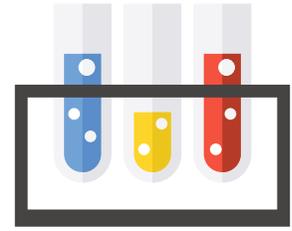


# The Value of a Medical Review Officer



**O**f all the service agents involved in the testing process, the MRO bears the most significant responsibility for the accuracy and integrity of the testing process.

Ideally, a business' drug and alcohol testing program is mostly unseen, running in the background to keep employees safe and the company protected. Workers get tested, and results most often go to the human resources professionals, who process them accordingly. Drug testing companies, especially those who offer mobile on-site drug testing, help their clients keep things moving with minimal interruption. However, as simple as they make the process seem, there's a great deal going on behind the scenes to ensure the testing process is handled with impartiality and the utmost professionalism.

One significant member of a company's drug testing team is the medical review officer (MRO). This medical professional is responsible for safeguarding the integrity of each testing sample. While drug testing companies rely on their collectors to obtain the specimen and laboratories to examine samples through forensic toxicology, respectively, the MRO is responsible for reviewing the process in its entirety and following it through to completion.

## What Qualifications Are Required of the MRO?

Before pursuing a career as an MRO, a person must first be a physician holding licensure as a Medical Doctor (MD) or Doctor of Osteopathy (DO); however, being a licensed physician is not all that's required for becoming a professional MRO. To gain certification from the Medical Review Officer Certification Council (MROCC), the gold standard within the profession, a physician must first complete an approved MRO training course.

These courses are provided by institutions such as American College of Occupational and Environmental Medicine and American Osteopathic College of Occupational and Preventive Medicine.

Upon completing a thorough training course, the physician is then eligible to take an exam administered by the MROCC. If the individual passes the exam, only then is the physician awarded his or her MRO certification. Requalification training is required of all MROs, generally every five years, after which the MRO must successfully complete a competency exam like that required in the beginning. These steps help ensure MROs remain well equipped and prepared to handle all of that

which is required of them by the U.S. Department of Transportation (DOT).

## To What Degree Does the MRO Impact Workplace Drug and Alcohol Testing?

Of all the service agents involved in the testing process, the MRO bears the most significant responsibility for the accuracy and integrity of the testing process. Their tasks include acting as a liaison with the SAMHSA-certified lab<sup>4</sup> that performs their testing, monitoring the processing of specimens, and following up with other medical professionals to complete their analysis.

MROs must follow a number of regulations in order to maintain compliance with federal standards while working with agencies that fall under the authority of DOT.

Responsibilities of a medical review officer per DOT Rule 49 CFR Part 40.123:

- Acts as a gatekeeper for the accuracy of the drug testing process
- Ensures integrity of the testing process, including quality assurance reviews of specimen collections and external lab certification and reliability
- Communicates any service agent performance issues with employers, collection sites, and laboratories
- Collaborates with the Office of Drug & Alcohol Policy & Compliance (ODAPC) and/or DOT agencies, as needed
- Facilitates the timely processing of test results reporting
- Reviews laboratory results
- Evaluates explanations for non-negative findings
- Investigates and intervenes with drug tests resulting in canceled, adulterated, substituted, or invalid findings, including problems with blind specimens
- Protects the confidentiality of the testing information
- Perform functions in accordance with DOT regulations

## Is the MRO Responsible for Verifying Prescriptions?

One of the more critical aspects of an MRO's job is to verify an employee's claim he is taking a medically necessary medication and this substance is what caused the non-negative drug test result.

In these cases, the MRO will conduct a verification interview

with the employee, at which time the employee must provide contact information for the physician who prescribed the medication and the pharmacist who dispensed the prescription. The MRO then contacts the dispensing pharmacist to obtain proof that the prescription was legally dispensed to the employee. If the MRO is suspicious of the situation, the DOT encourages him or her to contact the employee's licensed, reporting physician.

In this function of their role, MROs are verifying the honesty of the employee's claim. If it is found to be accurate, the MRO reports the test result as negative. If the MRO cannot verify the employee's claim, the test result will report as positive. Regardless of the finding, the written test result will include a statement from the MRO such as, "interview conducted" or "interview conducted and documentation processed."

In a few instances, the employee has the opportunity to provide the MRO with the information requested after the MRO has issued a positive test result. This scenario often applies to post-accident testing where the employee suffered significant injury, requiring immediate medical intervention to include pain management. The legitimate medical explanation from the hospital was not readily available to the MRO when the initial verified drug test result was issued. The MRO may take in the new evidence, within 60 days of the original verification interview, and change the test result to negative. If the documentation is provided more than 60 days from the original interview, the MRO is required to consult with ODAPC prior to changing the result.

Another scenario the MRO is increasingly faced with is an employee whose drug test result is positive for marijuana, leading to a claim that the employee holds a state license to use medical marijuana. Although some states have legalized the use of marijuana for specific underlying medical conditions, following a licensed physician's recommendation, DOT excluded this claim as a valid medical explanation for transportation employees. DOT issued a 2009 memo, further clarified in a 2016 ODAPC Medical Marijuana Notice, on the premise that marijuana remains a Schedule I listed drug of the Controlled Substances Act, meaning:

- The drug or other substance has a high potential for abuse.
- The drug or other substance has no currently accepted medical use in treatment in the United States.
- There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Regardless whether the MRO is reviewing a test result for a DOT-mandated employee or a non-DOT employee, the approach remains the same, as the MRO is governed under the U.S. DOT federal guidelines. The bottom line is a Schedule I listed drug can't be prescribed by a physician.

## Is an MRO Granted Certain Protections?

Through its regulations, the federal government offers special consideration to MROs who are providing a valuable service. After all, MROs play a key role in maintaining workplace health and safety throughout the country.

MROs carrying out verification duties are exempt from the Health Insurance Portability and Accountability Act (HIPAA), a fact DOT clarified in a 2012 memo. In it, the agency stated MROs "do not need and must not attempt to obtain an employee's permission in order to confer with prescribing physicians."

This means MROs do not need written authorization to contact an employee's reporting physician or issuing pharmacist to confirm a claim of medical explanation for a positive drug test result. This is a significant legal exemption of the federal medical privacy law that is provided to MROs.

However, if you can forgive the Spider-Man pun, with great power comes great responsibility. With the exemption from HIPAA for the express purpose of verifying a medical explanation for a positive drug result, MROs maintain responsibility for protecting the privacy of employees' personal medical information.

In certain cases, an MRO must evaluate whether a legally prescribed medication may cause an employee to be unfit to perform certain tasks required of their job. A physician who prescribed painkillers for a FMCSA driver with legitimate chronic hip pain may not have realized the full extent of how the medication could interfere with his or her work duties.

The MRO is to advise the employee during the verification interview that if they have reason to believe the legally prescribed drug impacts his or her ability to perform safety-sensitive duties, they are required to take action. According to 49 CFR, Part 40.135(c), the MRO is to allow five days for the employee to have his or her prescribing physician contact the MRO to discuss other options to the medication currently prescribed.

After the conversation, if the MRO cannot make contact with a prescribing physician, or if the employee declines the MRO's request to have the treating physician call, the MRO may legally inform the person's employer of the situation. At that point, the employer will need to decide whether to keep the FMCSA driver on the job, having been alerted to the potential fitness-for-duty risk by the certified MRO.

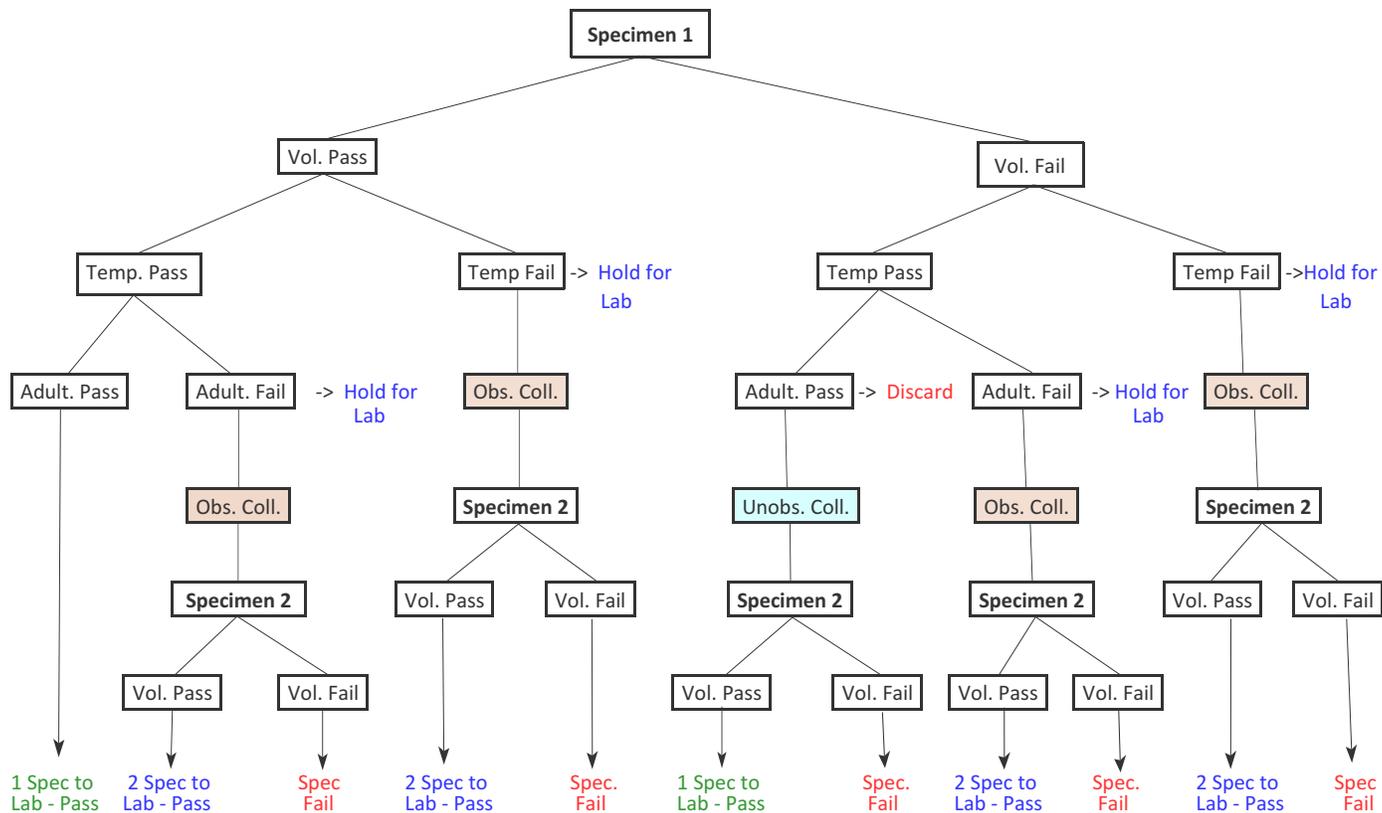
## Is an MRO Necessary?

An MRO is a required service agent for all agencies regulated by the DOT. They are not mandatory for non-DOT employees. However, an MRO review affords the employer greater legal protection at a critical time, when assessing liability. It is considered a best practice to utilize an MRO for all laboratory-based drug test results, so all employees are afforded a non-biased, clinical, and professional assessment by a licensed physician. ◀

### References

*samhsa.gov/workplace/resources/drug-testing/certified-lab-list, transportation.gov/odapc/mro, content.govdelivery.com/bulletins/gd/USDOT-27c2ef*

# URINE DRUG SCREEN SPECIMEN COLLECTION ALGORITHM AND NOTES



## NOTES

1. Proper identification of Donor
  - a. Acceptable forms of identification include:
    - i. A photo identification issued by the employer or any Federal, state, or local government agency, or
    - ii. Identification in person by an employer or employer representative
    - iii. If Donor is self employed or an Owner-Operator without valid ID, they may use two non-photo IDs if the signatures of the IDs match their signature on the CCF. If the signatures do not match, annotate in the Remarks section "Signature identification is unconfirmed".
    - iv. A faxed or photocopied identification document is not acceptable.
2. Consent Forms
  - a. Donors for Non-DOT collections must sign an Informed Consent and Release Form for a urine drug screen, consenting to perform a drug screen test and to release the result to the employer, before collection procedure begins.
  - b. Donors for DOT-required urine specimen collection shall not be asked to sign any forms other than the Custody and Control Form.
3. The urine specimen should be collected immediately after the Donor has been properly identified and checked in, even if they say they do not need to void at that time. Instruct Donor that most individuals can produce 45 ml of urine.
4. The shy bladder time limit begins as soon as the Donor fails to produce a specimen containing 45 ml of urine, whether it is the first or the second specimen. This time limit is 3 hours for a DOT collection, and 1 hour for a Non-DOT collection.
5. Actions that constitute a "Refusal".
  - a. Donor admits to any action that would substitute or adulterate a specimen.
  - b. Donor behaves in any disruptive or confrontational manner at the collection site.
  - c. Donor does not comply with instructions at the collection site.
  - d. Donor does not consent to or complete an observed specimen collection when one is required.
  - e. Donor is found to possess any device or material that could be used to substitute or adulterate a specimen.
6. If any of the conditions in #5 (above) occur, specimen collection is immediately terminated, and the DER is immediately notified that an adequate specimen was not obtained and reason for the failure.
7. You may instruct the Donor that leaving before a valid specimen is collected, for any reason, will be reported to the employer.
8. Items, such as suspected urine, plastic bags with fluid in them, artificial or mechanical objects for providing substituted urine, etc., should be returned to the driver. A full description in an attached memorandum for record, copies of which should be sent to the MRO and the employer.

Above chart provided by Dr. Dennis Murphy, MD, Medical Director of Self Regional Healthcare