee or applicant when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.



# ADA BASICS

A person has a disability if the person:

- Has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning, or operation of a major bodily function, such as brain, musculoskeletal, respiratory, circulatory, or endocrine function).
- Has a history of a disability.
- Is perceived to have a disability, except if it is transitory (lasting or expected to last six months or less) and minor.

# ADA BASICS

Employers are required to provide reasonable accommodations to disabled individuals which may include

- Granting schedule changes or telework;
- Granting time off for treatment or recovery;

Unless granting the accommodation will cause an undue hardship to the employer.



While refilling your cup of coffee in the break room, you overhear two co-workers talking about an employee and expressing concern that he looks like he could "go postal" any day. They signal for you to join them.

What should you say to them?

What should you do?



# Disability-Related Questions, Medical Exams, and Confidentiality

Once an employee is hired and has started work, an employer generally can only ask disability-related questions and/or require a medical exam if the employer needs medical information to support an employee's request for an accommodation or if the employer has objective evidence that an employee is not able to perform a job successfully or safely because of a medical condition.



# Generally Permitted Inquiries

- General questions about an employee's well-being
- Asking an employee whether or not he/she can perform job function
- Asking an employee whether they have been drinking
- Asking about current illegal drug use
- Requiring employee to provide an emergency contact





# Job Related Inquiries

When a need arises to question the ability of an employee to do the essential functions of his/her job or to question whether the employee can do the job without posing a direct threat due to a medical condition, it may be job-related and consistent with business necessity for an employer to make disability-related inquiries or require a medical examination.





# Job Related and Consistent with Business Necessity

A disability-related inquiry or medical examination of an employee may be "job-related and consistent with business necessity"

- when an employer "has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition."



# To Support an Accommodation of Leave of Absence Request

- Requests which follow up on a request for reasonable accommodation may be job-related and consistent with business necessity.
- Periodic medical examinations and other monitoring may be job-related and consistent with business necessity.



# What Can the Employer Do?



For the past two months, Sally, a tax auditor for the state, has done a third fewer audits than the average employee in her unit.

She also has made numerous mistakes in assessing whether taxpayers provided appropriate documentation for claimed deductions.

When questioned about her poor performance, Sally tells her supervisor that the medication she takes for her back pain makes her lethargic and unable to concentrate.




# What Can the Employer Do?



Mike is a long term employee with a rotating job schedule which alternates days and nights.

Mike tells Phil, his supervisor, that Mike is an alcoholic and is on probation resulting from Mike's third DUI.

Mike asks to attend court-ordered substance use counseling as part of Mike's probation requirements. This means that co-workers would need to cover for Mike on night shifts when he needs to arrive late due to the counseling sessions.





# Leave Related Inquiries

- Documentation of need for and duration of leave.
- Periodic updates when duration is not specified or leave is extended.
- Medical clearance of fitness to return to duty.
- Drug or alcohol testing after return based on concerns that employee is a direct threat to safety or pursuant to a return to work agreement.









# Resources

- <https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>
- <https://www.eeoc.gov/laws/guidance/depression-ptsd-other-mental-health-conditions-workplace-your-legal-rights>
- <https://www.eeoc.gov/laws/guidance/mental-health-providers-role-clients-request-reasonable-accommodation-work>



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# **Recovery Friendly Workplaces ECHO**

*Win-Win Strategies to Address Employee Substance Use & Mental Health*

**Session 5- Return to Work Agreements**  
**June 12, 2024**





# **Return-to-Work Agreements: Supporting Health, Wellness and Retention**

Presented by:

Charla Bizios Stevens, Esquire

Elizabeth A. Bailey, Esquire

June 12, 2024

# THE PURPOSE OF THIS TRAINING



Discuss Leaves of Absence as a Tool in Supporting Recovery



Review Communicating with Employees about Treatment and Leave



Determining Suitability for Return and Related Accommodations



Discussing Expectations with Employees



What Should an Agreement Contain?



# Review: Leaves of Absence

- Americans with Disabilities Act ("ADA")
- Family and Medical Leave Act ("FMLA")
- State Paid Family and Medical Leave
- Leave Provided as a Company Benefit



**WHAT DO EMPLOYEES NEED FROM THEIR  
LEADERS DURING TIMES OF CRISIS?**

Trust

Compassion

Stability

Hope



# Request for Leave Form

- Purpose of Leave/Need for Leave
- Expected Duration of Leave
- Whether you are Entitled to or Will Receive Periodic Updates

# Return to Work Certification

- Expected Return Date
- Certification that Employee is Fit for Duty
- Does Employee Need Accommodation Upon Return?
  - Modified Hours or Job Duties
  - Time off to attend outpatient treatment



# Delilah Comes Back to Work

Delilah is about to return to work after a four-month absence for drug and alcohol treatment. She is proud of the progress she has made and is certain that she will be able to do her job effectively. She is, however, worried about how her co-workers will receive her. Most of them don't know why she took leave. She is afraid of being questioned about her health.



# What Issues Will Delilah Face ?

- Questions from Co-Workers
- Scrutiny by Supervisors
- Dealing with Changes Since She Left
- Rusty Job Skills (especially if she wasn't performing well before her leave)
- Fear of Relapse



# WHAT MIGHT DELILAH NEED?

- Time to Reintegrate
- Additional Training
- Transition to Full Capacity
- A Mentor or Work Friend
- Support from Management Whether She Chooses to Discuss Her Substance Use or Not



# LET'S TALK FIRST



A meeting with Delilah, her supervisor, HR, and maybe a member of her care team or an EAP counselor



Discuss Delilah's experience in treatment and needs and what her follow up treatment schedule is



Review what the return-to-work agreement will contain so she is not surprised by it and can process it



# The Return to Work Agreement

## Why Have One?

- ▶ Protection for Employee and Employer
- ▶ A Tool for Retaining Employees
- ▶ Sets Out Expectations of All Parties
- ▶ Provides Clarity



# THE AGREEMENT

- Reasoning
  - Why is the Agreement needed?
  - Was there a policy violation?



# THE AGREEMENT

- **Expectations**
  - Compliance with treatment recommendations
  - Submitting to random drug testing
  - Fulfilling all work responsibilities
  - Meeting attendance and behavior requirements
  - Agreement to updates from care providers



# THE AGREEMENT

- **Timelines**
  - For how long is the agreement in effect?
- **Consequences of breach**
  - Suspension
  - Termination

# THE AGREEMENT

- Accommodations
  - Temporary reduction in hours or responsibilities
  - Time off to attend meetings or treatment
  - Training or retraining



# How Do We Support Delilah?

- Prioritize mental health at work for all employees.
- Make sure you have good policies around substance use and treatment.
- Establish an Employee Assistance Plan and make sure employees are aware of it.
- Create a welcoming and responsive company culture.











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***WELCOME!***

# **Recovery Friendly Workplaces ECHO**

*Win-Win Strategies to Address Employee Substance Use & Mental Health*

**Session 6- Drug Testing Best Practices and Considerations**

**June 26, 2024**





# WORKPLACE DRUG TESTING

*DAVID S. COCKRUM, MD*

*MEDICAL DIRECTOR*

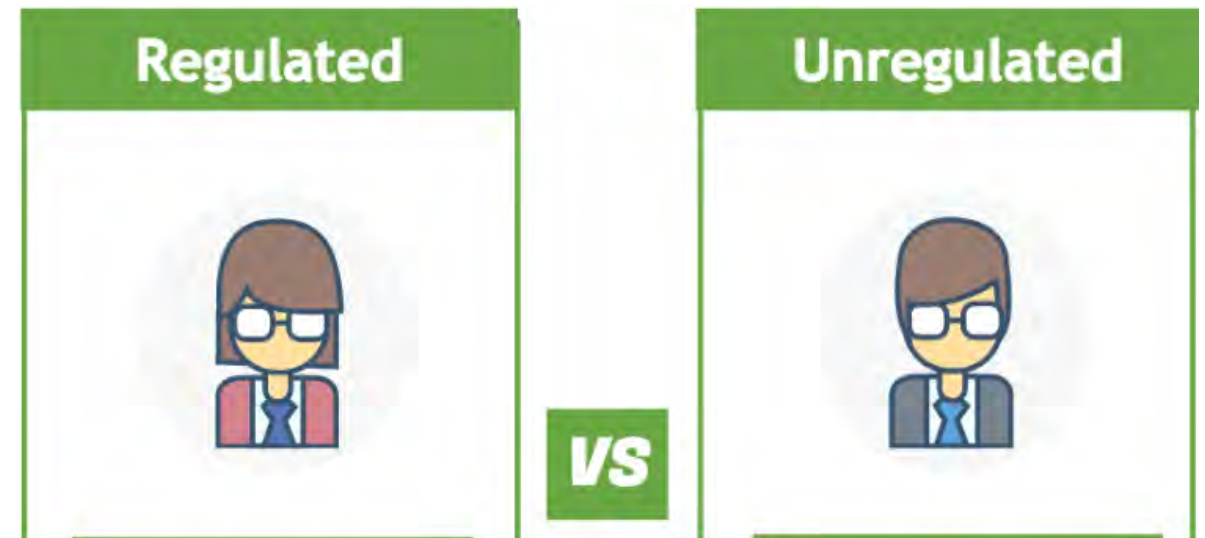
*OCCUPATIONAL & ENVIRONMENTAL MEDICINE*

# Introduction

- Steps
  - Collection
  - Laboratory analysis
  - Medical review
  - Employment action
- Federal Drug Free Workplace
- Recovery
- Safety sensitive

# Regulated vs Unregulated

- Federal regulations promulgated by HHS
  - Mandatory Guidelines for Federal Workplace Drug Testing Program
  - Safety/security sensitive
    - Public safety, security clearance
    - Truck drivers, pilots, railroad workers, etc
- Collectors, labs must be certified
- Adopted by DOT, applied by specific agencies
  - DOT Testing Procedures: 49 CFR Part 40
  - FMCSA: 49 CFR Part 382
  - FRA: 49 CFR Part 219
  - FAA: 14 CFR Part 120
  - FTA: 49 CFR Part 655
  - PHMSA: 49 CFR Part 199
  - USCG: 46 CFR Parts 4, 5, and 6





# Regulated vs Unregulated

- Main driver: Federal Drug-Free Workplace
- No federal “safety sensitive” designation for healthcare workers
- Workplace policy
- KEY: Unregulated process typically follows (mostly) regulated processes for legal sufficiency
  - Chain of custody
  - Medical testing (ER) – no chain of custody, no legal sufficiency



# Reasons for Testing

- Pre-employment
  - Drug-Free Workplace
  - Workplace safety
- Random
- Reasonable suspicion/reasonable cause
  - Impairment, reports
- Post-accident
- Return to Duty
- Follow-up

## Workplace policy



# Testing Targets

- Alcohol
- SAMSHA/Federal Five – AMCOP
  - Amphetamine, marijuana, cocaine, opiates, PCP
- Prescription drugs – misuse/abuse
  - Opiates – Heroin (6-Acetylmorphine), Morphine, Codeine
  - Opioids – Hydrocodone, hydromorphone, oxycodone, oxymorphone
  - Benzodiazepines, Barbiturates
  - Amphetamine
  - Recovery – Methadone, Buprenorphine, Suboxone
- Illicit drugs
  - Cocaine (benzoylecgonine)
  - Heroin, Methamphetamine, PCP
  - MDMA/MDA (methylenedioxymethamphetamine, methylenedioxyamphetamine)
- Fentanyl



# Alcohol

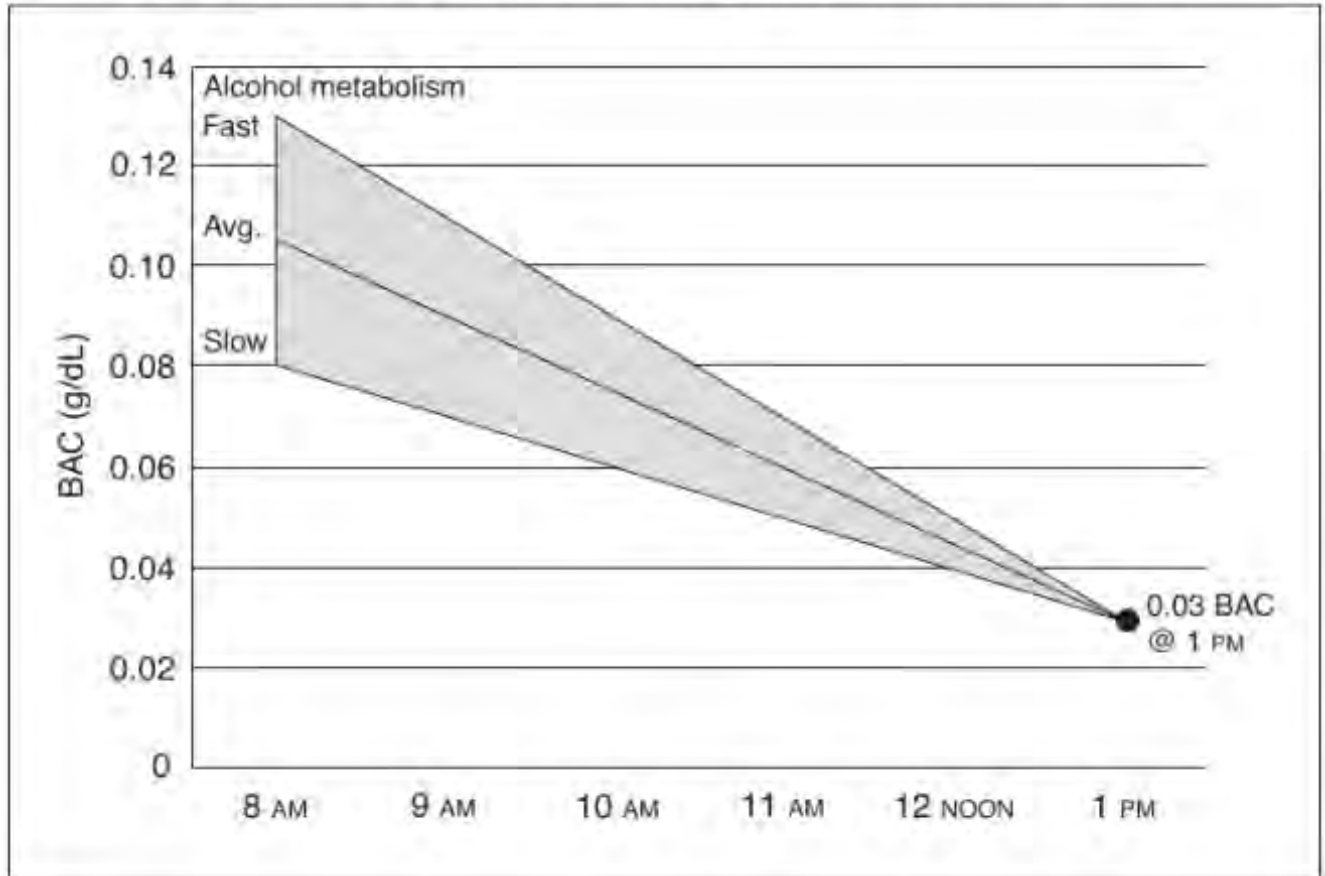
- Breath - Breath Alcohol Concentration (BAC) – usually %
  - 2 steps
    - Screen
      - $<0.02\%$  – inform employer, testing complete
      - $>0.02\%$  - Perform confirmation test
    - Confirmation
      - 15-30 minutes waiting period
      - Directly monitored, no drinking/eating, burping, chewing gum
  - Advantages
    - Immediate results
    - No medical review/interpretation
  - $0.04\%$  - immediate removal from safety sensitive duties (regulated)
  - Oral fluid
  - Blood
  - Urine – not accepted under regulated testing



# BAT Interpretation

- Extrapolation of BAC
  - Predictable elimination
  - Impairment well-studied
- Mouthwash, toothpaste, cough medicine – NOPE!
- Immediate results
  - No medical/MRO interpretation

**EXHIBIT 13-3** Example of Extrapolation of Blood Alcohol Concentration



# Drug Testing Methods

- Urine
- Oral fluid
- Hair
- Nails
- Blood

Comparison of Key Attributes of 5 Drug Testing Methods Relative to Testing for Marijuana					
	Urine	Oral Fluid	Hair	Breath	Blood
Lab-based or rapid-result (also known as POCT - point of care testing)	Both	Both	Lab only	POCT only	Lab only
Window of Detection	3-4 days	Up to 12 hours for marijuana / 24-48 hours for other drugs	Up to 90 days	2-3 hours for marijuana only	2-3 days
Recent-Use Detection	Lag time of several hours after initial usage	Within several minutes after any drug usage	Lag time of 7-10 days after initial usage	Within several minutes after only marijuana usage	Within several minutes after any drug usage
Legal by States	Lab: 50 states POCT: where permitted	Lab: 47 states POCT: where permitted	Lab: Most states	POCT: Only where POCT is permitted and where breath is permitted	Usually not permitted for workplace testing
SAMHSA Regs	Yes	Yes	Proposed	No	Only in very limited circumstances
Detection of Other Drugs	Virtually all drugs + alcohol	Virtually all drugs + alcohol	Virtually all drugs	Only marijuana +alcohol	Virtually all drugs + alcohol



# Urine Drug Testing Panels

- Federal Five
  - Additional drugs
    - Reasonable suspicion → specifically requested
- Validity
  - Specific gravity, pH, creatinine, oxidizing adulterants
- Specific panel highly variable
  - Few rules, little guidance
  - 9-12 panel most common

# Urine Drug Testing Panels

## Test List with Test Codes

To add medMATCH® include code 39158 with your order.

Drug Class	P	P,D	D
Alcohol Metabolites		39366	39384
Amphetamines	39344	39367	39385
Amphetamines with Reflex d/l Isomers		39368	39386
Antidepressants (urine) <sup>d</sup>		94032	
Antidepressants (serum) <sup>d</sup>		94031	
Antipsychotics (urine) <sup>d</sup>		94528	
Antipsychotics (serum) <sup>d</sup>		94529	
Barbiturates	39350	39369	39387
Benzodiazepines	39352	39371	39389

Drug Class	P	P,D	D
Buprenorphine with Naloxone	39353	39373	39391
Carisoprodol			39403
Cocaine Metabolite	39354	39374	39392
Eszopiclone			39434
Fentanyl	39356	39375	39393
Gabapentin			39407
Heroin Metabolite	39357	39376	39394
Marijuana Metabolite	39358	39377	39395
MDMA/MDA	39359	39378	39397
Meperidine			39408

Drug Class	P	P,D	D
Methadone Metabolite	39360	39379	39398
Methamphetamine d/l Isomers			39413
Methylphenidate			39409
Mitragynine	39432	39431	
Naltrexone			39414
Opiates	39361	39380	39399 <sup>a</sup>
Opioids Panel <sup>b</sup>		39013	39012
Oxycodone	39363	39381	39399 <sup>a</sup>
Phencyclidine	39364	39382	39401
Pregabalin			39410

Drug Class	P	P,D	D
Propoxyphene	39365	39383	39402
Synthetic Cannabinoids <sup>d</sup>		93027	
Synthetic Stimulants			39412
Tapentadol			39405
Tramadol			39406
Tricyclic Antidepressants			39411
Zolpidem			39435

<sup>a</sup> Includes oxycodone drug class.

<sup>b</sup> Included in Opioids Panel: Buprenorphine, Dextromethorphan, Fentanyl, Heroin, Methadone, Mitragynine, Opiates, Oxycodone, Tapentadol, Tramadol.

<sup>c</sup> Included in Expanded Opiates.


<sup>d</sup> medMATCH not available at this time.

## Test Panels

Panel Name and Test Codes	Base Panel		Panel 1			Panel 3		Panel 4		Panel 5			Panel 6	Panel 7	Panel 8
	39415	39421	39416	39422	39426	39418	39423	39419	39424	39420	39425	39427	39428	39429	39430
Drug Class	P	P,D	P	P,D	P,D	P	P,D	P	P,D	P	P,D	P,D	P,D	P,D	P,D
Alcohol Metabolites/ETG													ALC	ALC	ALC
Amphetamines			AMP	AMP		AMP	AMP	AMP	AMP	AMP	AMP		AMP	AMP	AMP
Amphetamines d/l Isomers					ADL							ADL			
Barbiturates			BAR	BAR	BAR			BAR	BAR	BAR	BAR	BAR	BAR	BAR	
Benzodiazepines	BEN	BEN	BEN	BEN	BEN	BEN	BEN	BEN	BEN	BEN	BEN	BEN	BEN	BEN	BEN
Buprenorphine with Naloxone															BUP
Cocaine Metabolite	COC	COC	COC	COC	COC	COC	COC	COC	COC	COC	COC	COC	COC	COC	COC
Heroin Metabolite													HER	HER	HER
Marijuana Metabolite			MAR	MAR	MAR	MAR	MAR			MAR	MAR	MAR	MAR	MAR	MAR
MDMA/MDA															MDM
Methadone Metabolite			MTH	MTH	MTH			MTH	MTH	MTH	MTH	MTH	MTH	MTH	
Opiates	OPI	OPI	OPI	OPI	OPI	OPI	OPI	OPI	OPI	OPI	OPI	OPI	OPI	OPI	OPI
Oxycodone	OXY	OXY	OXY	OXY	OXY	OXY	OXY	OXY	OXY	OXY	OXY	OXY	OXY	OXY	OXY
Phencyclidine			PCP	PCP	PCP			PCP	PCP				PCP		

P = Presumptive D = Definitive

# Urine Drug Testing Panels

Understanding urine drug testing panels 

	5 Panel DOT look-alike	10 Panel DOT look-alike	5 Panel pre 2010 DOT look-alike	10 Panel pre 2010 DOT look-alike	Expanded opiate & benzodiazepine
<b>Amphetamines</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barbiturates		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Benzodiazepines		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
<b>Cocaine metabolites</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Marijuana metabolites</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Methadone		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Methaqualone				<input type="checkbox"/>	
<b>MDA-analogues*</b>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
<b>Opiates</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Semi-Synthetic Opiates*</b>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
<b>6-Acetylmorphine*</b>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
<b>Oxycodones*</b>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
<b>Phencyclidine*</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Propoxyphene		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

\* Drugs that are considered add-ons | Drugs in bold are required for DOT drug tests.



# Urine Drug Screen

- Point of Care testing (POCT)
- Immediate results
- Qualitative
  - Negative vs non-negative
- Unregulated
  - Not part of regulated testing
- Limitations
  - Chain of Custody
  - Medical review
- Common in Pre-employment
  - Non-negative sent to reference lab



Accessed 6/7/24 via Google Images at:

<https://www.poctestsupply.com/store/p/55-10-Panel-Drug-Test.aspx>

<https://www.amazon.com/Prime-Screen-Urine-Panel-TDOA-3104-EXP/dp/B08GMBKW8F>

<https://identifydiagnostics.com/16-panel-drug-test-cup-with-FEN-fentanyl-ETG-K2-TRA-6-adulteration-identify-health/>

# Urine Drug Test

- Strict chain of custody
- Collection
  - Immediately upon arrival at collection site
    - Up to 3 hours if unable to provide adequate specimen
    - 40 oz water
  - Regulated – split specimen
    - Donor can request specimen B testing for any lab reported positive
- Lab
  - Initial test
  - Confirmatory test for any drug above initial cutoff

# Medical Review Officer (MRO)

- Physician
  - Trained/certified by HHS approved program (AAMRO, MROCC)
  - 20+ states w/MRO rules (none in NH, VT)
- Negative – case closed
- Lab confirmed positive – Contact donor
  - Request valid medical explanation
    - Prescription, note from provider
    - May contact pharmacy, prescriber
  - 5 days to reply
  - No explanation = “verified” positive





# Other Mediums – Oral Fluids

- Accepted for regulated testing
  - No federally certified labs
- Advantages
  - Easy to collect
  - Lower risk of adulteration
  - Higher concentration of “parent” drug
- Disadvantages
  - Narrower detection window
  - Donor monitoring prior to collection



# Other Mediums – Hair

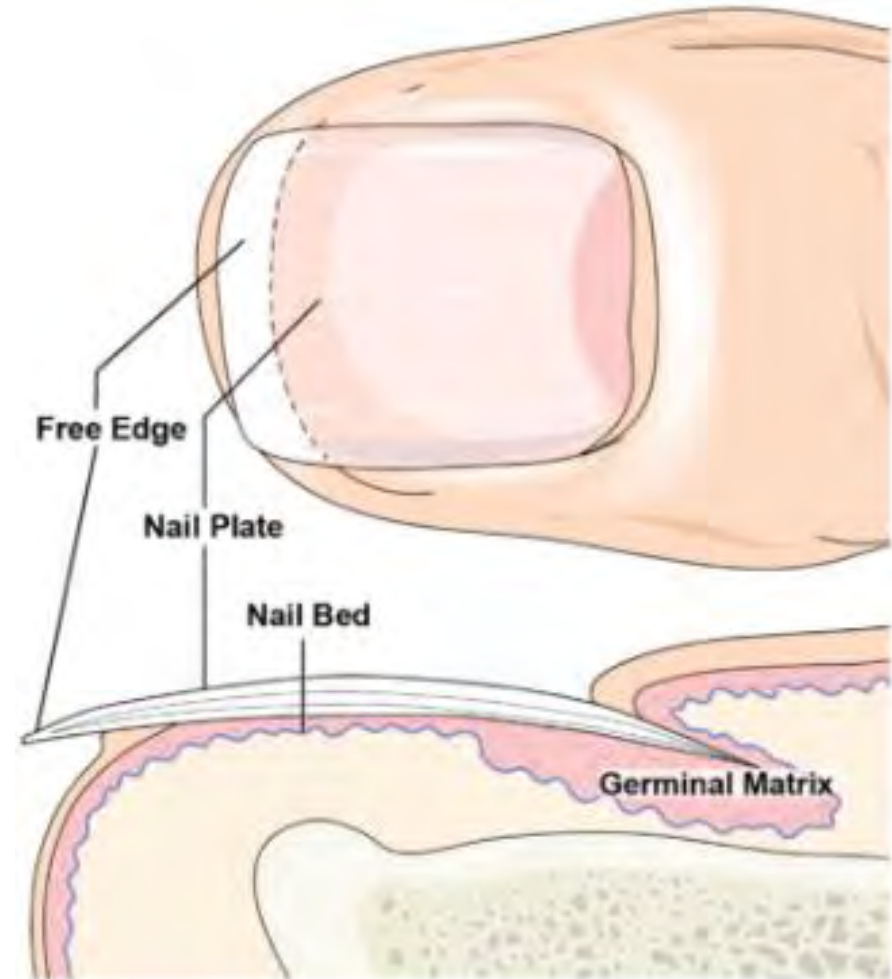
- Not accepted in regulated
- Window – 90+ days prior
  - Repeat in 1-2 weeks likely unchanged
  - Not useful for very recent or occasional use
- False positive – environmental exposure
- Hair “bias” – color, texture
- Not useful for alcohol
- 2x cost compared to urine



Accessed 6/7/24 at [https://www.emcdda.europa.eu/activities/hair-testing\\_en](https://www.emcdda.europa.eu/activities/hair-testing_en) via Google Images

# Other Mediums – Nails

- Easy collection
- Window
  - Fingernails: 6 months
  - Toenails – 12 months
- False positive – environmental exposure?
- No lab proficiencies or guidelines



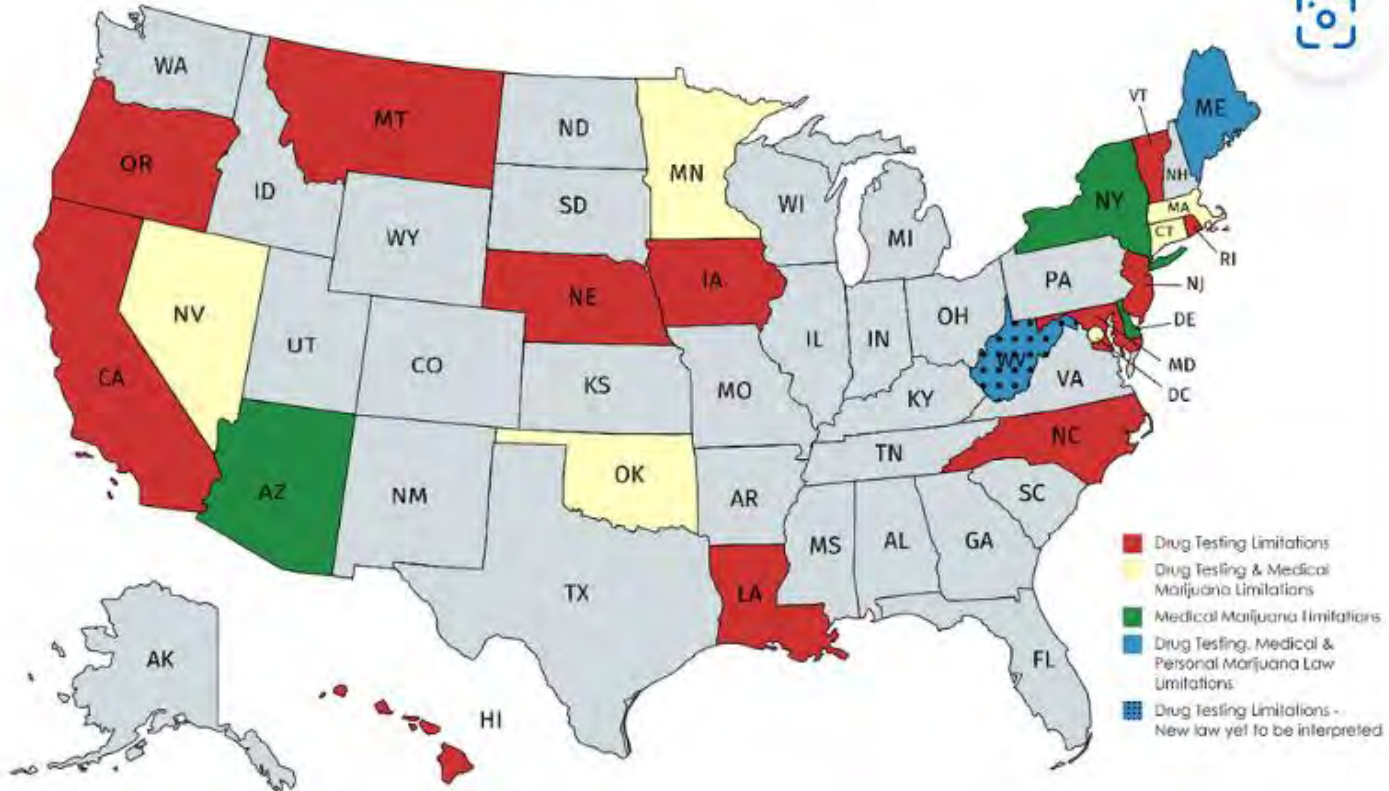


# Other Mediums – Blood

- Advantages
  - Detects very recent use
  - Useful for many drugs & alcohol
  - Parent drug
- Disadvantages
  - Invasive
  - Limited detection window
  - Expensive
  - Phlebotomy skills



# State Laws – Drug Testing



# Marijuana – The Definitive Answer

- Detection
  - Detectable days to weeks following use
  - Marijuana level unclear
    - High dose recently vs regular dosing (fat sequestration)
- Impairment
  - No data on correlation of marijuana levels with impairment
  - 6-8 hrs post-use cognitive impairment...but is that all?
- Employment policy challenges due to varying state laws
  - DHMS employees NH & VT residents – and remote from other states
- Expert opinion – ACOEM Position Statement



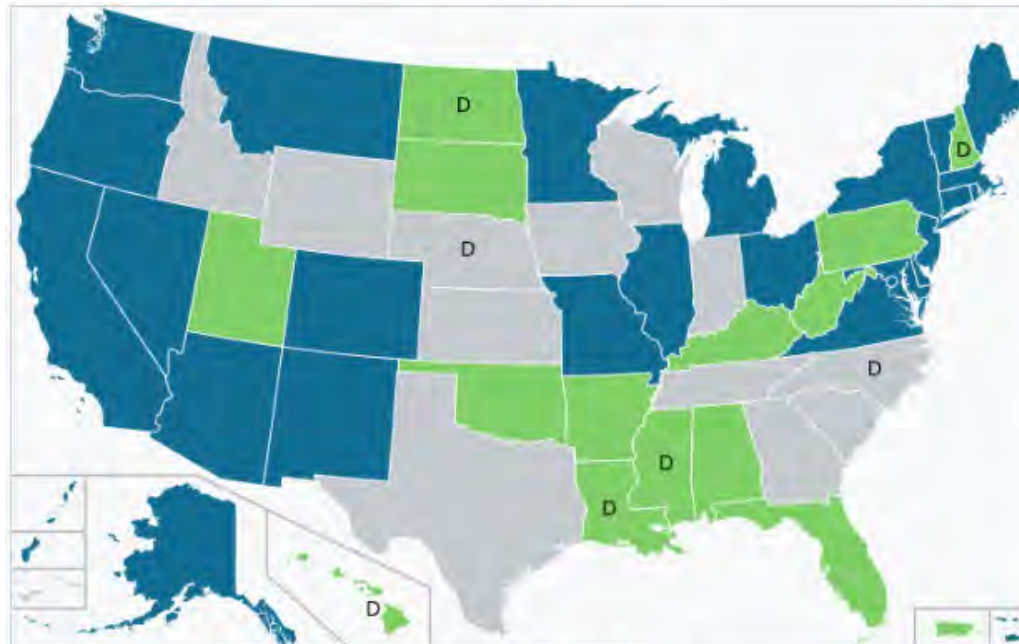
# Marijuana Laws

- NH
  - Legalization failed on final vote in House – closest ever to passing
  - Expected to utilize state-regulated sales like alcohol
- Federal
  - NPRM 5/21/2024 (<https://www.federalregister.gov/documents/2024/05/21/2024-11137/schedules-of-controlled-substances-rescheduling-of-marijuana>)
  - Change marijuana from Schedule I to Schedule III
    - Available by prescription from any provider with DEA number
    - Much easier to study – potential future data on impairment

# FDA Drug Schedules

- I – high abuse potential, no accepted medical use
  - Heroin, LSD, MDMA
- II – high abuse and dependency potential but accepted medical use
  - Opioids, amphetamine/methamphetamine, cocaine
- III – Intermediate abuse potential
  - Anabolic steroids, testosterone
- IV – Lower abuse potential than Schedule III
  - Benzodiazepines, tramadol
- V – Least potential for abuse
  - Pregabalin, dextromethorphan

# State Laws - Marijuana



Legality of cannabis in the United States

- Legal for recreational use
- Legal for medical use
- No comprehensive medical program
- D Decriminalized

[https://en.wikipedia.org/wiki/Legality\\_of\\_cannabis\\_by\\_U.S.\\_jurisdiction](https://en.wikipedia.org/wiki/Legality_of_cannabis_by_U.S._jurisdiction)



# Resources

- <https://www.hhs.gov/guidance/document/mandatory-guidelines-urine-testing>
- <https://www.samhsa.gov/workplace>
  - Drug-Free Workplace Programs & Guidance
- <https://www.samhsa.gov/spark>
  - SAMHSA Program to Advance Recovery Knowledge
  - *“...national technical assistance center to support transformational, recovery-oriented change for every state, tribal, and territorial behavioral health system and promote equitable access to recovery supports in the United States.”*
- <https://www.transportation.gov/odapc>
  - DOT Office of Drug and Alcohol Policy & Compliance
  - Collection Guidelines
  - MRO Guidelines
  - Substance Abuse Professional guidelines
- <https://www.currentconsultinggroup.com/current-compliance/>
  - Online compendium of state workplace drug testing laws
- <https://www.federalregister.gov/documents/2024/05/21/2024-11137/schedules-of-controlled-substances-rescheduling-of-marijuana>
- <https://www.ncbi.nlm.nih.gov/books/NBK557426/>
- <https://acoem.org/acoem/media/News-Library/Position-Statement-Cannabis-8-31-2023.pdf>