

## Standard Operating Guidelines

### Employee Substance Abuse

Guideline # 150.05

Date: 6/09 N

**EDUCATION:** The Board shall implement and use an education program, which addresses substance abuse related issues. The educational program shall be scheduled at sufficient intervals to ensure that not only are the goals of the negotiated policy met, but that all Union members become familiar with the issues, problems and current trends of thought concerning contemporary substance abuse.

**STANDARD FOR TESTING:** The District Chief based upon individualized and particular suspicion may require that a Union member submit to substance screening by urinalysis, which shall be administered by a competent testing laboratory. Such testing laboratory is to be a member of the National Institute for Drug Abuse. "Individualized and particular suspicion" is a belief based upon objective and identifiable facts sufficient to lead a prudent member to suspect that an employee is using, in possession or control of, or is under the influence of drugs or alcohol while on duty; and such conclusion cannot be imputed to any employee merely because of his/her association with another employee who is believed to be in use, possession or control of or the under the influence of drugs or alcohol while on duty. Examples include, but are not limited to the following:

1. Direct observation of drug/alcohol use while on duty;
2. Members found to be in possession of alcohol/drugs while on duty;
3. Spontaneously unusual, abnormal, erratic, or unacceptable behavior, or behavior which otherwise indicates that the member is under the influence of an intoxicating substance (e.g., the presence of bloodshot eyes, glassy eyes, slurred speech, lack of coordination, or other indications of intoxication or substance abuse);
4. Documented pattern of unusual, erratic or unacceptable behavior;
5. A major on-duty accident with or without injuries; and
6. Reporting for work unfit for duty.

**RANDOM DRUG TESTING:** The Board shall not administer random drug and/or alcohol testing, which term is defined as compulsory testing prompted for reasons other than individualized and particular suspicion discussed above, except in the following instances:

1. A drug/alcohol test shall be conducted as a component of pre-employment physical. The presence of illegal drugs shall constitute a basis for the applicant to be bypassed.

**MASS DRUG TESTING:** The Board shall not administer mass drug and/or alcohol testing, which term is defined as compulsory testing of all Union members without affording the Labor Union Associations forty five (45) days advance notice which shall be in writing effective the date received by the Labor Union Associations. Such testing must be administered in context with the annual comprehensive physical examinations given to all Union members.

## **PROCEDURE:**

**GENERAL PROVISIONS.** It is the overall responsibility of the District Chief to see that all Company Officers and Firefighters are fit for duty. If at any time the District Chief or Company Officer develop an individualized and particular suspicion that someone in their command is under the influence of drugs and/or alcohol, he/she shall:

- A. Temporarily relieve (with pay) the suspected Union member of all duties pending the outcome of further investigation
- B. Immediately contact another Officer preferably the next higher rank and inform him/her of his/her action and suspicions. That rank shall respond to the location of the suspected Union member and begin his/her own evaluation.
- C. If at the end of the second evaluation it is determined that an individualized and particular suspicion exists, or if either Officer is not in agreement with the other, the District Chief shall be notified and he shall continue the investigation. The District Chief and the highest rank Officer must agree that an individualized and particular suspicion exists in order for a Union Member to be tested.
- D. The District Chief, or his designee in his absence, and a Union Representative shall be notified prior to any testing of the suspected Union member. If he cannot be reached, the authority rests with the highest rank Officer in Charge.
- E. After all steps outlined above have been satisfied, the suspected Union member shall be transported to the Board's healthcare provider (Centra State Hospital) for testing.
- F. The Union member shall be relieved from duty (with pay) for the remainder of the workday. He/she shall call someone to come pick him/her up at the conclusion of the test.
- G. If a Union member tests positive he/she shall not be paid for the workday.
- H. The District Chief and/or highest ranking Company Officer involved in the decision making process aforesaid, whether they concurred or dissented from the conclusion that a Union member exhibited individualized and particular suspicion warranting drug and/or alcohol testing, shall write the specific facts, observed symptoms, and/or other basis which prompted their respective conclusions.
- I. If the results of the test are negative, no record of this incident shall be made part of the Union members file or used as evidence of a prior incident, if that Union member tests positive at a later date. The same applies if two Officers cannot agree that an individualized and particular suspicion exists and no test is given.

**EMPLOYEE ASSISTANCE PROGRAM.** The Board, working in cooperation with the Union Associations FMBA & IAFF, shall maintain an Employee Assistance Program (hereinafter "E.A.P."), which is for the benefit of all Union members. Voluntary participation, which is participation because a Union member believes he/she may benefit by attending programs of the E.A.P., is confidential and is at the option of the employee. The District Chief shall act as a liaison for the Department personnel in conjunction with the E.A.P.

**POSITIVE TEST RESULTS:** The following defines the procedure and consequences to be followed by the Board when particular suspicion is concluded warranting drug and/or alcohol testing.

- A. Testing Procedure at Board's Healthcare Provider. The Union member, having met the conditions of individualized and particular suspicion, shall be transported to the Board's healthcare provider for testing. There, someone from the medical staff shall direct the Union member in providing a urine sample, and this staff representative shall be responsible for insuring chain of custody involving the provided sample. A Union member may, and should see that a second sample is given and stored in case he/she wishes to appeal the finding the first test. A screening test shall be conducted to determine the presence of drugs and/or alcohol.

If such test is positive, a confirmation test shall be performed to identify the exact test results. The Union member may, at his/her own expense, request the second sample be sent to an independent laboratory for testing. The results of that test shall be his/her basis for appealing the results of the first test. The Union member shall have complete and sole discretion as to the selection of the second/independent laboratory provided, however, same is a member of the National Institute for Drug Abuse. The result of the employee's second/independent test shall be provided to both the employee and the Department. No unconfirmed positive tests, or records pertaining to same, shall be released or retained by the laboratory.

- B. Consequence of Positive Test Results. Should the test results prove positive, the Union member shall attend a Board approved in-patient drug rehabilitation program. Should the Union member successfully complete the in-patient rehabilitative program offered, he/she shall be returned to full duty and regular assignment. The Union member shall, however be referred to the E.A.P. coordinator, for a period not exceeding one (1) year, and comply with such directives as may reasonably be prescribed by the E.A.P. coordinator.

If after successfully completing an in-patient rehabilitative program and the Union member again tests positive at a later date for drugs or alcohol, he/she shall face disciplinary action that may eventually lead to termination as outlined in Chapter 2 of the NJ Civil Service Administrative Code Title 4A. The Union member shall be afforded grievance appeal as outlined in NJ Administrative Code 4A.

**REHABILITATIVE ABSENCE.** Union members who shall benefit from treatment on an in-patient basis in a rehabilitative substance abuse program shall be entitled to be carried as sick without loss of pay for a maximum of one hundred twenty days, provided the Union members agrees to and signs the substance abuse agreement, and provided the Union members has 120 days sick time.

**ALCOHOL TESTING.** A breathalyzer or similar testing equipment shall be used to screen for alcohol use and if positive, shall be confirmed by a blood alcohol test performed by the laboratory. This screening test shall be performed by an individual qualified through and utilizing equipment certified by the New Jersey State Police. An initial positive alcohol level shall be .10 grams per 210 L. of breath. If initial testing results are negative, testing shall be discontinued, all samples destroyed, and records of the testing expunged from the employee's file. Only specimens identified as positive on the initial test shall be confirmed using blood alcohol level. The same sampling procedures as utilized in motor vehicle testing shall be followed. A positive blood alcohol level shall be .10 grams per 100 ml of blood. If confirmatory testing results are negative, all samples shall be destroyed and records of the testing expunged from the employee's file.

**DRUG TESTING.** The laboratory shall test for only the substances and within the limits for the initial and confirmation tests as provided within the limits for the initial and confirmation tests as provided within standards established by the National Institute of Drug Abuse. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cut-off level shall be used when screening specimens to determine whether they are negative for these five (5) drugs or classes of drugs:

- Marijuana Metabolites 100 mg/ml
- Cocaine Metabolites 300 mg/ml
- Opiate Metabolites 300 mg/ml[1]
- Phencyclidine 25 mg/ml
- Amphetamines 1000 mg/ml

If initial testing results are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the Union members file. Only specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/M.S.) techniques at the following listed cut-off values.

- 1 Marijuana Metabolites[2] 150 mg/ml
- 2 Cocaine Metabolites[3] 300 mg/ml
- 3 Opiate
- 4 Morphine 300 mg/ml
- 5 Codeine 300 mg/ml
- 6 Phencyclidine 25 mg/ml
- 7 Amphetamines
- 8 Amphetamine 500 mg/ml
- 9 Methamphetamine 500 mg/ml

If confirmatory testing results are negative, all samples shall be destroyed and records of the testing expunged from the employee's file.

[1] If immunoassay is specific for free morphine, the initial true level is 25 mg/ml.

[2] Delta – 9 Tetrahydrocannabinol – carboxylic acid.

[3] Benzoyl ecgonine.

**TESTING PROGRAM COSTS.** The Board shall pay for all costs involving drug and alcohol testing. The Board shall also reimburse each Union members for his or her time and expenses, including travel, incurred involved in the testing procedure. The Department shall provide transportation to and from the testing procedure.

**EFFECTIVE DATE AND APPLICATION OF AGREEMENT.** The procedures and understandings incorporated within the contractual agreement shall become effective immediately upon acceptance by the Board and Union Associations FMBA & IAFF as memorialized by the parties affixing their signatures.

- A. Additional Provisions. The Board shall not implement any procedures, other than referenced herein, involving alcohol and/or drug testing, or the consequences thereof, except with the negotiated agreement of the Union Association FMBA & IAFF. Any Department rules/regulations implemented in accord with and/or expoundment upon this contractual Agreement shall be submitted to the Union Associations FMBA & IAFF for collaboration and approval prior to enforcement.
- B. Right of Appeal. The Union members have the right to challenge the results of the drug and/or alcohol tests, and any discipline imposed, in the same manner that any other employee action under the terms of the Agreement is appealable.
- C. Association Held Harmless. The Board assumes sole responsibility for the administration of this policy and shall be solely liable for any legal obligations and costs arising out of the provisions and/or application of this contractual Agreement relating to drug and alcohol testing.
- D. Changes in Testing Procedures. The parties recognize that during the life of this contractual Agreement, there may be improvements in the technology of testing procedures, which shall provide for more accurate testing. In that event, the parties shall bargain, in good faith, whether to amend this procedure to include such improvements, if the parties are unable to agree on the amendments, they shall be submitted to impasse procedures as outlined in the Grievance Procedure of the Agreement.
- E. Conflict With Other Laws. This Agreement is in no way intended to supersede or waive any constitutional or statutory rights that the employee may be entitled to as developed and/or recognized by Federal Courts, State Courts or Administrative agencies.

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Approved:

District Chief:

Date:

Board :

IAFF:

Date:

Date:

FMBA:

Date:

## Last Chance Agreement

The following agreement is a commitment to the conditions of employment between the Jackson Board of Fire Commissioners and \_\_\_\_\_ (employee name).

I, \_\_\_\_\_ (employee name) understand that as a result of my violation of the Substance Abuse Policy, I have been formally informed by the Board that my employment as of this date \_\_\_\_\_ is conditional regarding my compliance with the conditions enumerated below.

I agree to:

1. An evaluation by a Substance Abuse Professional (SAP), that has been approved by the Board; and
2. Enroll in a rehabilitation program that has been approved by the Board and the SAP, for professional treatment regarding my substance abuse problem; and
4. Request to be reinstated for duty by the Board only after presenting a “recommendation” for a return to duty “signed by my treatment counselor; and
5. Follow the treatment prescribed by my treatment counselor to its conclusion; and
6. Agree to sign a release of information statement to allow my treatment provider to report to the Board any lapse or missed treatment sessions.

Failure to comply with these conditions or subsequent positive test results, a refusal to test, or an adulterated test result may be just cause for my immediate termination as per NJ Civil Service Administrative Code 4A.

To be read to employee by District Chief: by signing below you are indicating that you understand this agreement. If you do not understand this agreement, I will be glad to explain it to you now. If you understand and agree to the conditions of this Last Chance Agreement and commit to comply with these conditions, and you understand that any violation of the above conditions, please indicate such by signing your name, and today’s date, below.

Employee Signature	Date	
District Chief Signature	Date	
Witness Signature	Date	