

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

Question: Can a consortium or a third party administrator act as an agent of the medical review officer (MRO) for the purpose of conducting administrative reviews of all negative urine drug test results and receive drug testing results directly from the laboratory?

Response: Section 40.33(a) states "*...A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a DOT agency regulation...review shall be performed by the Medical Review Officer (MRO) prior to the transmission of the results to employer administrative officials. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face. (2) The duties of the MRO with respect to negative results are purely administrative.*"

Through interpretation of this section, the Department has permitted the administrative review to be conducted by a staff person working under the direct supervision of the MRO. While allowing this delegation of MRO responsibility, the Department never intended nor can it condone a practice which allows for MROs to appoint outside "agents" to perform this review. The MRO should have direct supervisory relationship with the reviewer and not simply have access to the "process" of the administrative review. Conversely, a consortium or third party administrator cannot contract for the MRO to only review positive drug test results leaving the review or processing of negatives to the consortium or third party administrator.

Additionally, 49 CFR Part 40.29(g) requires that all drug test results be transmitted by the laboratory directly to the MRO. This is the MRO's place of business and not to a subsidiary or contractor. There is also the requirement that, regardless of what forms/records a consortium or third party administrator maintains for an employer, notification of all positive results will be performed by the MRO and not through or by anyone else.