

March 2009 Revision

PORTLAND COMMUNITY COLLEGE

CDL Commercial Drivers License **Safe Driving**



Can Save Your Life

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PCC TRANSPORTATION EMPLOYEE DRUG AND ALCOHOL TESTING POLICY

I. PHILOSOPHY

Portland Community College (PCC) and PCCFCE have a clear interest in maintaining a safe, healthful and productive environment for PCC employees, students and the general public. The improper use of alcohol or the use of illegal drugs, or the unauthorized use of prescription drugs undermines the quality of job performance and endangers co-workers, students and the general public. Consistent with PCC's Drug Free Work Place Policy and Board Policy B304 – Alcohol and Controlled Substances, PCC expects its employees to perform their work free of the effects of alcohol, illegal drugs and prescribed drugs illegally used.

Required standardized tests have been established by the federal government with the passage of the Omnibus Transportation Employee Testing Act of 1991 for employees who are drivers of commercial motor vehicles. All covered employees and their supervisors are expected to adhere to the following policy.

II. POLICY

Effective January 1, 1996, all PCC staff who hold commercial drivers' licenses (CDL) and are required to operate commercial motor vehicles (CMV) as defined by 49 CFR Part 382.107 will be considered to be performing safety-sensitive work. CMVs include:

- vehicles designed to transport 16 or more passengers, including the driver;
- vehicles weighing 26,001 pounds or more;
- vehicles hauling hazardous materials.

The people covered by this Act will be subject to pre-employment, random, reasonable suspicion, post accident, return to duty, and follow up testing for alcohol and drugs in accordance with this policy and the Omnibus Transportation Employee Testing Act of 1991.

Employees who are found to be in violation of this Act may be subject to discipline in accordance with section 8 of this policy. Supervisors are also covered by this Act and are expected to take reasonable precautions to insure there are no infractions of this Act.

III. EMPLOYEE ASSISTANCE

The heavy use of alcohol and use of controlled substances can have severe adverse health effects and lead to dependence on, and increased tolerance to, alcohol and drugs.

The following factors are possible, but not exclusive, signs or symptoms of alcohol or controlled substance abuse:

- Physical symptoms or manifestations of alcohol or controlled substances use such as altered or slurred speech or repeated incoherent statements, dilated or constricted pupils, flushed skin, excessive sweating, excessive drowsiness or loss of consciousness without reasonable explanation.
- Unexplained, abrupt or radical changes in behavior such as violent outbursts, hyperactivity, extreme suspiciousness, frequent and/or extreme fluctuations of mood swings without reasonable explanation.
- Inability to walk steadily or in a straight line, or perform normal manual functions essential to an employee's position without reasonable explanation.
- Unexplained, prolonged or frequent disappearances from the work area.
- Accidents or near accidents on the job that appear related to unexplained sensory or motor skill malfunctions.
- Smell of alcoholic beverage on the employee when the employee is expected to be performing job duties.
- The direct observation of alcohol or controlled substances use while at work or on duty.
- A report of reasonable suspicion provided by a reliable and credible source.

Early recognition and treatment of alcohol and drug abuse are essential to successful rehabilitation. PCC maintains an employee assistance program (EAP) to assist employees with alcohol and drug abuse problems, as well as with other personal problems. Our EAP will assist employees with these problems and will also make referrals to appropriate treatment programs. An EAP referral under this policy will not count against the EAP benefit annual number of visits.

Employees voluntarily seeking assistance for a substance abuse problem through PCC's EAP or another substance abuse professional will not be disciplined as a result of their disclosure of prior drug or alcohol use, and treatment by our EAP or another source will be handled in confidence. However, an employee may not necessarily avoid discipline for violation of this policy by participating in a treatment program.

Employees participating in a treatment program may use available sick leave, and will not be subject to discipline for absence from work for participating in such a program.

IV. DEFINITIONS

Alcohol—The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Commercial Motor Vehicle—A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property is considered a CMV if the motor vehicle:

- (a) has a gross combination weight rating of 26, 001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- (b) has a gross vehicle weight rating of 26, 001 or more pounds; or
- (c) is of any size and is used in the transportation of hazardous materials requiring placards under the Hazardous Materials Regulation, 49 CFR Part 172, Sub-part F; or
- (d) is carrying sixteen (16) or more passengers, including driver.

Confirmation Test—A subsequent alcohol test following a screening test that detects alcohol in an individual's system at 0.02 or greater, that provides quantitative data about the alcohol concentration. For controlled substances, confirmation testing means a subsequent analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or metabolite. Confirmatory drug testing is independent of the screen test and uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

Controlled Substances—Controlled substances mean those substances identified in 49 CFR Part 40.85:

- Marijuana metabolites
- Cocaine metabolites
- Amphetamines
- Opiate metabolites
- Phencyclidine (PCP)

Driver—Any person who operates a commercial motor vehicle requiring a commercial drivers license (CDL) or is in a position which requires a CDL as an eligibility criteria because they must drive or be on call and ready to drive if necessary. This includes:

- Full-time, regularly employed drivers;
- Casual, intermittent, or occasional drivers;
- Owner-operator contractors directly employed by, or under least to PCC;
- Individuals applying to PCC to drive a CMV.

Medical Review Officer (MRO)—A licensed physician responsible for receiving laboratory results generated by an employee's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Omnibus Transportation Employees Testing Act of 1991 (OMNIBUS ACT)—The federal law that requires drug and alcohol testing of drivers in various industries. By the authority of this Act, the Office of the Secretary of Transportation, U.S. Department of Transportation (DOT) on February 15, 1994, has published rules requiring employers to test drivers who are required to obtain commercial drivers' licenses (CDL) for the illegal use of alcohol and controlled substances. Compliance with the law commences January 1, 1996.

Safety-Sensitive Function—An employee is performing a safety-sensitive function whenever he/she is engaged in driving a commercial motor vehicle. This includes any period in which the employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions listed in 49 CFR Part 382.107.

Screening/Initial Test—In alcohol testing, an analytical procedure to determine whether an individual may have a prohibited concentration of alcohol in a breath or saliva specimen. In controlled substances testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

Split Sample Testing—Division of the urine specimen in controlled substance testing into two separate containers, the primary specimen used for the screening test and the split specimen used if the employee requests a second test after being informed of a verified positive screening test or a verified adulterated or substituted test result.

Substance Abuse Professional (SAP)—A licensed physician (Medical Doctor or Doctor of Osteopathy), or licensed or certified psychologist, social worker, employee assistance professional or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission; or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse; or by the National Board for Certified Counselors, Inc. and Affiliates/Masters Addictions Counselor), or a state-licensed or certified marriage or family therapist with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Unauthorized Use of Prescription Drugs—Use of a drug by anyone other than the person for whom the drug was prescribed, or in any manner that is prohibited by federal or state law.

V. ALCOHOL

(a) *Alcohol Use*

- No covered employee shall report for duty or remain on duty while having an alcohol concentration of 0.04 or greater.
- No covered employee shall use alcohol while performing safety-sensitive functions.
- No covered employee shall use alcohol within four hours of performing safety-sensitive functions.

Any supervisor who has actual knowledge that an employee has violated this regulation and permits the employee to perform safety-sensitive functions will be in violation of this policy.

(b) *Testing Procedure*

Employees will be tested for alcohol using an Evidential Breath Testing Device (EBT) approved by the national Highway Traffic Safety Administration (NHTSA).

Upon entering the test location, the employee will be asked to provide positive identification with photograph (example-driver's license) to the Breath Alcohol Technician (BAT). The employee and the BAT will complete the DOT Alcohol Testing Form (ATF) distributed at the test site and follow required testing procedures. Providing incomplete information or engaging in conduct that obstructs the testing process may be regarded as a refusal to take the alcohol test and may constitute cause for treating the employee as having tested positive. A refusal to sign the ATF certification is a refusal to be tested.

At the completion of the screening test, the results will be shown to the employee. If the result of the screening test shows evidence of detectable alcohol concentration at 0.02 or greater, a confirmation test will be performed within the specified time limits. If detectable amounts of alcohol of 0.04 (BAC) or higher are verified in the confirmation test, the employee will be in violation of this policy.

If a screening or confirmation test cannot be completed, or an event occurs that would invalidate the test, the BAT will conduct a new screening or confirmation test, as applicable. In the event that an employee attempts and fails to provide an adequate amount of breath, the employee will be referred to a physician for further evaluation in accordance with 49 CFR Part 40.69.

At the conclusion of the test, copies of the ATF will be retained by the testing location, provided to the employee, and transmitted in a

confidential manner to the appropriate designees in Risk Management at PCC.

VI. CONTROLLED SUBSTANCES

(a) *Controlled Substances Use*

No covered employee shall use controlled substances or unauthorized prescription drugs. Authorized use of prescription drugs by an employee requires that: (1) the use be authorized as prescribed medicine by an attending licensed physician who has advised the employee that the substance does not adversely affect the employee's work performance; (2) it be used at the prescribed dosage; and (3) the employee notify his or her supervisor of the controlled substance use. Any Supervisor who has actual knowledge that an employee has used an illegal drug and permits the employee to perform safety-sensitive functions will be in violation of this policy.

A finding that an employee has tested positive for controlled substances in an initial screen test and a confirmation test will constitute a violation of this policy absent authorization to take the controlled substance under conditions described above.

(b) *Testing Procedure*

For controlled substances testing, employees report to a specified test location. The employee will be asked to provide positive identification with photograph (example-driver's license). A urine sample will be collected from the employee and subjected to the split sample testing procedure. The employee's failure to comply with directions to remove outer clothing or to leave personal belongings in an agreeable location will constitute a refusal to test. If the employee is unable to provide the specified quantity of urine, the employee will be instructed to drink up to 40 ounces of fluid over a period of up to three hours or until a sufficient sample is produced. If a complete sample still cannot be provided, the Medical Review Officer (MRO) will refer the employee for a medical evaluation to determine if the inability to provide a specimen is genuine or constitutes a refusal to test and then report the findings to the appropriate designee in Risk Management.

Strict chain of custody procedures will be followed as the samples are forwarded to the laboratory. If the primary specimen is verified positive, the MRO will notify the employee of the result, the controlled substance(s) for which he/she tested positive and give the employee an opportunity to provide a legitimate medical explanation for the positive test result. If the MRO determines that a legitimate medical explanation exists, the MRO shall verify the test result as negative.

The employee can request that the split specimen be tested at a different Department of Health and Human Services' certified laboratory. The employee must make the request within 72 hours of notification by the MRO. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the original test results.

If the employee does not contact the MRO within 72 hours as required, the employee may present information to the MRO documenting a legitimate explanation for the employee's failure to contact the MRO within the 72 hours. A legitimate explanation means that circumstances occurred which unavoidably prevented the employee from requesting a split specimen within 72 hours. The MRO may determine to honor the employee's request to test the split specimen. The MRO's decision to permit further testing is final. Test results shall be confidential and will be reported directly to the employee, designee in Risk Management and, upon request, to the U.S. Department of Transportation.

VII. TESTS REQUIRED

(a) *Pre-Employment/Pre-Duty*

As a condition of employment, before an employee or conditional hire is placed into a position requiring the operation of a commercial motor vehicle, he/she shall be tested for controlled substances and must be found to be in compliance with this policy.

An exemption from pre-employment/pre-duty testing is a new covered employee who was subject to an Omnibus drug testing program within the previous 30 days and has either (1) been tested in the past six months or (2) has participated in a random testing program. Also, a current employee who is transferring from one safety-sensitive position to another at PCC is exempt from pre-employment/pre-duty testing.

(b) *Post Accident*

While on duty, a driver who is involved in an accident involving a commercial motor vehicle must be tested for alcohol and controlled substances and found to be in compliance with this policy if any of the following occurs: (1) there is a fatality, or (2) the driver receives a citation arising from the accident and either an injury results requiring medical attention or a vehicle is towed.

Every reasonable effort will be made to administer alcohol tests within two (2) hours of the accident. If an alcohol test has not been performed within eight (8) hours following the accident, or controlled substance testing has not been performed within thirty-two (32) hours following the accident, efforts to test will stop. Supervisors are responsible to provide and forward

written documentation to Risk Management any time alcohol testing is not performed within two (2) hours, or controlled substance testing is not performed within thirty-two (32) hours. Written documentation should include the amount of time taken between the accident and testing and the reason for the delay.

A driver who is subject to post-accident testing shall remain readily available for testing following the accident until he/she undergoes testing or he/she will be deemed to have refused to submit to testing. This requirement shall not cause a driver to delay either receiving or obtaining necessary medical assistance for him/her or any other injured party.

Testing conducted by federal, state, or local officials at the scene of the accident having independent authority to conduct tests for alcohol and/or controlled substances shall be considered to meet the requirement for post-accident testing provided that the tests meet federal, state or local testing requirements and that the results of the test are released to PCC.

(c) *Random*

Drivers will be subject to random testing in accordance with 49 CFR Part 382.305. PCC may participate in a consortium for purposes of random selection of drivers for testing. A sufficient number of drivers shall be selected for alcohol testing during each calendar year equal to 10% of the drivers, and 50% of the drivers shall be selected for testing for controlled substances. This percentage may increase or decrease in any given year depending on the violation rate as determined by FHWA. Drivers will be tested just before, during, or just after performing safety-sensitive duties. If a driver is off work due to illness, vacation, leave of absence, layoff, injury or for any other reason, for more than 30 calendar days, his or her name will be removed from the random pool and replaced when the employee returns to duty.

Upon notification, drivers selected for random testing shall immediately report to the collection site.

(d) *Reasonable Suspicion*

Upon reasonable suspicion of a violation of this policy, a driver may only be directed to undergo reasonable suspicion testing for alcohol or drug testing during, just before, or just after the driver performs safety-sensitive functions. Reasonable suspicion must be based upon the specific and timely observations concerning the appearance, behavior, speech or body odors of the driver or the specific observations of actual use or possession of alcohol or illegal drugs.

These observations must be made by a member of management trained to recognize signs of alcohol or drug use. If reasonable suspicion exists,

the employee shall be directed to submit to testing and be transported to the test site by the supervisor or his or her designee.

An employee directed to submit to alcohol or drug testing will also be advised of the fact that an unjustified refusal to provide the specimen will be treated as a positive test and may result in the driver being fined by the Department of Transportation. The Supervisor shall document the information communicated to the employee and the evidence which constituted reasonable suspicion within 24 hours of the observed behavior or report of the incident or before the results of the test are released, whichever is earlier. This record must be signed by the supervisor making the observations. A copy of such document will be provided to the employee by the supervisor. The Supervisor will also provide copies to the Safety and Risk Services Department.

If an alcohol test has not been performed within two (2) hours following the events or behaviors causing reasonable suspicion, the Supervisor shall provide written documentation stating the reason for the delay. If an alcohol testing has not been performed within eight (8) hours following the events or behaviors causing reasonable suspicion, efforts to test will stop. The Supervisors shall provide written documentation stating the reason the test was not administered. Copies of the document(s) shall be forwarded to Risk Management. In the event testing efforts are stopped for the foregoing reasons, the driver shall not be returned to safety-sensitive functions until an alcohol test is administered with a result below 0.02 alcohol concentration, or at least 24 hours have elapsed since the events or behaviors causing reasonable suspicion.

VIII. RESULTS OF TESTING

(a) *Consequences of Positive Test Results*

A positive controlled substance test or an alcohol test of 0.04 alcohol concentration or greater will be considered a violation of this policy and such a test result may subject an employee to discipline under the applicable collective bargaining agreement. Such test result will, at a minimum, require the covered employee to be relieved immediately of duties requiring performance of safety-sensitive functions until the driver complies with the requirements of .49 CFR part 40 subpart O.

Employees who have passed probation for their covered position and who are tested at 0.02 alcohol concentration or greater but less than 0.04 will be relieved of duties requiring safety-sensitive functions for 24 hours following the administration of the test. The driver may also be subject to discipline in accordance with the applicable collective bargaining agreement.

Applicants who have received conditional offers of employment and who test positive for alcohol or drugs as described above shall not be employed. Probationary staff will be permanently removed from their positions following a single violation of this policy. Regardless of employment status, PCC will refer persons who test positive to a substance abuse professional, approved by PCC, to determine whether the individual needs assistance resolving problems associated with substance abuse, including referral of the individual for any necessary treatment. The individual may be responsible for treatment/consultation costs not covered by the EAP or their health plan.

(b) *Return to Work and Follow-up Testing*

A covered employee who has attained regular employment status who has previously tested positive may return to work, but only at such time as his or her confirmed return-to-work alcohol test results are lower than 0.02 and confirmed return-to-work controlled substance test results are negative.

The employee must be evaluated by a substance abuse professional to determine whether 1) the employee is in need of assistance in resolving problems associated with alcohol misuse or substance abuse, and if so, 2) if the employee has successfully complied with and completed his or her rehabilitation program. The employee must test negative for controlled substances and/or test below 0.02 alcohol concentration. If the substance abuse professional determines that the driver is in need of assistance, the employee will be subject to unannounced follow-up alcohol or controlled substances tests.

The number and frequency of these tests shall consist of at least 6 tests in the first 12 months following the driver's return to duty requiring the performance of safety-sensitive functions. The unannounced tests may be breath alcohol, urine samples for controlled substances, or both. Follow-up tests may only be conducted while a covered employee is performing safety-sensitive functions, or just after he or she has ceased performing safety-sensitive functions. Follow-up tests shall be conducted for a maximum of 60 months. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first 6 tests have been conducted.

All drug tests will be reviewed by a PCC-designated medical review officer (MRO), prior to a report of the results to PCC. If the MRO receives a positive test result from an approved laboratory, the MRO will contact the employee to determine if there is an alternative medical explanation for the positive test results. The MRO will only report positive test results for those tests where an employee does not produce appropriate documentation and the MRO has not found that the employee's use of the

prohibited drug is legitimate. The MRO's written report shall contain the information mandated by OMNIBUS ACT.

(c) *Refusing To Be Tested*

An employee's delay in reporting immediately and directly to or refusal to take a drug or alcohol test on a post-accident, pre-employment, reasonable suspicion, return to work, follow-up, or random basis will be considered the same as having a positive result and may be subject to discipline under the applicable collective bargaining agreement.

An employee who fails to report for testing will also be immediately removed from safety-sensitive functions until he/she is tested.

Failure to produce an adequate alcohol breath sample without a valid medical reason or engaging in conduct that clearly obstructs the collection process will be considered a refusal to test and may subject the employee to appropriate disciplinary action.

IX. RECORDS RETENTION AND CONFIDENTIALITY

Test results and medical records are considered confidential; however, they may be released to PCC's designated representatives and approved substance abuse professionals in accordance with the OMNIBUS ACT and underlying DOT regulations. Except as provided in the OMNIBUS ACT, release of information is subject to prior consent of the employee or applicant.

Contracted and subcontracted transportation providers are required to provide PCC annually with verification of compliance with the ACT. Such records of compliance and verification must be retained for at least five (5) years. Contractors who do not meet PCC's standard of having employees who are drug and alcohol free in accordance with this policy may have their contracts terminated.

Records of testing, including the verification of contracted health agencies who administer tests on PCC's behalf, must be retained by the contracted health agency for a period of at least five (5) years.

Records concerning the collection process are to be retained for at least two (2) years and the selection process for at least one (1) year. Records of negative and cancelled controlled substance test results and alcohol test results with a concentration of less than 0.02 must be retained for at least one (1) year.

PCC will provide the Federal Highway Administration with reports summarizing the results of its alcohol and controlled substance program in accordance with the OMNIBUS ACT.

X. NOTIFICATION AND TRAINING

Every covered employee is expected to be aware of this policy and its requirements and to abide the requirements. Department Supervisors have the responsibility to ensure that all employees are made aware of this regulation. In addition, department supervisors should schedule a meeting with their respective staff on an annual basis to review the provisions and requirements of this policy. All employees in positions requiring the performance of safety-sensitive functions will be provided a copy of this regulation and shall sign a statement certifying receipt of such which will be maintained in the employee's personnel file.

Supervisors or employees in positions requiring the performance of safety-sensitive functions, who are responsible for determining if reasonable suspicion exists, will undergo training sessions on substance abuse and on alcohol misuse. Training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

In the event an employee is believe to be in violation of this policy, Risk Management will notify the appropriate designee in the Human Resources Department at PCC and forward in a confidential manner copies of any relevant documents, including but not limited to, the employee's alcohol and controlled substances test results.

Legal Reference: Omnibus Transportation Employee Testing Act of 1991 as amended.

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For Department of Transportation regulations see: <http://www.dot.gov/ost/dapc/>