



# ATLANTIC AREA/D5 & MLCA LEGAL NEWSLETTER



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## TOPIC: CONDUCTING URINALYSIS AFTER AN UNAUTHORIZED ABSENCE (UA) & BEST PRACTICES FOR ALL POSITIVE TESTS

Happy New Year. This issue addresses one aspect of the increasing UA and drug problems being experienced by many units.

### CONDUCTING URINALYSIS AFTER AN UNAUTHORIZED ABSENCE (UA)

- Ref: (a) Coast Guard Personnel Manual, Chapter 20.C.2  
(b) Military Rule of Evidence 313  
(c) Urinalysis Testing Procedures, COMDTINST M5355.1F  
(d) Coast Guard Commander's Quick Reference Manual for Legal Issues

Executive summary: *In most instances, there are only two circumstances under which a command may conduct a urinalysis of a member returning from UA without the member's consent: (1) you have probable cause that the member's urine contains metabolites of an illegal drug & obtain a search authorization or (2) you conduct a valid administrative inspection IAW an established written policy to test everyone returning from a UA period. This article shows you how to lay the groundwork for valid administrative inspections. At the end, we pass along general best practices for investigating all positive urinalysis results.*

### Administrative Inspections.

An "inspection" is an examination of the whole or part of a unit conducted as an incident of command for the primary purpose of determining & ensuring military fitness and good order & discipline. Reference (a) authorizes the use of urinalysis as a method of routinely conducting administrative inspections of members in order to maintain operational readiness, security, and good order and discipline. Reference (b) supports the use of urinalysis as a valid method of inspection provided that the primary purpose is **not** to obtain evidence for use in a court-martial. In other words, an administrative inspection cannot be a "search."

### Searches.

A "search" is an examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceeding.

An examination is presumed to be a "search" if (1) it immediately follows a report of a specific offense and was not previously scheduled (2) specific individuals are selected for examination or (3) persons examined are subject to substantially different intrusions.

A valid search in the context of urinalysis normally requires consent or a valid search authorization.

### Why You Should Care.

The results of a valid administrative inspection may be used for any purpose, including NJP and court-martial.

An invalid search that results in a positive urinalysis may only be used as a basis for separation. The results may not be used in disciplinary proceedings or to characterize service.

### How to Keep an Administrative Inspection from Accidentally becoming a "Search."

- Promulgate a unit Instruction modeled on the enclosed sample. Have the signed instruction in place *prior to* conducting any inspections! To remove any doubt that the instruction is intended to address a specific individual, you should institute the policy when nobody is UA.

- Apply the unit Instruction uniformly. Removing discretion on whether to test an UA returnee helps validate that this is an inspection program and shows that specific individuals were not selected by the command.

- Do not request any extra testing beyond that done during a regular random urinalysis. From a legal standpoint, it is in your best interest not to deviate from your established urinalysis collection procedure. Have the urinalysis coordinator and urinalysis observer conduct the collection and mail it off just like any other urinalysis.

- Use "IU"(unit inspection) as the "testing premise identifier" in the command's urinalysis ledger. See reference (c).

- Consistently use the term "administrative inspection" to describe examinations made under the unit Instruction.

- Establish a reasonable basis for deciding the circumstances that will trigger the inspection, such as a 24-hour or longer UA period.

### More Legal Background on a Reasonable Basis for the Inspection.

Reference (d) suggests that all members returning from a UA in excess of 24 hours should be given a urinalysis. This policy has been upheld as reasonable in the Navy case *United States v. Patterson*, 39 M.J. 678 (1993). This case is interesting in that while the court had no problem with the fact that the unit had an instruction requiring testing upon return from a 24-hour UA, the court ultimately threw out the results of the urinalysis because the instruction was inconsistently applied. When other unit members returned from a UA, they rarely were subjected to a compulsory urinalysis. Patterson went UA on three separate occasions. After returning from the first two UAs, he was not required to submit to a urinalysis inspection. Only after he was also suspected of a larceny when he returned from a one-day UA was he directed to provide a urine sample. The court determined that the urinalysis was a subterfuge to search for evidence of a crime. It's clear from this case that Instructions implementing Administrative Inspections *must be* consistently enforced in order to achieve the desired outcome.

### Best Practices for Handling All Positive Urinalysis Test Results.

Prepare for all meetings with the member. Plan your rights advisement and interview. It is extremely important to get the member's full, detailed story during the first meeting. Consider calling CGIS if there is a recurring drug problem or other ongoing investigations that could be related to drug use. Do not approach the member to ask questions about possible drug use if CGIS is going to investigate.

If CGIS is not involved and you want to question the member, remember to use the Article 31(b) rights advisement form in enclosure (5) to the Military Justice Manual, COMDTINST M5810.1D.

When members waive their rights and consent to being interviewed, ask them to explain why their sample tested positive. You may also ask if they knowingly ingested any illegal drugs, and if so, in what way (eat, smoke, snort, inject, etc.), WHEN, and in what quantity. Establish how the member knew they ingested an illegal drug and who else was present (other CG members, the dealer, etc.)

If the member denies illegal drug use, obtain **detailed** information about the member's activities in the 4-5 days preceding the urinalysis. (WHERE they were; with WHOM; exactly WHEN; WHAT they did, ate, drank, etc. and WHO else might have seen any part of this.)

Keep in mind that one point of an interview is to eliminate possibilities, so probe for a "final answer" on each point. Carefully note when a witness says they cannot remember any of the details you've asked about. This lack of memory may be a very important fact!

AFTER getting details about activities in the 4-5 days before the urinalysis, ask the member if there might have been a time when they could have innocently/accidentally ingested the drug (a party, concert, bar, or club) and, if so, how they might have ingested it (a spiked drink, etc.). Fully explore any claim of innocent ingestion! Determine exactly WHEN and HOW the member thinks this occurred. Who do they think did it? Why? Ask the member if they felt any effects from the event and who, if anyone, they told about it. Identify all witnesses to the event.

Carefully note any change from the member's earlier timeline describing activities in the 4-5 days before the urinalysis. Ask the member to explain any inconsistencies.

You also should ask the member about any over-the-counter medications, dietary supplements, or body building products they may have been taking at the time of the test. Fully explore all claims! If the member says that they were taking supplements, determine the exact dosage (it may not be recommended amount) and when they took the supplement in relationship to the test. Obtain the container or establish that the member doesn't have one. If they give you the container, start a chain of custody document. If they don't have a container, ask for the name of the drug or product, the amount ingested, the place they purchased it and the recommended dosage. Determine if there is anyone else who can verify the supplement use.

If possible, obtain a sworn written statement that will document the answers to all of these questions.

The Bottom Line: Valid Administrative Inspections are the best way to conduct a uri-

nalysis test after an unauthorized absence.  
So write a unit Instruction ASAP and follow  
it. A sample Instruction is attached.  
QUESTIONS?

Please don't hesitate to call with questions or  
suggestions for other newsletter topics.

Atlantic Area/D5 Command Advice &  
Operational Law Branch MLCA(lo):  
CDR Felicetti, LT Hennessy, LT Luce,  
LT Solomon, LT Ashburn, YN1 Stevens,  
and YN2 Steiner.  
(757) 398-6291 Fax: (757) 398-6511

MLCA Command Advice & Military Justice  
Branch MLCA(lj): LCDR Beyer, LT  
Walbert, and YN1 Harvey.  
(757) 628-4198 Fax: (757) 628-4217

Atlantic Area Legal Advisor LANT-  
AREA(AI) & Chief, MLC Atlantic Legal  
Division MLCA(l): CAPT Kutz.  
(757) 628-4192 Fax: (757) 628-4217