

Model Department Policy For Drug And Alcohol Testing As Part Of A Comprehensive Intervention For Suspected Substance Abuse In Anesthesia Professionals

Committee on Occupational Health

Chair Jonathan D. Katz M.D.

Members: William Arnold MD, Carolyn Bannister MD, Arnold Berry MD, Morris Brown MD, Robert Brown MD, Karen Domino MD, Robert Holzman MD, Steven Howard MD, Samuel Hughes MD, Stephen Jackson MD, Diana McGregor MD, Susan Polk MD, H. Douglas Roberts MD, Joan Ruffle MD, Donald Silverman MD, Michael Sopher MD, Robert Strong MD.

Task Force on Chemical Dependence

Chair William P. Arnold III MD

Members: Connie Ward MD, Joan Ruffle MD, John Lecky MD, Jonathan Katz MD, Stephen Jackson MD, Susan Polk MD, Terrence McGraw MD, Cathy Lineberger MD, Jerry Matsumura MD, H. Douglas Roberts MD, James J. Jacque MD, Terry Bogard MD, Michael Sopher MD, Ronald Harter MD, Stuart Brooker MD

This document has been developed by the ASA Committee on Occupational Health, but has not been reviewed or approved as a practice parameter or policy statement by the ASA House of Delegates. This is a template for a policy that must be customized by any department that chooses to use it. It is not intended to imply ASA policy for or against drug testing for cause. Variances from the recommendations contained in this document may be acceptable based on the judgment of the responsible anesthesiologist. The recommendations are designed to encourage quality patient care and safety in the workplace, but cannot guarantee a specific outcome. They are subject to revision from time to time as warranted by the evolution of technology and practice.

Introduction: As with other healthcare professionals, inappropriate use of alcohol or drugs is a known occupational hazard among anesthesia professionals and a potential risk to patient safety. If inappropriate use of alcohol or drugs is suspected, either because of a signal event or a series of events, intervention is our ethical responsibility to our colleagues as well as to our patients. Unfortunately, those with the responsibility to investigate or take action frequently are unsure of the law, particularly with respect to drug testing. Those under suspicion also frequently are unsure of their rights and obligations with respect to drug testing. When these situations are approached in an *ad hoc* fashion, measures that should be taken immediately may be overlooked or impeded.

The following discussion proposes a prototype policy for drug and alcohol testing as a component of a comprehensive intervention. This prototype policy intends to strike a balance between an individual's privacy rights and the collective responsibility to protect patients. Optimally this policy would be adopted in advance of the need for intervention.

Applicable Law: Federal and state* laws have provisions that permit mandatory drug testing in many occupations, especially those that are critical to public safety. Anesthesiology is an occupation in which drug testing based on reasonable suspicion would serve a compelling public interest that supersedes ordinary privacy expectations. There exists no federal or state* statutory or constitutional prohibition against requiring anesthesia professionals to submit to drug testing when there is a reasonable suspicion of an impairment that may affect patient care.(1)

Recommended Policy: The approach recommended in this policy calls for drug and alcohol testing only when there is a reasonable suspicion that the individual may be under the influence of illegal drugs, legal drugs used illegally or inappropriately or alcohol.** The reasonable suspicion must be justified by specific facts and rational inferences drawn from those facts. There is no requirement that actual impairment be demonstrated. Reasonable suspicion alone will compel further investigation, including testing, to determine whether the individual is under the influence of chemical substances.

Use of Prescribed Drugs: There are circumstances in which anesthesia professionals may need to take prescribed drugs that have the potential for producing impairment. However, impairment of professional performance, whether or not related to the use of prescribed drugs, must be addressed directly in order to protect patients.

Policy Wording: A written policy should be adopted by the medical staff, the anesthesiology department, and/or an anesthesiology group as either a stand-alone policy or as part of an employment agreement. Policy wording may vary, depending on such factors as state or local law.* The following recommended prototype policy attempts to incorporate the important elements of an effective policy for drug and alcohol testing as a component of a comprehensive intervention.

***Potential Drug or Alcohol Impairment.** No member/employee shall use or be under the influence of illegal or inappropriately used legal drugs or alcohol when required to provide patient care, or when on call to provide such care. Any member/employee shall be required to submit to testing for illegal or inappropriately used legal drugs or alcohol at the request of the Chief of Medical Staff/Chair of Department (or Officer of the Department/Group/Corporation), or his designee, based on reasonable suspicion that the individual may be under the influence of illegal or inappropriately used drugs or alcohol. Reasonable suspicion exists when the party making the request has determined, in his judgment and upon the basis of personal observation or apparently reliable information, that there is a reasonable basis for suspecting that an individual may be under the influence of illegal or inappropriately used drugs or alcohol. This testing for drug and alcohol should be a component of a comprehensive intervention, and it should be conducted in accordance with the Staff's/Department's/Group's established drug testing procedures. Consultation with the physician health and well-being committee is a recommended resource. Refusal of drug and alcohol testing based on reasonable suspicion of inappropriate use of drugs or alcohol shall result in termination.*

Drug and alcohol testing is one component of a thorough assessment of suspected abuse which also must include a well planned intervention and arrangement for comprehensive evaluation by experts in the management of addictive diseases. In recognition of the potential for self-harm by individuals fearing discovery of addiction, when a demand for testing is fulfilled, the subject individual should be immediately accompanied by a qualified physician to a referral for

evaluation. The subject individual should be removed from direct patient care pending receipt of the results of the drug and alcohol test and/or evaluation for fitness for duty. In the event that the test results indicate the presence of alcohol, illegal drugs, or inappropriate or illegal use of legal drugs, the individual should be removed from patient care and related responsibilities, and placed on medical leave of absence pending a completed evaluation for chemical dependency. He or she may be subject to disciplinary action up to and including immediate termination depending upon the results of that evaluation.

Testing Procedure: A protocol governing the obtaining, securing, processing and testing of the body fluid should be adopted in advance. Provisions should be made so that the collection of the specimen is conducted in a credible and defensible manner, and the testing of the specimen is accomplished by a laboratory with demonstrated qualifications for testing for chemical substances applicable to the practice of anesthesiology. The manner in which drug and alcohol testing is demanded and conducted should protect privacy rights and avoid public embarrassment or humiliation, insofar as is possible. However, steps must be taken to ensure that the specimen provided is genuine (direct observation of the collection) and unaltered (chain of custody). Included in the testing panel should be drugs that are specific to the practice of anesthesiology, as for example, fentanyl and sufentanyl, in addition to the “routine” toxicology panel. Although persons should not be singled out for testing on the basis of race, sex, age or other discriminatory criteria, membership in these categories is not a basis for immunity from drug testing.

Follow Up: In the event of positive drug test results, it is essential to take measures that will protect the involved anesthesia care professionals as well as patients. False positive and false negative test results are possible, emphasizing the fact that a laboratory result always should be a component of a comprehensive intervention and considered in conjunction with the history of the individual and physical and psychological examinations. Positive results may necessitate reporting to appropriate authorities (including the state’s physician health program), immediate removal from patient care activities, and evaluation and treatment in a credible treatment and rehabilitation program. If the suspected individual is unwilling to participate in this evaluation, he or she is subject to immediate suspension of practice privileges. It is prudent to obtain legal counsel, and to ensure compliance with all protocols, agreements and laws that may bear upon discipline or remedial measures. Confidentiality should be maintained to the extent possible.

If appropriate, opportunity for re-entry into the work force - subject to the supervision and direction of the appropriate state authority/physician health program - should be considered after rehabilitation. In the event that re-entry is permitted, then the re-entering anesthesia care professional may be made subject to random drug and alcohol testing for a minimum of three years, or for such longer period of time as dictated by state law, state physician health program, and/or as recommended by an appropriate professional in addiction medicine.

Policy Implementation: The requirement that anesthesia personnel remain free of alcohol or illegal or inappropriately used drugs while providing patient care, or when on call to provide such care, and the policy on required testing should be referenced in rules and regulations, shareholder or employment agreements, and other documents regulating continued participation or employment. The consequences of violating the policy should be made clear. Departments, groups and corporations likely will choose to retain discretion regarding the details of disciplinary action in order to afford opportunity for supervised rehabilitation. Therefore, it is advisable to use language such as “discipline up to and including termination.”

Development and implementation of a drug and alcohol testing policy should be accompanied by ongoing education on chemical dependence, including the understanding, recognition, detection and treatment of the inappropriate use of alcohol and drugs. Successful implementation of this policy enables a timely, fair and reasoned response to the suspicion of the inappropriate use of alcohol or drugs.

Self Identification: The same rules or agreements should recognize that persons who are chemically dependent (whether as an initial case or someone already in recovery) might decide to disclose that fact, or be identified through a mechanism such as the medical staff's physician health and well-being or advisory committees. Those provisions should require submission to supervised rehabilitation, opportunity and requirements for assessment of rehabilitation, and provisions for ongoing oversight, consistent with the requirements of the *Americans With Disabilities Act*.

Past Disability: Advice should be obtained when persons with a history of addiction seek employment. The Americans With Disabilities Act affords some protection to individuals with a history of alcohol or chemical dependency who are in recovery. However, the law does not require employment of persons who may pose a direct threat to their own safety or to the health or safety of others. The policy proposed here does not dwell upon special concerns in assessing the rehabilitation of persons being considered for employment, or measures for assuring continued abstinence. Pre-employment testing is permissible.

Conclusion: Impaired anesthesia professionals are a potential threat to patient safety as well as to themselves, all who work with them, and the facilities in which they work. The adoption of a specific written policy on drug testing enables a timely, fair and reasoned response to the suspicion of the inappropriate use of drugs or alcohol. Having the policy in place avoids controversy, increases patient safety, and assures those who must take action that they are on sound ground.

**Several states (and cities) have established specific statutory conditions for proper drug testing, as well as definitions of "reasonable suspicion." Therefore, careful examination of state (and local) law is advisable before the establishment of a drug and alcohol testing policy.*

***Federal and some state laws do permit required drug testing that is not dependent on cause.*

Revised 6/29/05

1. Scott M. Legal aspects of drug testing. Newsletter of the ASA 2005;69:25- 8.