



**CONSTANGY
BROOKS, SMITH &
PROPHETE LLP**

30 minute update: The new DOT final rule

January 11, 2018

Presented by: Thomas M. Eden III and
Richard O. Brown



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Legal Disclaimer

This presentation is for educational purposes only and is not intended as a substitute for the legal advice of an attorney knowledgeable in the field of work place drug and alcohol testing.

The presenter makes no assurances regarding the accuracy or completeness of the following information. Legislative, regulatory or case law.



"No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers."



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Meet the Presenter

THOMAS M. EDEN III

PARTNER AT CONSTANGY, BROOKS,
SMITH & PROPHETE, LLP



Bar & Court Admissions

Alabama, 1980
Georgia, 1981
U.S. District Courts, AL & GA,
11th Circuit Court of Appeals
U.S. Supreme Court

Education

Cumberland School of Law,
Samford University,
Birmingham Alabama
J.D., *cum laude*

Auburn University,
Auburn, Alabama B.A.,

Tommy Eden's law practice is principally in the areas of Management Labor and Employment Law; he concentrates in Drug Testing Law (DOT Regulated and Non-Regulated) throughout the United States; Preparation of Drug Free Workplace Policies in all 50 states which specifically deal with medical and recreational marijuana issues, recent cardholder protection cases and opioids in the workplace; Tommy is a frequent speaker and trainer on these subjects and heads up Constangy's Workplace Drug & Alcohol Testing Practice Group.



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Meet the Presenter

RICHARD O. BROWN

PARTNER AT CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP



Education

The University of Alabama,
Tuscaloosa, Alabama
J.D., M.B.A.

Auburn University,
Auburn, Alabama B.A.





Rick is the office head for the firm's Birmingham office. He works primarily in the traditional labor and employment areas with emphasis on the negotiation and administration of collective bargaining agreements, as well as the representation of management in connection with union campaigns and unfair labor practice charges. In addition, he handles administrative charges and litigation involving various state and federal agencies including the EEOC, the U.S. Department of Labor, and the National Labor Relations Board. He also works extensively with employers on issues associated with the development and implementation of policies and procedures that affect the relationship between employees and employers.




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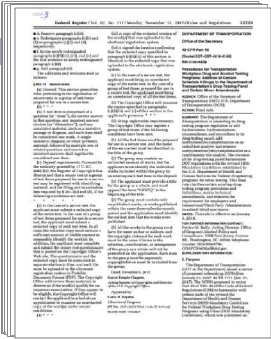
Today's Agenda


-  About the New Rule
-  Who's Affected & How?
-  7 Things to Prepare
-  Q&A


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About the New Rule

- Most Impactful Change to DOT Regulated Testing in 15 years!
- Final Rule in Federal Register (82 FR 52229)
- Copy of Rule: <https://www.transportation.gov/odapc/frpubs>
- Effective January 1, 2018
- Key Changes:
 - Adds 4 semi-synthetic opioids (hydrocodone, oxycodone, hydromorphone, oxymorphone)
 - Adds methylenedioxyamphetamine (MDA)
 - Removes methylenedioxyethylamphetaime (MDEA)
 - Modifies timing for Medical Review Officers (MROs) to communicate a significant safety risk or medically unqualified decision



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About the New Rule, cont.

- Other Changes:
 - Adds new section reiterating only urine specimens can be collected/analyzed at HHS labs
 - Adds language emphasizing existing DOT prohibition on DNA testing
 - Minor modifications to certain section headings
 - Moved list of Substance Abuse Professional certification organizations to ODAPC's website
 - Moved MIS instructions from Appendix H to ODAPC's website
 - Removed outdated compliance dates and links
 - Updated Appendices B, C, D, H



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Who's Affected, and How?

- **Employees**
 - DOT 5 panel, PLUS 4 semi-synthetic opioids
 - No longer tested for MDEA
- **Consortium / Third Party Administrators (C/TPA)**
 - No longer required to submit blind specimens to labs
- **Urine Collectors**
 - Shy bladder process modified – discard insufficient specimen after 3 hours
- **HHS-Certified Laboratories**
 - Add 4 semi-synthetic opioids to DOT testing panel
 - Add MDA as an initial test analyte
 - Remove testing for MDEA
 - Add 3 more fatal flaws to list of reasons when lab would report a “rejected for testing” specimen
 - Modify reports [Appendix B & C] you provide employers and DOT

4 SEMI-SYNTHETIC OPIOIDS:

Hydrocodone Oxycodone
Hydromorphone
Oxymorphone

COMMON NAME BRANDS:

OxyContin® Percodan®
Percocet® Vicodin® Lortab®
Norco® Dilaudid® Exalgo®



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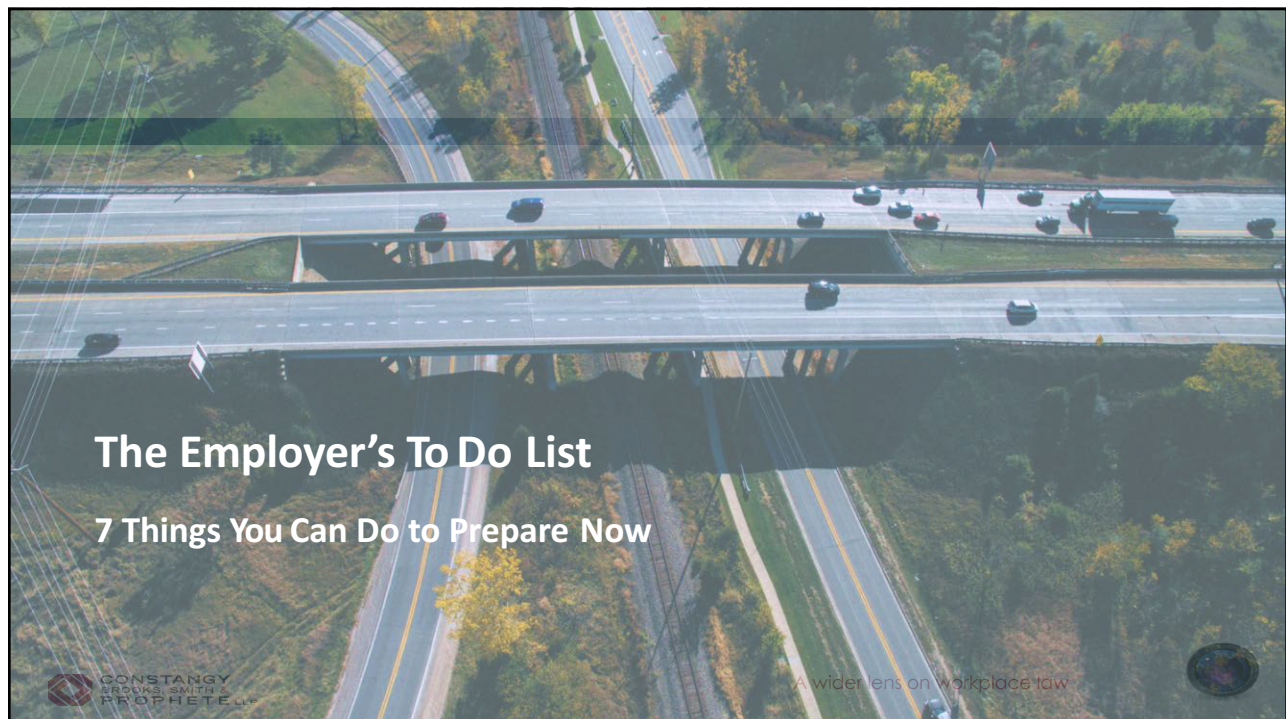


Who's Affected, and How? cont.

- **Medical Review Officers (MRO)**
 - "Prescription" has been clarified – ONLY an Rx legally valid as Schedule II Drug under Controlled Substances Act (excludes Medical Marijuana)
 - Authority to conduct D, L stereoisomer and THC-V testing
 - Hold 5 business days for physician to contact you before communicating significant safety risk or medically unqualified decision to employer to allow Driver physician to call MRO to discuss non-impairing treatment solutions.
- **Alcohol Technicians**
 - List of NHTSA-approved Alcohol Screening Devices and Evidential Breath Testing Devices are on ODAPC's website
- **Service Agents**
 - Required to subscribe to ODAPC's list-serve: https://www.transportation.gov/odapc/ListServe_Notices
 - Unauthorized use of DOT-branded items could cause DOT to initiate Public Interest Exclusion proceeding

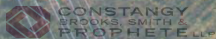


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The Employer's To Do List

7 Things You Can Do to Prepare Now



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1

Educate Your Managers & Drivers

Educate your managers, supervisors and DOT Drivers on the new 49 CFR Part 40 Regulatory changes

➔ See [DOT New Rule Guide](#) for Notice to Employees



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2

Service Agents Make Changes

Make sure all your DOT Service Agents are making their own changes to accommodate the Part 40 changes

➔ See [DOT New Rule Guide](#) for suggested updates



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3

Update Your DOT Policy

Update your DOT Policy Effective 1.1.2018 to reflect these changes, in addition to the changes caused by the DOT Clearinghouse Regulation Changes Effective 1.5.2017

- See [DOT New Rule Guide](#) for policy proposal worksheet
- See [Clearinghouse Regulation Webinar](#)



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4

Have Drivers Check Prescriptions

Educate your DOT Drivers that effective January 1, 2018, they are subject to being tested for hydrocodone, oxycodone, hydromorphone, oxymorphone and they should now examine all of their prescriptions to see if they contain any of these semi-synthetic opioids prescription drugs.

See [New Rule Guide](#) for Notice to Employees



4 SEMI-SYNTHETIC OPIOIDS:

Hydrocodone Oxycodone
Hydromorphone
Oxymorphone

COMMON NAME BRANDS:

OxyContin® Percodan®
Percocet® Vicodin® Lortab®
Norco® Dilaudid® Exalgo®



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5 Have Drivers Speak with Physicians

Educate your DOT Drivers that, if they do have such a prescription, now is the time to visit with their prescribing physician to determine if they can be put on an alternative treatment or medication. Failure to not be proactive now may turn into a bigger problem for them after 1.1.2018.



4 SEMI-SYNTHETIC OPIOIDS:

Hydrocodone Oxycodone
Hydromorphone
Oxymorphone

COMMON NAME BRANDS:

OxyContin® Percodan®
Percocet® Vicodin® Lortab®
Norco® Dilaudid® Exalgo®



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6 Update Job Descriptions

DOT employers should update their job descriptions to make “the ability to operate in a constant state of alertness, and safe manner” an essential job duty, and also include a pre-duty impairing effects prescription medications safety policy within their DOT Policy. Prescription medication disclosure falls under the Americans with Disabilities Act Amendment. In the ADA there is an untested narrow DOT regulated testing exception, but try not to be the test case.

This should also include medical marijuana as an impairing effects substance, even though it is not acceptable as a legitimate medical excuse under the DOT.



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7

Update Your DOT FMCSA Policy

- DOT employers should amend their DOT FMCSA Policy to give Drivers fair notice that the DOT Employer, under 49 CFR Part 391.11, has the final authority to make fitness for duty disqualification determinations for its FMCSA Drivers.



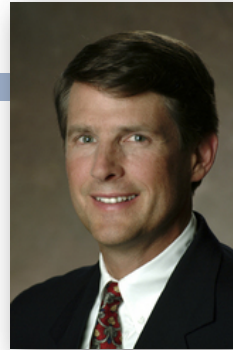
Your To Do List

- 1) Educate your managers and drivers
- 2) Make sure your DOT Service Agents are making their own changes
- 3) Update your DOT Policy
- 4) Have your drivers check their prescriptions
- 5) Have your drivers speak with their physicians about alternatives
- 6) Update your job descriptions
- 7) Update your DOT FMCSA Policy

Contact the Presenter

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January 1, 2018

2018 TO DO LIST FOR DOT EMPLOYERS

On November 13, 2017, the Department of Transportation (DOT) published a final rule in the Federal Register ([82 FR 52229](#))(much of this update is taken from the extremely well written release by ODAPC). The rule, among other items, added four semi-synthetic opioids (i.e., hydrocodone, oxycodone, hydromorphone, oxymorphone) to the testing panel for all DOT regulated employees including FMCSA, PHMSA, FAA, USCG, FRA and FTA. It also added methylenedioxyamphetamine (MDA) as an initial test analyte and removed the testing for methylenedioxyethylamphetamine (MDEA).

When is the final rule effective?

The final rule is effective January 1, 2018.

What does this mean for employees?

In addition to DOT 5 panel, you will *also* be tested for four semi-synthetic opioids (i.e., hydrocodone, oxycodone, hydromorphone, oxymorphone). Some common names for these semi-synthetic opioids include OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®. In addition, you will no longer be tested for MDEA.

What does this mean for employers and Consortium/Third Party Administrators (C/TPA)?

As an employer or C/TPA, you will no longer be required to submit blind specimens to laboratories.

What does this mean for urine collectors?

The shy bladder process has been modified so that the collector will discard any specimen provided during the collection event when the employee does not provide a sufficient specimen by the end of the three hour wait period.

What does this mean for laboratories?

As an HHS-certified laboratory you will:

- Add four semi-synthetic opioids: hydrocodone, oxycodone, hydromorphone; oxymorphone to your DOT testing panel;
- Add MDA as an initial test analyte;

- Remove testing for MDEA;
- Add three more fatal flaws to the list of reasons when a laboratory would report a ‘rejected for testing’ specimen; and
- Need to modify the reports [in Appendix B & C] you provide to employers and the DOT.

What does this mean for Medical Review Officers (MRO)?

Several of your MRO drug test review processes have been modified. For example:

- The term ‘prescription’ has been clarified to only include a prescription that is legally valid as a Schedule II Drug under the Controlled Substances Act (this would exclude Medically Marijuana under a state law);
- You have authority to conduct D,L stereoisomer and THC-V testing; and
- The timing when you communicate a significant safety risk or medically unqualified decision under 40.327 has been modified. [amended 40.135(e) to add a five business day pause period for the Driver’s prescribing physician to contact the MRO to determine if a non-impairing effect drug/treatment can be prescribed so that the MRO would not be required to make a safety concern or medically disqualified report to the employer].

What does this mean for alcohol technicians?

The list of NHTSA-approved Alcohol Screening Devices and Evidential Breath Testing Devices will appear on ODAPC’s website.

What does this mean for service agents?

- Collectors, alcohol testing technicians, MROs, and Substance Abuse Professionals will be required to subscribe to ODAPC's list-serve at: https://www.transportation.gov/odapc/ListServe_Notices.
- Unauthorized use of DOT-branded items (such as logos or emblems) on a service agent’s website, publications, etc., could be a basis for the DOT to initiate a Public Interest Exclusion proceeding.

What are some of the other changes to Part 40?

- The DOT added a new section reiterating that, in the DOT testing program, only urine specimens can be collected and analyzed at HHS-certified laboratories.
- The DOT added language further emphasizing the existing DOT prohibition on the use of DNA testing on DOT drug-testing specimens.
- The final rule made minor modifications to certain section headings.
- The final rule moved the list of Substance Abuse Professional certification organizations from the rule text to ODAPC's website.
- The final rule moved the MIS instructions from Appendix H to ODAPC’s website.
- Outdated compliance dates were removed and links were updated.
- Appendices B, C, D, and H were updated.

Where can I find a copy of the final rule?

You can view the final rule on ODAPC's web site www.transportation.gov/odapc/frpubs.

2018 To Do List for DOT Employers by Tommy Eden, Partner Constangy, Brooks, Smith & Prophete, LLP

1. Educate your managers, supervisors and DOT Drivers on the new 49 CFR Part 40 Regulatory changes;
2. Make sure all your DOT Service Agents are making their own changes to accommodate the Part 40 changes;
3. Update your DOT Policy Effective 1.1.2018 to reflect these changes, in addition to the changes caused by the DOT Clearinghouse Regulation Changes Effective 1.5.2017;
4. Educate your DOT Drivers that effective January 1, 2018, they are subject to being tested for hydrocodone, oxycodone, hydromorphone, oxymorphone and they should now examine all of their prescriptions to see if they contain any of these semi-synthetic opioids prescription drugs (see draft **NOTICE TO DOT REGULATED EMPLOYEES OF NEW TESTING PANEL – a link to the notice is found at www.alabamatwork.com**)
5. Educate your DOT Drivers if they do have such a prescription as listed above, now is the time to visit with their prescribing physician to determine if they can be put on an alternative treatment or medication;
6. DOT employers should update their job descriptions to make “the ability to operate in a constant state of alertness, and safe manner” an essential job duty, and also include a pre-duty impairing effects prescription medications safety policy within their DOT Policy (this should also include medical marijuana as an impairing effects substance as well even though it is not acceptable as a legitimate medical excuse under DOT);
7. DOT employers should amend their DOT FMCSA Policy to give Drivers fair notice that the DOT Employer under 49 CFR Part 391.11, has the final authority to make fitness for duty disqualification determinations for its FMCSA Drivers.

If you need policy support, or additional information contact Tommy Eden, a Partner with Constangy, Brooks, Smith & Prophete, LLP at teden@constangy.com or Direct: 334-246-2901/ Cell: 205-222-8030. Blog at www.alabamatwork.com with links. Firm website: www.constangy.com .

NOTICE TO DOT REGULATED EMPLOYEES OF NEW TESTING PANEL

On November 13, 2017, the Department of Transportation (DOT) published a final rule in the Federal Register (82 FR 52229). The rule, among other items, added four semi-synthetic opioids (i.e., hydrocodone, oxycodone, hydromorphone, oxymorphone) to the testing panel for all DOT regulated employees including FMCSA, PHMSA, FAA, USCG, FRA and FTA. It also added methylenedioxyamphetamine (MDA) as an initial test analyte and removed the testing for methylenedioxyethylamphetamine (MDEA).

Q: When is the final rule effective?

A: The final rule is effective January 1, 2018.

Q: What does this mean for employees?

A: In addition to DOT 5 panel, you will also be tested for four semi-synthetic opioids (i.e., hydrocodone, oxycodone, hydromorphone, oxymorphone). Some common names for these semi-synthetic opioids include OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®. In addition, you will no longer be tested for MDEA.

Q: Where can I find the new Regulations?

A: You can view the final rule on ODAPC's web site www.transportation.gov/odapc/frpubs.

2018 To Do List for DOT Employees

1. Effective January 1, 2018, DOT Regulated employees are subject to being tested for hydrocodone, oxycodone, hydromorphone, oxymorphone so the time is now to examine all of your prescriptions, and over the counter medications, to see if they contain any of these semi-synthetic opioids prescription drug, or state on the warning labels “do not drive or operate machinery or may cause drowsiness” – your pharmacist should be able to guide you if you have questions;
2. If you do have such a prescription as listed above, now is the time to visit with your prescribing physician to determine if they can put you on an alternative treatment or medication that does not render you as the DOT regulated employee medically unqualified under an applicable DOT agency regulation or is likely to pose a significant safety risk, so as to trigger a reporting obligation by the MRO to your employer;
3. The DOT Comments to the Regulations gives helpful guidance to the MRO, DOT employee and prescribing physician on opioids prescriptions:

Under § 40.327, an MRO must report drug test results and medical information the MRO learns as part of the verification process to third parties without the employee's consent if the MRO determines, in his or her reasonable medical judgement, that either of two concerns is triggered. First, the MRO is required to disclose to third parties information when the information obtained during the verification interview is likely to render the employee medically unqualified under an applicable DOT agency regulation (e.g., a fitness for duty requirement). Second, the MRO must report the information to third parties if the “information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.” To ensure that the employee is not caught by surprise by an MRO's decision to report the medical information regarding a legally valid prescription to a third party, we have amended § 40.135(e). Specifically, we will direct the MRO to first provide the employee with up to five business days after the reporting the verified negative result to have the prescribing physician contact the MRO to determine if the medication(s) can be changed to one that does not make the employee

medically unqualified or that does not pose a significant safety risk before reporting the safety concern. If the MRO does not receive such information from the prescribing physician, the MRO would then report to third parties as provided in § 40.327. Although we are creating a pause before the MRO reports the information so that the employee can have time to communicate with the employee's own physician, the part 40 requirement for the MRO to report the downgraded test result as a verified negative immediately remains unchanged. With this final rule, the employer will receive a negative result first and medical information, if necessary, will come later. There may be cases where the MRO is contacted by the employee's physician before the end of the five days, but the communication between the doctors does not alleviate the significant safety risk that the MRO has identified. In such cases, the MRO can report the medical information to third parties after the discussion with the employee's physician; the MRO is not required to allow five days to elapse.

4. Proactively dealing with the issues before being called for DOT testing is highly desirable to prevent potential job disqualification, being temporally removed from your position or potential job loss for the DOT regulated employee.

5. It is also a good time for you make sure all your prescriptions are up to date and current. Any prescriptions past their expiration date may not be accepted by the MRO as a valid current prescription, so as to constitute a valid medical excuse under DOT regulations.

DOT Drug Testing: Part 40 - Employee Notice

(Posted on DOT List serve December 18, 2017)

This is a reminder that the U.S. Department of Transportation (DOT) drug testing program will soon require testing for *four semi-synthetic opioids* (i.e., hydrocodone, oxycodone, hydromorphone, oxymorphone). *The change is effective January 1, 2018.*

What does this mean for the employees?

Beginning January 1, 2018, in addition to the existing DOT drug testing panel (that includes marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates), you will *also* be tested for four semi-synthetic opioids (i.e., hydrocodone, oxycodone, hydromorphone, oxymorphone). Some common names for these semi-synthetic opioids include OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®.

If you test positive for any of the semi-synthetic opioid drugs, then as with any other drug test result that is confirmed by the laboratory, the Medical Review Officer (MRO) will conduct an interview with you to determine if there is a legitimate medical explanation for the result. If you have a valid prescription, you should provide it to the MRO, who will determine if the prescription is valid. If a legitimate medical explanation is established, the MRO will report the result to your employer as a ‘negative’. If not, the MRO will report the result to your employer as ‘positive’.

As it has been the requirement in the past, when your employer receives a ‘positive’ drug test result, your employer is to immediately remove you from performing safety-sensitive functions and provide you with a list of qualified Substance Abuse Professionals (SAP) available in your area. In order to return to performing safety-sensitive functions for any DOT-regulated employer, you must complete the return-to-duty process that will include an evaluation by a SAP, who will require education and/or treatment. The SAP will determine if you successfully completed the prescribed education and/or treatment. Before an employer could return you to safety-sensitive work, the employer must get a negative result on a directly observed return-to-duty drug test. After you return to safety-sensitive work, you must be subject to directly observed follow-up testing for 12-60 months depending on the SAP’s recommendations.

Do I need to tell anyone about my prescribed medications?

Your employer may have a policy that requires you to report your prescribed medications to them. So check with your employer. If your job function has DOT-regulated medical standards (truck/bus driver, airline pilot, mariner), the DOT agency regulation may require you to report your prescribed medications to those who approved your medical qualifications.

What should I tell my prescribing physician?

If you are taking any prescription medications, consider this to be a reminder to have a conversation with your prescribing physician to discuss your safety-sensitive work. Be proactive in ensuring that your prescribing physician knows what type of transportation-related safety-sensitive work you currently perform. For example, don't just provide a job title but describe your exact job function(s) or ask your employer for a detailed description of your job function that you can give to your prescribing physician. This is important information for your prescribing physician to consider when deciding whether and what medication to prescribe for you. It is important for you to know whether your medications could impact your ability to safely perform your transportation-related work.

Will the MRO report my prescribed medication use/medical information to a third party?

Historically, the DOT's regulation required the MRO to report your medication use/medical information to a third party (e.g. your employer, health care provider responsible for your medical qualifications, etc.), if the MRO determines in his/her reasonable medical judgement that you may be medically unqualified according to DOT Agency regulations, or if your continued performance is likely to pose a significant safety risk. The MRO may report this information even if the MRO verifies your drug test result as 'negative'.

As of January 1, 2018, prior to the MRO reporting your information to a third party you will have up to five days to have your prescribing physician contact the MRO. You are responsible for facilitating the contact between the MRO and your prescribing physician. Your prescribing physician should be willing to state to the MRO that you can safely perform your safety-sensitive functions while taking the medication(s), or consider changing your medication to one that does not make you medically unqualified or does not pose a significant safety risk.

NOTE: This document informally summarizes some of the effects of recent changes to the Procedures for Transportation Workplace Drug and Alcohol Testing Programs that are important for transportation employees, but it should not be relied upon to determine legal compliance with those procedures.

December 11, 2017



DOT Drug Free Policy Worksheet

You have requested a worksheet in order for your entity to receive a proposal to develop a Drug Free Workplace Policy and/or Forms. You will be sent an engagement letter to confirm the work requested prior to drafting your customized Drug Free Workplace Program. If you have questions contact attorney Tommy Eden, a partner working out of the Constangy, Brooks, Smith & Prophete, LLP offices in Opelika, AL and West Point, GA and a member of the ABA Section of Labor and Employment Law who serves on the Board of Directors for the East Alabama SHRM Chapter. **Contact him at Office: 334-246-2901; Mobile: 205-222-8030; Blog: www.alabamamatwork.com; Website: www.constangy.com. Email: teden@constangy.com.**

This is a fillable PDF. Please fill out this questionnaire and return it via email to teden@constangy.com or fax to 334-521-7017 so that we can provide to you a flat rate quote for your project. Thank you.

1. Name of the Entity as it should appear throughout the Policy & Forms:

Answer: _____

Entity Name

2. Abbreviated Name of the Entity as it should appear throughout the Policy & Forms (such as "ATC" rather than "American Trucking Company, Inc.):

Answer: _____

Abbreviated Entity Name

3. Type of Entity: (examples - Company, Organization, Agency, League, Association, Corporation, Firm, Group, Department, Practice, Partnership, Enterprise):

Answer: _____

Entity Type

4. Mailing Address (include city, state & zip code):

Answer: _____

Address

5. Phone number:

Answer: _____

Telephone

6. Fax number:

Answer: _____

Telefax

7. Title and/or Name of the Entity's "Designated Employer Representative" – (This should be the person in charge of implementing the program, overseeing employee education, arranging for testing, and keeping records of the Entity's compliance with drug-free workplace rules. It is generally the personnel director, administrator, or your Entity's equivalent):

Answer:

*** DER ***

DER's Title: _____

DER's address: _____

DER's Phone: _____

DER'S E-mail: _____

Hours when available: _____

8. Back-up DER: _____

Alternate DER

Answer:

DER's Title: _____

DER's address: _____

DER's Phone: _____

DER'S E-mail: _____

Hours when available: _____

9. Name of your certified Medical Review Officer (MRO) – (a licensed physician (MD or DO) and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results):

MRO

Answer: _____

MRO's Address: _____

MRO's Phone: _____ MRO's Fax: _____

10. EAP Provider (provide all contact information-must have if PHMSA regulated)

EAP

Answer: _____

11. **Lab** **Answer:** **Address:**

*** Lab ***

12. How many DOT covered employees?

Answer: _____

Under what DOT agency(s) regulations do your covered employees work?

13. Do you also want additional state specific "Company Authority" policy? If yes, what state?

State

Answer: Yes / No _____

State: _____

14. When do you plan to implement the program (date)?

Effective Date

Answer: _____

15. Alcohol Testing Site(s) & Specimen Collection Site(s):

Answer: _____

16. Substance Abuse Professional (SAP)

*****SAP*****

Answer: _____

Address of SAP: _____

SAP Phone: _____

17. Consortium/Third Party Administrator (C/TPA)

*****TPA*****

Answer: _____

Address: _____

Phone: _____

These materials are for educational purposes only and are not intended as a substitute for the legal advice of an attorney knowledgeable of the issues covered as they relate to a user's individual circumstances.

"No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers."



Thomas M. Eden, III

Partner

"You may gain temporary appeasement by a policy of concession to violence, but you do not gain lasting peace that way."

--Sir Anthony Eden, Former British Prime Minister and Foreign Secretary to Winston Churchill

Tommy Eden's law practice is principally in the areas of Management Labor and Employment Law; Drug Testing Law (DOT Regulated and Non-Regulated) throughout the United States; defense of employers in federal court in all aspects of employment litigation including claims under Title VII, ADA, FMLA, FLSA, ADEA, and retaliatory discharge actions; defense of employers in charges brought with the EEOC, Wage and Hour Division, National Labor Relations Board, and the Department of Labor; and litigation over employee benefits under ERISA. He also counsels employers on Immigration compliance under the Alabama Immigration Act and conducting I-9 audits under the Federal Immigration Act.

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Practice Areas

> [Litigation; Employment Litigation Prevention and Defense](#)

Practice Emphasis

- Management Labor and Employment Law
- Employment Law Compliance Consultation and Training
- Workplace Drug Testing Law and Consultation
- Workplace Immigration Compliance and Training
- Civil Litigation
- Administrative Law
- Church Law and Consultation
- Union Avoidance

Bar & Court Admissions

- Alabama, 1980
- Georgia, 1981
- U.S. District Courts, AL & GA, 1980
- Eleventh Circuit Court of Appeals, 1981
- U.S. Supreme Court, 1983

Education

Publications/Presentations

"[Marijuana in the Workplace](#)," *ConstangyTV: Close-Up on Workplace Law*, December 2016

[Additional Publications by Thomas M. Eden, III >](#)

Professional Activities/Associations

- Member, Alabama State Bar
- Member, American Bar Association, Labor and Employment Law Section
- Member, American Employment Law Council
- Member, Birmingham Bar Association
- Member, Lee County Bar Association
- Member, State Bar of Georgia
- Member of Board of Directors, East Alabama SHRM Chapter
- Board Member, SAPAA
- Editor, SAPAA State Laws-at-a-Glance Blogs
- AV® Peer Review Rated By Martindale-Hubbell

Civic/Charitable Activities/Associations

- Board Member, Boys & Girls Club of Greater Lee County
- Auburn Bicycling Committee
- Boy Scouts of America

Cumberland School of Law,
Samford University

- J.D., *cum laude*, 1980

Auburn University

- B.A., 1976

Seminars & Presentations

- > Webinar - Drug Testing Landmines for Public Employers
- > Webinar: Transportation employers, are you ready for the FMCSA drug and alcohol clearinghouse?
- > Webinar - Standing firm against marijuana in the workplace
- > Webinar - Don't panic! Employers should be able to continue most post-accident drug tests under OSHA's new "Reasonable Reporting Procedure" Rule
- > Webinar - Drug Testing and Disclosure of Legal Medications: Walking the ADA Tightrope
- > Webinar: 7 Drug-Testing Litigation Landmines for Public Employers, and How to Avoid Them

- Chattahoochee Council Board
- Auburn Kiwanis Club
- First Baptist Church of Opelika

Other Personal Background Information and Interests

- Enjoys road cycling, hiking and attending Auburn University football games. Tommy is married and has two sons.

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Contact(s)

> Thomas M. Eden, III
All Attorneys in this Area

Related Service Areas

> Litigation; Employment
Litigation Prevention and
Defense

Events

- > Webinar - Drug Testing Landmines for Public Employers
- > Webinar: Transportation employers, are you ready for the FMCSA drug and alcohol clearinghouse?
- > Webinar - Standing firm against marijuana in the workplace
- > Webinar - Don't panic! Employers should be able to continue most post-accident drug tests under OSHA's new "Reasonable Reporting Procedure" Rule
- > Jacksonville Breakfast Briefing: Drug Testing for Public Employers
- > Webinar - Drug Testing and Disclosure of Legal Medications: Walking the ADA Tightrope
- > Webinar: 7 Drug-Testing Litigation Landmines for Public Employers, and How to Avoid Them

Newsletters & Bulletins

- > OSHA Update, Court refuses to block OSHA's new anti-retaliation rule that restricts post-accident drug testing and safety incentive programs
- > Client Bulletins, Colorado Supreme Court Beats the Reefer
- > Client Bulletins, Medical marijuana extracts approved in Georgia

Workplace Drug & Alcohol Testing

Substance abuse policy review; federal and state-specific policy development; guidance with forms; assistance with government compliance; counseling employers on employee hiring and severance procedures.

POLICY REVIEW AND DEVELOPMENT SERVICES

Whether your substance abuse testing program has been implemented recently or has been in place for many years, Constangy recommends a thorough policy review to make sure your program meets all federal, state, and local legal compliance requirements, reduces the risk of your organization of legal liability, and provides every available tool you need to maintain a safe, drug-free, and effective workplace.

After we complete your policy review, if we have found that your program documents do not meet the legal requirements, we can help you develop one that will.

Constangy will answer questions about your drug testing policy such as:

- What personnel can you test?
- What substances can you test for?
- Can you test with instant products or use lab services, or both?
- Can you complete collections onsite or send your personnel to off-site collection facilities, or both?
- Under what circumstances can you drug and alcohol test?

Constangy develops customized policies and form packs for the following Department of Transportation (DOT) covered industries:

- Federal Motor Carrier Safety Administration (FMCSA)
- Federal Transit Administration (FTA)
- Pipeline and Hazardous Materials Safety Administration (PHMSA)
- Federal Aviation Administration (FAA)
- United States Coast Guard (USCG)
- Mine Safety and Health Administration (MSHA)
- Supervisor Reasonable Suspicion Training in accordance with DOT guidelines

Constangy develops customized, state-specific policies and form packs for 48 states.

CONSULTATION SERVICES

We give employers critical decision making guidance with regard to:

- Reasonable suspicion determinations and documentation
- Documenting appropriate disciplinary actions for violators
- Prevailing in unemployment compensation disqualification cases
- Prevailing in workers' compensation disqualification cases
- Negotiating last chance and work continuation agreements
- Response to regulatory fines and inquiries
- Union negotiations of Drug Free Workplace Policies
- Fitness for duty determination strategies
- Medical Review Officer protocols
- Laboratory Corrective Action Plans
- Collector Correction Affidavits
- Substance Abuse Professional regulatory compliance guidance
- Navigating DOT Medical Examination fitness issues
- Medical marijuana in the workplace risk reduction
- Public employee testing precautions

For more information of assistance in your specific workplace, contact [Tommy Eden](#) at 205.222.8030 or teden@constangy.com or any Constangy attorney.