

**Office of Drug Enforcement and Program Compliance  
49 CFR Part 40 Interpretation**

**Question:** May a laboratory provide "one-stop shopping" to an employer by including the services of a medical review officer (MRO) or a list of MROs (which the laboratory does not employ) from which the employer or client could select a specific MRO?

**Response:** Section 40.29(n)(6) states "*The laboratory shall not enter into any relationship with an employer's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having an employer use a specific MRO*".

Substantially similar language appears in the June 9, 1994 revision of the Department of Health and Human Services (DHHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29908, 29923).

Under current DOT interpretation of the rule, a laboratory would be prohibited from supplying a limited list of MROs from which the employer would select individuals that would provide MRO services. In this circumstance, there is a clear financial advantage to the MROs who appear on the laboratory list, since this makes them among the candidates for use by that laboratories clients. This advantage could readily be viewed as providing these MROs an incentive to maintain a good relationship with the laboratory, so as to ensure that they remain on the list, which is in their financial interest. The existence of this incentive could, in turn, call into question the objectivity and independence of the MROs in the review of the test results and the reporting to relevant officials of any potential errors in test results or procedures. The regulatory prohibition is not limited to actual, demonstrated conflict of interest. It includes matters that "may be construed as a potential conflict of interest". The DOT position is that the above described laboratory arrangement presents the appearance of a conflict of interest.