

The Substance Abuse Professional Guidelines

United States
Department of Transportation



Office of Drug and Alcohol Policy and Compliance

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THE SUBSTANCE ABUSE PROFESSIONAL

SECTION I: INTRODUCTION

The Department of Transportation (DOT) regulation -- 49 CFR Part 40 -- defines the Substance Abuse Professional (SAP) as a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. In order to be a SAP, you need to have certain credentials, possess specific knowledge, receive training, and achieve a passing score on an examination. There is also a continuing education requirement.

Credentials: You cannot be a SAP unless you are a licensed physician (Doctor of Medicine or Osteopathy); or a licensed or certified social worker; or a licensed or certified psychologist; or a licensed or certified employee assistance professional; or an alcohol and drug abuse counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).

Knowledge: You cannot be a SAP unless you have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders. You cannot be a SAP without understanding how the SAP role relates to the special responsibilities employers have for ensuring the safety of the traveling public. Nor can you be a SAP unless you are well informed about Part 40, pertinent DOT agency regulations, these SAP guidelines, and any significant changes to them. It is important to note that your degrees and certificates alone do not confer to you these knowledge requirements.

Training: You cannot be a SAP unless you receive qualification training. The qualification training must include the nine required components laid out in Section 281(c) of Part 40. You must have completed this training requirement by December 31, 2003, if you become a SAP on or before December 31, 2003. If you become a SAP after December 31, 2003, you must meet this training requirement before you perform any SAP functions.

Examination: Following completion of your training, you must satisfactorily complete an examination. This examination must be given by a nationally recognized professional or training organization and must comprehensively cover all the elements required for the qualification training. Please be aware that DOT requires these training or professional organizations to have their SAP examination validated by a test evaluation organization.

Continuing Education: During each three-year period following satisfactory completion of your training and examination, you must complete at least 12 professional development hours (e.g., Continuing Education Units) relevant to your performing SAP duties.

As a SAP, be absolutely sure you understand what is at stake each time you work with an employee who has violated DOT rules. Because you choose to be a SAP, you elect to have a special relationship and bond with everyone the employee will encounter if that employee returns to the performance of safety-sensitive duties. The traveling public is made up of kids, moms, dads, boyfriends, girlfriends, wives, husbands, partners, close friends, acquaintances, strangers, co-workers, neighbors, and many others. All are riding on, literally and figuratively, the decisions you make. In your counseling work, you always view the person walking through your door as your client, and rightfully so: Now DOT is asking that you view the public as your client as well.

We recognize this may represent a departure for you. However, we think it crucial to the important role you play as “Gatekeeper” for DOT’s return-to-duty process. You represent the major decision point (and in some cases the only decision point) an employer may have in choosing whether or not to place an employee behind the steering wheel of a school bus, in the cockpit of a plane, at the helm of an oil tanker, at the throttle of a train, in the engineer compartment of a subway car, or at the emergency control valves of a natural gas pipeline. Your responsibility to the public is enormous!

In accepting this responsibility, please remember that as a SAP you are advocate for neither the employer nor the employee. Your function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education and/or treatment, follow-up tests, and aftercare. Your recommendations should, to the greatest

extent possible, protect the public safety in the event that the employee returns to the performance of safety-sensitive functions.

As you know, the primary safety objective of the DOT rules is to prevent, through deterrence and detection, alcohol and controlled substance users from performing transportation industry safety-sensitive functions. As a SAP, you are responsible for several duties important to the evaluation, referral, and treatment of employees identified through breath and urinalysis testing as being positive for alcohol and controlled substance use, or who refuse to be tested, or who have violated other provisions of the DOT rules.

Your fundamental responsibility is to provide a comprehensive face-to-face assessment and clinical evaluation to determine what level of assistance the employee needs in resolving problems associated with alcohol use or prohibited drug use. Then you must recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty. Treatment recommendations can include, but are not limited to: In-patient treatment, partial in-patient treatment, out-patient treatment, education programs, and aftercare. Education recommendations can include, but are not limited to bona fide drug and alcohol education courses, self-help groups, and community lectures.

Upon the determination of the best recommendation for assistance, you will serve as a referral source to assist the employee's entry into an acceptable program. As a SAP, you should have a working knowledge of quality programs and qualified counselors as well as insurance, benefit plans, and payment requirements. In addition, you, when possible, should be cognizant of the employer's policies regarding payment for treatment; on-duty-time treatment programming; and the granting of administrative, sick, and/or annual leave for both in-patient and out-patient treatment. You should also make information available to the employee regarding meetings of Alcoholics Anonymous, Narcotics Anonymous, and Al-Anon, as well as other tenable self-help groups.

Prior to the employee's return to safety-sensitive duties, you are required to provide a face-to-face follow-up evaluation with the employee to determine if the individual has demonstrated successful compliance with recommendations of the initial evaluation. This evaluation must be accomplished before an employer can consider the employee for return to

safety-sensitive functions. Therefore, the evaluation serves to provide the employer with assurance that the employee has made appropriate clinical progress sufficient to return to duty.

As the SAP, you also develop and direct a follow-up testing plan for the employee returning to work following successful compliance. The number and frequency of unannounced follow-up tests is directed by you, and is to consist of at least six tests in the first 12 months following the employee's return to safety-sensitive duties. If poly-substance use has been indicated, the follow-up testing plan should include testing for drugs as well as alcohol (for the alcohol rule violator) and for alcohol as well as drugs (for the drug rule violator). Follow-up testing can last up to 60 months, but can be terminated by you any time after one year (if all tests recommended up to that point are completed). This follow-up testing requirement is in addition to tests accomplished through the employer's random testing program.

In directing the follow-up testing plan, you will specify the number and frequency of the follow-up tests. The employer would then be responsible for ensuring that the individual is tested according to the plan. Follow-up testing is an important way that the employer has to determine if the employee has stopped using controlled substances or misusing alcohol. It is important to note that the employer has the option to conduct all or some of the follow-up tests (as well as the return-to-duty test) as directly observed collections.

As you know, there are times when an employee will need continuing assistance with an alcohol or drug problem even if the employee is ready to return to work. At these times, you will provide the employee and employer with your recommendations for “aftercare” – continuing education and/or treatment needed after return to safety-sensitive duties.

It is important to note that employers are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee. However, if the employer offers the employee an opportunity to return to DOT safety-sensitive duty, the employer must ensure that the employee goes through the entire SAP return-to-duty process to include successful compliance with the SAP's recommendations. Payment is left for employers and employees to decide and may be determined by existing management-labor agreements, employer policies, or health care benefits.

Your work as a SAP is a very important part of DOT's efforts to help make our transportation industries the safest in the world. You represent one of the professionals willing to accept a vital role in protecting public safety. The job you do as "Gatekeeper" of the return-to-duty process provides important help to the employee, the employer, and to the traveling public.

SECTION II: SAP DUTIES

THE EVALUATION PROCESS

Consistent with sound clinical and established SAP standards of care in clinical practice, and utilizing reliable alcohol and drug abuse assessment tools, the SAP must conduct a face-to-face evaluation of the client. This type of session is essential to provide the SAP with an opportunity to objectively evaluate the "non-verbals" -- those physical cues to internal feelings, thoughts, and behaviors. The SAP should be cognizant of the client's appearance, posture, carriage, ability to make eye contact, and ability to relate in-person as well as other physical characteristics that would be indicative of alcohol and drug use and abuse. Attention should be placed upon the rule violation that brought the employee to the point of being required to have the SAP evaluation. Always, the SAP must provide immediate attention to individuals who may be in danger to themselves or others.

The evaluation should be comprised of a standard psychosocial history; an in-depth drug and alcohol use history (with information regarding onset, duration, frequency, and amount of use; substance(s) of use and choice; emotional and physical characteristics of use; associated health, work, family, personal, and interpersonal problems); and, a current mental status. The evaluation should provide a diagnosis, treatment recommendations, and a treatment plan to be successfully complied with prior to the employee becoming eligible for follow-up evaluation and subsequent return (if the employer desires) to safety-sensitive functions.

When an employee has tested positive on or refused a drug test because of adulterating or substituting a specimen, the SAP may consult with the Medical Review Officer (MRO) who verified the employee's drug test in gathering information for this evaluation. The MRO and SAP are free to discuss the test result, quantitation levels (if available), and any other

pertinent medical information disclosed during the MRO's verification interview with the employee. This information can be provided without the employee's signed release.

It is important to note that SAPs are prohibited from considering certain factors in determining recommendations for assistance. These are:

1. Employee claims that the testing process was unjust or inaccurate.
2. Employee statements attempting to lessen the seriousness of a DOT rule violation.
3. The SAP's own personal opinions about the justification and rationale for drug and alcohol testing.

Upon a SAP's determining what level of assistance the employee needs with a drug or alcohol problem, the SAP must inform the employer in writing of this decision. The SAP is to send this report directly to the employer and not to a third party or entity for forwarding to the employer. No third party is authorized to change the SAP's report in any way. This notification should be in letter format with the SAP's own letterhead, signed and dated by the SAP, and must contain the following items:

1. Employee's name and social security number;
2. Employer's name and address;
3. Reason for the assessment (specific violation of the rules and date);
4. Date(s) of the SAP assessment;
5. SAP's education and/or treatment recommendation; and
6. SAP's telephone number.

Employees and employers are prohibited from seeking a second SAP evaluation in order to obtain another recommendation after a qualified SAP has evaluated the employee. Employers are not to rely upon a second evaluation if the employee obtains one contrary to this prohibition.

In addition, no one may change in any way the SAP's evaluation or recommendations for assistance. For example, a third party is not permitted to make more or less stringent a SAP's recommendation by changing the evaluation or seeking another SAP's evaluation. However, the SAP who made the initial evaluation may modify the evaluation and recommendations based on new or additional information (e.g., from an education or treatment program).

THE REFERRAL PROCESS

Following the evaluation, the SAP's referral of the employee to the appropriate program is vital. This referral should be consistent with clinically evaluated employee needs. The SAP should also take into consideration other stipulations such as employee insurance coverage, employee ability to pay for care, employer treatment contracts, employer policies regarding availability of leave for employees needing assistance, and availability of treatment and education programs.

The SAP should have a working knowledge of quality programs and qualified counselors. When a variety of appropriate treatment programs are available within the employee's geographical area, the SAP may permit the employee to select the facility or practice from a SAP-approved provider list. The SAP should facilitate the referral by making contact with the recommended program. It is not necessary for the SAP to make the initial appointment for the employee unless the SAP believes it necessary. The SAP should transmit, by appropriate means, the treatment plan with diagnostic determinations to the treatment provider.

The SAP cannot refer an employee to the SAP's private practice or to a person or organization from which the SAP receives remuneration or to a person or organization in which the SAP has a financial interest. To prevent the appearance of a conflict of interest, the intent of the rules is to preclude the SAP from making referrals to entities with which the SAP is financially associated (to include any in-patient, out-patient, and education organizations or practices). However, this requirement could impose hardship upon employer and employees in remote areas or in situations where employee assistance is provided by contract or through a health insurance program. Therefore, the rules do not prohibit the SAP from referring an employee for assistance by:

1. A public agency (e.g., an out-patient treatment facility) operated by a State, county, or municipality;
2. A person employed by or under contract to the employer to provide alcohol and drug treatment and/or education services (e.g., the employer's contracted treatment provider);
3. The sole source of therapeutically appropriate treatment under the employee's health insurance program (e.g., the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or
4. The sole source of therapeutically appropriate treatment reasonably accessible to the employee (e.g., the only education program reasonable located within the general commuting area).

The intent of these prohibitions is to ensure that the SAP referral in no way is of financial benefit to the SAP. And, because the SAP needs to have knowledge of reliable treatment resources, the SAP needs to maintain objectivity in determining what actually constitutes a reliable resource.

THE FOLLOW-UP EVALUATION PROCESS

The SAP's evaluation of the employee prior to return to safety-sensitive duties is vital in gauging (for the employer) the employee's success in meeting the requirements in the initial evaluation's treatment plan. The violation of a DOT drug and alcohol rule has rightfully caused the employee's ability to perform safety-sensitive duties to be called into question. The employee's ability to demonstrate successful compliance with the initial treatment recommendations is key to an employer's decision to return an employee to transportation safety-sensitive duties. Importantly, the follow-up evaluation is clinically based and should provide the employer a concise assessment of the employee's success in fulfilling requirements of the treatment plan.

In some cases, the SAP has the latitude to conduct the follow-up evaluation prior to the employee's completion of the full range of recommended education and/or treatment. However, it is important to note

that an employee in an in-patient or partial in-patient / day-treatment program should not be considered eligible for receiving a follow-up evaluation prior to program completion. An employee entering this type of program is not to receive a follow-up evaluation while still participating in that program. Upon program completion, the employee can be evaluated prior to subsequent entry into or completion of an after-care out-patient treatment program.

With a premium on public safety, an employer is best served if the SAP provides an evaluation designed to ascertain if the employee demonstrates successful compliance rather than an evaluation that is a cursory administrative review. The SAP would base the determination of whether the employee demonstrates successful compliance with the initial recommendation based upon written reports from and personal communication with the education and/or treatment program professionals as well as a face-to-face interview with the employee.

Written information from the program could include a progress report and/or discharge summary. The personal contact with treatment program professionals may be telephonic conversation regarding the nature of the employee's progress, prognosis for success, and any other salient factors that could assist the SAP's follow-up evaluation. It is imperative that a SAP focuses upon more than simply the employee's attendance in the program, but rather upon the level of participation and the progress the employee has made in dealing with the drug or alcohol problem. Documentation of this contact should be included in the client's case record.

Furnished with information from the education and/or treatment program, the SAP will conduct a face-to-face clinical interview with the employee to discuss the education and/or treatment effort, behavioral changes, and plans for continued treatment plan follow through as well as return-to-duty and follow-up testing issues. At this point, one of two things is possible: The SAP can determine that the employee has demonstrated successful compliance or that the employee has not done so.

Demonstration of Successful Compliance: Based upon clinical judgment that the employee has made progress sufficient to warrant return to safety-sensitive functions, the SAP will provide written notice directly to the employer that explains the situation, any continuing care recommendations, and a follow-up testing plan. The SAP's report should be in letter format

with the SAP's own letterhead, signed and dated by the SAP, and should contain the following items:

1. Employee's name and social security number;
2. Employer's name and address;
3. Reason for the initial assessment (specific violation of DOT regulations and violation date);
4. Date(s) of initial assessment and synopsis of the treatment plan;
5. Name of the practice(s) or service(s) providing the recommended education and/or treatment;
6. Inclusive dates of the employee's program participation;
7. Clinical characterization of the employee's program participation;
8. SAP's clinical determination as to the whether the employee has demonstrated successful compliance;
9. Follow-up testing plan;
10. Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
11. SAP's telephone number.

If the SAP believes the employee needs additional treatment, aftercare, education, or support group services to assist an employee to maintain sobriety or abstinence from drug use after the employee returns to safety-sensitive duties, the SAP must provide recommendations for these services in the report. An employer may, as part of a return-to-duty agreement (or similar arrangement) with the employee, require the employee to participate in these recommended services. If the employee fails subsequently to do so, he or she may be subject to disciplinary action by the employer.

No Demonstration of Successful Compliance: Based upon clinical judgment that the employee has not demonstrated successful compliance with the treatment recommendation, the SAP will provide written notice directly to the employer that explains this situation. The SAP should first contact the employer to determine if the employer wants to authorize an additional follow-up evaluation and more time for the employee to make progress. The employer's decision should be consistent with the employee's prospects for progress and with the employer's policy and/or labor-management agreements. The SAP's report should be in letter format with the SAP's own letterhead, signed and dated by the SAP, and should contain the following items:

1. Employee's name and social security number;
2. Employer's name and address;
3. Reason for the initial assessment (specific violation of DOT regulations and violation date);
4. Date(s) of initial assessment and synopsis of the treatment plan;
5. Name of the practice(s) or service(s) providing the recommended education and/or treatment;
6. Inclusive dates of the employee's program participation;
7. Clinical characterization of the employee's program participation;
8. Date(s) of the first follow-up evaluation;
9. Date(s) of any further follow-up evaluation the SAP has scheduled;
10. SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
11. SAP's telephone number.

THE FOLLOW-UP TESTING PROCESS

Follow-up testing serves as more than an employer's additional assurance that an employee is performing safety-sensitive work in an alcohol-free and/or drug-free manner. It serves the recovering employee as an adjunct to the total and on-going rehabilitation effort. Despite the fact that treatment can be short term, the rehabilitation process for the recovering alcohol abuser and drug user usually requires long-term effort on the part of the employee. Because most relapses occur during the first 12 months following treatment, this effort can be enhanced in many ways during this first year (and thereafter) -- among these are the recovering employee's required participation in follow-up testing program as well as participation in aftercare programs and in self-help groups.

Therefore, the SAP must present the employer a plan for follow-up testing. The SAP can re-evaluate the plan at any time and terminate the plan following first year if all the required tests for the first year were completed. Testing should be spread throughout the year, unpredictable, and unannounced. An employee's follow-up testing program can last up to 60 months. Typically, the SAP will provide the employer with the recommended number of tests and the frequency of the tests: For example, 4 tests in the first 6 months and 2 in the final six months of the first year; twenty-four tests, once each month for 24 months). Employers are best suited to arrange for the tests to be conducted because they are aware of employee performance issues and schedule circumstances. This follow-up testing requirement is in addition to tests accomplished through the employer's DOT testing program. In other words, no other types of tests replace follow-up testing.

SECTION III: RELEASE OF INFORMATION

Imperative to SAP functioning is the ability to receive and communicate pertinent information regarding the employee's drug and alcohol test results and progress in the SAP return-to-duty process. Part 40 places no restrictions upon the SAP in communicating with Medical Review Officers, nor does it place restrictions on the SAP's communicating with education and/or treatment program personnel. In addition, Part 40 authorizes the SAP to provide written reports directly to the employer without obtaining a signed release from the employee.

Federal and State laws and rules, codes of ethical standards, and certification and licensing boards by which counselors are regulated, have supported the privileged client-counselor relationship. Exceptions to confidentiality primarily occur if the client poses a clear and imminent danger to self or others, if there is known or suspected child abuse or neglect, when medical records are court ordered by a judge compelling disclosure, or when the counselor seeks medical or legal consultation. In addition, the SAP is to make case records available, on request, to DOT agency representatives (e.g., inspectors conducting an audit or safety investigation) and representatives of the National Transportation Safety Board in an accident investigation.

Upon request, SAPs must also provide employees with employer reports, from which the SAP must redact follow-up testing requirements. SAPs may also provide these reports without employee consent to service agents (e.g., a consortia/third-party administrator (C/TPA)) responsible for maintaining records on behalf of the employer, but must not use the C/TPA as an intermediary in the transmission of the report to the employer.

SECTION IV: RECORD MAINTENANCE

SAPs need to maintain copies of reports to employers for 5 years, and employee clinical records in accordance with Federal, state, and local laws regarding record maintenance. All records should be maintained in limited access areas that permit no unauthorized entry.

SECTION V: QUESTIONS AND ANSWERS

1. Under the DOT rules, must a SAP be certified by DOT in order to perform SAP functions?

DOT does not certify, license, or approve individual SAPs. However, the SAP must be able to demonstrate to the employer qualifications necessary to meet DOT rule requirements. Part 40 states that the SAP must be a licensed physician (Doctor of Medicine or Osteopathy); or a licensed or certified social worker; or a licensed or certified psychologist; or a licensed or certified employee assistance professional; or an alcohol and drug abuse

counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC). Additionally, there are specific knowledge, training, examination, and continuing education requirements that SAPs must satisfy.

2. Will DOT add additional certified counselor groups to the SAP function the way they added NAADAC and ICRC counselors?

If a certification organization wants DOT to authorize its certified drug and alcohol counselors to be added to the list of those with appropriate credentials to become a SAP, the organization should petition DOT in writing. Before petitioning the Department, the organization must obtain National Commission for Certifying Agencies (NCCA) accreditation and meet the minimum requirements outlined at Appendix E of Part 40. The DOT will review the petition and supporting information before making a decision on whether or not to include those counselors in Part 40.

3. Must nationally recognized test and training groups who administer SAP evaluations have those examinations validated?

Because the Department places a premium on the return-to-duty process, we want to make sure that SAPs are trained and pass an examination that has validity. Therefore, SAP examinations must be validated by a test evaluation organization. Doing so guarantees that an objective outside expert believes that the test has validity. A poorly designed test or a less-than-deliberate exam is a hapless compliment to an effective training requirement; and a well-designed examination can serve to readily point out substandard training efforts. The validation process should include a discussion of test items, knowledge domains, and how effective the test items measure the domains. It should also include a psychometric review that offers an interpretation of the test and the value of how the items and questions are structured. Ultimately, the Department can be assured that SAPs passing the examination have done so because they learned the materials and not because the examination was seriously flawed.

4. Are employers required to refer a fired employee to a SAP?

The rules require an employer to provide the employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of qualified SAPs readily available to the employee. This list should include the names, addresses, and telephone numbers of SAPs. In the scenario where the employer fires the employee, that employer would be considered to be in compliance with the rules if they provide the list of at least two qualified SAPs. This employer has no further obligation (e.g., facilitate referral to the SAP; ensure that the employee receives a SAP evaluation; pay for the evaluation; or seek to obtain, or maintain the SAP reports) than to present the employee with the required resource list and ensure that SAPs on the list are qualified.

[If the employer makes use of a SAP network, the network must provide the employee with the appropriate list of SAPs. If the employer intends to have the employee return to duty (with that employer), the employer needs only to provide the employee with the specifics of the SAP who will conduct the evaluation.]

5. How will the SAP evaluation process differ if the employee is fired by the employer rather than retained following a rule violation?

After engaging in prohibited conduct and prior to performing safety-sensitive duties in any DOT regulated industry, the employee must receive a SAP evaluation. And, the employee must receive education and/or treatment, and demonstrate successful compliance before again performing DOT safety-sensitive duties.

The SAP process has the potential to be more complicated when the employer does not retain the employee. In such circumstances, the SAP will likely not have a connection with the employer for whom the employee worked nor have immediate access to the exact nature of the rule violation. The SAP may need to contact the former employer and the MRO to discuss the violation. In addition, the SAP may have to hold the employer reports until asked to forward that information to a gaining employer wishing to return the individual to safety-sensitive duties.

A gaining employer may determine to his or her own satisfaction (e.g., by having the prospective employee meet with the gaining employer's designated SAP; by having the gaining employer's SAP confer with the employee's SAP) that the prospective employee has demonstrated successful compliance with recommended treatment.

6. Can SAP evaluations be conducted telephonically or online?

SAP evaluations cannot be conducted telephonically or online. Both the initial and follow-up SAP evaluations are clinical processes that must be conducted face-to-face. Body language and appearance offer important physical cues vital to the evaluation process. Tremors, needle marks, dilated pupils, exaggerated movements, yellow eyes, glazed or bloodshot eyes, lack of eye contact, a physical slowdown or hyperactivity, appearance, posture, carriage, and ability to communicate in person are vital components that cannot be determined telephonically or online. In-person sessions carry with them the added advantage of the SAP's being able to provide immediate attention to individuals who may be a danger to themselves or others.

7. Do community lectures and self-help groups qualify as education and/or treatment?

Self-help groups and community lectures qualify as education but do not qualify as treatment. While self-help groups such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) are crucial to many employees' recovery processes, these efforts alone are not considered to be treatment programs. If an employee's clinical evaluation indicates a need for treatment, community lectures and self-help groups will not suffice. However, they can serve as vital adjuncts in support of treatment program efforts. Therefore, if a client is referred to one of these groups or to community lectures as a result of the SAP evaluation, the employee's attendance, when it can be independently validated, can satisfy a SAP recommendation for education.

8. Can an employee who has violated the rules return to safety-sensitive duty prior to completing the SAP return-to-duty process?

Employees (including applicants) who violate DOT drug and alcohol rules are prohibited from performing any DOT regulated safety-sensitive function until successfully completing the SAP return-to-duty process. An employer is prohibited from permitting the employee to engage in safety-sensitive duties until receiving the report indicating that the employee has demonstrated successful compliance with prescribed education and/or treatment. Then the employer must ensure that the employee takes a return-to-duty test. The employee must have a negative drug test and/or an alcohol test with an alcohol concentration of less than 0.02.

9. Is an employer obligated to return an employee to safety-sensitive duty following the SAP's finding during the follow-up evaluation that the employee has demonstrated successful compliance with the treatment recommendation?

The DOT rules do not obligate an employer to return the employee to a safety-sensitive job. Demonstrating successful compliance with prescribed education and/or treatment and testing negative on the return-to-duty drug test and/or below 0.02 on the return-to-duty alcohol test, are not guarantees of employment or of return to work in a safety-sensitive position. They are preconditions the employee must meet in order to be considered for hiring or reinstatement into safety-sensitive duties by an employer.

10. Can an employee receive the follow-up evaluation from a SAP who did not conduct the initial SAP evaluation?

Although it is strongly recommended that the same SAP be involved throughout the return-to-duty process, circumstances may arise that prevent this from happening. For instance, the initial SAP may no longer be in the area, still under contract to the employer, or still employed by the employer to conduct the service. Additionally, the employee may have moved from the area to a new location. In all cases, the employer responsibility is to ensure that both the initial SAP and the follow-up SAP are qualified to do the job.

11. What does Part 40 mean when it says that SAPs are to use their “own letterhead” when transmitting their reports directly to the employer?

“SAP’s own letterhead” (at 40.311) means the letterhead the SAP uses in her or his daily counseling practice. If the SAP is in private practice, the SAP should use the letterhead of her or his practice. If the SAP works directly for an EAP organization, the SAP should use the EAP’s letterhead. If the SAP works directly for a community mental health service, the SAP should use the service’s letterhead. What the DOT wants to avoid is a SAP network provider requiring the SAP to use the provider’s letterhead rather than that of the SAP. The DOT also wants to avoid another service agent that contracts the SAP’s services to require the contracted SAP to use the service agent’s letterhead. There should be no appearance that anyone changed the SAP’s recommendations or that the SAP’s report failed to go directly from the SAP to the employer. In addition, DOT wants to ensure that an employer and DOT agency representatives can readily contact the SAP at the address listed on the letterhead.

12. Who is responsible for reimbursing the SAP for services rendered?

Payment for SAP evaluations and services is left for employers and employees to decide and may be governed by existing labor-management agreements and health care benefits.

13. Can the SAP direct that an employee be tested for both alcohol and drugs for the return-to-duty test and during the follow-up testing program?

If the SAP determines that an employee referred for alcohol misuse also uses drugs, or that an employee referred for drug use also misuses alcohol, the SAP can require that the individual be tested for both substances. The SAP's decision to test for both can be based upon information gathered during the initial evaluation, the SAP's consultation contacts with the treatment program, and/or the information presented during the follow-up evaluation.

14. Can random testing be substituted for required follow-up testing?

Follow-up testing is directly related to a rule violation and subsequent return to safety-sensitive duty. Random tests are independent of rule violations. Therefore, the two test types are to be separated -- one cannot be substituted for the other or be conducted in lieu of the other. Follow-up testing should be unpredictable, unannounced, and conducted not less than six times throughout the first 12 months after the employee returns to safety-sensitive functions. Follow-up testing can last up to 60 months. An employee subject to follow-up testing will continue to be subject to an employer's random testing program. It is important to note that a follow-up test that is cancelled is not a completed test: A cancelled follow-up test must be recollected.

15. If a company has several employees in follow-up testing, can those employees be placed into a follow-up random testing pool and selected for follow-up testing on a random basis?

Follow-up testing is not to be conducted in a randomized way. An employee's follow-up testing program is to be individualized and designed to ensure that the employee is tested the appropriate number of times as directed by the SAP. Random testing is neither individualized nor can it ensure that the employee receives the requisite number of tests.

16. Who is responsible for paying for follow-up testing recommended by the SAP?

The DOT rules do not affix responsibility for payment for follow-up testing upon any single party. The Department has left discussions regarding payment to employer policies and to labor-management agreements. Therefore, in some instances, this issue has become part of labor-management negotiations. However, in making the decision to return the employee to safety-sensitive duty, the employer is, in essence, determining that costs associated with hiring and training a new employee exceeds costs associated with conducting follow-up testing of the returning employee. In any case, whether the employer pays or the employee pays, if the employee returns to performance safety-sensitive functions, the employer must ensure that follow-up testing occurs as required. The employer will be held accountable if the follow-up testing plan is not followed.

17. Can a SAP recommend that six follow-up tests be conducted in less than twelve months and then suspend testing after all six are conducted?

Follow-up testing must be conducted a minimum of six times during the first twelve months following the employee's return to safety sensitive functions. The intent of this requirement is that testing be spread throughout the 12-month period and not be grouped into a shorter interval. When the SAP believes that the employee needs to be tested more frequently during the first few months after returning to duty, the SAP may recommend more than the minimum six tests or can direct the employer to conduct more of the six tests during the first months rather than toward the latter months of the year. In any case, the follow-up testing is to last at least one year.

18. With respect to follow-up testing, what happens if the employee changes employers without first completing the follow-up testing plan?

It is also important to note that the requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service. Part 40 provides examples.

19. What actions are to occur if an employee tests positive or refuses a test while in the follow-up testing program?

Employees testing positive or refusing a test while in a follow-up testing program are subject to specific DOT operating administration rules regarding rule violations. In addition, the employees are subject to employer policies related to second violations of DOT rules. At a minimum, the employee must be removed immediately from safety-sensitive duties and must go through the entire SAP process again before returning to safety-sensitive duties.

20. Can the employer monitor a SAP's recommendations for continuing services the employee needs even after the employee returns to safety-sensitive duties?

If the SAP believes the employee needs additional treatment, aftercare, education, or support group services to assist an employee to maintain sobriety or abstinence from drug use after the employee returns to safety-sensitive duties, the SAP must provide recommendations for these services in your report. An employer may, as part of a return-to-duty agreement with the employee, require the employee to participate in these recommended services. The employer may make use of SAP and employee assistance program services in assisting and monitoring the employee's compliance with these SAP recommendations. If the employee fails subsequently to comply, he or she may be subject to disciplinary action by the employer.

21. What are the specific regulations governing employers' implementation of the DOT drug and alcohol testing rules and what are some specific rule differences of which SAPs should be aware?

The FMCSA regulation is 49 CFR Part 382.

The FRA regulation is 49 CFR Part 219.

The FAA regulation is 14 CFR Part 121.

The FTA regulation is 49 CFR Part 655.

The USCG regulation is 46 CFR Parts 4, 5, and 16.

The RSPA regulation is 49 CFR Part 199.

Drug and alcohol testing (including SAP) procedures are 49 CFR Part 40.

22. What are some specific important rule requirements of DOT's Operating Administrations?

See the following pages.

Federal Motor Carrier Safety Administration (FMCSA)

Covered employee: A person who *operates (i.e., drives)* a Commercial Motor Vehicle (CMV) weighing 26,001 pounds or greater, or is designed to transport 16 or more occupants (to include the driver); or is of any size and is used in the transport of hazardous materials that require the vehicle to be placarded.

Types of tests for drugs: Pre-employment, random, reasonable suspicion, post-accident, return-to-duty, and follow-up.

Types of tests for alcohol: Pre-employment (optional), random, reasonable suspicion, post-accident, return-to-duty, and follow-up.

Definition of accident requiring testing: Any accident involving a fatality requires testing. Testing is also required in accidents in which a vehicle is towed from the scene or in which someone is treated medically away from the scene; *and* a citation is issued to the CMV driver.

Reasonable-suspicion determination: One trained supervisor or company official can make the decision based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.

Pre-duty alcohol use prohibitions: Four (4) hours prior to performance of duty.

Actions for BACs 0.02 – 0.039: The employee cannot be returned to duty until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following the test.

Employee training: Employer must provide educational materials explaining drug and alcohol regulatory requirements and employer's policies and procedures for meeting regulation requirements. Distribution to each employee of these educational materials and the employer's policy regarding the use of drugs and alcohol is mandatory.

Supervisor training: One-hour training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. One-hour training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable alcohol use.

Reportable employee drug and alcohol violations: No requirements to report violations to FMCSA.

Other: Drivers are prohibited from using alcohol for eight hours following an accident (as described above) or until they have undergone a post-accident alcohol test, whichever occurs first.

Federal Railroad Administration (FRA)

Covered employee: A person who performs *hours of service* functions at a rate sufficient to be placed into the railroad's random testing program. Categories of personnel who normally perform these functions are *engineers, conductors, signalmen, operators, dispatchers, and switchmen*.

Types of tests for drugs: Pre-employment, random, reasonable suspicion, reasonable cause, post-accident, return-to-duty, and follow-up.

Types of tests for alcohol: Pre-employment (optional), random, reasonable suspicion, reasonable cause, post-accident, return-to-duty, and follow-up.

Definition of accident requiring testing: FRA's post-accident testing rule goes well beyond normal Part 40 procedures (i.e., urine and blood from surviving employees and also tissue from deceased employees is collected). FRA regulation 49 CFR Part 219 Subpart C, stipulates the level of events requiring testing and who has to be tested. This testing, at FRA's contract laboratory, provides FRA with accident investigation and usage data.

Reasonable-suspicion determination: One trained supervisor can make the decision for alcohol testing based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. A decision to conduct a drug test requires two supervisors (only the on-site supervisor must be trained).

Reasonable-cause determination: Employers are authorized to use federal authority to test covered employees after specific operating rule violations and/or accidents which meet the criteria in 49 CFR Part 219 Subpart D.

Pre-duty alcohol use prohibitions: Four (4) hours prior to performance of duty.

Actions for BACs 0.02 – 0.039: The employee cannot be returned to duty until the start of the employee's next regularly scheduled duty period, but not less than 8 hours following the test.

Employee training: Employer must provide education materials that explain the requirements of the FRA rules as well as the railroad's policies and procedures with respect to meeting these requirements.

Supervisor training: One-hour of training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use and a second hour is required concerning alcohol use. A component of this training is that identification of these indicators requires a reasonable suspicion test. Additionally, one-hour of training is required covering post-accident determinations.

FRA (continued)

Reportable employee drug and alcohol violations: No requirements to report violations to FRA. Engineers, who are the only certificate holders in the rail industry, will have their certificates reviewed for suspension or revocation by the employer when a violation occurs.

Other:

Anyone with direct or immediate supervisory authority over an employee may not collect that person's urine, saliva, or breath.

Employers must provide a ***voluntary referral program*** which addresses an employee's substance abuse rehabilitation needs prior to a violation occurring and a ***co-worker report program*** which addresses violations identified by co-workers but before employers identify them. Both of these ***self-help programs*** guarantee that employees will retain their jobs if they cooperate and complete the required rehabilitation program. For an engineer who is in a voluntary referral program, the counseling professional must report the engineer's refusal to cooperate in the recommended course of counseling or treatment to the employer.

Federal Aviation Administration
(FAA)

Covered employee: A person who performs *flight crewmember duties, flight attendant duties, flight instruction duties, aircraft dispatch duties, aircraft maintenance or preventive maintenance duties; ground security coordinator duties; aviation screening duties; and air traffic control duties*. Note: Anyone who performs the above duties directly or by contract for part 121 or 135 certificate holders, *sightseeing operations* as defined in 135.1(c), and *air traffic control* facilities not operated by the Government are considered covered employees.

Types of tests for drugs: Pre-employment, random, reasonable cause, post-accident, return to duty, and follow-up. Periodic testing for Part 67 medical certificate holders.

Types of tests for alcohol: Pre-employment (optional), random, reasonable suspicion, post-accident, return to duty, and follow-up.

Definition of accident requiring testing: Accident means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage. Testing must occur if employee's performance either contributed to the accident or cannot be completely discounted as a contributing factor of the accident. The decision not to test an employee must be based on a determination, using the best information available at the time of the determination, that the employee's performance could not have contributed to the accident.

Reasonable cause determination (drugs): Two of the employee's supervisors, one of whom is trained, shall substantiate and concur in the decision to test the employee. If the employer has 50 or fewer employees, a single trained supervisor can make the determination.

Reasonable suspicion determination (alcohol): A trained supervisor shall make the determination based upon specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body orders.

Pre-duty alcohol use prohibitions: Eight (8) hours prior to performance of flight crewmember duties, flight attendant duties, and air traffic controller duties. Four (4) hours prior to performance of other duties.

Actions for BACs 0.02 - 0.039: If the employer chooses to return the employee to covered services within 8 hours, the BAC retest must be below 0.02.

Employee training (drugs): An employer must train all employees who perform safety-sensitive duties on the effects and consequences of prohibited drug use on personal health, safety, and work environment, and on the manifestations and behavioral cues that

FAA (continued)

may indicate drug use and abuse. Employers must also implement an education program for safety-sensitive employees by displaying and distributing informational materials, a community service hot-line telephone number for employee assistance and the employer's policy regarding drug use in the work place which must include information regarding the consequences under the rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug test result, or refusing to submit to a drug test required under the rule.

Employee training (alcohol): No training required. Employers must provide covered employees with educational materials that explain the alcohol misuse requirements and the employer's policies and procedures with respect to meeting those requirements. The information must be distributed to each covered employees and must include such information as the effects of alcohol misuse on an individual's health work, personal life, signs and symptoms of an alcohol problem; and the consequences for covered employees found to have violated the regulatory prohibitions.

Supervisor training (drugs): One-hour training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. In addition, supervisors must receive employee training as defined above. Reasonable recurrent training is also required.

Supervisor training (alcohol): One-hour training is required on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Reportable employee drug and alcohol violations:

Each employer must notify the FAA of any employee who holds a certificate issued under 14 CFR Parts 61 (pilots and flight and ground instructors), 63 (flight engineers and navigators), or 65 (air traffic control tower operators, aircraft dispatchers, airframe or power plant mechanics, and repairmen) who has refused to take a drug or alcohol test.

Medical Review Officers must notify the FAA of any employee or applicant who is required to hold a medical certificate issued under 14 CFR Part 67 and has a positive drug test result. An employer cannot permit an employee who is required to hold a medical certificate under part 67 to perform a safety-sensitive function to resume that duty until the employee has received a medical certificate or a special issuance certificate issued by the FAA Federal Air Surgeon *and* the employer has ensured that the employee meets the return to duty requirements in accordance with Part 40. [Medical certificates are not operating certificates but employees cannot continue to perform airman duties without a medical certificate or a special issuance medical certificate.]

Employers must notify the FAA Federal Air Surgeon of any safety-sensitive employee who is required to hold an airman medical certificate issued under 14 CFR Part 67 and

FAA (continued)

has any alcohol violation. An employer cannot permit an employee who is required to hold a medical certificate under part 67 to perform a safety-sensitive function to resume that duty until the employee has received a medical certificate or a special issuance certificate issued by the FAA Federal Air Surgeon **and** the employer has ensured that the employee meets the return to duty requirements in accordance with Part 40.

Federal Transit Administration
(FTA)

Covered employee: A person who performs a *revenue vehicle operation; revenue vehicle and equipment maintenance; revenue vehicle control or dispatch; Commercial Drivers License non-revenue vehicle operation; or armed security duties.*

Types of tests for drugs: Pre-employment, random, reasonable suspicion, post-accident, return-to-duty, and follow-up.

Types of tests for alcohol: Pre-employment (optional), random, reasonable suspicion, post-accident, return-to-duty, and follow-up.

Definition of accident requiring testing: Any accident involving a fatality requires testing. Testing following a non-fatal accident is discretionary: If the employer can show the employee's performance could not have contributed to the accident, no test is needed.

Reasonable-suspicion determination: One trained supervisor can make the decision based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.

Pre-duty alcohol use prohibitions: Four (4) hours prior to performance of duty.

Actions for BACs 0.02 – 0.039: If the employer chooses to return the employee to covered service within 8 hours, the BAC retest must be below 0.02.

Employee training: Employer must provide education with display and distribution of informational materials and a community service hot-line telephone number, if available. One-hour of training on the effects and consequence of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use. Distribution to each employee of the employer's policy regarding the use of drugs and alcohol is mandatory.

Supervisor training: One-hour training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. One-hour training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable alcohol use.

Reportable employee drug and alcohol violations: No requirements to report violations to FTA.

Other: **Anyone with direct or immediate supervisory authority over an employee may not collect that person's urine, saliva, or breath.**

United States Coast Guard (USCG)

Covered employee: A person who is *on board a vessel* acting under the authority of a *license, certificate of registry, or merchant mariner's document*. Also, a person *engaged or employed on board a U.S. owned vessel* and such vessel is required to engage, employ or be operated by a person holding a license, certificate of registry, or merchant mariner's document.

Types of tests for drugs: Pre-employment, periodic, random, reasonable cause, and post-serious marine incident (SMI), return-to-duty, and follow-up.

Types of tests for alcohol: 49 CFR Part 40 alcohol-testing requirements do not apply to the Maritime Industry. 46 CFR Part 4.06 requires post-SMI chemical testing for alcohol use. 33 CFR Part 95.035 allows for a marine employer or a law enforcement officer to direct an individual to undergo a chemical test for intoxicants when reasonable cause exists or an accident has occurred.

Definition of incident requiring testing: An SMI is defined in 46 CFR 4.03-2. In general, an SMI is: A discharge of 10,000 gallons or more of oil into the navigable waters of the United States, whether or not resulting from a marine casualty; a discharge of a reportable quantity of a hazardous substance into the navigable waters or into the environment of the United States, whether or not resulting from a marine casualty; or a marine casualty or accident required to be reported to the Coast Guard, involving a vessel in commercial service, and resulting in any of the following: One or more deaths; an injury to any person (including passengers) which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a commercial vessel, which renders the person unable to perform routine vessel duties; damage to property in excess of \$100,000; actual or constructive total loss of any inspected vessel; or actual or constructive total loss of any uninspected, self-propelled vessel of 100 gross tons or more.

Reasonable-cause determination (drugs): The marine employer must have a reasonable and articulable belief that the individual has used a dangerous drug. This belief should be based on the direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use and where practicable based on the observation of two persons in supervisory positions.

Reasonable-cause determination (alcohol): The employee was directly involved in the occurrence of a marine casualty or the individual operated a vessel and the effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.

Pre-duty alcohol use prohibitions: Four (4) hours prior to performance of scheduled duty.

USCG (continued)

Employee training: Employer must provide education with display and distribution of informational materials and a community service hot-line telephone number. Distribution to each employee of the employer's policy regarding the use of drugs and alcohol is mandatory. Training must include the effects of drugs and alcohol on personal health, safety, and work environment; and manifestations and behavioral cues that may indicate drug and alcohol use and abuse.

Supervisor training: One-hour training is required on the effects of drugs and alcohol on personal health, safety, and work environment; and manifestations and behavioral cues that may indicate drug and alcohol use and abuse.

Reportable employee drug and alcohol violations: Results of all post-SMI tests and positive drug test results for all mariners who hold a license, certificate of registry or merchant mariner's document must be reported to the nearest Coast Guard Officer in Charge, Marine Inspection.

Research and Special Programs Administration (RSPA)

Covered employee: A person who performs on a pipeline or liquefied natural gas (LNG) facility an *operation, maintenance, or emergency-response* function.

Types of tests for drugs: Pre-employment, random, reasonable cause, post-accident, return-to-duty, and follow-up.

Types of tests for alcohol: Post-accident, reasonable suspicion, return-to-duty, and follow-up.

Definition of *accident requiring testing*: An accident is one involving gas pipeline facilities or LNG facilities or involving hazardous liquid or carbon dioxide pipeline facilities.

Reasonable-suspicion determination: One trained supervisor can make the decision based upon signs and symptoms.

Reasonable-cause determination: One trained supervisor can make the decision based upon reasonable and articulable belief that the employee is using prohibited drugs on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use.

Pre-duty alcohol use prohibitions: Four (4) hours prior to performance of duty.

Actions for BACs 0.02 – 0.039: If the employer chooses to return the employee to covered service within 8 hours, the BAC retest must be below 0.02.

Employee training (Drugs): Employer must provide EAP education with display and distribution of informational materials; display and distribution of a community service hot-line telephone number; and display and distribution of the employer's policy regarding the use of prohibited drugs.

Employee Training (Alcohol): Employer must develop materials that explain policies and procedures (as well as names of those who can answer questions about the program) and distribute them to each covered employee.

Supervisor training: One-hour training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. One-hour training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable alcohol use.

Reportable employee drug and alcohol violations: No requirements to report violations to RSPA.