WEST VIRGINIA CODE: §21-3E-7

§21-3E-7. Testing procedure.

All sample collection and testing of drugs and alcohol under this article shall be performed in accordance with the following conditions:

(1) The collection of samples shall be performed under reasonable and sanitary conditions.

(2) Any observer of the collection of urine samples shall be of the same sex as the employee.

(3) Sample collections shall be documented, and these documentation procedures shall include:

(A) Labeling of samples so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided and handling of samples in accordance with reasonable chain-of-custody and confidentiality procedures; and

(B) An opportunity for the employee, or prospective employee, to voluntarily provide notification of any information which may be considered as relevant to the test, including, but not limited to, identification of currently or recently used prescriptions or nonprescription drugs, or other relevant medical information. This may be accomplished by providing procedures for review by a qualified medical professional to verify a laboratory sample which tests positive in a confirmatory test.

(4) Sample collection, storage and transportation to the place of testing shall be performed so as to reasonably preclude the possibility of sample contamination, adulteration, or misidentification.

(5) Confirmatory drug testing shall be conducted at a laboratory: (i) Certified by the U. S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration; (ii) approved by the U. S. Department of Health and Human Services under the Clinical Laboratory Improvements Act; or (iii) approved by the College of American Pathologists.

(6) Drug and alcohol testing shall include confirmation of any positive test results. For drug testing, confirmation will be by use of a different chemical process than was used by the employer in the initial drug screen. The second confirmatory drug test shall be a chromatographic technique such as gas chromatography/mass spectrometry, or another comparably reliable analytical method. An employer may take any adverse employment action, including job denial to a prospective employee, based only on a confirmed positive drug or alcohol test.

In the event a person desires to challenge the results of his or her initial sample test result, that person shall have the right to have the split sample tested by another laboratory as set

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forth in subsection four. The cost associated with the testing of the split sample shall be the responsibility of the person challenging the initial sample test results.

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