

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 23, 2009

GENERAL ORDER D-19

SUBJECT: ADMINISTRATIVE DRUG AND ALCOHOL TESTING PROCEDURE

PURPOSE

- 1 - The City of Berkeley and the Berkeley Police Department are committed to maintaining a workplace that is free from the influence of alcohol and drugs. The critical mission of law enforcement establishes a compelling need to maintain a drug and alcohol-free work environment. Concurrently, promotion of employee health and welfare is in the best interest of the City and community. Police officers who engage in unauthorized or abusive use of illegal drugs, controlled substances, and/or alcoholic beverages place at risk their own safety, as well as that of fellow officers and the public. Such behavior is manifest of significant health-related issues most effectively resolved through medical treatment and counseling programs. Professionally, it undermines confidence in an individual's integrity, increases the potential for corruption, and may bring conflict into and disrepute upon the organization. The purpose of this policy is to enhance employee and organizational welfare through establishment of a comprehensive administrative drug and alcohol testing policy.

POLICY

- 2 - It is the policy of the Berkeley Police Department to conduct alcohol and drug testing for sworn employees involved in incidents with potentially serious civil liability and when there is reasonable suspicion to believe a sworn employee's use of intoxicants adversely effects the ability to safely and properly perform his/her duties.
 - (a) Appropriate disciplinary action will be taken when employees violate City and Department policy regarding the use of intoxicants.

SUBSTANCE ABUSE TREATMENT PROGRAMS

- 3 - Employees who suspect that they may have a substance abuse problem are encouraged to seek help from peer counselors, through the Employee Assistance Program or other appropriate treatment program.

DEFINITIONS

- 4 - The following are terms and phrases used in this Order:
 - (a) Intoxicant: Alcohol, prescription drug, illegal drug, or other substance that impairs a person's normal physical and mental capacity to act and reason.
 - (b) Medical Review Officer (MRO): A licensed physician designated by the City who shall conduct a validation review of any report associated with the drug analysis of blood or urine samples obtained pursuant to this Order.

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- (c) Positive Test Result: An analysis report, evaluated and validated by a Medical Review Officer, indicating the presence of an intoxicant in a sample of blood or urine.
 - (1) The presence of any amount of alcohol shall be treated as a positive result.

PROCEDURE

- 5 - Sworn employees may be required to submit to alcohol and/or drug testing under the following circumstances:
 - (a) When a supervisor or command officer determines through articulable facts and observations that there is reasonable suspicion to believe that the employee is under the influence of, or otherwise adversely effected by an intoxicant while on-duty.
 - (b) Except as necessary in the performance of an official assignment, the on-duty employee has the odor of an alcoholic beverage on his/her person, clothing or breath.
 - (c) When the employee is in possession of illegal drugs or controlled substances and there is reasonable suspicion, based on articulable facts and observations, to believe such possession is in violation of the law.
- 6 - The Chief of Police, or if unavailable, a Captain, must approve and order any alcohol and/or drug testing authorized by this Order.
- 7 - The Chief/Captain, not the subject employee, shall select the testing method based on the circumstances, which shall be either a blood draw administered by a licensed medical professional, or a two-part urine sample, with individual samples taken 30 minutes apart.
- 8 - The testing procedure shall occur as soon as practical at a location and time designated by the Department.
- 9 - The subject employee may consult with a Police Association or other legal representative as long as the consultation does not unreasonably delay the testing.
- 10 - An employee's refusal to cooperate, deliberate obstruction, delay, or failure to successfully complete testing authorized by this Order, including refusal to sign consent or chain of custody forms, shall be considered a failure to obey a lawful order (ref. Police Regulation 249) subject to disciplinary action, up to and including termination, as set forth in General Order P-26.
 - (a) The disciplinary action taken will include the same penalty as if the employee had tested with a positive result.

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- 11 - Two samples shall be taken with one preserved for any potential additional testing.
 - (a) The employee may, at his/her expense, elect to have a third blood or urine specimen collected and forwarded by the City's testing service to another DHHS-certified laboratory for independent supplemental analysis.
- 12 - The City will use licensed technicians to collect all samples.
 - (a) The City's current service for administrative drug and alcohol testing, On Site Health and Safety, has technicians available to respond within one hour, 24 hours per day, 7 days per week [24-hour hotline (510) 254-2700].
 - (b) If the subject employee is being treated at a hospital or other medical facility, arrangements may be made for a blood draw or the collection of urine samples by that facility or by having On Site Health and Safety send a technician.
- 13 - The supervisor or command officer supervising a testing process shall forward all relevant information and documents to the Chief of Police via the chain of command in a manner that ensures confidentiality.
- 14 - Employees directed to submit to testing authorized by this Order may be subject to temporary reassignment or paid administrative leave pending final disposition.

Supervisory Responsibilities

- 15 - The supervisor or command officer who becomes aware of an employee suspected of being under the influence of an intoxicant shall take reasonable measures to ensure the subject employee does not operate a motor vehicle or take any duty-related action until the issue of intoxicant influence is resolved.
 - (a) If circumstances require, and when directed by competent authority, sworn employees shall surrender to the supervisor or command officer all weapons in their immediate possession.
- 16 - A supervisor or command officer should designate an employee of equal or superior rank to that of the subject employee to remain in the immediate presence of the employee throughout the testing process.

Chain of Custody

- 17 - The samples should be delivered without delay to a Department of Health and Human Services (DHHS) certified laboratory designated by the City.

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Administrative Management, Reporting of Testing Results

- 18 - All records pertaining to this testing process shall be deemed confidential medical-related information, and shall be maintained separately from an employee's general personnel and medical records.
- 19 - The Director of Human Resources, or his/her designee, is responsible for the receipt of specimen analysis results and coordination of MRO review.
- 20 - Positive laboratory test results associated with drug-related analysis of blood and/or urine samples will be reviewed for validation by the MRO.
 - (a) A positive test result indicating only the presence of alcohol in a blood and/or urine sample shall not require MRO review.
 - (b) To evaluate whether or not the presence of a particular intoxicant found in the sample was caused by its lawful and appropriate usage, the MRO will contact the subject officer.
 - (1) The MRO may, with the express authorization of the subject employee, review relevant medical records and interview the subject employee.
 - (c) A positive test result without satisfactory explanation to the MRO shall be considered a validated positive result.
- 21 - Subsequent to receipt of specimen analysis and MRO review results from the Director of Human Resources, the Chief of Police will be responsible for ensuring timely administrative review and disposition.
 - (a) An employee who has a positive test for alcohol and/or a validated positive test for a substance other than alcohol may be subject to disciplinary action, as set forth in General Order P-26.
- 22 - Employees tested pursuant to this Order shall receive a copy of all available information, data and reports associated with the testing process and results.
- 23 - Administrative alcohol and/or drug test results shall not be disclosed as part of a criminal investigation unless the employee has consented in writing or disclosure is required by law.
- 24 - Nothing in this Order shall prevent a criminal investigator from requesting an employee voluntarily submit to an alcohol and/or drug test when the employee is the subject of the investigation.
- 25 - Nothing in this Order shall prevent a criminal investigator from requiring an employee to submit to an alcohol and/or drug test when such testing is authorized by law based on probable cause.

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References: City of Berkeley Council Resolution No.63,761, "Rescind Policy Prohibiting Drug and Alcohol Testing of City Employees" (July 26, 2007)
General Orders P-12, P-26 and P-65
Police Regulations 200, 201, 227, 228, 229 and 249
Memorandum Agreement between the City of Berkeley and the Berkeley Police Association (January 2008)