

## Rules and Procedures

### Rule 111

December 17, 1998

#### Rule 111 - SUBSTANCE ABUSE POLICY

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#### I. INTRODUCTION

To ensure a safe, healthful and productive work environment, to protect the health and welfare of the citizens of the City of Boston, and to assure compliance with the Federal Drug-Free Workplace Act of 1988, the Department has adopted this policy to address drug and alcohol abuse by sworn personnel. These procedures provide the Department with reasonable measures to ensure drug or alcohol use does not jeopardize the public or the Department's ability to serve its citizens.

It is the general intent of the policy to create a humanitarian program. Treatment and discipline are both important aspects of the plan. Drug and alcohol testing, which will be part of the program, is intended in part as a means of identifying those who need help. In fact, the testing components of the program will not be instituted until this policy has been in effect for 60 days. This two month delay is intended to allow all sworn personnel who currently have a substance abuse problem time to take appropriate actions to correct that problem prior to implementation of the procedures described below. Prior to the implementation of this policy, all Officers will receive up to three hours educational training in the effects of drugs and alcohol

in general as well as in the workplace. The training shall also include a review of this policy. All such training will occur on Department time.

The Department will not tolerate any drug or alcohol use which could affect an Officer's job performance. The citizens of the City of Boston have a right to expect that sworn personnel will carry out their duties in a safe and reliable manner, free from the effects of drug or alcohol use. This policy replaces, except where contrary to contractual obligations, any and all earlier policies or procedures based on or expanding upon the Drug-Free Workplace Act, but it does not replace or in any way supplant any other policies or procedures including, but not limited to, the Boston Police Department's rules and procedures.

These procedures are significantly more comprehensive than the Federal Drug-Free Workplace Act requirements. The Boston Police Department must, by law, comply with that Act and report our drug-free workplace activities to the Federal government. The Act requires the adoption of a policy, some training, informing sworn personnel of the availability of help, and requiring sworn personnel to report convictions for drug crimes committed on the job. The intent of the Act is admirable, but the Department believes much more must be done than these minimal requirements. There are four important ways in which these procedures are broader and more effective than the Drug-Free Workplace Act:

- we emphasize treatment and counseling rather than just discipline in many cases;
- we will employ drug and alcohol testing procedures in great part to overcome the user's denial that a problem exists, so that we may protect the public and provide help and treatment as appropriate;
- we are requiring that all sworn personnel attend comprehensive awareness and training programs;
- we are setting up a supervisor support phone system so that those who will be applying these procedures day-by-day can do so effectively, comfortably, and legally.

These procedures apply to all sworn personnel and, where contracts specifically allow, to Department contractors. The Department reserves the right to modify these procedures in whole or in part in accordance with law and contractual procedures.

## II. DEFINITIONS

- A. Controlled Substance - any drug included in Schedules I through V, as defined by Section 802(6) of Title 21 of the United States Code (21 USC 802(6)), the possession of which is unlawful under Chapter 13 of that title, or any drug included within the definition of "Controlled substance" in Chapter 94C of the Massachusetts General Laws (for example, but not limited to: cocaine, marijuana, valium, morphine, anabolic steroids). The term

does not include the use of prescribed drugs which have been legally obtained and are being used for the purpose for which they were prescribed.

- B. Illegally-Used Drug - any prescribed drug which is legally obtainable but has not been legally obtained or is not being used for prescribed purposes, all designer drugs not listed in the Controlled Substances Act (for example, but not limited to: MDA, fentanyl), and any other over-the-counter or non-drug substances (for example, but not limited to: airplane glue) being used for other than their intended purpose.
- C. Alcohol - colorless, volatile and flammable liquid that is the intoxicating agent in fermented and distilled liquors. It includes, but is not limited to, beer, wine and liquor. It does not include alcohol used in chemical processing, cleaning or testing.
- D. Department Property - includes buildings, offices, facilities, equipment, vehicles, land, and parking lots owned, loaned, utilized or leased by the Department. It also includes any other site at which business of the Department is transacted whether on or away from Department owned, loaned, or leased property.
- E. Accident - an unplanned, unexpected and unintended event which a) occurs on Department property, on Department business, or during working hours, and b) initially appears to have been caused wholly or partially by an Officer, and c) results in either i) a fatality, ii) bodily injury requiring medical treatment away from the scene of the event, or iii) damage to property in excess of \$2,500; an unplanned, unexpected and unintended discharge of a firearm is also an "accident".
- F. Drug Paraphernalia - any item which is clearly intended for use for the administering, transferring, manufacturing, testing or storing of a controlled substance and which is not authorized or intended for use in the course of legitimate law enforcement activities.
- G. Reasonable Suspicion of Drug and/or Alcohol Use - the reasonable suspicion standard for drug testing of sworn personnel is based upon a specific objective fact(s) and reasonable inferences drawn from that fact(s) in light of experience that the individual may be involved in the use of any illegally-used drug, controlled substance, or alcohol. Examples would include one or more of the following:
  - 1. Observable phenomena, such as direct observation of on-duty alcohol use or possession and/or direct observation of on-duty or off-duty use or possession of illicit drugs, and/or the on-duty display of behaviors which appear to be indicative of the use of any illegally-used drug, controlled substance, or alcohol and are not attributable to other factors;
  - 2. a pattern of abnormal conduct, erratic behavior or deteriorating work performance, including but not limited to, frequent absenteeism, excessive

tardiness, or frequent accidents, not attributable to other factors and which appears to be related to drug and/or alcohol abuse;

3. arrest, indictment, or conviction for a drug-related offense;
4. newly discovered evidence that the Officer has tampered with a prior drug/alcohol test;
5. repeated or flagrant violations of the Department's rules and procedures which are determined by a supervisor to pose a substantial risk of injury or property damage and which are not attributable to other factors and appear to be related to drug and/or alcohol abuse;
6. causing an accident (as defined in definition E. above).

The above examples are not all inclusive, but are intended to be illustrative. Though not a sign or symptom of substance abuse, accidental discharge of a firearm is such a serious event that it can contribute, when substantiated by more direct evidence, to a finding of reasonable suspicion. The symptoms of being affected by a drug or by alcohol are not confined to those consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. Although reasonable suspicion does not require certainty, mere "hunches" are not sufficient to meet this standard.

- H. Under the Influence of an Unauthorized Controlled Substance, Illegally-used Drug and/or Alcohol - The presence of a .04 alcohol content in the blood, or a verified positive drug test, at levels specified by the National Institute of Drug Abuse (NIDA), for an unauthorized controlled substance or an illegally-used drug.
- I. Medical Review Officer (MRO) - A licensed physician responsible for receiving laboratory drug testing results who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate a positive test relative to the Officer's medical history and other relevant biomedical information.

### III. AUTHORIZED USE OF PRESCRIPTION MEDICINE

Sworn personnel undergoing prescribed medical treatment with any drug must report the drug used to their supervisor, pursuant to [Rule 102](#) and a determination made as to the Officer's ability to perform his duty according to that rule.

### IV. PROHIBITED CONDUCT

The following conduct by sworn personnel is prohibited:

- A. Unauthorized use, possession, manufacture, distribution, dispensation or sale of a controlled substance, illegally-used drug, drug paraphernalia, or alcohol on Department property, on Department business, in Department supplied vehicles, in vehicles being used for Department purposes, or during working hours;
- B. Unauthorized storage in a desk, locker, automobile or other repository on Department property of any illegally-used drug, controlled substance, drug paraphernalia, or alcohol;
- C. Being under the influence of an unauthorized controlled substance, illegally-used drug or alcohol on Department property, on Department business, in Department supplied vehicles or vehicles being used for Department business or during working hours;
- D. Possession, use, manufacture, distribution, dispensation or sale of illegally-used drugs or controlled substances while off duty;
- E. Switching or adulterating any urine or blood sample;
- F. Refusing consent to testing or refusing to submit a breath, urine, or blood sample for testing (except as regards "Condition of Promotion" testing);
- G. Failing to adhere to the terms of any Rehabilitation Agreement (sample attached) which the Officer has signed;
- H. Conviction under any drug or alcohol statute;
- I. Failure to immediately notify the Department of any arrest or conviction under any drug or alcohol statute;
- J. Failure to notify a supervisor of the use of a prescription drug;
- K. Refusing to sign a) a receipt for the Department's Substance Abuse Policy, b) the Consent and Release Form, c) the Chain of Custody Form, or d) a Rehabilitation Agreement;

## V. TESTING

Sworn personnel of the Boston Police Department will be tested for drugs and/or alcohol under the following circumstances:

- A. Reasonable Suspicion of Drug and/or Alcohol Use - Sworn personnel will be tested for drugs and/or alcohol when a supervisor who has been trained in making determinations of reasonable suspicion has made such a determination. Referrals for reasonable

suspicion testing will be made using the procedures set forth in Appendix A of these procedures.

- B. Follow-up Testing - Sworn personnel referred by the Department to treatment, and who undergoes any form of treatment for substance abuse, will be subject to unannounced testing for a period of thirty-six months following a return to full duties (which shall be subject to a medical certification that the Officer is qualified to safely carry a weapon).
- C. Pre-Employment Testing - All applicants for the position of Sworn Police Officer will be required to submit to a drug test. The Department will not knowingly employ as a Sworn Police Officer any individual who actively abuses alcohol, an illegally-used drug or a controlled substance. All applicants for the position of Sworn Police Officer will be advised in connection with their application for employment that, prior to being offered a position, they will be required to submit to a drug screen. Failure to consent to such a test, or a verified positive result, will disqualify the applicant for employment in a position subject to pre-employment testing.
- D. Probation Period Testing - All Probationary personnel are subject to drug testing during their probation period without prior warning and at random intervals.
- E. Condition of Promotion/Rating/Appointment Testing - Sworn personnel who are offered a promotion/appointment and/or a detective rating will be required to submit to a drug test. A negative test result shall be a condition of such promotion and/or rating. Sworn personnel may refuse to submit to such a drug test without penalty or risk of disciplinary procedures, however such refusal shall be considered a declination of the offer of promotion.
- F. Assignment to Special Unit Testing - Sworn personnel, upon assignment to specialized units as identified by the Commissioner, shall be required to submit to a drug test. Such units include: Command Staff, Drug Control, Anti-corruption, Explosive Ordnance Unit, Hazardous Materials Unit, Boston Police SWAT team, Firearms Analysis Unit, Range, and Organized Crime. This form of testing shall also be applicable upon assignment to any outside agency.
- G. Annual Drug Testing (Hair) - This provision only applies to those bargaining units that have agreed to such testing.
- H. In a joint desire to achieve and maintain a work force that is 100% drug free and in further recognition that the Department has not yet achieved such goal, the parties agree that all sworn personnel shall be subject to an annual drug test to be conducted through a fair, reasonable, and objective hair analysis testing system. Each Officer shall submit to an annual test on or within thirty (30) calendar days of each Officer's birthday. The Department shall schedule each examination and so notify each Officer as far in advance as practicable. Hair testing does not contemplate or include testing for alcohol.

- I. The Department agrees that it will establish and adhere to written collection and testing procedures for hair samples. These procedures shall be fair and reasonable so as to ensure the accuracy and integrity of the test and process. These written procedures will be appended to this Rule and become incorporated thereto. The union, should it so request, shall meet with the Department in order to discuss issues relative to the collection and testing process. Nothing contained herein alters the current policy as it relates to other drug/alcohol testing, procedures, or requirements.

Drug tests will consist of determinations of the presence of these five drugs, classes of drugs, or their metabolites: marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine (PCP), and amphetamines. In the course of testing for Reasonable Suspicion of Drug and/or Alcohol Use, other drugs or their metabolites may be tested for if their particular use is suspected. Such other drugs may include, but need not be limited to: lysergic acid diethylamide (LSD), methaqualone, barbiturates, and benzodiazepines. All urine testing will be performed under the guidelines described in Appendix C "Procedures for Drug Testing". These procedures call for the use of an immunoassay screen (i.e. "EMIT") with all positives tested for confirmation using Gas Chromatography/Mass Spectrometry (GC/MS) technology. In a GC/MS test, the specimen is heated and the vapors are passed through a column of absorbent material, where traces of the drugs separate into colored bands (gas chromatography). A mass spectrometer then analyzes the precise chemical composition of each band. GC/MS is generally considered to be the most conclusive method of confirming the presence of a drug in urine.<sup>1</sup> GC/MS results are accepted as evidence in criminal cases. Positive GC/MS results are first communicated to a Medical Review Officer (MRO) who investigates the possibility of a legitimate explanation of the test result. Where reasonable suspicion exists to test for alcohol, the Officer shall be given the option of submitting to either a breath screen test or a blood alcohol test. All breath screen tests shall be administered by a certified collection site facility utilizing DOT approved equipment and DOT procedures. All blood alcohol tests shall be administered by a certified collection site facility following procedures identified in Appendix C for identification and chain-of-custody safeguards.

## VI. CONSEQUENCES OF A POSITIVE TEST

### ILLICIT DRUGS

Sworn personnel who receive a verified positive test result for illicit drugs will be subject to termination. However, where the Officer's only violation is a positive test for illicit drug use and it is the Officer's first offense, the Commissioner shall offer voluntary submission to the following alternative program:

- up to a 45 day suspension without pay,
- execution of a Rehabilitation Agreement and submission to treatment/rehabilitation,
- placement in an administrative position and suspension of weapon carrying privileges upon return to work following suspension until certified by the treatment provider to be recovering and able to safely carry weapons, and
- submission to follow-up testing as described in section V(B) above.

Note that failure to comply with the terms of the Rehabilitation Agreement either during or after the suspension period would constitute a separate violation of this policy and shall result in a recommendation of termination.

#### ALCOHOL OR ILLEGALLY-USED DRUGS

Sworn personnel who test positive for alcohol or illegally-used drugs shall be subject to disciplinary procedures up to and including termination. However, the first time an Officer tests positive for alcohol or illegally used drugs, the Officer shall be offered and the Officer shall sign a Rehabilitation Agreement and the Officer shall receive up to a 5 day suspension. Note that refusing to sign the Rehabilitation Agreement under these circumstances constitutes a separate violation of this policy. Sworn personnel who sign the Rehabilitation Agreement and undergo treatment will be assigned administrative duties and have their weapon carrying privileges suspended until such time as they are certified, by the treatment provider, to be recovering and able to safely carry weapons, at which time the disciplinary procedures being held in abeyance shall not be served. A record of the original disciplinary action, as well as successful completion of rehabilitation, shall remain in the Officer's medical personnel file. They will also be subject to Follow-Up drug testing as described in V(B) above.

#### VII. CONSEQUENCES OF VIOLATION OF THE POLICY

Any violation of the Substance Abuse Policy shall lead to disciplinary action up to and including termination. The severity of the action chosen will depend on the circumstances of each case. The Commissioner may, at his discretion, suspend any disciplinary action while an Officer is undergoing substance abuse treatment subject to a Rehabilitation Agreement (see "Consequences of a Positive Test" above). Refusing to sign a Rehabilitation Agreement shall result in a recommendation of termination.

Refusing to submit to a drug or alcohol test (except as regards Condition of Promotion testing), or switching or adulterating any blood or urine sample, shall result in a recommendation of termination.

Failure to adhere to the terms of the rehabilitation agreement shall result in disciplinary action up to and including termination.

## Appendix A

### REFERRAL PROCEDURES FOR SUPERVISORS

The Department's supervisors are responsible for being alert to declining job performance, erratic behavior or other symptoms of possible substance abuse. Whenever a supervisor who has been trained in the making of determinations of reasonable suspicion of drug and/or alcohol use (as defined in Section II of these procedures) makes such a determination the following steps will be taken:

- A. The supervisor will document in writing all circumstances, information and facts leading to and supporting his/her suspicion. At a minimum, the report will include appropriate dates and times of suspect behavior, reliable/credible sources of information, rationale leading to referral for testing and the action(s) taken.
- B. Prior to referring an Officer for testing, the supervisor will discuss the problem with the Officer in a private location with one witness, preferably another supervisor, present. Caution will be taken not to accuse the Officer of substance abuse, but the Officer will be presented with instances of questionable behavior. If the Officer does not have an acceptable explanation for his questioned behavior, the supervisor will continue with the procedures set forth in this section. Nothing in this procedure is intended to prevent the Officer from invoking any Weingarten rights the Officer may have.
- C. The supervisor shall consult with a second supervisor of a higher rank and they shall jointly decide whether to refer an Officer for testing. All persons involved in the decision-making process will have received training in the identification of actions, appearance, and conduct which are indicative of the use of alcohol and/or drugs.
- D. In those cases where the supervisor determines that the person's behavior causes a potential threat of harm to himself or others, the Officer will be immediately removed from the work site and where there is no other misconduct resulting in suspension the Officer shall be placed on administrative leave and shall be subject to customary restrictions of such leave.
- E. Once a determination has been made to refer an Officer for testing, it will be the responsibility of the supervisor to advise the Officer of such decision and to escort the Officer to a collection facility. The supervisor should remain with the Officer at the collection site facility until testing is concluded. In the event that leaving the scene and/or remaining with the Officer is not feasible, the supervisor will 1) arrange transportation to the collection facility (the Officer will be instructed not to drive a vehicle), 2) notify the collection facility that the Officer is being sent for testing, 3) request that the collection facility notify the supervisor when collection procedures are completed, 4) arrange transportation for the Officer following the collection process, and 5) notify the Officer that he or she is not to return to work pending receipt of the test results by the Office of Internal Investigation.

- F. Upon conclusion of the examination, the supervisor will ensure that the Officer is escorted to his destination. The supervisor will direct the Officer not to drive himself to his destination. The Officer will be relieved from duty pending receipt by the Office of Internal Investigation of the test results and the Officer will be notified of this change in status.
- G. If the Officer tests negative for drugs or alcohol, the Officer will be compensated for any regularly scheduled hours he or she would have worked during the suspension period.
- H. In those cases where a supervisor discovers an Officer who possesses what appears to be a controlled substance, illegally-used drug or alcohol, he or she will proceed as described above for instances where reasonable suspicion exists, and, if the substance in question appears to be a controlled substance or illegally-used drug, will in addition perform the following steps:
  - 1. Immediately confiscate the substance and all equipment or paraphernalia directly employed with the substance. Wrap them in any available clean material (e.g. paper towel, copier paper, handkerchief). The supervisor will keep the package on his or her person or where he or she can be absolutely sure it cannot be tampered with and shall strive to process the materials as soon as possible.
  - 2. As soon as the supervisor can, he or she will put the wrapped materials, still in the wrapping, into a large envelope and seal the envelope completely. The supervisor's initials will be written over the seam of the envelope in several places.
  - 3. The supervisor will write the Officer's name, his or her own name, and the date at the top of the envelope, will promptly notify his or her commanding officer, and will turn the envelope over as soon as possible to the Office of Internal Investigation. The supervisor will witness the signing and dating of the envelope by the person to whom he or she turns it over.
  - 4. All persons who subsequently and for whatever reason have possession of the envelope will sign and date it in the presence of the previous supervisor.
  - 5. The Bureau of Professional Standards and Development will be responsible for delivering the substance to the Division of Food and Drug for analysis. Pending delivery the substance will be secured appropriately.

## Appendix B

### REHABILITATION AGREEMENT

Name: \_\_\_\_\_

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

Department: \_\_\_\_\_

Dear \_\_\_\_\_:

On \_\_\_\_\_, 19\_\_\_\_, the Boston Police Department agreed to your request to seek counseling and referral to a rehabilitation program for alcohol and/or drug abuse. The following conditions apply to your rehabilitation program:

1. You must authorize your treatment provider to provide proof to the Office of Internal Investigation of enrollment in a rehabilitation program and proof of attendance at all required sessions on a monthly basis. Your attendance will be monitored closely and the Bureau of Professional Standards and Development will initiate appropriate disciplinary action up to and including termination if you do not regularly attend all sessions.
2. You must adhere to all of the requirements of the drug or alcohol treatment or counseling program in which you are enrolled.
3. If you are absent from work during the rehabilitation period without prior authorization, you must promptly submit a written doctor's certificate explaining the reason for such absence. The Department will take disciplinary action if you are absent as a result of alcohol or drug use.
4. You will pay for all costs of rehabilitation which are not covered under the employee's health plan.
5. During the thirty-six months following the completion of your rehabilitation program, the Department will test you for alcohol and/or drug use on a random basis. The Department will take prompt disciplinary action if you refuse to submit to testing or if you test positive during this period.
6. You must meet all established standards of conduct and job performance. The Department will institute appropriate disciplinary action if your on-the-job conduct or job performance is unsatisfactory.
7. Failure to comply with all of the above conditions will result in the institution of appropriate disciplinary action, up to and including termination. Furthermore, rehabilitation personnel will notify the Department in writing or appear for testimony at administrative, civil service and superior court hearings in the event an Officer has not complied with the designated rehabilitation program.

I hereby voluntarily agree to all of the above conditions and authorize my treatment provider to provide the Office of Internal Investigation with proof of my enrollment and attendance at the

recommended rehabilitation program. I sign this rehabilitation agreement of my own free will, and without duress.

_____	_____
Officer's Name	Commanding Officer's Name
_____	_____
Officer's Signature	Commanding Officer's Signature
_____	_____
Date	Date

Appendix C

PROCEDURES FOR DRUG TESTING

All drug tests administered pursuant to the Department's Substance Abuse Policy will be conducted in strict accordance with the following procedures:

1. Laboratory Qualifications: The Boston Police Department (the Department) has retained a certified laboratory under the Department of Health and Human Services (HHS) Mandatory Guidelines for federal workplace drug testing programs. The use of a certified laboratory ensures that the highest standards of forensic toxicology are being met.
2. Controlled Substances: The following drugs will be tested for:
  - a. Marijuana
  - b. Cocaine
  - c. Opiates
  - d. Amphetamines
  - e. Phencyclidine
  - f. others as appropriate.
3. Security and Chain of Custody: The selected laboratory will maintain strict security at its laboratory facilities and will strictly adhere to the chain of custody procedures mandated by DOT and HHS. This will include:
  - a. Use of a standard drug testing custody and control form;
  - b. Use of a clean, single-use specimen bottle that is securely wrapped until filled with the specimen, or use of a clean, single-use collection container that is securely wrapped until utilized;

- c. Use of a tamperproof sealing system designed to ensure against undetected opening and the use of a specimen bottle with a unique identifying number which is identical to the number appearing on the custody and control form;
- d. Use of a shipping container in which the specimen and related paperwork may be transferred and which can be sealed and initialed to prevent undetected tampering;
- e. Written procedures, instructions and training to ensure the integrity of the process shall be provided to collection personnel.

4. Specimen Collection Procedures:

- a. All specimens will be collected at designated collection sites which have necessary personnel certified by the laboratory in accordance with NIDA standards, materials, equipment and supervision to provide for specimen collection, security, temporary storage facilities, and shipping or transportation to the laboratory;
- b. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe a person may alter or substitute the specimen to be provided. The following are the exclusive grounds constituting reason to believe an individual may alter or substitute a specimen:
  - 1. The Officer presents a specimen which falls outside normal temperature range (32.5°-37.7°C/90.5°-99.8°F); and
    - a. The person refuses to provide a measurement of oral body temperature; or,
    - b. Oral body temperature varies by more than 1°C/1.8°F from the temperature of the specimen.
  - 2. The last urine specimen provided by the Officer was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L;
  - 3. The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g. substitute urine in plain view, blue dye in the specimen presented, etc.); or,
  - 4. The Officer has previously been determined to have used a controlled substance without medical authorization and the test was being conducted under Department procedures providing for follow-up testing upon            or            after            return            to            service.

In any case where a determination is made by a collection site person to observe a specimen collection, a higher-level supervisor of the collection site person, or the Office of Internal Investigation, shall review and concur in such decision in advance. All direct observation shall be conducted by a person of the same gender as the person providing the specimen. In any case where collection is monitored<sup>2</sup> by non-medical personnel, the person shall be the same gender as the person providing the specimen.

- c. The following procedures shall be used to ensure the integrity and identity of the specimen.
  1. Toilet bluing agents will be placed in the toilet tanks whenever possible so the reservoir remains blue. Where practical, there shall be no other source of water in the enclosure where urination occurs. If there is another source of water, it shall be effectively secured or monitored so as to ensure it is not used as a source for diluting the specimen.
  2. Upon arriving at the collection site, the Officer to be tested shall present the collection site person with proper identification to ensure that he/she is positively identified as the person selected for testing (e.g., by presenting a driver's license or other photo ID, or by identification by the Office of Internal Investigation). If the Officer's identity cannot be established, the collection site person shall not proceed with the collection, and the Office of Internal Investigation shall be notified. If requested by the Officer, the collection site person shall show his or her identification to the Officer.
  3. If the Officer scheduled to be tested fails to arrive at the collection site at the assigned time, the collection site person shall contact the Office of Internal Investigation to obtain guidance on the action to be taken.
  4. The Officer to be tested will be required to remove any unnecessary outer garments (e.g., a coat or jacket) that might conceal items or substances that could be used to tamper with or adulterate the urine specimen. The collection site person shall ensure that all personal belongings such as purses or briefcases remain with the outer garments. The Officer may retain his or her wallet. If requested, the collection site person shall provide the Officer with a receipt for any personal belongings.
  5. The Officer shall be instructed to wash and dry his/her hands prior to urination.

6. After washing his/her hands, the Officer shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.
7. The Officer may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection person shall provide the Officer with a specimen bottle or collection container, as applicable.
8. The collection site person shall note any unusual behavior or appearance of the Officer which may indicate the sample may have been tampered with on the urine custody and control form.
9. Upon receiving the specimen from the Officer, the collection site person shall determine if it contains at least 60 milliliters of urine. If the Officer is unable to provide 60 milliliters of urine, the collection site person shall direct the Officer to drink fluids and, after a reasonable time, again attempt to provide a complete sample using a fresh specimen bottle or a fresh collection container. The original specimen shall be discarded. If the Officer is still unable to provide a complete specimen, the following rules apply:
  - a. In the case of a reasonable cause test, the Officer shall remain at the collection site and continue to consume reasonable quantities of fluids until the specimen has been provided or until the expiration of a period up to 8 hours from the beginning of the collection procedure.
  - b. In the case of a pre-employment test or other test not for cause, the Office of Internal Investigation may elect to proceed as specified in 9.(a) above (consistent with any restrictions on hours of service) or may elect to discontinue the collection and conduct a subsequent collection at a later time to be scheduled by the Office of Internal Investigation.
  - c. If the Officer cannot provide a complete sample within the up to 8-hour period or at the subsequent collection, as applicable, then the MRO shall refer the Officer for a medical evaluation to develop pertinent information concerning whether the Officer's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen.<sup>3</sup> The medical evaluator shall report his or her findings to the MRO. Upon completion of the examination, the MRO shall report his or her conclusions to the Office of Internal Investigation in writing.

10. Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.
11. A specimen temperature outside the range of 32.5° - 37.7°C/90.5° -99.8°F constitutes a reason to believe that the Officer has altered or substituted the specimen in accordance with paragraph 4)b(1) above. This may be cause for the Officer to be required to provide another specimen under direct observation. In such cases, the Officer supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the Officer may have altered or substituted the specimen.
12. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the custody and control form.
13. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
14. Whenever there is reason to believe that a particular Officer has altered or substituted the specimen as provided in paragraph 4)b(1) or (3) above, a second specimen shall be obtained as soon as possible under the direct observation of a collection site person of the same gender.
15. After the urine specimen is provided, both the Officer being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. The specimen shall be sealed (by placement of a tamperproof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the Officer. If the specimen is transferred to a second bottle, the collection site person shall request the Officer to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.
16. The collection site person, in the presence of the Officer, shall place securely on the bottle an identification label which contains the date, the Officer's specimen number and any other identifying information provided or required by the Department. If separate from the label, the tamperproof seal shall also be applied.

17. The Officer shall, in the presence of the collection site person, initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.
18. The collection site person shall, in the presence of the Officer, enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the form certifying that the collection was accomplished according to the procedures described herein.
19. The Officer shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him or her is in fact the specimen he or she provided. He or she will also have the opportunity to set forth on the form information concerning medications taken or administered in the past 30 days.
20. The Officer will also be required to read and sign a consent and release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances and release of the test results to the Office of Internal Investigation.
21. The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the Officer and shall certify proper completion of the collection process. If the specimen is not immediately prepared for shipment, the collection person shall ensure that it is appropriately safeguarded during temporary storage.
22. While any part of the above chain of custody procedures is being performed, the urine specimen and custody documents must remain under the control of the involved collection site person.
23. The collection site person shall not leave the collection site in the interval between presentation of the specimen by the Officer and securement of the sample with an identifying label bearing the Officer's specimen identification number and seal initialled by the Officer. If it becomes necessary for the collection person to leave during this interval, the collection shall be nullified and (at the election of the Office of Internal Investigation) a new collection begun.
24. To the maximum extent possible, the collection site personnel shall keep the Officer's specimen bottle within sight both before and after the Officer has urinated. After the specimen is collected it shall be properly sealed and labeled.

25. Collection site personnel shall arrange to ship the collected specimen to the drug testing laboratory. The specimens shall be placed in shipping containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers) and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site person shall sign and enter the date the specimens were sealed in the shipping containers for shipment. The collection site person shall ensure that the chain of custody documentation is attached or enclosed in each container sealed for shipment to the drug testing laboratory.
26. If the Officer refuses to cooperate with the collection process, the collection site person shall inform the Office of Internal Investigation and shall document the non-cooperation on the drug testing custody and control form.
27. If the sample is being collected from an Officer in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen.
28. A chain of custody form (and a laboratory internal chain of custody document, where applicable) shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

5. Laboratory Procedures:

- a. Drug testing laboratories shall be secure at all times and shall have in place sufficient security measures to control access to the premises and to ensure no unauthorized personnel handle the specimens or gain access to the laboratory process or areas where records are stored.
- b. Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots<sup>4</sup> as they are received.

- c. 1) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the Department's chain of custody forms attached to the shipment shall be immediately reported to the Office of Internal Investigation and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.  
  
2) Specimen bottles generally shall be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.
- d. Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6°C. Emergency power equipment shall be available in case of prolonged power failure.
- e. Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.
- f. 1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial Cutoff (ng/ml) <sup>5</sup>	Test Levels
Marijuana metabolites	100	
Cocaine metabolites	300 <sup>6</sup>	
Opiate metabolites	300	
Phencyclidine	25	

Amphetamines 1,000

g. 2) These cutoff levels are subject to change by the HHS as advances in technology or other considerations warrant identification of these substances at other concentrations. For drugs not listed in f.(1) above, cutoff levels to be used shall, when available, be those then specified by the HHS.

h. 1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis.

Confirmatory cutoff (ng/ml)		test levels
Marijuana metabolite <sup>7</sup>		15
Cocaine metabolite <sup>8</sup>		150
Opiates:	Morphine	300
	Codeine	300
Phencyclidine		25
Amphetamines:	Amphetamine	500
	Methamphetamine	500

i. 2) These cutoff levels are subject to change by the HHS as advances in technology or other considerations warrant identification of these substances at other concentrations. For drugs not listed in g.(1) above, cutoff levels to be used shall, when available, be those then specified by the HHS.

j. 1) The laboratory shall report test results to the MRO within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the Department, and the drug testing laboratory specimen identification number (accession number).

k. 2) The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

3) The MRO may request from the laboratory and the laboratory shall provide quantification of test results. The MRO shall report whether the test is positive or negative to the Office of Internal Investigation and may report the drug(s) for which there was a positive test, but shall not disclose the quantification of test results to the Office of Internal Investigation.

4) The laboratory may transmit results to the MRO by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and the MRO must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

l. 5) The laboratory shall send only to the MRO the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.

m. 6) The laboratory shall provide to the Superintendent, Chief of the Office of Internal Investigation a monthly statistical summary of urinalysis testing of sworn personnel and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary.

Monthly reports shall not include data from which it is reasonably likely that information about sworn personnel's tests can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report is withheld for this reason, the laboratory will so inform the Office of Internal Investigation in writing.

7) Unless otherwise instructed by the Office of Internal Investigation in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

n. Long term frozen storage (-20°C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. The laboratory shall retain and place in properly secured long term frozen storage for a minimum of 1 year all specimens confirmed positive, in their

original labeled specimen bottles. Within this 1 year period, the Office of Internal Investigation may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

- o. Because some analytes deteriorate or are lost during freezing and/or storage, quantification for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.
- p. The drug testing laboratory shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2 year period may be extended upon written notification by the Office of Internal Investigation. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall maintain documents for any specimen known to be under legal challenge for an indefinite period.

#### 6. Reporting and Review of Results

- i. An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an Officer/applicant as having used drugs in violation of Department policy. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer (MRO) prior to the transmission of the results to the Office of Internal Investigation. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face. The duties of the MRO with respect to negative results are purely administrative.
- j. 1) The MRO shall be a licensed physician with knowledge of substance abuse disorders who has been approved by the NIDA certified laboratory retained by the City.
- k. 2) The MRO shall not be an employee of the laboratory conducting the drug test.
- l. 3) The role of the MRO is to review and interpret confirmed positive test results obtained through the Department's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the Officer's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by

the tested Officer when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results of urine samples that are not obtained or processed in accordance with the procedures set forth herein.

- m. 1) Prior to making a final decision to verify a positive test result for an Officer, the MRO shall give the Officer an opportunity to discuss the test result with him or her.
- n. 2) The MRO shall contact the Officer directly, on a confidential basis, to determine whether the Officer wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the Officer. Except as provided in paragraph (c)(5) of this section, the MRO shall talk directly with the Officer before verifying a test as positive.
  - 3) If, after making all reasonable efforts and documenting them, the MRO is unable to reach the Officer directly, the MRO shall contact the Office of Internal Investigation who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the Officer through the Office of Internal Investigation, the Internal Affairs Division shall employ procedures that ensure, to the maximum extent practicable, that the requirement that the Officer contact with the MRO is held in confidence.
  - 4) If, after making all reasonable efforts, the Office of Internal Investigation is unable to contact the Officer, the Department may place the Officer on administrative leave with pay.
- o. 5) The MRO may verify a test as positive without having communicated directly with the Officer about the test in two circumstances:
  - a. The Officer expressly declines the opportunity to discuss the test; or,
  - b. The Office of Internal Investigation has successfully made and documented a contact with the Officer and instructed the Officer to contact the MRO and more than five days have passed since the date the Officer was successfully contacted by the Office of Internal Investigation.
- 6) If a test is verified positive under the circumstances specified in paragraph (5)(b) of this section, the Officer may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the Officer from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the Officer to present

information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative as per (f) below.

7) Following verification of a positive test result, the MRO shall refer the case to the Office of Internal Investigation.

- h. Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence -- in addition to the urine test --of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (This requirement does not apply if GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine).
- i. Should any question arise as to the accuracy or validity of a positive test result, only the MRO is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified by HHS and which may be selected by the Officer as long as such laboratory is certified by NIDA utilizing the same certification levels referred to in the "Laboratory Procedures", paragraph 5, subparagraph (g) of this policy. The MRO shall authorize a reanalysis of the original sample if requested to do so by the Officer within 72 hours of the Officer's having received actual notice of the positive test. If the retest is negative, the MRO shall declare the final result to be negative.
- j. If the MRO determines there is a legitimate medical explanation for the positive test result, the MRO shall report the test result to the Office of Internal Investigation as negative and shall include in the report a list of all prescription medications being used by the Officer.
- k. Additionally, the MRO, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the MRO may request reanalysis of the original sample before making this decision. The laboratory shall assist in this review process as requested by the MRO by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who had equivalent forensic experience in urine drug testing, to provide specific consultation as required by the Department.
- l. Except as provided in this paragraph, the MRO shall not disclose to any third party any medical information provided by the Officer to the MRO as a part of the testing verification process.
- m. 1) The MRO may disclose such information to the Office of Internal Investigation only if in the MRO's reasonable medical judgment the information indicates that

continued performance by the Officer of his or her safety sensitive function could pose a significant safety risk.

2) Before obtaining medical information from the Officer as part of the verification process, the MRO shall inform the Officer that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

7. Protection of Sworn Personnel Records

8. Department contracts with laboratories require that the laboratory maintain sworn personnel test records in confidence. The contracts will provide that the laboratory shall disclose information related to a positive drug test only to the Office of Internal Investigation.

9. Individual Access to Test and Laboratory Certification Results

Any Officer who is the subject of a drug test conducted under this policy shall, upon written request to the Chief, Bureau of Professional Standards and Development, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

Positive test results for drug and/or alcohol shall be retained by the Department and processed as in the same manner as are any violations of Department Rules and Procedures. Documentation leading up to or supporting a decision to test where the test is positive shall be retained and/or processed in the same manner as any violation of Department Rules and Procedures. Documentation leading up to a decision to test where the test is negative shall be filed separately with the Superintendent, Chief of the Bureau of Professional Standards and Development and shall remain confidential.

Appendix

D

PROCEDURES FOR ANNUAL HAIR TESTING

- A. Tracking System - The Department shall develop and maintain a tracking system that ensures each Officer who is subject to Annual Testing will undergo a hair test as required by Rule 111, sec. V, para. G.
- B. Notification to Submit - The Department shall provide to Commanding Officers a listing of those Officers who shall be required to submit to an annual hair test. The Commanding Officer or his/her designee shall notify the Officer when he/she shall submit to the test at Occupational Health Services.
- C. Collection Personnel - Certified employees of the Occupational Health Services Unit shall perform all hair sample collections.

- D. Identification of Officer's Identity - The Officer's identity shall be verified by checking the driver's license or other photo identification. The Department, including personnel from the Occupational Health Services Unit, may do a visual identification of the Officer, however this must be noted on the Test Request Form.
- E. Completing the Test Request Form - The Test Request Forms (TRF) are pre-printed forms that are coded specifically to the Department. The collection personnel shall fill out the form in the presence of the Officer. The TRF includes information such as the collector's identity, the Test Subject Identification Number, and where the sample was collected (ex., crown of head, nape of the neck).
- F. Completing the Sample Acquisition Card (SAC) - The SAC is a card that will hold the hair sample during transportation. A foil used for collection is included with the card. These steps may occur prior to or after the collection of the hair sample and shall be completed in the presence of the Officer.
1. The collection personnel shall sign and date the SAC. The collection personnel shall write the Test Subject Identification Number on the SAC. This number must match the number listed on the TRF.
  2. The collection personnel shall place the bar code from the TRF on the SAC to ensure the two documents are identified with one another.
- G. Collecting the Hair Sample - The collection personnel shall complete each of the following steps in the presence of the Officer.
1. The collection personnel will grasp a small lock of hair approximately  $\frac{1}{2}$  inch wide by one strand deep when held flat and cut the sample close to the scalp. If the head hair is not available other body hair shall be collected.
  2. The sample is then placed in the foil with the root ends extending approximately  $\frac{1}{4}$  inch. The foil is pressed together, trapping the sample inside. If the hair is long, the collection personnel will wrap the remaining hair around the foil.
  3. The collection personnel shall place the sample inside the SAC, sign and date the integrity seal, and place the integrity seal over the designated spot on the SAC.
  4. The Officer shall initial the SAC in the space provided.
  5. The Officer shall complete the Donor Certification section of the TRF that includes the Officer's name and telephone number. In the comments

section, the donor may provide additional information for the Medical Review Officer (MRO), (ex., use of prescription medicine or an additional phone number where the MRO can contact the Officer if the need arises).

6. The copy of the TRF that contains the Donor Certification section shall be separated from the TRF and placed in a sealed envelope addressed to the MRO. The Officer shall initial and date the sealed envelope. The sealed envelope shall be kept in a secured area until sent to the MRO, at the next regularly scheduled pick-up using an overnight carrier.
  7. The collection personnel shall place the SAC and a copy of the TRF into the collection pouch and seal the pouch.
  8. The Officer shall initial and date the collection pouch in the space provided.
- H. Storing and Shipping the Sample - The sealed collection pouch shall be kept in a secured area until sent to the laboratory, at the next regularly scheduled pick-up using an overnight carrier.
- I. Licensed Laboratory - The sample shall be tested at a licensed laboratory that is certified to perform hair testing.
- J. Review of Test Result by an authorized Medical Review Officer (MRO) - All hair sample drug test results shall be reviewed by an authorized MRO prior to the transmission of the test results to the Commanding Officer, Bureau of Professional Standards and Development (BPSD)
1. The duties of the MRO with respect to positive test results are to review and interpret confirmed, positive test results obtained through the Department's annual hair testing program. In carrying out this responsibility, the MRO shall examine alternative medical explanations for any positive test result. This action may include conducting a medical interview and review of the Officer's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested Officer when a positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results for hair samples that are not obtained or processed in accordance with the procedures set forth herein.
  2. Prior to making a final decision to verify a positive test result for an Officer, the MRO shall give the Officer an opportunity to discuss the test result with him. For example, there may be a legitimate positive test result for the use of legally prescribed or dispensed medication such as codeine for coughs, narcotic analgesics for pain, tetrahydrocannabinol for

cancer, cocaine as a vasoconstrictive anesthetic, etc. It is important to note that it is highly unlikely that a medically acceptable explanation will be found for the presence of cocaine or marijuana.

3. The MRO shall contact the Officer directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in Paragraph J(5) of this Section, the MRO shall talk directly with the employee before verifying a test as positive.
4. If after making all reasonable efforts and documenting them, the MRO is unable to reach the Officer directly, the MRO shall contact BII who shall contact the Officer and direct him to contact the MRO as soon as possible. If it becomes necessary to reach the Officer through BII, the Bureau shall employ procedures that ensure, to the maximum extent practicable, that the requirement that the Officer contact with the MRO is held in confidence.
5. The MRO may verify a test result as positive without having communicated directly with the Officer in three circumstances.
  - a. If the Officer expressly declines the opportunity to discuss the test result, the test shall be reported as positive.
  - b. If BII has successfully made and documented a contact with the Officer and instructed the Officer to contact the MRO and more than five calendar days have passed since the date the Officer was successfully contacted by BII and the Officer has not contacted the MRO, the test shall be reported as positive.
  - c. If after making all reasonable efforts and documenting them, BII has not been able to contact the Officer and fourteen calendar days have passed since BII's first documented attempt to contact the Officer, the test shall be reported as positive.
6. The MRO shall report to BII any samples that were not suitable for testing. When BII receives a test result that indicates the hair specimen was an inadequate specimen and/or was not testable for any other reason, BII shall contact the Officer and require him/her to provide another specimen for testing provided the collection occurs on or within thirty (30) calendar days of that Officer's birthday.

7. The MRO shall report whether the verified test result is positive or negative to BII. If the MRO, in his/her sole medical opinion, concludes there is a legitimate medical explanation for the positive test result, the MRO shall report the test result as negative to BII.
  8. BII shall notify each Officer who receives a positive test result and the provisions of Rule 111 shall apply.
- K. Safety-Net Tests - If an Officer receives a positive, confirmed hair test result, the Officer may request a safety-net test. The safety-net test must be performed under the same or more stringent procedures as recommended by the manufacturer.
1. To request the safety-net test, the Officer must submit a written request to the Commanding Officer, BII within 72 hours of being notified by BII of the positive test result. BII shall notify Occupational Health that a safety-net test has been requested, and Occupational Health shall schedule the safety-net test forthwith. The Officer must pay for the costs of the safety-net test and the MRO review, payable by check made out to the City of Boston at the time of the sample collection.
  2. For Officers who have requested a safety-net test, the Department shall immediately place the Officer on administrative duty pending the outcome of the safety-net test. While on administrative duty the Officer shall not carry a firearm and shall not be eligible for overtime or details.
  3. If the result of the safety-net test result is negative, the Officer shall be reimbursed for the costs of the safety-net test and the MRO review and shall be made whole, e.g., paid for any overtime or details he/she would have been eligible to perform pursuant to the current collective bargaining agreement. Likewise, said hours shall be recorded and posted pursuant to the current collective bargaining agreement. In addition, the Officer's IAD file shall be expunged of the prior positive test result that led to the safety-net test.
- L. Access and Storing of Test Results - Any Officer who is the subject of a hair test conducted under this procedure shall, upon written request to the Commanding Officer, BII, have access to any and all record(s) relating to his/her hair test result that is/are in the possession of the Department. Such results and records are confidential medical information and shall not be disclosed without the Officer's consent except to the extent necessary to effectuate the purposes of the Department's Substance Abuse Policy. Positive hair test results shall be retained by the Department and processed in the same manner as any violations of Department Rules and Procedures.

M. Applicability of Rule 111 - The hair testing procedures are effective pursuant to the collective bargaining agreement. Nothing contained herein alters the current Substance Abuse Policy as it relates to other drug/alcohol testing, procedures, or requirements, e.g., switching, adulterating or refusing to be tested are prohibited by Section IV of Rule 111.

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<sup>1</sup>National Institute on Drug Abuse, Research Monograph 73 - "Urine Testing for Drugs of Abuse", 1986.

<sup>2</sup> A collection site person "monitors" a collection for this purpose only if he or she is in close proximity to the Officer as the Officer provides the sample, such that the collection site person can hear the Officer's actions.

<sup>3</sup>Such a referral is not necessary in pre-employment testing where the Department does not wish to hire the person.

<sup>4</sup>An aliquot is that portion of the urine specimen used for testing.

<sup>5</sup>ng = nanograms

ml = milliliters

<sup>6</sup>25 ng/ml if immunoassay specific for free morphine

<sup>7</sup>Delta-9-tetrahydrocannabinol-9-carboxylic acid

<sup>8</sup>Benzoylcegonine

Notes:

- Amended by SO 07-016, issued April 2, 2007, update the organization names to reflect the new BPD organizational structures. Appendix C (4-26).
- Amended by Special Order 07-056, issued October 3, 2007, Sec. V Line F. "Entry and Apprehension Team" or "Entry Team" in Boston Police Rules and Procedures and Special Orders changed to "Boston Police SWAT Team".
- Amended by SO 08-034, issued 09/12/2008, All references to the "Ballistics" or "Ballistics Unit" shall be amended to Firearms Analysis Unit. All references to the "Ballistician" or the "Department Ballistician" shall be amended to the Firearms Examiner. Section V, paragraph F.