

Office of Drug Enforcement and Program Compliance
49 CFR Part 40 Interpretation

Question: If the medical review officer (MRO) determines that a donor has a legitimate prescription for Marinol, would this be reported as a negative result? What if in the MRO's opinion, the use of the prescribed medication may compromise safety?

Answer: Section 40.33 states in part, that *"...A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a DOT agency regulation. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of the results."* The Department's interpretation has been that if the MRO can determine that the donor has a legitimate prescription, the positive result would be "down graded" to a negative. This would apply to any legitimately prescribed drug, including Marinol. If the MRO determines that the use of that particular prescription/substance may compromise safety in the performance of a transportation related safety sensitive function (whether or not the substance is prescribed for the appropriate condition), the MRO should discuss this with the donor's (prescribing) physician. The donor's physician may decide to prescribe an alternate substance that may not have adverse affects on the donor's performance of his/her duties.

Section 40.33(i) states in part, that *"...the MRO may disclose such [medical] information to the employer, a DOT agency...or a physician responsible for determining the medical qualification of the employee....if...the information indicates that continued performance by the employee ... could pose a significant safety risk. (2) Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph..."* If after talking to the prescribing physician, the MRO still determines that a safety risk exists, he/she may inform the employer, DOT, or the employer's physician of the existence of a medical condition that could preclude the donor from performing a safety sensitive function. However, the MRO must ensure that he/she informed the employee prior to the verification process that this (medical) information may be provided to a third party.