



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES  
ATTORNEY GENERAL

TELEPHONE  
(208) 334-2400

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Mr. A. I. Murphy  
Director  
Department of Corrections  
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION  
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Dear Mr. Murphy:

You have asked us whether the use of EMIT-d.a.u. (drug abuse urine) assays by the department of corrections constitutes a "laboratory" within the definition of IDAPA 16.02.6003.01. The more normal procedure would be to address the question to the administering agency by way of a request for declaratory ruling under the Idaho A.P.A., I.C. § 67-5208. However, since both agencies have requested our opinion on this matter, we issue this legal guideline.

The EMIT-d.a.u. assay materials and equipment are used by the department of corrections for the chemical examination of urine samples from parolees or probationers. The purpose is to provide information for diagnosis or prevention of impairment to their physical or mental health or for assessment of their condition. It is our opinion that these facilities are within the broad definition of "laboratory" as provided by IDAPA 16.02.6003.01 and the sub-classification of "other laboratory" as provided by IDAPA 16.02.6003.01.d.

ANALYSIS

As described by SYVA Company, the producer of the EMIT-d.a.u. assays, the assays in question are immunochemical tests designed as primary screening tests to detect the presence of specific groups or classes of drugs in human urine samples. A separate assay is required to detect the concentration of each different suspected group or class of drugs within the detection limits of the test. The different assays are basically performed by mixing prepared EMIT reagents and bacteria samples with a small amount of urine and monitoring the resultant

reaction with a digital reading spectrophotometer. Each assay also requires buffer and cleaning solutions, calibrators, pipette-diluters, beakers, a data processor and other laboratory equipment. The tests must be performed by trained personnel.

The purpose of performing these tests, as stated by the department of corrections, is to assist in determining whether suspected individuals may have violated their parole or probation agreements by using certain drugs. The non-prescription use of the drug groups or classes detected by the EMIT-d.a.u. assays is not only prohibited by probation and parole agreements, but is also unlawful under Idaho law. See, "Uniform Controlled Substances Act," I.C. § 37-2701 to 2751. These prohibitions seek to prevent drug abuse and the physical and mental impairment of individual and public health associated with the non-prescription use of these drugs.

The definition of "laboratory or clinical laboratory" is provided by IDAPA 16.02.6003.01:

A facility for the biological, microbiological, serological, chemical immunohematological, hematological, biophysical, cytological, pathological or other examinations of material derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of the health of man.

All laboratories are divided into four categories: "hospital," "independent," "private," and "other" laboratories. This last category is defined in catch-all terms by IDAPA 16.02.6003.01.d. as "a public or private facility which performs tests on material derived from the human body but is not a part of [the other three categories.]"

As a general rule of statutory construction, "the words of a statute must be given their plain, usual and ordinary meaning, in the absence of any ambiguity." Walker v. Hensley Trucking, 107 Idaho 572, 573 (1984). This principle of statutory construction also applies to the construction of rules and regulations promulgated by an administrative agency. Higginson v. Westergard, 100 Idaho 687, 690-691 (1979).

The definition of "laboratory" is clear and unambiguous. The definition is not based on design, size or type of equipment. Rather, it refers to a broad type of activity: the examination of material from a human source to provide information for certain general purposes. An EMIT-d.a.u. assay is a chemical examination of human urine. The purpose of the examination is to gain information to deter or prevent drug use

and its associated impairments to physical and mental health. At a minimum, the information is used to help assess an individual's physical condition or health. Even if these assays are performed only to screen for possible drug use, with further examinations being provided by the department of health and welfare, the regulations provide no exemption for "mere screening" and none can be inferred from a review of the entire set of regulations and their underlying statutory authority.

Based on the preceding, it is our opinion that use by the department of corrections of the EMIT-d.a.u. assays does constitute a "laboratory" and is subject to regulation by the department of health and welfare. Please call if further assistance is required.

Cordially,



JOHN J. McMAHON  
Chief Deputy

JJM/lh