

# POLICY NO. 3

**Area: Board of Trustees**

*Original signature on file with the  
Office of General Counsel*

Adopted: May 1, 1998

Certified by \_\_\_\_\_  
Dr. Morakinyo A.O. Kuti  
University President

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## **Subject: DRUG-FREE WORKPLACE**

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### 1.0 PURPOSE

The University is committed to maintaining a safe, healthy, and efficient workplace for its employees and a safe and healthy campus for the entire University community.

### 2.0 DEFINITIONS

#### 2.1 Abuse (Abusing)

2.1.1 The use of any prescription medication in a manner inconsistent with its prescription or under circumstances where use is not permitted;

2.1.2 The use of recommended Medical Marijuana in a manner inconsistent with a medical purpose or under circumstances where use is not permitted;

2.1.3 The use of any other Restricted Substance under circumstances where use is not permitted.

#### 2.2 Alcohol - Ethyl Alcohol or ethanol.

2.3 Controlled Substance – A drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V, as provided in ORC 3719.41, or in the Controlled Substances Act, 27 USC Section 812 and by regulation at 21 CFR Section 1308.

2.4 Medical Marijuana - Marijuana that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose, as defined in ORC 3796.01. Medical Marijuana is a Controlled Substance. An employee only qualifies to use Medical Marijuana if on the registry established in ORC 3796.08 with a valid and active recommendation issued by a physician. For purposes of this policy, Medical Marijuana is not a prescription medication.

- 2.5 Non-Medical Cannabis - Marijuana as defined in ORC 3719.01 that is not Medical Marijuana.
- 2.6 Restricted Substance
  - 2.6.1 Alcohol;
  - 2.6.2 Controlled Substance(s);
  - 2.6.3 Any substance(s), legal or illegal, that is used intentionally inappropriately, and impairs ones' ability to make responsible decisions;
  - 2.6.4 Medical Marijuana, Non-Medical Cannabis, and prescription medications are Controlled Substances and are Restricted Substances for purposes of this policy.
- 2.7 Safety Sensitive Position - Any job, position, work-related function, or job task designated as such by the University, which through the nature of the activity could be dangerous to the physical well-being of or jeopardize the security of the employee, co-workers, customers, or the general public through a lapse in attention or judgment.

### 3.0 FIT FOR DUTY REQUIREMENT

All University employees must be able to perform the essential functions of their job on University property and at other locations while conducting University business.

### 4.0 PROHIBITIONS

University employees are prohibited from:

- 4.1 Currently Abusing a Restricted Substance.
- 4.2 Conducting University business with a prohibited level of a Restricted Substance present in their bodily fluids unless such presence is otherwise exempt from this policy.
- 4.3 Conducting University business while suffering from a hangover.
- 4.4 Unlawfully manufacturing, distributing, dispensing, gifting, possessing, purchasing, transferring, or using a Restricted Substance on University property and at other locations while conducting University business.
- 4.5 Manufacturing, distributing, dispensing, possessing, purchasing, transferring, gifting, or using Alcohol, Medical Marijuana, or Non-Medical Cannabis while conducting University business or while on University property.

- 4.6 Abusing prescription medication while conducting University business or while on University property.
- 4.7 Using a Controlled Substance if the employee is in a position that requires the employee to carry or otherwise possess or transport a firearm or ammunition.
- 4.8 Using drugs and/or alcohol (as defined by federal law) in a manner that violates United States Department of Transportation (DOT) drug testing laws if the employee is in a position that is subject to those laws.

## 5.0 MEDICAL MARIJUANA

This policy is not intended to prohibit Medical Marijuana use by University employees (or applicants) who are not conducting University business and who are not on University property at the time of use, provided that:

- 5.1 Such use is in accordance with applicable Ohio law, this policy, and any other applicable policy, procedure, work rule, or directive (collectively “standards”);
- 5.2 The employee’s position is not subject to DOT Testing;
- 5.3 The employee’s position does not require an individual holding that position to transport, carry, or otherwise possess a firearm or ammunition; and
- 5.4 When the employee is conducting University business or is on University property, the employee is fit for duty as provided in Section 3.0.

## 6.0 TESTING

Testing is used to determine whether a prohibited level of a Restricted Substance is present in an employee’s bodily fluids. Testing procedures are conducted consistent with the DOT Drug Testing Laws, unless modified by any applicable collective bargaining agreement. This includes procedures for sample collection, laboratory analysis, and reporting and reviewing results.

- 6.1 Applicant Testing: Final applicants for the [STATE APPLICABLE POSITIONS] must complete and successfully pass a test as a condition of employment. The applicant should be tested as soon as possible but must be tested within 32 hours of receiving notification. The Office of Human Resources should be contacted if the applicant cannot comply with this timeline.
- 6.2 Random Testing: Employees who occupy a position designated as a Safety Sensitive position are subject to random testing according to the requirements of any applicable collective bargaining agreement(s). Bargaining unit employees may confer with a union representative, should one be available, within one hour before the test is to be conducted. The employee has no right, however, to have the union representative accompany them to the collection site for a random test.

Testing will not be postponed if a union representative is requested but is not available. If the employee has an unplanned absence, the University will have the employee tested during the next business day, and the employee will be notified of the rescheduled test on the day it is to occur.

### 6.3 Reasonable Suspicion Testing

6.3.1 An employee may undergo testing based on a for-cause determination by management. That determination may be drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Examples of reasonable suspicion include:

6.3.1.1 Smell of Alcohol;

6.3.1.2 Slurred speech;

6.3.1.3 Disorientation;

6.3.1.4 Abnormal conduct or behavior;

6.3.1.5 Involvement in an on-the-job accident resulting in disabling personal injury requiring immediate hospitalization of any person;

6.3.1.6 Property damage in excess of \$2,000;

6.3.1.7 When circumstances raise a reasonable suspicion concerning the existence of a Restricted Substance.

6.3.2 The supervisor or manager shall call the Office of Human Resources to report the reasonable suspicion and request testing to be scheduled. The basis for reasonable suspicion testing must be documented in writing and supported by two witnesses, which includes the person having such suspicion. The immediate supervisor shall be contacted, if possible, to confirm that a test is warranted based on the circumstances.

6.3.3 Any employee involved in a significant incident in which the health or safety of the employee or other individuals is involved, or in which extensive property damage has occurred, will be subject to reasonable suspicion testing in accordance with the requirements of any applicable collective bargaining agreement(s), or for employees exempt from collective bargaining, as determined by the University.

6.3.4 Bargaining unit employees may confer with a union representative, should one be available, within one hour before the test is to be conducted. A union representative may accompany the employee to the collection site provided the union representative's attendance does not impede the testing process. Testing will not be postponed if a union

representative is requested but is not available.

- 6.3.5 An employee ordered to undergo a reasonable suspicion test shall always be transported to the testing facility by their supervisor or manager and another management-level employee. The supervisor or manager or other management-level employee shall arrange for the employee's family or friend to pick the employee up after the test is conducted. If arrangements cannot be made, the supervisor or manager and other management-level employee should take the employee home. The employee shall not be permitted to drive.
- 6.3.6 Appropriate medical assistance should be obtained first (9-1-1) for an employee injured on the job and in need of immediate medical attention.

#### 6.4 Rebuttable Presumption Notice

- 6.4.1 When an employee who suffers a work-related injury has a positive test result or refuses a test, the positive test result or refusal to test creates a rebuttable presumption that the presence of a Restricted Substance in an employee's system is the proximate cause of a work-related injury. The burden of proof then shifts to the employee to prove that the presence of the Restricted Substance was not the proximate cause of the work-related injury.
  - 6.4.2 An employee who tests positive or refuses to submit to testing may be disqualified for compensation and benefits under the Workers' Compensation Act.
  - 6.4.3 A Medical Marijuana recommendation or other medical documentation is insufficient to demonstrate that the presence of marijuana was not the proximate cause of the work-related injury.
  - 6.4.4 Access to medical treatment shall never be delayed to satisfy any pre-test documentation. Documentation should, however, be prepared within 24 hours of the test and given to the employee or other authorized parties as stipulated in any applicable collective bargaining agreements.
- 6.5 Any employee referred through administrative channels to a counseling or rehabilitation program as a result of that employee's positive test result may be subject to follow-up testing according to specifications and provisions of any collective bargaining agreement or for employees exempt from collective bargaining, as determined by the University.
  - 6.6 Employees whose duties require them to have a commercial driver's license and drive certain types of vehicles are subject to testing in accordance with the DOT drug testing laws and applicable United States Department of Transportation regulations.

- 6.7 All sample collections shall be conducted off-site by professional non-state personnel subject to the collection protocols of the Federal Omnibus Act.
- 6.8 An employee tested based on reasonable suspicion shall be placed on administrative leave with pay pending test results. If the test result is negative, the employee shall be notified to report to work. An employee who has a positive test result must be removed from their duties, pending evaluation by a substance abuse professional and a negative return-to-work test. The University shall initiate any disciplinary process in accordance with the appropriate collective bargaining agreement and University work rules, policies, and procedures. An employee shall have a negative return-to-work test before returning to work.
- 6.9 Confidentiality of Test results will be maintained to the extent provided by law.
- 6.10 Employees or applicants shall be given the opportunity as required by applicable collective bargaining agreements, or in the absence of such agreements, as stipulated by the University, to offer an explanation or submit medical documentation of prescription medication, Medical Marijuana recommendation, or exposure to toxic substances that may explain a positive test result. Such information shall be reviewed only by the medical review officer (MRO) in determining the validity of a positive test result and shall be released to the University only to explain the Test result.
- 6.11 Refusal to Test
- 6.11.1 An employee's test will be treated as a positive test, subject to discipline, if the employee refuses to submit to a properly ordered test or if the employee otherwise fails to cooperate with the testing process. An applicant will not be hired if the applicant refuses to submit to an applicant test or if the applicant fails to cooperate with the testing process.
- 6.11.2 The types of actions listed below will be considered a refusal to Test. This list is not intended to be all inclusive.
- 6.11.2.1 Refusal to sign test forms;
- 6.11.2.2 Refusal to provide a specimen to be tested or an adequate amount of the specimen;
- 6.11.2.3 Alteration or substitution of the test specimen;
- 6.11.2.4 Any other failure to cooperate during the testing process that prevents proper completion of the Test;
- 6.11.2.5 Any other act of refusal.

## 6.12 Disciplinary Action

- 6.12.1 An employee who violates any of the standards contained in this policy and/or has a confirmed positive test will be subject to disciplinary actions, up to and including termination.
- 6.12.2 Any employee who has not completed their initial probationary period shall be subject to termination on the first occasion in which the employee has a positive test result.
- 6.12.3 Employees who have a confirmed positive test may be required to enroll in and successfully complete a substance abuse rehabilitation program certified by the Ohio Department of Mental Health and Addiction Services. Any disciplinary action may be held in abeyance if the employee enrolls in and successfully completes the substance abuse rehabilitation program. If an employee has a confirmed positive test while enrolled in, or subsequent to completion of, the rehabilitation program, the employee will be subject to discipline, up to and including termination.
- 6.12.4 This provision in no way limits the University's ability to also discipline for workplace or job-related incidents that may be directly or indirectly associated with the test result.
- 6.12.5 An employee whose test shows a blood Alcohol level at or above .02% and below .04% shall be immediately removed from duty until the start of the employee's next scheduled shift or for 24 hours, whichever is greater. Employees removed from duty may use any accrued leave or compensatory time at the employee's option or be placed on a leave without pay status if accrued leave or compensatory time is not available. The employee may be subject to discipline.

## 7.0 CRIMINAL DRUG CONVICTION

- 7.1 A conviction is any finding of guilty, no contest (including a plea of nolo contendere), or the imposition of a sentence by a judge or jury in any federal or state court.
- 7.2 Each employee is required to notify the University within five calendar days after being convicted for violating any federal or state criminal drug statute where such violation occurred at the University. Any employee who fails to report such a Conviction will be subject to immediate termination.
- 7.3 The University may have an obligation to notify any U.S. government agency with which it has a contract or grant within 10 days after receiving notice from the employee or otherwise actual notice of such conviction. If required, any

criminal drug conviction at the University will be reported to federal granting authorities.

7.4 Within 30 days of such notification, the University will be required to take appropriate disciplinary action against such employee, up to and including termination. In the alternative, the University may require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

8.0 **APPLICANTS OR EMPLOYEES IN RECOVERY:** This policy complies with the Americans with Disabilities Act. The University will not discriminate against any applicant or employee who is not engaging in current illegal use of a Restricted Substance and who: successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully, is participating in a supervised rehabilitation program, or is erroneously regarded as engaging in such use.

#### 9.0 REASONABLE ACCOMMODATION

The University recognizes that some prescription medications and Medical Marijuana may affect judgment, coordination, and physical ability. Employees who need accommodation should submit a request to the Office of Human Resources.

9.1 For accommodation requests regarding prescription medication, the University shall evaluate such requests in accordance with applicable law, the standards established in this policy, and any other applicable policy or directive.

9.2 For accommodation requests regarding Medical Marijuana, the University may evaluate such requests in accordance with the standards established in this policy and any other applicable policy or directive.

9.3 For accommodation requests regarding testing, the University will evaluate such requests in accordance with applicable law, the standards established in this policy, and any other applicable policy or directive.

#### 10.0 TRAINING

The University will establish and implement a drug-free awareness program addressing the following topics:

10.1 Dangers of drug abuse in the workplace.

10.2 University policy regarding a drug-free.

10.3 Availability of approved drug counseling and rehabilitation services.

- 10.4 Penalties that may be imposed upon employees for drug abuse violations.
- 10.5 Every employee engaged in the performance of a federal grant will be given a copy of this policy.