

I. POLICY STATEMENT

Pasco-Hernando Community College is committed to the prevention of illegal drug use by, and resulting drug impairment of, employees of the college while on duty for the college. The unlawful use of drugs or alcohol, or impairment therefrom, by employees of the college during duty hours shall not be condoned or tolerated. Any employee found in violation of this policy shall be subject to appropriate disciplinary action, which may include dismissal from the college.

II. PROHIBITED USES OF DRUGS AND ALCOHOL

The use or possession of alcohol or illegal drugs by employees while on college premises, or while engaged in college-sponsored activities off-campus, is prohibited. Additionally, no employee shall report for duty while impaired by illegal drugs or alcohol. For purposes of this Rule, an employee shall be deemed "impaired by illegal drugs" if a confirmed drug test reveals any trace of illegal drugs in the urine, blood, or breath of the employee. For purposes of this Rule, an employee shall be deemed "impaired by alcohol" if a confirmed drug test reveals .08 percent or more by weight of alcohol in the person's blood or breath.

Under no circumstances shall the lawful use of a prescription medication by the person for whom it is legally prescribed constitute a violation of this policy. Also, under no circumstances shall the use of a non-prescription medication authorized pursuant to federal or state law for general "over the counter" distribution constitute a violation of this policy.

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III. DRUG-TESTING PROGRAM

Pasco-Hernando Community College shall conduct a drug-testing program in accordance with the Drug-Free Workplace Act as defined at Section 112.0455 Florida Statutes (1989) and the rules and regulations promulgated thereunder, as amended from time to time.

The goal of the drug-testing program shall be to maintain a healthy and productive work force, to ensure for employees a safe working environment free from the effects of drugs, and to provide quality instruction and educational services to the students, staff, and other users of the college and its facilities. This policy is intended to provide employees with a fair, reasonable, and accurate method of drug testing, an opportunity to participate in employee assistance programs or drug or alcohol rehabilitation programs (at the expense of the employee), and confidentiality in connection with both the test results and any rehabilitative services pursued by the employee.

The types of drug testing which will be conducted by the college are as follows:

1. Job Applicant Testing

The final candidate for a safety-sensitive position with the college shall be required to pass a drug test as a condition of employment. The college shall refuse to hire any applicant who declines to be tested or who specimen tests positive for the presence of drugs.

2. Reasonable Suspicion

An employee may be required to submit to a drug test based on reasonable suspicion that the employee is using or has used drugs in violation of college policy. Such reasonable suspicion must be drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Reasonable suspicion drug testing shall not be required except upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question and with the advance approval of the President or his designee. Among other things, such facts and inferences may be based upon:

- a) observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug;
- b) abnormal conduct or erratic behavior while at work coupled with a significant deterioration in work performance;
- c) evidence that an individual has tampered with a drug test during his employment with the college;
- d) information that an employee has caused or contributed to an accident while at work, under circumstances that suggest drug impairment;
- e) evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on college premises, or while operating a college vehicle, machinery or equipment;

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3. Routine Fitness

An employee or job applicant shall be required to pass a drug test when the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is scheduled routinely for all members of an employment classification or group; and required by the college as a condition of continued employment. This provision shall not include nor affect any requirements of hospitals or clinical sites where allied health faculty may be required to submit to an annual test, examination, or certification to prove fitness to conduct clinical activities for the college at the hospital or clinical site.

4. Follow-Up Testing

An employee who, during the course of employment enters an employee assistance program for drug-related problems, or an alcohol or drug rehabilitation program, shall be required to pass a drug test as a follow-up to such program, on an annual basis for two (2) years thereafter.

IV. **DEFINITIONS**

For purposes of this Rule, the following listed terms shall have the meanings indicated:

1. **"Drug"** means alcohol, including distilled spirits, wine, malt beverages, and intoxicating liquors; amphetamines; cannabinoids; cocaine; phencyclidine (PCP); hallucinogens; methaqualone; opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; or a metabolite of any of the substances listed herein.
2. **"Drug test"** or **"test"** means any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites. A **drug test** may include the testing of a person's urine, blood, or breath, or any combination of the foregoing. A **"positive test result"** is one which reveals the presence of any trace of an illegal drug in the urine, blood, or breath of the person being tested, or .08 percent by weight of alcohol in the blood or breath of the person being tested.
3. **"Initial drug test"** means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All **initial tests** shall use an immunoassay procedure or an equivalent, or shall use a more accurate scientifically tested method approved by the appropriate regulatory authorities.
4. **"Confirmation test"** or **"confirmed test"** means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The **confirmed test** must be different in scientific principle from that of the initial test procedure. The confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

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5. ***"Prescription or non-prescription medication"*** means a drug or medication obtained pursuant to a prescription by an appropriately licensed physicians, or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments or injuries.
6. ***"Safety-sensitive position"*** means any position, including a supervisory or management position, in which a drug impairment would constitute an immediate and direct threat to public health or safety. The President shall designate those college positions considered to be safety-sensitive in an internal management memorandum.

V. **DRUG-TESTING PROGRAM IMPLEMENTATION**

Prior to the implementation of a drug-testing program, the college shall perform each of the following tasks:

1. **Notice to Employees**

The college shall give all employees written notice of the intent of the college to implement such a program, along with a copy of this policy and any other procedural rules relating to the program. Such notice shall be given at least sixty (60) days prior to the date that actual drug-testing will begin. Such notice shall additionally include all of the disclosures required by Section 112.0455 (6), Florida Statutes.

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2. Testing Agency

The college shall contract with a properly licensed and approved testing agency for the provision of comprehensive testing services, including collection of the test specimen with due regard for the privacy and sensitivities of the employees and job applicants, laboratory analysis of the specimen, notification of the test results, confirmation and follow-up testing, and technical advice and assistance to the college concerning test result contests and grievances. The testing agency shall be required by contract to follow all applicable legal authorities concerning the collection, documentation, and testing of specimen. The testing agency shall follow reliable and prudent chain-of-custody procedures to ensure the accuracy of the test results and protection from tampering or identification error.

3. Employee Assistance

The college shall contract with a properly licensed and approved employee assistance agency for the provision of an employee assistance program for the benefit of college employees. The employee assistance agency shall provide confidential assessment, counseling, and referral to an alcohol or drug rehabilitation program when appropriate.

VI. DRUG-TESTING PROCEDURES

The President may issue internal management memoranda implementing this policy and specifying in detail the procedures to be followed in conducting the drug tests required by this policy. Such procedures shall be consistent with this policy and shall include at least the following elements:

1. Legal Authority

Before an employee or job applicant may be required to submit to a drug-test, the legal authority for the test as well as the factual basis for the test shall be placed in writing and a copy given to the employee or job applicant.

In the case of job applicant testing, a notice of the requirement for such a test shall also be placed in the vacancy announcement for the position and a full copy of the college drug-testing policy shall be posted at the college and a copy made available at no charge to any applicant who requests it.

In the case of reasonable suspicion testing, a written memorandum shall be prepared which states in detail the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this memorandum shall be given to the employee and the original shall be retained in a confidential file for at least one year.

2. Job Applicant

In the case of job applicant testing, the final candidate for a safety-sensitive position shall be instructed to appear at the testing agency for the administration of the drug test at a time and date selected by the college. The applicant shall not be compensated for the time that the drug test is administered.

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3. Employee

In the case of testing an employee, the employee shall be instructed to appear at the testing agency for the administration of the drug test at a time and date selected by the college. If the employee is unable to transport himself or herself to the testing agency site, then the college shall provide such transportation. The employee shall be compensated at his or her regular wage rate for the time that the drug test is administered.

4. Disclosures

At the testing site, every person to be tested shall be given a form on which the person can provide any information relevant to the test, including identification of currently or recently used prescription or non-prescription medication or and other relevant information. Such form shall provide notice of the most common medications by brand name or common name as well as chemical name, which may alter or affect a drug test. The information provided shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed results.

5. Confirmation Test

In the event of a positive test result, the testing agency shall conduct a second test, known as a confirmation test, to confirm the positive results of the initial drug test. If the second test results in a positive finding of the presence of a drug, the test results shall be considered a confirmed positive result and the college may proceed with the actions described in Section VII below.

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6. Negative Result

In the event of a negative test result, the testing agency shall so notify the college of the results and such results shall be recorded in a confidential file concerning the test. The college shall notify the employee or job applicant of the negative test result and no further action shall be taken by the college with respect to such test.

VII. ACTIONS TO BE TAKEN UPON POSITIVE CONFIRMED RESULT

Upon the occurrence of a confirmed positive test result, the college shall take the following actions:

1. Notice

An employee or job applicant whose specimen tests positive for drugs after confirmation testing, shall be notified of the results in writing within five (5) working days following the receipt of the test results by the college. Upon request of the job applicant, the college shall provide the applicant with a copy of the test results.

2. Explanation

The employee or job applicant shall be allowed five (5) working days to submit information to the college explaining or contesting the test results, or otherwise demonstrating, why the results do not constitute a violation of college policy concerning use of drugs. If the explanation is satisfactory to the college, then it will be recorded in a confidential file and no further action will be taken by the college concerning the drug test. If the explanation is unsatisfactory to the college, then a written statement about why the explanation is unsatisfactory, along with a copy of the test results, will be recorded in a confidential file and the college shall proceed with the actions described below:

a. Refusal to hire

In the case of a job applicant with a positive confirmed test result, the college shall refuse to hire the applicant.

b. Referral

In the case of an employee with a first-time confirmed positive test result, the college shall refer the employ to an employee assistance program for participation at the expense of the employee. The employee may use accrued paid leave to allow time to participate in the assistance program and any other rehabilitation program appropriate for the circumstances. In the event that the employee's paid leave time is not sufficient, the employee shall be allowed unpaid leave sufficient to facilitate participation in such assistance or rehabilitation program.

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If the employee pursues and successfully completes a rehabilitation program, no disciplinary action may be taken against the employee for the first confirmed positive test result and the employee shall be reinstated to the same or equivalent position that was held prior to such rehabilitation. The employee shall be subject to annual follow-up testing for two (2) years thereafter.

c. Discipline

In the event that the employee who has a first-confirmed positive test result refuses to participate in an employee assistance program or rehabilitation program, or fails to successfully complete such a program after a reasonable time, or refuses to provide the college information concerning the employee's participation in such a program, the employee may be disciplined or discharged pursuant to Board Rules 6Hx19-2.23, 2.231, 2.24, and/or 2.59, as appropriate. Upon a second confirmed positive test result, the employee shall be discharged.

VIII. MISCELLANEOUS PROVISIONS

1. Refusal to Test

Any employee who refuses to submit to a lawfully required drug-test shall be discharged.

2. Voluntary Treatment

No disciplinary action shall be taken against any employee who voluntarily submits to, or enters an employee assistance or rehabilitation treatment program. However, such employee shall be subject to follow-up testing in accordance with this Rule.

3. Temporary Placement

Any employee who holds a safety-sensitive position may be placed in a non-safety-sensitive position, or if such position is unavailable, on leave status while participating in an employee assistance or rehabilitation program. If placed on leave status without pay, the employee shall be permitted to use any accumulated leave credits prior to being placed on leave without pay.

4. Testing Costs

All costs incurred for initial and confirmation testing shall be paid by the college. Any costs for additional testing, at the request of the employee in connection with a contest or grievance, shall be paid by the employee.

5. Relationship

No physician-patient relationship is created between an employee or job applicant and the college or any person performing or evaluating a drug test, solely by the establishment, implementation, or administration of this drug-testing program.

6. Confidentiality

All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or created by the college concerning the drug testing of an employee or job applicant, shall be maintained by the college as confidential communications and shall be exempt from the public disclosure provisions of Section 119.07(1), Florida Statutes, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except as provided for in Section 112.0455, Florida Statutes (1192).

7. Specimen Retention

Every specimen that produces a positive confirmed result shall be preserved by the testing agency for a period of at least 210 days from the time the results of the positive confirmation test are mailed to the college. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall so notify the testing agency and the specimen shall be retained by the agency until the case or administrative matter is settled.

During the 180-day period after written notification of a positive test result, the employee or job applicant shall be permitted to have a portion of the specimen retested, at his or her own expense, at another laboratory licensed and approved by the Department of Health and Rehabilitative Services. The second laboratory chosen by the employee or job applicant must test at equal or greater sensitivity for the drug in question as the first laboratory. The testing agency that conducted the first test shall be responsible for the transfer of a portion of the specimen to be retested and for the integrity of the chain-of-custody during such transfer.

8. Grievances

Any employee who wishes to challenge, contest, or complain about a drug test result or any matter concerning this drug-testing policy, shall file and pursue same in accordance with the procedures set forth in Board Rule 6Hx19-2.39.

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General Authority: FS 240.319 (1)l

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Proposer: Dr. Milton O. Jones, President