Approved: 3-12-99
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE AND LABOR.

The meeting was called to order by Chairperson Al Lane at 9:10 a.m. on March 11, 1999 in Room 521-S of the Capitol.

All members were present except: Rep. Peggy Long - excused

Committee staff present: Bob Nugent, Revisor of Statutes
Jerry Donaldson, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Bev Adams, Committee Secretary

Conferees appearing before the committee: Phil Harness, KDHR
Roger Aeschliman, KDHR
Terry Leatherman, KCCI

Others attending: See attached list

Rep. Grant made a motion to adopt the minutes of March 10 as written. It was seconded by Rep. Toplikar. The motion passed and the minutes were approved as written.

Hearing on: SB 219 - Workers compensation, administrative changes.

Phil Harness, Director, Division of Workers Compensation, Kansas Department of Human Resources (KDHR), appeared to explain the bill which contains recommendation from the Workers Compensation Advisory Board (WCAC), recommendations from the Director, and additional changes added by the Senate as a result of the post-audit report on workers compensation earlier this year. He went through the changes one-by-one and explained and answered questions for each one. (See Attachment 1)

Roger Aeschliman, Acting Secretary, KDHR, appeared to talk with the committee about a new concern. He had received a letter from Barb Hinton, Director, Division of Legislative Post Audit, informing him that she had received complaints from two employees of a smaller unit of the Workers Compensation Division of KDHR. He hopes that the additional clout that the department will have with this bill will take care of these complaints, which concerned the compliance unit.

Mr. Aeschliman thinks that the complaints may have been a result of a review done in the department. The senior staff, Phil Harness and David Shufelt, did a review of all the units in the division following the post audit report, asking them several questions that concerned the running of their departments and what they needed to solve problems they might have, such as additional staffing or computer equipment.

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI), and a member of the WCAC, appeared to explain why KCCI supports the bill. The principle reason they support the bill is the change to the current drug testing provision in the law. The Department of Transportation has recently changed their drug testing protocol which was used in **SB 219** and the bill will need to be amended to reflect these changes. They also support the other changes. (See Attachment 2)

Written testimony supporting the bill was passed out to the committee from:
Christine E. Davis, WCAC member (See Attachment 3)
Terry Humphrey, Kansas Trial Lawyers Association (See Attachment 4)
Tom Whitaker, Kansas Motor Carriers Association (See Attachment 5)
John Ostrowski & Mitchell D. Wulfekoetter, Kansas AFL/CIO (See Attachment 6)

No others were present to testify for or against the bill and Chairman Lane closed the hearing on **SB 219**.

The meeting was adjourned at 9:48 a.m.

The next committee meeting is scheduled for March 12, 1999.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE March 11, 1999

NAME	REPRESENTING
PAT MORRIS	KAHA
Rick [illegible]	Health Midwest
DICK CARTER NR	KSIA
George Welch	Barbee & Assoc.
Bill Curtis	Ks Assoc of School Bds
Dick Cook	KS Ins. Dept.
Terry Leatherman	KCCI
Hal Hudson	NFIB/Kansas
Art Brown	Mid-Am Lem Farmers
Harland Priddle	Priddle & Associates
Mike Mahl	SSIF
[illegible]	KDHR
Stacy Soldan	Weis & Weis Chtd.
David Shufelt	KDHR - Division Work Comp
Phil Harness	

TESTIMONY BEFORE THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE ON SENATE BILL 219

By Philip S. Harness
March 11, 1999

Senate Bill 219 consists of several recommendations by the Workers Compensation Advisory Council, procedural recommendations by the Director, as well as amendments drafted by the Senate in response to the recent report by the Division of Legislative Post Audit:

Section

1. **New section on post-award medical proceedings** setting forth a new procedure for post-award medical treatment requests allowing for an evidentiary hearing as well as dealing with attorneys fees and appeals therefrom. Should there be a post-award application for additional medical expenses, there would be a separate opportunity for hearing and such request would move to a second priority position, following preliminary hearings (which are at the top of the trial docket); appeals therefrom would be treated the same way.

2. **Proposed amendment to K.S.A. 44-501 (d)(2)** to include certain drug levels under the conclusive presumption of employee impairment.

3. **The necessity to clean up ambiguities created by K.S.A. 1998 Supp. 44-503; 44-503b; 44-503c in regard to subcontractors**. Besides the interesting public policy issues, House Bills No. 2591 (effective April 30, 1998) and 2831 (effective April 16, 1998) created a conflict in K.S.A. 44-503. Specifically, House Bill 2831 (signed by the Governor on April 7, 1998) contained no amendments to K.S.A. 44-503 (a) whereas House Bill 2591 (signed by the Governor April 20, 1998) contained an amendment to K.S.A. 44-503 (a) at the end of that section as follows: "For the purposes of this subsection, a worker shall not include an individual who is a self-employed subcontractor." Further, House Bill No. 2831 struck K.S.A. 44-503 (h) and inserted "New section 2"; whereas, House Bill 2591 put the old wording of K.S.A. 44-503 (h) back in but did not include the new Section 2 of House Bill 2831. It is recommended by the Director to place the aforementioned sentence in K.S.A. 44-503, and repeal 44-503b, leaving 44-503c alone.

4. **Proposed one-word amendment to K.S.A. 44-510** to harmonize with the regulations on peer and utilization review.

5. **Proposed amendment to K.S.A. 44-510c**. Modifications to temporary total disability are done at the preliminary hearing stage after the 1993 amendments. This proposed deletion of language referring to review and modification would keep it consistent. This is recommended by the Director, not yet voted on by the advisory council.

6. **Proposed amendment K.S.A. 44-519** to allow that, except in the matters of preliminary hearings (under K.S.A. 44-534a), no report of a health care provider shall be otherwise admitted into evidence without foundation testimony. This has long been the practice in preliminary hearings by virtue of K.A.R. 51-3-5a, which has allowed medical reports without foundation testimony. A concern was raised as to whether the regulation conflicted with the statute; in order to alleviate that concern, there would be an exception made within the statute.

7. **Proposed amendment to K.S.A. 44-527** to conform to actual practice by requiring certified mail rather than registered mail if the Director disapproves an agreement.

8. **Proposed amendment to K.S.A. 44-557.** The Workers Compensation Act contains two (2) conditions precedent for an employee to meet prior to the ability to litigate a claim. The first one is a notice of the accident to the employer within ten (10) days (may be extended to 75 days for just cause); the second is an employee must make a written claim upon the employer for benefits within 200 days. Prior to 1993, the statute allowed an extension of the 200-day rule of up to one (1) year if the employer had failed to file an accident report. A revision in 1993 clouded that one-year extension language by stating that if an accident report was not filed by the employer (within 28 days), then a proceeding for compensation must be commenced by filing an **application** with the Director within one (1) year. An **application** has been considered to be the filing of a Form E-1 (application for regular hearing). The statute would seemingly say that instead of having the written claim requirement extended to one (1) year, a claimant must now file an **application** (Form E-1) within one (1) year. That would put the statute in direct conflict with K.S.A. 44-534 (the general workers compensation statute of limitations) which says one must file an **application** with the Director within two (2) years of the last payment of compensation or three (3) years from the date of accident. Under a literal reading, if an employer does not do what is required by statute (timely file an accident report), the claimant is penalized by having to file the Form E-1 within one (1) year. The Workers Compensation Board has issued at least two (2) opinions in this area noting the mistake and indicating that surely this is not what the Legislature intended to do, and so held. The proposed amendment would insert the language back to its pre-1993 meaning and extend the 200-day rule to one year in the case of a failure by the employer to file an accident report.

There is a proposal to amend subsection (d) to prosecute the repeated failure of any employer to file an accident report (present language is the "knowing failure."). Further, the penalty against a workers compensation insurance carrier was stricken since the duty to file an accident report under subsection (a) is solely upon the employer.

Also, subsection (e) is proposed to be amended so that the proceeding to recover the $250 penalty is pursuant to the Kansas Administrative Procedures Act (KAPA) and not in the district court of Shawnee County.

9. **Proposed amendment to K.S.A. 44-557a**. This proposed amendment would allow the Division of Workers Compensation to collect not only the medical information it now collects, but also hospital charges and related diagnostic procedure codes. The Senate added a penalty paragraph for self-insured employers, pools, insurance carriers, and/or vocational rehabilitation providers who fail to provide statistical information.

10. **Proposed amendment to K.S.A. 44-5,104.** This is a proposed amendment, added by the Senate, which clarifies that accident prevention programs of carriers and pools shall be maintained and provided upon the request of the covered employer. Inspections necessary to determine the adequacy of the accident prevention services may be done on a random basis and based upon employer complaints, and the result shall be reported to the insurance commissioner. The information on the type of accident prevention programs will still be submitted to the secretary of human resources, who shall send the information and results to the insurance commissioner who shall widely disseminate information about the program. Further, the education requirements for an insurance carrier field safety representative was modified to delete business degrees and insert, in its place, industrial hygiene degrees along with other specific degrees and/or designations, or five (5) years of experience.

11. **Proposed amendment to K.S.A. 44-5,120**. There is a proposed amendment made to K.S.A. 44-5,120 (d)(20), the fraud and abuse administrative statute, which section deals with the failure to file required documents and reports, to make an exception for failure to file accident reports, which will be prosecuted pursuant to the K.S.A. 44-557 proceeding.

12. **Proposed amendment to K.S.A. 44-5,122.** The Senate added a proposed amendment which would allow the assistant attorney general, assigned to the Division of Workers Compensation, the authority to prosecute a criminal fraud and abuse case which the county attorney fails to prosecute within 90 days.

13. **Proposed amendment to K.S.A. 44-5,125.** This is a proposed amendment to K.S.A. 44-5,125, the criminal fraud and abuse statute, which would extend the statute of limitations to five (5) years.

14. **Repeal of certain statutes, including K.S.A. 44-501a.** All the statutes proposed to be amended would be repealed (in their original form). One statute which would be repealed would be K.S.A. 44-501a, which the Kansas Supreme Court declared unconstitutional in the *Osborne* case. This statute was an attempt to apply K.S.A. 44-501 retroactively, which attempt failed.

LEGISLATIVE TESTIMONY

the Kansas Chamber of Commerce and Industry
The Unified Voice of Business

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SB 219

March 11, 1999

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Business, Commerce & Labor

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman. I am Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. I am also a member of the Kansas Workers Compensation Advisory Council. Thank you for the opportunity to present KCCI's support for SB 219, the work product of the Workers Compensation Advisory Council for 1999.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The principal reason for the Kansas Chamber's support of SB 219 is its change to the current drug testing provision in the law, found on page 3 of the bill. One of the important changes in the

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3-11-99
Attachment 2

ature's 1993 reform of the Act was the declaration that a workers compensation injur[illegible] be compensated, if the employee contributed to the injury by using alcohol or drugs. Since the reform became law, cases alleging alcohol use have been sustainable, principally because the reform included a declaration that a .04 alcohol concentration creates an impairment presumption. SB 219 would include a Department of Transportation concentration index to establish impairment, due to drug use, for the first time in the law.

It is my understanding the drug testing provision may need amendment, to make it consistent with current Department of Transportation drug testing protocol. KCCI would support an amendment to achieve that consistency.

Another important change is found on page 1 of the bill. This section creates an avenue for an injured worker to pursue further medical treatment for their injury. The right given in this "post award medical application" is not a new right. It is instead an attempt to allow an existing right to be exercised in a more straightforward manner.

Other Advisory Council recommendations proposed in SB 219 are largely clarifying in nature. One of those changes involves the very controversial issue of self employed subcontractors. This recommendation was presented to the Advisory Council as no more than language to reconcile two bills approved in this area in 1998. This Council recommendation does not propose changes to the current subcontractor statute.

On behalf of the employer representatives on the Advisory Council, please permit me a moment to publicly thank the employee representatives on the Council for their willingness to work with us to reach the agreements in SB 219 and to work together to address other concerns involving workers compensation. Finally, thank you for this opportunity to present the reasons why KCCI supports passage of SB 219.

I would be happy to answer any questions.

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LEGISLATIVE TESTIMONY:

Testimony Before the
Senate Committee on Commerce
By
Christine E. Davis, PHR
Worker's Compensation Advisory Council Member
V.P., Human Resources, Sunflower Bank, N.A., Salina, Kansas

Madam Chairperson and members of the Committee:

INTRODUCTION:

Thank you for allowing me to testify before you in support of Senate Bill No. 219, specifically the reform of 44-501(d)(2). I think I speak for a number of Kansas employers when I say this subject is near and dear to our hearts, as well as our pocket books. Drug use in today's society, as well as in the workplace, is a problem no one can afford to ignore. All one has to do is open the daily newspaper, turn on the tube, or listen to the radio for discovery of a recent dramatic crime scene-drug related violence and death; record breaking murder rates; or striking examples of drug-related workplace disasters.

Business owners and legislators must face these facts:

- The United States consumes 60% of all the world's drugs on a daily basis.
- Six million people in the U.S. have a serious drug problem.
- There are 20 million regular marijuana users.
- The U.S. has 10 million cocaine addicts and 500,000 Americans who are hooked on heroin.
- Each day 5, 000 new Americans will try cocaine for the first time.
- The United States has fifteen million alcoholics.
- A recent study shows that 74% of all drug users are employed. (*Department of Health and Human Services)*
- 14 out of every 100 employees abuse drugs on the job.
- 60% of all users will sell drugs to other employees and 40% of them will steal from their company to support their habit.
- Drug abuse on the job takes many forms: illegal drugs, "designer drugs", legal prescription drugs and alcohol. All are subject to abuse by even the best of employees.
- Substance abusers are absent from work three weeks more per year than the average worker.

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Attachment 3

- Substance abusers use 2.5 times more medical benefits than nonabusing employees do.
- Substance abusers are four times more likely to be involved in on-the-job accidents.
- Substance abusers are six times more likely than non-abusers to file a workers' compensation claim. (*National Institute on Drug Abuse*)
- It costs over $7,000 to replace a salaried employee, over $10,000 to replace a mid-level employee, and $40,000 to replace a senior executive.
- An estimated $100 billion in profits and productivity will be lost this year due to substance abuse.

No industry is spared these mounting statistics. There are no social or economic boundaries. Real dollar costs are spent in absenteeism, sick leave, overtime pay, workplace theft and crime, insurance claims and premium hikes, tardiness, lost productivity, and of course, worker's compensation liability. Hidden costs include diverted supervisory and managerial time, friction among workers, damage to equipment, poor judgment, and decision-making, damage to the company's public image, turnover and lowered morale of employees (U. S. Government, 1990). That is why I believe the compensation of benefits to substance-abusing employees involved in work-related injuries through the State of Kansas Worker's Compensation Law is a sociological and economic tragedy.

STATEMENT AND SETTING OF THE PROBLEM:

In the State of Kansas, some drug offenders who attend work under the influence of drugs, cause or contribute to a work-related accident, and then fail a federally approved drug testing procedure, can and do in fact receive workers' compensation benefits for the relief of their injuries. And not only do the individuals receive medical benefits, but time-loss and disability benefits as well, despite their subsequent conviction for drug offenses by state law enforcement agencies. As ludicrous and unbelievable as it sounds, thus is the reality of the workers' compensation system currently in the State of Kansas.

Twice in a matter of years, I've personally had to stand by while employees who clearly

contributed to their work-related injuries and were subsequently convicted of drug trafficking and abuse by the criminal justice system, were issued workers' compensation benefits while in incarceration. I've visited their homes to drop off worker's compensation checks, only to witness the purchase of new furniture and décor, newly built decks and whirlpools, and brand name clothing while neither spouse worked. I have been privy to their bragging and "I showed them" mentality, directed, of course, at their ex-coworkers. And despite the fraud and deception enacted by both, and presumption of evidence presented to presiding judges, their entitlement under the workers' compensation system was not diminished in the least.

HISTORY:

The Workers' Compensation System in the State of Kansas was initially designed as an exclusive remedy for workers injured on the job. In order for it to operate effectively and efficiently to promote good will between an employer and injured worker, however, the trade-off between "no-fault" and "no liability" must be mutually beneficial. The system must not burden either party financially to an extreme nor allow fraudulent misrepresentations or actions by either party to alter the intentions of the system.

In the State of Kansas, extensive legislative reform was instituted in 1993 to combat the rising costs of workers' compensation insurance premiums. One reason given for escalating premiums was substance-abusing workers who negligently caused or were involved in work-related accidents. Under the old law, employers were forced to provide workers' compensation benefits to workers under the influence of drugs unless the employer could convincingly prove contribution to the accident.

Although current statutes allow substance abuse as a defense against a claim of workers' compensation benefits, employers are still asked to hurdle evidence barriers too tall for the leaping.

Current law allows substance abuse as a defense against workers' compensation benefits if the employer meets certain conditions, including a proclivity of contribution. In order for employers to submit chemical tests as admissible evidence to prove impairment, however, employers must prove "there was probable cause to believe the employee used, had possession of, or was impaired by the drug or alcohol while working." This alternative is not in the least satisfactory, since most employers, even if trained, are not medical personnel and unable to diagnose if an employee is impaired by mere observance. Therefore, showing probable cause is not always easily managed. The impaired individual is subsequently able to receive workers' compensation benefits despite his impairment and probable fault, thereby increasing costs to the workers' compensation system and ultimately employer premiums. The status quo is therefore an inadequate problem resolution.

SCOPE OF THE PROBLEM:

Although the 1993 reform is considered a step in the right direction, the issue is not resolved. Urine drug testing programs are currently used to demonstrate the presence of certain drugs or drug metabolites in urine. Although results do not necessarily determine dosage, the time of drug ingestion, or the extent of any drug effects in the individual, they certainly can indicate drug use and presumptive evidence that certain behavioral changes in performance observed may be associated with the use of drugs. When a Gas Chromatography-Mass Spectrometry, or confirmation urine screen, is performed on an initially positive sample, a confirmation of that positive is only prescribed if the level of concentration exceeds a cutoff or abusive level. Legislative reform to allow current forms of technically advanced substance abuse testing as a clear and substantial defense for denial of workers' compensation benefits for those employees who chose to imbibe, would be a definite improvement over current law and become a cost-reducing factor in the

calculation of workers' compensation premiums on a state-wide basis. In the present Kansas workers' compensation system, alcohol testing at a level of .04 is presumed to be abusive, and therefore is a clear defense against any claim of workers' compensation benefits. Subsequently, abusive levels of drug intoxication, the proof of which is the laboratory-certified confirmation drug screen, should be considered a presumed impairment in and of itself without further convincing evidence of contribution. Senate Bill 219 addresses the impairment issue by including confirmation positive drug testing cut-off levels as conclusive presumption of impairment for illegal or illicit drugs.

IMPORTANCE OF THE PROPOSED CHANGE:

"Zero tolerance" in the workplace may be what Kansas employers want to proclaim, but current legislative constraints inhibit effective enforcement. What kind of message is given to substance abusers if they know they can knowingly and willingly violate the law, knowingly and willingly place themselves and others in harm's way, knowingly and willfully solicit financial rewards for their illicit behavior without punitive or deterring consequences? Proactive employers may provide comprehensive substance abuse, education, medical, and employee assistance programs, but without the law as a backup, the ultimate results are minimized. Drug abusing employees who recognize Kansas employers as committed to drug-free environments, reinforced with "no benefits for perpetrators" laws will be less likely to look for employment where they may not only get caught, but face extreme medical as well as financial reprisal. For the State of Kansas to remain competitive in attracting business, industry, and a qualified and productive workforce, they must recognize and encourage a cost-enhancing business environment. If potential businesses view Kansas's workers' compensation laws as archaic and cost prohibitive, they will look elsewhere to "set up shop." Reducing the recovery of benefits for ineligible workers will not only improve business and employee morale, but enhance the economic climate of the state.

In order to eradicate drug and substance abuse from the workplace, government and businesses must band together to reinforce the consistent message that on-the-job drug and alcohol use presents a substantial risk to the safety and financial security of employees and employers and will not be tolerated. Legislature must allow employers to enforce their drug testing programs with qualified, qualitative drug testing procedures without proof of impairment. Substance abusers must know they have the right to choose, but if they chose to imbibe, the consequences of their choice will be no jobs, no unemployment benefits, and no workers' compensation benefits.

Thank you for allowing me to address and support the passage of Senate Bill 219!

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

MEMORANDUM

TO: Al Lane, Chairman of the House Business, Commerce, & Labor Committee and Members of the Committee

FROM: Terry Humphrey

DATE: March 10, 1999

RE: SB 219

Senate bill 219 is a balanced work product from the Workers Compensation Advisory Council. The bill contains a package of proposals which have been thoroughly reviewed and massaged for over a year by the Council. The Kansas Trial Lawyers Association wishes to express appreciation to the Workers Compensation Advisory Council and Director Phil Harness for their work on this measure.

HOUSE BUSINESS, COMMERCE & LABOR COMM.
3-11-99
Attachment 4

Jayhawk Tower * 700 SW Jackson, Suite 706 * Topeka, Kansas 66603-3758 * 913.232.7756 * Fax 913.232.7730
E-Mail - triallaw@ink.org

STATEMENT

BY KANSAS MOTOR CARRIERS ASSOCIATION
P.O. Box 1673 ▪ Topeka, Kansas 66601
Telephone: 785-267-1641 ▪ FAX: 785-266-6551 ▪ www.kmca.org

Submitting Testimony to the
House Business, Commerce & Labor Committee
Representative Al Lane, Chairman
Thursday, March 11, 1999
State Capitol, Topeka, Kansas

Supporting Senate Bill No. 219

MR. CHAIRMAN AND MEMBERS
OF THE HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE:

My name is Tom Whitaker, director of governmental relations and membership services for the Kansas Motor Carriers Association. We represent our 1,400 member firms and the highway transportation industry.

We ask for your support of Senate Bill No. 219. In particular, the addition to K.S.A. 44-501 of impairment levels for drugs. The concentration levels, which appear on page 3 of the bill, are the confirmatory test cutoff levels found in the United States Department of Transportation's (USDOT) rules and regulations.

Since December 21,1989, USDOT has required motor carriers to implement drug-testing programs for all drivers of commercial vehicles. Motor carriers must perform pre-employment, random and post-accident drug tests. In January of 1995, motor carriers were required to annually perform random drug tests on 50 percent of their drivers. The Kansas Motor Carriers Association supports this mandated testing in order to eliminate those drivers abusing drugs from operating commercial vehicles.

The inclusion of the confirmatory test cutoff levels in K.S.A. 44-501 was recently approved by the Workers Compensation Advisory Council. We understand, on December 1, 1998, USDOT revised the testing cut-off levels for Opiates. We support an amendment to S.B. 219 to adjust the cut-off level. We have attached a letter of explanation that was sent to all clients of STA United, our endorsed drug- testing program.

The Kansas Motor Carriers Association asks for your favorable consideration of Senate Bill No. 219.

HOUSE BUSINESS, COMMERCE & LABOR COMM.
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tachment 5

KANSAS KMCA Kansas Motor Carriers Association MOVES BY TRUCK

Dear Client:

The US Department of Health and Human Services (USDHHS) and the Substance Abuse and Mental Health Services Administration (SAMHSA) have, at long last, scheduled the implementation of the revised Opiate (Morphine and Codeine) urine drug testing cut-off levels. This change will take effect for all regulated Department of Transportation (DOT) drug testing on December 1,1998. The revised cut-off level will be 2000ng/ml for both the screen and confirmation (the old cut-off level was 300ng/ml). Additionally, whenever a specimen confirms positive for morphine at a level greater than 2000 ng/ml, it will also have to be tested for 6 Acetylmorphine (6-AM) at a level of 10 ng/ml. 6-AM is a metabolite of heroin which, if found in the urine, proves heroin abuse.

Revising the cut-offs has been discussed for many years because of the fact that an Opiate positive drug test could be due to poppy seed ingestion. Additionally, because the DHHS guidelines for a positive verification for an Opiate required clinical signs of abuse (track marks), the MRO would normally have the 6-AM test run after the initial report from the laboratory. This practice often added as much as a week or more to the turn around time of the result being reported to the employer as a negative. With the revised cut-offs and testing requirements, there should be less delays and no additional charges for 6-AM testing.

For all NMRO clients who are regulated by the DOT, this change will be automatic. Regulated company drug testing policies should be revised if those polices include the specific drugs and cut-offs that are used in the testing program. For all of the NMRO clients who are not regulated by the DOT, we suggest that you closely review this opportunity to enhance your testing program. In a study by the DHHS has found that about 70% of all Opiate positives have failed to be verified by the MRO do to the inability of the MRO to find any clinical signs of Opiate abuse. We do not know how many fewer Opiate positive results will be received from the laboratory but we do know that many of the current Opiate positives that we receive are due to prescription medication and that their reporting levels are below the revised 2000 ng/ml cut-off. Although there is no requirement for non-regulated employers to change, it appears that in doing so, the number of delayed negatives will be reduced. NMRO will monitor the numbers once the revised program is in place.

If you are a non-regulated employer and would like to have your Opiate cut-off level revised to 2000 ng/ml, please contact your laboratory or NMRO. Either one of us can ensure that the change is made. If you have any questions or concerns, please feel free to contact any member of our client services staff at 800-733-6676.

Sincerely,

Sheryl Morris
Director, Client Services

TESTIMONY OF KANSAS AFL-CIO
REGARDING SB 219
HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
March 9, 1999
JOHN M. OSTROWSKI
MITCHELL D. WULFEKOETTER

Thank you Chairman Lane for this opportunity to speak regarding SB 219. The Kansas AFL-CIO supports passage of SB 219 in all particulars.

As this Committee is well aware, SB 219 primarily represents the work product of the Advisory Council where eight votes out of a possible ten are needed to endorse legislation; with a minimum of four votes from "each side of the table." As such, Advisory Committee bills do represent either consensus or a "give and take."

While the changes and compromises set forth in SB 219 are not earth shattering, they are important. The legislation will clarify some areas of the workers' compensation law, and implement needed procedural changes thereby reducing litigation. Other sections of the bill strengthen the data collection process, penalties and procedures against fraudulent acts, and implementation of safety programs.

As regards the drug levels, the Kansas AFL-CIO believes it is appropriate to use the most current levels accepted by the Department of Transportation. In the bill, this would amend the cutoff levels for codeine and morphine at page 3 of the bill and add a test for 6-AM (6-acetylmorphine) following a positive morphine test. 6-AM is a metabolite specific to heroin use. (See attachment.)

Again, the Kansas AFL-CIO thanks you for this opportunity to testify in support of passage of SB 219. I would be happy to answer any questions.

HOUSE BUSINESS, COMMERCE & LABOR COMM.
3-11-99
Attachment 6

CLINICAL REFERENCE LABORATORY

Change in Opiates Cutoff Levels

The Issue

It has been established as a fact that the ingestion of poppy seeds through a regular diet (muffins, bagels, etc.) can cause a positive morphine result at the current low cutoff level of 300 ng/ml. In view of this fact, Medical Review Officers can not verify a result as positive on a low level morphine unless there is clinical evidence of heroin use—i.e. track marks. A study by the Department of Health and Human Services (DHHS) has found that 70% of the laboratory confirmed positive opiate (codeine/morphine) results fail to be verified as positive by MRO's. These samples are being reported to employers as negative results but only after substantial delays for additional laboratory testing and MRO/Donor contact and interview.

The Solution

DHHS intends to increase the cutoff levels for opiates (codeine/morphine) for both screening and confirmation from 300 ng/ml to 2000 ng/ml. In addition, any sample confirming positive for morphine will be subject to an additional test—6-acetylmorphine (6-AM) with a cutoff level of 10 ng/ml. The 6-AM is a metabolite specific to heroin use.

DHHS Announcements

DHHS had originally announced an effective date of May 1, 1998 for these new cutoff levels. They delayed this implementation in order to allow reagent manufacturers to gear up production of the new reagents and to allow for full testing of DHHS certified laboratories capabilities at these levels.

In numerous recent public settings, DHHS has verbally announced a **new anticipated effective date of December 1, 1998.** They have indicated that they will provide written notification of this change and the December 1st effective date in late-November.

CRL felt it appropriate to provide our clients with more lead time and notification of these changes than afforded by the DHHS timetable described above. Following are the changes that CRL will implement as a result of the change in the Federal standard for these cutoff levels.

CRL Changes—DOT Testing

If your company is required to test under DOT regulations, **CRL will implement the new procedures as required on the effective date.** It appears to be **99% certain that this effective date will be December 1, 1998.** The 2000 ng/ml cutoffs will go into effect and the 6-AM will become automatic. The 6-AM test will no longer be looked at as an optional test and will be performed at no additional cost.

You will need to review your drug testing policy to make sure that these changes are accurately reflected.

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