

## **34.02 Drug and Alcohol Abuse and Rehabilitation Programs**

*Approved February 27, 1995 (MO 44-95)*

Administrators should exercise extreme caution in all matters relating to this policy, assuring that procedures are carefully followed and that substantial evidence from reliable sources supports a decision to confront a student or an employee. System general counsel shall be apprised by the appropriate administrator of possible violations of this policy and their advice shall be secured before taking any action with regard to testing.

### **1. PURPOSE**

1.1 Based on its commitment to assure the safety and health of its students and employees, The Texas A&M University System (the "System") seeks to maintain work and learning environments free of the unlawful manufacture, distribution, possession or use of a controlled substance or the abuse of alcohol. Drug and alcohol abuse affects the responsible conduct of business, teaching and learning, and therefore will not be tolerated.

1.2 This policy is based on the following objectives:

- (1) to maintain a safe and healthy environment for all students and employees;
- (2) to maintain the good reputation of the System and its employees within the respective communities where System components are located;
- (3) to minimize accidental injuries to persons or property;
- (4) to keep absenteeism and tardiness at a minimum and to improve the effective performance of job duties and productivity of all employees and the educational performance of all students;
- (5) in appropriate circumstances, to assist students and employees in securing alcohol or substance abuse rehabilitation;
- (6) to comply with the federal Drug-Free Workplace Act of 1988, the Drug-Free Schools and Communities Act Amendments of 1989, and other applicable legislation; and
- (7) to adopt and implement a program to prevent use of illicit drugs and abuse of alcohol by students and employees.

1.3 This policy shall be in addition to any alcohol or drug abuse policy or policies relating to participation in intercollegiate athletics.

### **2. DEFINITIONS**

As used in this policy, the following definitions apply.

- 2.1 "Drugs or other controlled substances" means any substance, including alcohol, capable of altering an individual's mood, perception, pain level or judgment.
- 2.1.1 A "prescribed drug" is any substance prescribed for individual consumption by a licensed medical practitioner. It includes prescribed drugs and over-the-counter drugs that have been legally obtained and are being used for the purpose for which they were prescribed or manufactured.
- 2.1.2 An "illicit drug" or chemical substance is: (a) any drug or chemical substance, the use, sale or possession of which is illegal under any state or federal law, or (b) one which is legally obtainable but has not been legally obtained. The term includes prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes.
- 2.1.3 The term "controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substance Act (21 U.S.C.S. 812) or whose possession, sale or delivery results in criminal sanctions under the Texas Controlled Substances Act (Art. 4476-15, TCS). In general, this includes all prescription drugs, as well as those substances for which there is no generally accepted medicinal use (e.g., heroin, LSD, marijuana, etc.), and substances that possess a chemical structure similar to that of a controlled substance (e.g., "designer drugs"). The term does not include alcohol.
- 2.2 "Alcohol" refers to any alcoholic beverage that is "alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted."
- 2.3 "Alcohol abuse" means the excessive use of alcohol in a manner that interferes, but not chronically, with: (1) physical or psychological functioning; (2) social adaptation; (3) educational performance; or (4) occupational functioning.
- 2.4 The term "conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes. (See 9.5 for time limitations on reporting such convictions.)
- 2.5 "Cause for reasonable suspicion" shall be established by: (1) observation; (2) actions/behaviors of the individual; (3) witness by supervisor or other reliable individual of possession or use; or (4) any other legal measure used for alcohol or drug detection.
- 2.6 The term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance.
- 2.7 "Sanctions" may include completion of an appropriate rehabilitation or assistance program, expulsion from school or termination from employment, or other disciplinary action, or referral to authorities for prosecution. If an employee has

been convicted of a criminal drug statute, sanctions must be imposed within 30 days.

### 3. POLICY

3.1 All System components are expected to abide by state and federal laws pertaining to controlled substances, illicit drugs, and use of alcohol. Each System component shall adopt a plan consistent with this policy to include a time table for implementation of a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees of the component. (See 4.2.)

#### 3.2 Standards of Conduct

The unlawful manufacture, distribution, possession or use of illicit drugs or alcohol is strictly prohibited on System property and/or while on official duty.

3.3 Sanctions will be imposed on students and employees (consistent with local, state, and federal law), up to and including expulsion or termination of employment and referral for prosecution, for violation of the standards of conduct set forth in 3.2 above.

3.4 Each System component shall conduct a biennial review of its drug and alcohol abuse prevention program. It shall determine and put in report format: (1) the effectiveness of the program, and (2) the consistency of the enforcement of sanctions imposed pursuant to the program. It shall also evaluate whether any changes are needed and shall implement any such changes.

3.5 Each System component shall have available for review by the Secretary of Education, or designee, other applicable governmental agencies, and the general public, if requested, copies of all documents distributed to students and employees under the drug and alcohol abuse prevention program, and also copies of the biennial review.

### 4. POLICIES FOR SYSTEM COMPONENTS

4.1 The Chief executive officer of each System component shall establish a policy, including regulations or procedures for the implementation of this policy. Such regulations or procedures cannot be less stringent than this policy and shall be approved by the System General Counsel's office before being released. Requirements of the Department of Defense, the Department of Transportation, or other regulatory bodies shall be included when applicable for the students or employees in the System component.

4.2 Minimum requirements for policies and procedures in the System components include the following:

4.2.1 All System components shall distribute annually to each employee and to each student, if applicable:

- (1) standards of conduct that prohibit the unlawful manufacture, possession, use, and distribution of illicit drugs and alcohol by students and employees on the System's property or as part of any System activity;
- (2) a description of the applicable legal sanctions under local, state, or federal law for the unlawful manufacture, possession or distribution of illicit drugs or alcohol;
- (3) a description of the health risks associated with the use of illicit drugs and the abuse of alcohol;
- (4) a description of drug or alcohol counseling, treatment, rehabilitation or re-entry programs that are available to students or employees;
- (5) a clear statement that the System component, consistent with local, state, or federal law, will impose sanctions against a student or employee who violates the standards of conduct. The statement must describe the possible sanctions, which may include completion of an appropriate rehabilitation program, expulsion from school, termination of employment, or referral to the authorities for prosecution; and
- (6) a description of the institution's drug/alcohol abuse prevention and intervention program, if applicable, including alternative support, education and re-entry programs for students who are expelled as a result of violating standards required by these minimum requirements.

4.2.2 Academic institutions shall certify the availability of a drug abuse prevention program for officers, employees and students of the institution, as required under Title IV of the Higher Education Amendments of 1986 (P.L. 99-498).

## 5. ALCOHOL AND DRUG-FREE AWARENESS PROGRAM

Each System component will provide, with the approval of the Chancellor, an alcohol and drug-free awareness program to inform students and/or employees about: (1) the dangers of alcohol and drug abuse; (2) the System policy of maintaining a workplace and learning environment free from drug and alcohol abuse; (3) any available alcohol and drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon students and employees for alcohol and drug abuse violations. (See Paragraphs 3.3 and 4.2.1.)

## 6. SUSPICION OF USAGE

### 6.1 Students

Procedures related to students suspected of alcohol or drug abuse shall be developed by the individual System universities and approved by the System General Counsel.

## 6.2 Employees

6.2.1 If a supervisor reasonably suspects that usage of a controlled substance or of alcohol has affected an employee's job performance, the supervisor shall immediately notify the appropriate department head, or other designated administrative official and, upon direction, the supervisor or other designated administrative official shall discuss with the employee the suspected alcohol or drug-related problems. The employee should be advised of any available alcohol and drug counseling, rehabilitation, or employee assistance programs, and the terms of any applicable disciplinary sanctions. All such meetings between the employee and the supervisor or other designated administrative official to address the suspected alcohol or drug-related problem and/or its resolution shall be documented in a memorandum to the record and filed in the employee's personnel file.

6.2.2 Should such discussion and/or participation in any available alcohol or drug counseling, rehabilitation, or employee assistance program fail to resolve the suspected alcohol or drug-related problems, or should the employee fail to meet the terms of any applicable disciplinary sanctions, the employee may be subject to disciplinary action up to and including termination, or a chemical screening may be required as provided in Paragraph 8., PROCEDURE FOR TESTING (SCREENING).

## 7. RULES FOR TESTING (SCREENING)

### 7.1 Students

Procedures related to testing of students may be developed by the individual System institutions and approved by System General Counsel.

### 7.2 Employees

#### 7.21 Employees in Sensitive Positions

7.2.1.1 "Employee in a sensitive position" means an employee who has been granted access to classified information, or employees in other positions determined by appropriate administrative personnel to involve national security, health or safety concerns, or functions requiring a high degree of trust and confidence.

7.2.1.2 The Department of Defense Drug-Free Work Force Rule, 53 Fed. Reg. 37763 (1988), mandates that government contractors establish a program for testing for the use of illicit drugs by an employee in a sensitive position under a Department of Defense (DOD) contract.

System components which have such contracts shall also be in compliance with the DOD rules for maintaining a program for achieving a drug-free workplace.

7.2.1.3 Testing of an employee in a DOD-funded sensitive position shall be undertaken under the following circumstances: (1) there is reasonable suspicion that the employee's job performance has been affected by the use of illicit drugs, and (2) there is a reasonable belief that such impairment will affect national security, health or safety concerns, or functions requiring a high degree of trust and confidence.

## 7.2.2 Other Employees

7.2.2.1 Testing of employees other than those occupying DOD-funded sensitive positions may be undertaken in the following circumstances: (1) there is reasonable suspicion that the employee's job performance has been affected by the use of alcohol or illicit drugs, and (2) there is a reasonable belief that such impairment presents a risk to the physical safety of the employee or another person.

7.2.2.2 The decision to test an employee not occupying a DOD-funded sensitive position shall be made by the appropriate chief executive officer or designee.

## 8. PROCEDURE FOR TESTING (SCREENING)

### 8.1 Students

Procedures related to testing for students may be developed by the individual System institutions and approved by System General Counsel.

### 8.2 Employees

8.2.1 The decision to require a chemical screening must be reviewed with legal counsel prior to the screening.

8.2.2 Prior to the administration of chemical screening, the appropriate administrative or supervisory personnel must explain the chemical screening procedures to the employee and then accompany the employee to a hospital or clinic for the taking of a specimen for screening purposes. (If the System component has laboratory or medical facilities with personnel trained for such testing, those facilities may be used if there are adequate chain-of-custody procedures established for the samples, and precautions are taken to guarantee the integrity of the testing against tampering or substitution.)

8.2.3 Before the specimen is taken, the employee should be asked to sign a consent form agreeing to the taking of a specimen for testing purposes. The signed form will be required by the hospital or clinic. The employee may be asked to list any medications being taken. There will be a reasonable opportunity to rebut or explain a positive test result, including an independent retest of the sample.

8.2.4 The expense of the screening, and any retest, shall be borne by the System component. The screening will be kept confidential, with the results being reported to the employee and the appropriate senior-level administrator as soon as they are available.

## 9. REGULATIONS SPECIFICALLY RELATED TO EMPLOYEES

9.1 A copy of the System component's drug and alcohol abuse policy shall be provided to each employee on or before the first day of employment. It is strongly recommended that each component obtain a signed acknowledgment of receipt of the policy and that the signed statement be kept on file.

9.2 Any employee whose off-duty use of alcohol, drugs or other controlled substances results in absenteeism, tardiness, impairment of work performance, or is the cause of workplace accidents, will be referred to an assistance program and may be subject to discipline (up to and including discharge) if he or she rejects participation in the program.

9.3 Employees whose work-related performance gives cause for suspicion of use or possession of alcohol or a controlled substance may, at the discretion of appropriate delegated authorities in the applicable System component, be subjected to testing for the substance in accordance with the sections in this policy related to testing and chemical screening. A refusal to submit to a test, combined with a reasonable suspicion of usage, may be a sufficient basis for termination.

9.4 Any disciplinary action shall be governed by System policies on discipline and dismissal and academic freedom, responsibility and tenure. A record of the action will be placed in the employee's personnel file.

9.5 As a condition of employment, employees on government grants or contracts must abide by the required notification statement and must report any criminal drug statute conviction for a violation occurring in the workplace or on System business to their employer no later than five days after such conviction. The employer, in turn, must so notify the contracting federal agency within 10 days after receiving notice from an employee or otherwise receiving actual notice of such conviction, and within 30 days must impose sanctions on the employee involved. Such sanctions may take the form of personnel actions against such an employee, up to and including termination, or requiring the employee to satisfactorily participate in an approved drug abuse assistance or rehabilitation program.

10. AUTHORITY OF CHANCELLOR

The Chancellor of The Texas A&M University System is authorized to implement rules and regulations to bring the System into full compliance with instructions of the Board of Regents, applicable legislation, or guidelines promulgated by local, state, or federal governmental bodies.