

# STATE OF THE INDUSTRY

By most accounts, the drug and alcohol testing industry is about 30 years old. In 1986, President Ronald Reagan issued Executive Order 12564, which established a drug-free workplace in the federal government and presented a model for drug-free workplace programs for American businesses. This article focuses on the current state of the drug and alcohol testing industry in the United States even though we are now seeing the drug testing industry growing stronger globally.

BY JOE REILLY, JOE REILLY & ASSOCIATES

**B**y many accounts, the state of the drug testing industry is very good. The Drug & Alcohol Testing Industry Association (DATIA) recently held its Annual Conference at the Caesars Palace in Las Vegas, NV and with 834 attendees, 80 exhibit booths and informative expert presenters; it was a great conference. I personally spoke to more than 100 attendees and every single one said business is good, healthy, and growing. More than a few stated that business is booming and several more stated that a lot depends on the continuing improvement of the economy and growing employment figures in the United States.

## So how is the state of the industry? It is very good and there are many changes and challenges to come.

One thing is certain: drug use and abuse is not declining. The most recent statistics from Substance Abuse and Mental Health Services Administration (SAMHSA) annual household survey<sup>1</sup> revealed:

- Overall, the use of illicit drugs—including marijuana—among Americans aged 12 and older increased from 9.4% in 2013 to 10.2% in 2014.
- In 2014, 27.0 million people aged 12 or older used an illicit drug in the past 30 days
- In 2014, roughly 8.4 percent of Americans age 12 and older were current users of marijuana—up from 7.5% in 2013.
- There were 139.7 million previous month alcohol drinkers aged 12 or older in 2014, including 60.9 million who were binge alcohol users and 16.3 million who were heavy alcohol users

According to a new market report published by Transparency Market Research, “*Drugs of Abuse Testing Market (Sample Based Testing—Urine, Saliva and Hair Onsite and Laboratory Testing)—Global Industry Analysis, Size, Share, Growth, Trends and Forecast, 2013–2018*,” the global drugs of abuse testing market was valued at USD 2.6 billion in 2012 and is expected to grow to reach an estimated value of USD 3.4 billion in 2018. The report stated “[t]his rise in the consumption of illicit drugs has led to the demand for drugs of abuse testing. Testing of drugs of abuse can be done at home, educational institutions, or workplace, or at the laboratory using many superior

techniques to achieve accurate results.” The market research report also stated that urine is the largest specimen sample segment and it is projected to continue to grow.

Mergers and acquisitions continue to be the norm in our industry. In 2012, LabCorp completed the acquisition of MEDTOX Scientific, Inc. Also in 2012, eScreen merged with Pembroke Occupational Health and soon afterward eScreen was purchased by Alere. In 2014, Bode Technology Group, Inc. and its division Chromosomal Labs (DNA identification testing) became a wholly-owned subsidiary of LabCorp. DISA Global Solutions has acquired University Services an MRO service formally run Dr. Benjamin Gerson. In February of this year, Abbott Laboratories agreed to buy Alere for \$5.8 billion. On the TPA side, WorkforceQA out of Salt Lake City, Utah has made several acquisitions and mergers over the last few years including Employers Drug Program Management (EDPM), Interactive Medical Connections (IMC), Compliance Safety Systems (CSS) and Intermountain MRO Services (IMRO).

As the Loretta Lynn song goes, “*We’ve Come a Long Way Baby*.” Early on, urine drug testing at laboratories was the dominant specimen type and testing methodology. Today there are many testing types and methodologies. While urine testing at a laboratory is still by far the most recognized type of testing, instant testing with urine or oral fluid, hair follicle testing, and oral fluid testing at a laboratory are now common methods used in workplace drug testing.

Instant drug testing devices are currently used by employers at their places of business throughout the United States; they are also used at many collection sites. Often referred to as rapid testing or point of collection testing (POCT), this testing methodology can reveal negative drug test results in about five minutes, which enables employers to get applicants on the job and existing employees back to work more quickly. Specimens producing non-negative

results should be sent to a laboratory for confirmation testing and then review and verification by a certified medical review officer (MRO); failure to do this may place the employer at risk for potential legal action if they have taken adverse action against an applicant or employee based on the instant non-negative result alone. Both drug testing collection sites and employers should use caution when choosing which instant testing devices they utilize; it is very important that they are approved by the U.S. Food and Drug Administration (FDA) for workplace testing. The FDA clearance process includes a detail of the appropriate procedures for the use of instant testing devices including the requirement of sending non-negative initial screens to the laboratory for confirmatory testing.

Hair follicle testing is becoming increasingly popular. In fact, several large trucking companies are now performing hair follicle testing in an addition to the DOT required 5-panel urine lab based testing. Other industries that have embraced hair testing include oil and gas, gaming and auto manufacturing. Hair testing has an approximate 90-day look back period and is difficult for donors to cheat or adulterate. Laboratories have increased the menu of panels available for hair testing beyond the typical 5-panel hair test that was previously available. Expanded opiate testing is now available for hair, and some laboratories are offering hair testing for additional drugs panels including: Benzodiazepines, Barbiturates, Methadone, Propoxyphene, Meperidine, Tramadol, Fentanyl and others.

In the near future, hair follicle testing may be allowed in the DOT mandated drug and alcohol testing program. In December of 2015, Congress passed legislation known as “Fixing America’s Surface Transportation Act” or the “FAST Act.” With this legislation, hair testing has been authorized in conducting DOT pre-employment testing for use of a controlled substance and DOT random testing for the use of a

controlled substance if the operator was subject to hair testing for pre-employment testing. It is important to note that this is an initial authorization for hair testing and that regulations and guidelines still need to be established by the Department of Health and Human Services (HHS). The law requires HHS to issue guidelines no later than one year from the date of enactment. It will be interesting to see if and when hair testing becomes a reality for the DOT program.

Laboratory-based oral fluid testing seems to be gaining the most momentum in our industry. It seems that every month there is an industry webinar being promoted to educate employers and drug testing industry professionals about lab-based oral fluid drug testing. This testing is currently offered by most of the major laboratories providing

workplace drug testing. Similar to hair testing, it is very difficult to cheat on an oral fluid drug test. It is important to note that the look back period is the shortest of all the specimen types and also that many drugs can be detected within hours of use.

In May of 2015, HHS proposed new guidelines in the Federal Register that would revise the Mandatory Guidelines for Federal Workplace Drug Testing Programs to permit the testing of oral fluid specimens for drugs. Soon after, this proposal was open for comment and 120 comments were received from industry professionals and employers. Charles LoDico from HHS spoke at the recent DATIA conference and updated the attendees on the next steps HHS must take to finalize the proposed rule on allowing oral fluid testing. Once that is complete and



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the rule has final approval, DOT will then start their process of incorporating oral fluid testing into 49 CFR Part 40.

There are both challenges and opportunities for drug testing industry professionals and employers in regards to oral fluid testing. The oral fluid drug test is marketed as a product that may be used by the employer to collect the specimen at the employer's place of business. Often employers engage mobile collectors to come to the business and collect oral fluid specimens from multiple employees at one time. Most mobile collectors will perform oral fluid collections. The challenge occurs when sending applicants and employees to fixed collection facilities for oral fluid specimen collections, as most third party collection sites are not offering oral fluid drug test collections at this time. An employer using a specific collection site on a regular basis may request that a PSC or third party collection site stock oral fluid collection devices and perform oral fluid collections. For many small- and medium-sized employers that do not want to be in the business of collecting specimens, an oral fluid testing collection vendor is currently difficult to find, particularly when testing applicants or employees located in multiple areas across the United States.

It is important to recognize that the above referenced HHS proposal referenced above also included proposed changes in its mandatory guidelines for urine testing. The proposed changes would allow federal executive branch agencies to test for additional Schedule II prescription medications (oxycodone, oxymorphone, hydrocodone, and hydromorphone). The rule is also going through the HHS process for final approval. Testing for expanded opiates is particularly important in light of America's growing opioid addiction epidemic. It is good to see that the Obama Administration has made a priority of addressing the startling rise in use of opioids, particularly prescription painkillers like OxyContin, which often lead to the use of harder, illegal drugs,

such as heroin. President Obama also participated in the National Rx Drug Abuse and Heroin Summit in Atlanta, GA. held on March 29, 2016.

Not only is the industry and the DOT moving to test additional drugs and alternative specimen types, it is also moving from paper to Electronic (eCCF). So where do we stand on electronic CCF (eCCF) for DOT? Labs are currently being reviewed for approval to begin using eCCFs for DOT urine drug testing. Once approved, the labs will have to coordinate with the National Laboratory Certification Program (NLCP) to complete inspections of their laboratories in order to begin using electronic CCFs for DOT-regulated testing. As the laboratories receive their approvals, they will enable their customers to begin using eCCFs for customers to begin utilizing them. Alere Toxicology's lab in Gretna, LA. has final approval for DOT eCCF. Others labs, as of May 1, 2016, are in the process of undergoing the required inspections for getting final approval. It is anticipated that by the end of the year, there will be four to five SAMHSA certified labs offering eCCF forms for DOT drug testing.

So how is the state of the industry? It is very good and there are many changes and challenges to come. Legalization of marijuana and possibly other drugs, along with an employer's rights to test, are issues that needs to be monitored and as an industry along with each industry member we must be proactive in employer rights to test. Look to DATIA for information and resources to help you work with the industry to address these challenges. Also look also to DATIA to learn about final laboratory approvals for electronic custody and control forms, oral fluid testing final approval for DOT testing, expanded opiates final approval for DOT testing, hair testing for DOT covered employees and of course other changes and updates for our industry.

I wrote an article in early 2008 for the inaugural issue of the *DATIA focus* magazine entitled, "What a Great Time to be in the Drug

*Testing Industry!"* The economy was starting to struggle but the drug testing business was still strong. Little did I know that we would be in for some tough times with the financial crisis that peaked later that year. The number of workplace specimens going to the labs for testing decreased for the first time ever. The good news is that today the industry is again booming and both DOT and non-DOT testing continue to be increasing. Actually, it is non-DOT testing that is fueling the growth of the drug testing industry. In contrast to the early years of drug testing, the growth segment of the industry are the small- and medium-sized non-regulated employers. I am excited about the future of the drug testing industry. Business is up. There is increased activity in mergers and acquisitions; background screening is also growing in leaps and bounds plus alternative specimen testing continues to grow. If you are a service agent and are not seeing an increase in the market for non-DOT drug screening, it is time to review your marketing programs because our industry continues to grow and so should you. I am happy to say, once again, "What a Great Time to be in the Drug Testing Industry!" ■

## References

- 1 Results from the 2014 National Survey on Drug Use and Health—<http://www.samhsa.gov/data/sites/default/files/NSDUH-FRR1-2014/NSDUH-FRR1-2014.pdf>
- 2 Drugs of Abuse Testing Market—Global Industry Analysis, Size, Share, Growth, Trends and Forecast, 2013–2018 <http://www.transparencymarketresearch.com/drugs-abuse-testing-market.html>



Joe Reilly entered the world of drug testing in 1993. He is well known throughout the industry and considered an expert on workplace drug testing issues. Joe served for nine years on

the DATIA Board of Directors and served as Chairman of the Board from 2004–2008. After a few years of retirement, Joe is again serving again on the DATIA Board and works with the leadership of several drug testing companies including National Drug Screening, Joe Reilly & Associates and USA Mobile Drug Testing.



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