

U.S. Department of Transportation Issues Reminder to Medical Review Officers Concerning Employees' Use of Prescription Medications

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The U.S. Department of Transportation (DOT) issued on September 30, 2014 [a reminder to Medical Review Officers \(MROs\)](#) concerning transportation employees' use of prescription medications. Specifically, the reminder addressed the process to be followed when verifying drug test results of employees who use prescription medications, as well as the MRO's obligation to raise fitness-for-duty concerns to the employer.

A Medical Review Officer is a licensed physician who is knowledgeable about and has clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results. MROs review drug test results before the results are reported to the employer. DOT's reminder stated that when an employee's drug test result is non-negative and the employee claims that the result is due to the use of prescription medication, the MRO is required to determine whether the medical explanation is legitimate. The MRO must verify the authenticity of all records provided by the employee including, for example, contacting the employee's pharmacy and the employee's physician.

More significantly, DOT's reminder stated that even if the MRO accepts the employee's medical explanation and verifies the drug test result as negative, the MRO still may have a responsibility to raise fitness-for-duty considerations. Specifically, under DOT regulations, a MRO must report drug test results and medical information that was learned as part of the verification process — without the employee's consent — if, in the MRO's reasonable medical judgment: (1) the information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or, (2) the information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.

These guidelines are instructive even in the non-DOT context. Many employers who conduct workplace drug and alcohol testing worry that MROs will give a pass to anyone who presents a prescription (this is especially true for medical marijuana). Employers who employ safety-sensitive employees should ensure that their MROs will provide them with information (as permitted by applicable state law) if the employee is likely to pose a significant safety risk. The employer then will need to conduct the direct threat analysis as required by the Americans with Disabilities Act (and comparable state laws) and may also need to consider other issues such as state medical marijuana

laws.

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