



**Presentation to:
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Conference**

**International Drug Testing:
Legal Challenges in International Drug Testing
A Service Agent's Perspective**



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Session 2: Overview

International Workplace Testing:

- A Service Agent's Perspective
- Policy/Legal/Compliance Considerations
- Specimen Type/Methodology Considerations
- Education and Training, Intervention, and Rehabilitation Considerations
- International Collections and Laboratory Considerations
- The Role of the Medical Review Officer in International Testing

A Service Agent's Perspective on International Testing



Key Considerations

The Global Substance Abuse Testing Marketplace continues to be an emerging Marketplace



- Legal/Compliance understanding and logistical solutions will help expand the global marketplace



- Understanding of international country by country unique cultural considerations is critical to substance abuse testing program success

Key Consideration #1



Key Consideration #1:

A fully operational and successfully deployed International Substance Abuse Testing Program for any Country must be responsive to emerging and active global market conditions.

Practice Tip for Service Agents:

Partner with the internationally based client and carefully selected global vendor partners for sales and service support delivery – establish realistic and reciprocal expectations concerning an emerging market.

Key Consideration #3



Key Consideration # 3:

Understanding of international country by country unique cultural considerations is critical to substance abuse testing program success.

Practice Tip for Service Agents:

Require that client's local program administrator (DER) work closely with you so that you can come to understand those cultural considerations in order to determine the best strategy relative to program logistics – policy/program implementation, collection, test administration, laboratory as applicable, currency, shipping issues, test result medical review, intervention strategies.

Ten Key Questions

1. What does the client really want when they say they want to conduct drug testing internationally?
2. If client is U.S. based, does the client want to administer their program from their global locations or from their United States location or vice versa?
3. Whether substance abuse testing is permitted or being conducted in a particular country and is it a consideration if the applicant or employee to be tested is a deployed U.S. Citizen, an expatriate of the U.S. or of another Country, or a Native of the Country in which you intend to test.
4. Legal Authority to test – are there restricting statute(s) and/or is legal authority available or known?
5. What testing methodology(s) permitted (e.g. specimen type – urine, hair, blood, sweat as applicable) and which reasons for/types of testing are permitted (ex: pre-employment, reasonable cause, etc.)

Ten Key Questions Continued

6. Who are the laboratory service providers for each country?
7. Are there test ordering, test review/verification/Medical Review Officer requirements or data transfer or management/privacy security/confidentiality considerations in the country in which you intend to test?
8. What are the specimen collection or screening test requirements?
9. Are there issues or requirements relative to donor identification?
10. Are there cultural considerations to be taken into account?

Program Administration Management Methods

- **De-Centralized (Regional) Method**
 - Client manages program on a regional basis
 - Reporting platform is supported by Service Agent's local vendor partner
 - Account implementation, management and billing by Service Agent's local vendor partner
- **Challenges**
 - Uniform inquiry methodology and reporting standards
 - Establishing reasonable and specific client expectations at the outset

Program Administration Management Methods

- **Centralized (Global) Method**
 - Client manages global screening program from a single region.
 - Client requires Service Agent to process work from a single point of contact
 - Client requires sole Service Agent global account manager
 - Client requires billing in a single specific currency
 - Method requires multiple platforms with a single user interface
 - Account implementation, management and billing requires central oversight of Service Agent's local vendor partner
- **Challenges**
 - Uniform inquiry methodology and reporting standards
 - Uniform pricing to account for fluctuations in world currencies
 - Establishing reasonable and specific mutual expectations at the outset

Policy/Legal/Compliance Key Considerations



Policy/Legal/Compliance Key Considerations

- 1. Legal Authority to test – category of individual being tested**
- 2. Written Drug Testing Policy/Posting Requirements**
- 3. Notification Requirements**
- 4. Labor Laws, Work Rules, Union Agreements, Data Privacy, Confidentiality**
- 5. Conditions and Restrictions on Type of Workplace Drug Tests (Pre-employment, Random, Reasonable Suspicion, Post-Accident, Return-to-Duty and Follow-Up)**
- 6. Specimen Type and Panels**

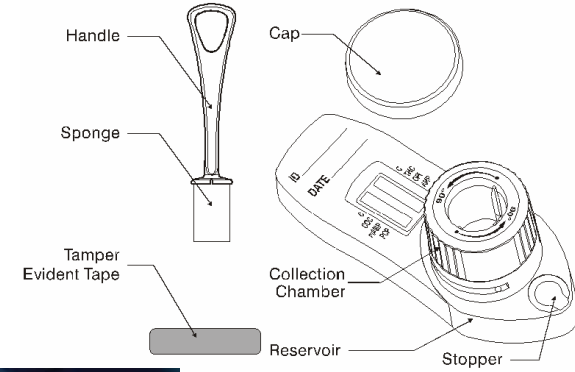
Policy/Legal/Compliance Key Considerations (cont.)

- 7. Laboratory and Collection Guidance – direct observation issues**
- 8. Responsibility for Test Costs**
- 9. Post-Positive Notices and Disciplinary Consequences and Intervention Requirements**
- 10. Requirements for Applicant or Employee to Receive Written Notice of Positive Test**
- 11. MRO Review Requirements**
- 12. Approach to Use of Marijuana for Medical Reasons**
- 13. Rehabilitation, Intervention, or Education and Training Requirements**

Specimen Type/Methodology

Key Considerations





Sampling of Specimen/Methodology Types

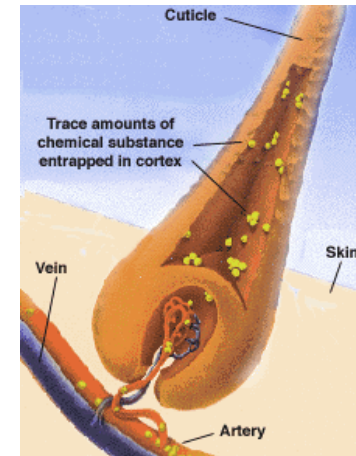
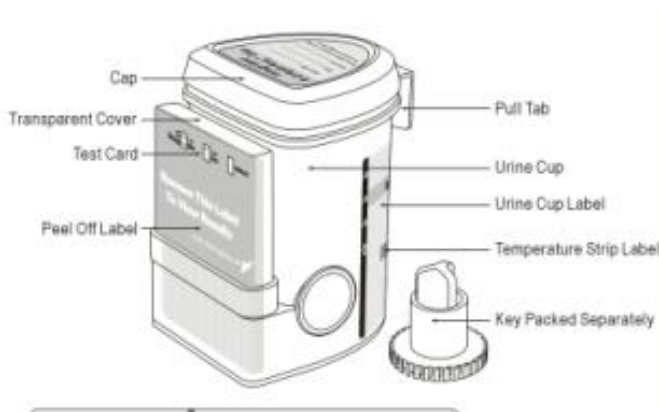


Illustration of Human Hair

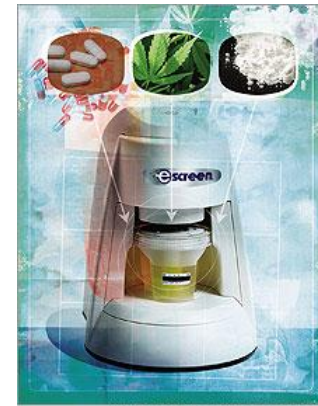
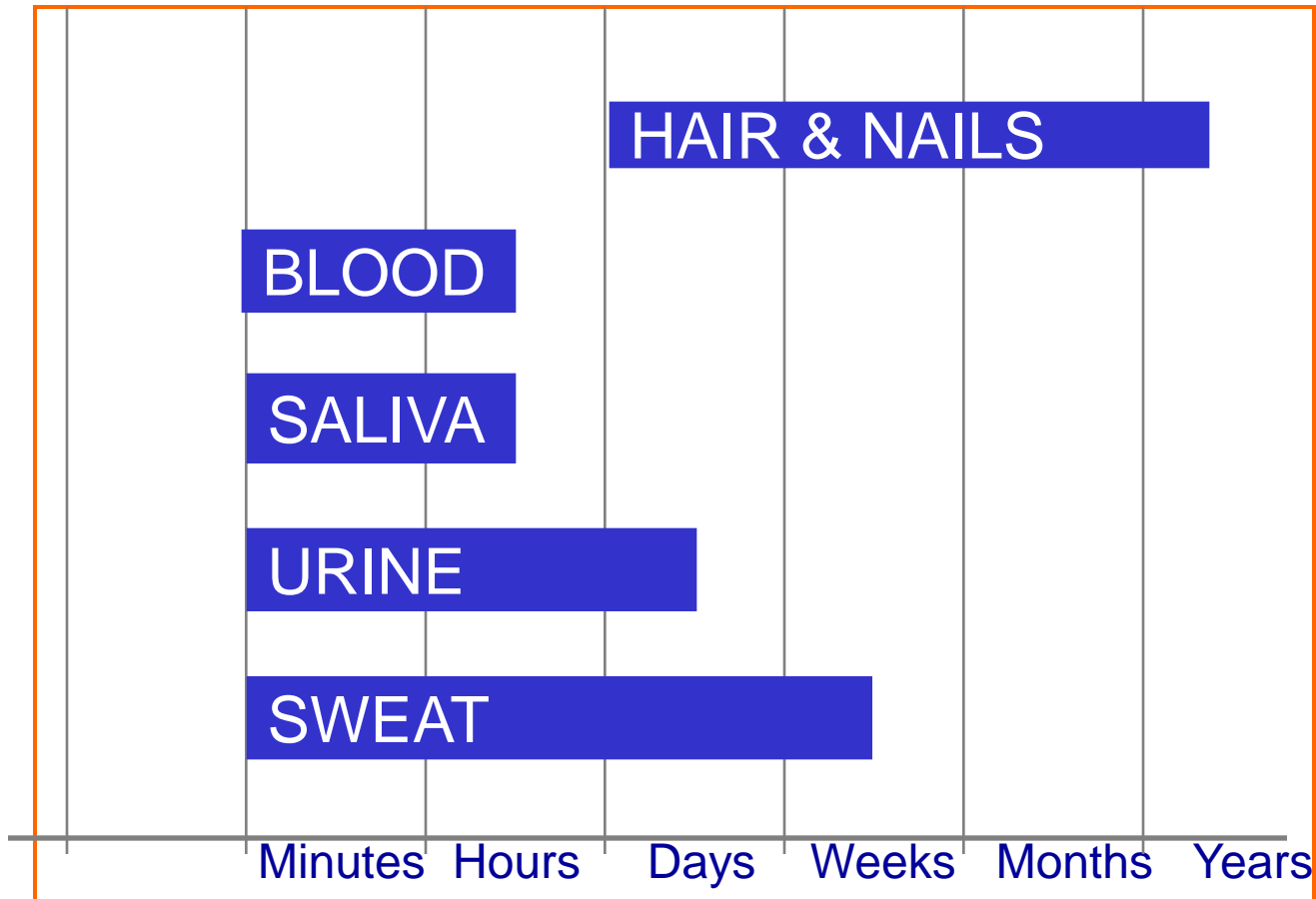


ILLUSTRATION: STUART BRADFORD

Drug Detection Timeframes Compared



Why Employers Are Interested In Using Alternative Specimens/Methodologies for Workplace Testing

Over the years, individuals have developed ways to “cheat” urine testing including:

- Substitution of samples
- Dilution
- Adding substances at collection to decrease detection

Specimens/Methodology Selection Policy Considerations

Two Considerations:

1. When and where specimen methodology can be used

- 1) Legal and case considerations (note that relative to alternative specimens/methodologies, other than for hair testing, a body of case law precedent has not developed to date because the technologies are too new to the marketplace)
- 2) Individual methodology and product considerations in the context of any applicable law or legal precedent

2. Why an employer would want to use an alternative to traditional urine

Important Note:

Relative to alternative specimens/methodologies, other than for hair testing, a body of case law precedent has not developed to date because the technologies are too new to the marketplace.

Specimens/Methodology Selection Policy Considerations Continued

Ensure that the following are considered and addressed prior to a decision to conduct testing:

- **Legal Authority should be considered** prior to using alternative specimens/ methodologies in support of a Workplace Drug Free Workplace Program.
- **Case law** must be considered prior to using alternative specimens/ methodologies in support of a Workplace Drug Free Workplace Program.

Specimens/Methodology Selection Policy

Considerations Continued

Overall program administration questions that an employer should consider prior to implementing a program authorizing alternative specimens/methodologies because they will assist in determining whether alternative specimens/methodologies are a good choice for employer's organization:

- What objective(s) is my substance abuse and alcohol misuse program seeking to achieve?
 - Prevention
 - Deterrence
 - To address a possible substance abuse or alcohol misuse workplace issue – including possibly the abuse of a particular drug?

Specimens/Methodology Selection Policy Considerations Continued

- To meet client contractual requirements?
- To meet legally mandated compliance requirements?
- Which types of tests do I want to conduct? (Pre-employment, reasonable suspicion, post-accident, random, reasonable suspicion, return-to-duty, follow-up testing)

Education and Training Intervention/Rehabilitation Key Considerations



Education and Training Intervention and Rehabilitation

- Training for Employers and Designated Employer Representative (DER)
- Training for Employees
- Training for Supervisors
- Drug Test Technician Training
- Alcohol Test Technician Training
- Medical Review Officer and MRO Assistant Training

- Intervention Strategies
- Rehabilitation Approach

International Collections and Laboratory Key Considerations



Collections and Laboratory Considerations

- Laws
 - Guidelines
 - Practicalities
- 

The Role of the MRO in International Testing and Key Considerations



Role of the MRO

- The Role of the MRO in International Substance Abuse Testing is not well established.
- The Role of the MRO is not addressed or acknowledged in many countries.
- In a review of 200 countries, a Drug and Alcohol Industry research team found information on the role of the Medical Review Officer in only 36 countries or 18% of the 200 countries researched.

Role of the MRO

- In Austria, Belgium, Finland, France and Germany there appears to be a role for the occupational health physician in the review of workplace drug tests.
- Under Finland's Occupational Health Care Act, only a health care professional can determine if a test is needed.
- Authorization to test from an occupational health physician is also required in France, Lithuania, Netherlands, Norway, Slovakia, Slovenia, and possibly Ireland.
- By contrast, in the United Kingdom, occupational health physicians are discouraged from being involved in workplace drug testing, including test review, because it is believed that the occupational health physician's role will damage the trust of the workforce.

Role of the MRO

- In Germany, a company's physician should not conduct the test or provide Medical Review Officer review because medical secrecy restrictions limit the use of the information.
- The occupational health physician's role in the foregoing countries is a little different than the role of the MRO in the United States because the objective of the occupational health physician's test review is to report on the fitness for duty of the donor.
- The purpose of the fitness for duty review arises from a concern for balancing two objectives fairly, firstly, workplace security, and secondly, the protection of personal information.

MRO Related Key Considerations



- The impact of time differences on communications
- Language differences
- Seasonal and holiday variations
- Electronic privacy and security laws, especially data transmission and storage laws that may prohibit the flow of data from between one country to another country
- Review considerations unique to a particular country and
- MRO training

Presentation Reviewed

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Contact Information and Questions

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Thank you for your attention.