

## Urine Alcohol Testing—A Treacherous Path for Employers?

**E**thylglucuronide and Ethylsulfate, or EtG/EtS urine alcohol testing can be a treacherous path to embark upon when used for employment purposes. EtG/EtS testing of urine is more commonly used for alcohol addiction treatment or judicial and probative requirements. The use of urine alcohol testing in treatment or probationary scenarios can be a viable marker of recent past usage. In many cases, the simple threat of testing and/or judicial consequences may act as a deterrent from alcohol use.

However, in the employment arena, urine alcohol testing can be most problematic as a number of factors come into play. Is the donor in the consumption phase or the elimination phase? Is the detected alcohol a result of a diabetic or medical condition? Are there environmental or legal use issues to be contemplated?

Lets look at an example: Bob's Tool & Die has enacted a zero-tolerance alcohol policy, and has an employee (we'll call him Tom) whose position with the company does not fall within federal regulatory guidance. Tom is a long-term, trusted and valued employee, and has had no recorded issues that are of concern or warrant the call to action of reasonable suspicion testing. Tom puts in his full shift on a given Monday, and then is off-duty from 4pm on that Monday until 8am on Tuesday. He's an adult of legal drinking age, and has been invited by his friends to watch a professional sporting event on big screen TV at their favorite watering hole. So, Tom agrees to attend, and proceeds to have burgers, nachos, pretzels and also four or five beers (or adult beverages) in a 5-hour span, and then is home and in bed by 11 pm. On Tuesday morning he is up and on his way to work before 8am. Tom is called to submit to a urine alcohol test at 8:10am.

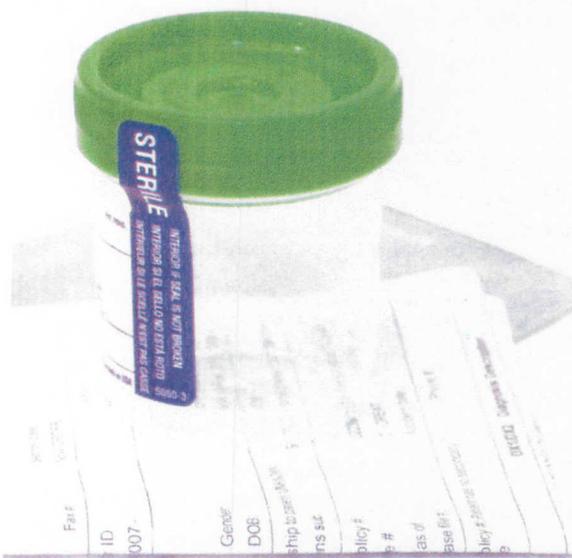
Questions: Is Tom under the influence of alcohol (if all the facts listed are true)? The answer is likely no. Will Tom test positive (.02 or greater) using the federal testing

methods and protocols? Again, the answer is likely no. Will a urine sample provided by Tom result in a positive result under EtG/EtS urine testing? The answer is most likely yes. Now that you have a positive test result based on the urine EtG/EtS testing protocol, what action do you take? Take a deep breath. Calm yourself in thought, and then ask yourself "Why did we do this"? Is this positive test result the outcome your policy and testing protocol intended for? Did we just invite undue hardship upon our employee, and what legal defense must we now undertake?

An EtG/EtS urine test may detect alcohol in the body for up to 80 hours after the last drink has been metabolized (not just consumed!). It should also be noted that a number of environmental factors and innocuous consumption activities can come into play, many of which may adversely affect detection and test results including; the exposure in an enclosed room to the vapors from commercial and private use alcohol-based products like varnishes or paints and cleaning products, the use of alcohol-based hand sanitizers that are readily available to the public. Do you provide alcohol-based hand sanitizer products for your employees use?

Although not recommend for use of urine alcohol testing as a stand-alone process for employment purposes, the use of EtG/EtS testing is seen as a viable method for abstinence programs. When used, the test results should be reviewed by a professional specifically trained in this format, and the test results should be used in combination with other forms of comprehensive patient/participant history to support the final actions to be taken. In all cases, specific protocols for the testing and the clinical review of lab results are highly recommended.

It should be noted that workplace programs under federal regulatory guidance (i.e. DOT-FMCSA) allow testing for alcohol usage to be performed only by breath or saliva sampling. Breath testing provides an



immediate indicator of present usage through a measurement of the amount of alcohol in the participant's blood at the time of the test. The DOT rules allow for screening tests to be conducted using saliva devices or breath testing using evidential breath testing (EBT) and non-evidential breath testing devices approved by the National Highway Traffic Safety Administration (NHTSA). NHTSA periodically publishes a list of approved devices in the Federal Register. Breath alcohol tests estimate the blood alcohol concentration by measuring the amount of alcohol in a deep-lung breath sample. This type of testing has scientific correlation to blood alcohol levels. Other forms of sample collection may be used for alcohol testing in accordance with DOT regulations—refer to the governing modality for further guidance.

Many types of breath alcohol tests exist using different technologies. Breath alcohol tests are non-invasive, easy to use and inexpensive, making this the most common type of alcohol testing in use. Some states have unique limitations that guide alcohol testing (for non-federal mandated testing) in the workplace, such as the use of blood sampling.

If you are a Third Party Administrator, Consortium, or other entity that is in the business of providing consulting, collector services, lab-based testing services, or engaged in any supportive agreement for workplace testing with your clients; it should become a high-level priority to become versed in all aspects of testing available to you and your customers. Failure to provide guidance to your clients may land you in court defending your practices.

Prior to implementation of any employee drug or alcohol testing program, we encourage you to seek legal counsel, adopt a written plan that outlines the prohibitions you wish to adopt, and the subsequent consequences for failure to abide. ■

Jamie has been involved in the D&A industry for 10 years, with current responsibilities including oversight of company compliance, insurance and legal affairs, MROA protocols and is a certified trainer for Breath Alcohol Technicians and Certified Professional Collectors. He was educated at Northwest Technical College in Credit and Finance Management, and has over 25 years previous experience in banking operations, insurance risk management, sales and customer service.