Marijuana/Opioid Crisis

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Question

What is the government’s latest initiative in chemical testing of commercial vessel personnel in the face of the Marijuana/Opioid crisis?
History

• In 1988 Coast Guard implemented chemical testing for holders of merchant mariner credentials in safety sensitive positions

• 53 FR 47,064 (1988); 46 C.F.R. Part 16; 49 C.F.R. Part 40
Drugs Tested (5 panel)

- Marijuana
- Cocaine
- Opiates (codeine, morphine, and heroin)
- Phencyclidine (PCP)
- Amphetamines
Types of Tests

• Pre-employment
• Periodic
• Random
• Serious Marine Incident
• Reasonable Cause
Rationale

• **Discourage** drug and alcohol use by commercial vessel personnel
• **Reduce** the potential for marine casualties
• **Enhance** the safety of marine transportation

Has it worked?
Post Accident Drug Test Positivity Rates: CFVs vs. ALL Vessels

The diagram illustrates the post-accident drug test positivity rates for CFVs and ALL vessels from 2003 to 2011. The y-axis represents the drug test positivity rates, ranging from 0 to 0.35. The x-axis shows the years from 2003 to 2011.

Key:
- Post-Accident Drug Test Positivity Rates (CFV)
- Post-Accident Drug Test Positivity Rates (ALL)
Random and Post-Accident Positivity Rates, By Year

P-A Pos Rate (Per 100 Tests)
Random Pos Rate (Per 100 Tests)
If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the merchant mariner’s [credential] shall be revoked unless the holder provides satisfactory proof that the holder is cured.

Source: 46 U.S.C. § 7704(b)
Cure Defined

• Drug rehabilitation, followed by
• One year of non-association
• Substance abuse monitoring program
• Medical Review Officer (MRO) Return to Work Letter
Enforcement Mechanism

- Formal, trial type hearings
- Most drug cases are settled
Positive Test Triggers Presumption of Dangerous Drug Use

• If an individual fails a chemical test for dangerous drugs under this part, (46 C.F.R. Part 16) the individual will be presumed to be a user of dangerous drugs. (46 C.F.R. § 16.201(f))
Two Recent Events Resulting in More Tests

• Minimum number of random drug tests required to be conducted increased from 25% to 50%

• Addition of four opioids to the types of drugs tested
What’s an Opioid?

• Opiates - derived from opium poppy plant
• Includes codeine, morphine, and heroin
• Opioids - broader category: opiates and semi-synthetic compounds such as hydrocodone, hydromorphone, oxycodone, and oxymorphone.
• What are they popularly known as?
Popular Brand Names

- Hydrocodone – Vicodin
- Hydromorphone – Dilaudid
- Oxycodone – Percocet, OxyContin
- Oxymorphone – Opana and Opana ER, AKA Blue Heaven, Pink Lady, Octagons, Oranges, Orgasna

- Concentration: If $\geq 100$ ng/ml then positive test
Marijuana/Opioid Crisis
259 million prescriptions for opioids in 2012.
One bottle for every adult.

NPRM 82 FR 7771 of 1/23/17
Misuse/Dependent

In 2014, 2 million Americans misused or were dependent on prescription opioids.

NPRM 82 FR 7771 of 1/23/17
Opioid Overdose Deaths

- 28,647 in 2014
- 33,091 in 2015
- 13% ↑

NPRM 82 FR 7771 of 1/23/17
Deaths Related to Prescription Opioids

40% of overdose deaths in the U.S. have been related to prescription opioids since 2012. Not insignificant.

NPRM 82 FR 7771 of 1/23/17
The 5 Panel Tests Now Look Like This

Marijuana, Cocaine, Phencyclidine (PCP), Amphetamines, and Opioids (to include codeine, morphine, and heroin, plus percocet, vicodin, opana, and dilaudid)
Verification Process

• Medical Review Officer (MRO) verifies test result as + or –
• Legitimate medical explanation – e.g., valid prescription
• Can mariner continue performance safely?
• MRO duty to disclose
Verification Process, Continued

MRO is **required to disclose** to third parties information likely to:

1) render the mariner **medically unqualified** under an applicable DOT agency regulation;

2) indicate continued performance by the mariner of his or her safety-sensitive function is likely to **pose a significant safety risk**.
Who Are the Third Parties?

• Mariner’s Employer
• Coast Guard
• Substance Abuse Professional (SAP)
• Examiner who determines whether the mariner is medically qualified
MRO’s Discretion

Reporting is always the “reasonable medical judgment” of the MRO.
Marijuana

• A prescription for marijuana must be “consistent with” and not simply “under” the Controlled Substances Act. (21 U.S.C. § 801 et seq.)

• Regardless of any state’s “medical marijuana” laws, there cannot be a legally valid prescription for marijuana, because it remains a Schedule I substance under the Controlled Substances Act.
MRO’s Discretion

• An MRO may request a D, L stereoisomer test of a lab confirmed methamphetamine result to help rule out whether the result was possibly due to the use of an over-the-counter product.

• An MRO may request a THC-V test when verifying a positive marijuana test result after a doctor provides a (Marinol) prescription. THC-V testing provides useful info to the MRO when determining whether the lab reported positive result for marijuana resulted from the mariner’s use of marijuana.
Conclusion

Mariners are subject to drug testing requirements which fairly selects them and fairly deals with those who test positive for marijuana and opioids, thereby promoting safety at sea.