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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

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Title 9. Rehabilitative and Developmental Services
Division 4. Department of Alcohol and Drug Programs
Chapter 3. Programs for Alcohol and Drug Impaired Drivers
Subchapter 4. Participant Standards

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§ 9874. Program Sobriety.

(a) The DUI program shall require a program participant to maintain program sobriety. As used in this chapter, "program sobriety" means that participants shall not attend program services or activities or be on the DUI program premises while under the influence of any amount of alcohol or drugs as defined in this regulation, or be convicted of a subsequent DUI offense while enrolled in a DUI program.

(b) If a participant is sleeping, disruptive, belligerent, or otherwise appears unable to pay attention and participate in program services or activities, or a participant smells of alcohol or any alcoholic beverage, the DUI program shall determine whether the participant is under the influence of alcohol or drugs as specified in (c) and (d) of this regulation.

(c) The DUI program shall determine whether the participant is under the influence of alcohol either by (1) or (2) below:

(1) The DUI program may require the participant to submit to testing with a breathalyzer or other similar chemical screening device designed to measure alcohol on the breath.

(A) The DUI program shall only use an alcohol screening device if the packaging for the screening device indicates approval for such use by the U.S. Department of Transportation. If the screening device indicates an alcohol level higher than .01 percent, the participant shall be determined to be under the influence of alcohol.

(2) Two or more staff members may document in writing in the participant's program record that the participant is sleeping, disruptive, belligerent, or otherwise appears unable to pay attention and participate in program services or activities, or the participant smells of alcohol or any alcoholic beverage.

(d) The DUI program shall determine that the participant is under the influence of drugs either by one (1) or (2) below:

(1) The DUI program may require the participant to submit to testing with a chemical device designed to determine if an individual is under the influence of drugs. The DUI program shall only use a chemical drug screening device if the packaging indicates that the device has been approved for such use by the National Institute of Drug Abuse. If the chemical drug screening device indicates a positive for use of drugs, the participant shall be determined to be under the influence of drugs.

(2) Two or more DUI program staff document in writing in the participant's program record that the participant exhibits a combination of appearance, behavior, and speech indicating that the participant is under the influence of drugs. Such symptoms may include the following, as listed in the most current version of Chapter 3 of the Driving under the Influence Enforcement Manual developed by the California Highway Patrol: constricted or dilated pupils; slurred or rapid speech; impaired coordination; body tremors; green coating on the tongue; paranoid hallucinations; muscle rigidity; confused, disordered, or dizzy appearance; agitated behavior; or lethargy, stupor, or blank stare. The Driving under the Influence Enforcement Manual is available from the Publications Unit of the California Highway Patrol.

(e) If the DUI program determines that the participant is under the influence of drugs, as specified in (d) of this regulation, the DUI program shall:

(1) Advise the participant that he/she may obtain a drug test at his/her own expense in order to refute the determination of illicit drug use. The DUI program shall accept the test results provided:

(A) The drug screening test was conducted by a clinical laboratory licensed by the Department of Health Services pursuant to Section 1265 of the Business and Professions Code; and

(B) The drug screening test was conducted within 24 hours of the time that the DUI program or his/her staff determined that the participant was under the influence of drugs.

(2) Ask the participant to leave the DUI program premises.

(A) The DUI program shall advise the participant not to drive him/herself home.

(B) The DUI program shall offer to call a friend or relative of the participant or a taxi cab (at the participant's expense) to drive the participant home.

(f) The DUI program shall document in the participant's record how the DUI program determined that the participant was under the influence of alcohol or drugs, including staff observations of the indicators listed in (c)(2) and (d)(2) of this regulation.

(g) Except as specified in (h) of this regulation, the DUI program shall dismiss the participant pursuant to Section 9886 if the DUI program determines that the participant has used alcohol or illicit drugs based on the criteria contained in (c) and (d) of this regulation.

(h) The DUI program shall not dismiss a participant from the program for using medication prescribed by a licensed physician and used in accordance with the prescription unless the participant is unable to participate in program services due to the effects of the medication (e.g. falling asleep, unable to pay attention, etc.).

(i) The DUI program shall not conduct testing on a random basis.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code. Reference: Sections 11837.1, 11837.3(d)(2), and 11837.4, Health and Safety Code.

HISTORY

1. New section filed 7-31-2002; operative 8-30-2002 (Register 2002, No. 31).

2. Amendment filed 3-22-2012; operative 4-21-2012 (Register 2012, No. 12).

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