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PART 40 QUESTIONS AND ANSWERS

The Office of Drug and Alcohol Policy and Compliance and Office of the General Counsel of the Department of Transportation are providing this question and answer. It constitutes an official and authoritative guidance and interpretation concerning 49 CFR Part 40 (see 49 CFR 40.5). This Question and Answer is dated 01/18.

§§ 40.135; 40.327

01/18

QUESTION:

During the verification interview, the MRO may learn about a legally prescribed medication that would likely make the employee medically unqualified or would likely pose a significant safety risk. Section 40.135(e) requires the MRO to tell the employee to have his/her prescribing physician contact the MRO to discuss the MRO's concern about the medication. If the prescribing physician does not speak with the MRO within 5 business days of the MRO informing the employee to have his/her prescribing physician contact the MRO, the MRO will report the information about the legally prescribed medication to the appropriate third party. Can the MRO report that information to a third party before 5 business days have elapsed?

ANSWER:

- Yes, there could be instances where the MRO would not have to wait the 5 business days to report the information, for example:
 - The prescribing physician speaks with the MRO before 5 business days have elapsed and the significant safety risk remains unresolved.
 - The employee expressly declines to have his/her prescribing physician speak with the MRO.
- If, during the verification interview, the MRO learns of a medical condition or diagnosis that is likely to result in the employee's being medically unqualified under a DOT agency regulation (e.g, FAA, FMCSA, USCG), the MRO must report that information under the procedures in § 40.327. The 5-day pause provision in § 40.135(e) is inapplicable.