



April 2022 Newsletter

From the President's Perspective:

I'm writing this newsletter as I just got back from the 2022 Western New York Safety Conference. This is the conference cancelled in 2020 with a few different twists. I can confidently state it was a good time! There were many folks in the WNY Safety community I have not seen in 2 years or more. It was good to see everyone, we were all in good condition and certainly in good spirits! We also had a SPY award winner and one of our Members won the Waring Award; more on that a bit later in the newsletter. Consider this an Extra Publication based on a returning event!

The Conference theme was communication; the keynote speakers covered that, safety leadership and how to read body language very well. The presentation on reading body language to determine if someone was being less than truthful was fun to attend! The presentation on Workplace Violence Prevention was one of the better ones I have heard. The concurrent sessions on Wed. and Thurs. that I attended were very informative and thought provoking. As usual, the information presented at the Conference has a practical and immediate application, making the Conference a must attend!

One issue presented at the Conference, was done in a superb manner by Dr. Stuart Dorfman; the effect of the legal environment created by the NYS MRTA (look that up in a previous newsletter) and how to manage it effectively. In brief, MRTA has made taking an adverse action against an employee who has a positive THC (the active ingredient in cannabis) metabolite test all but impossible. But does that mean we should tolerate an employee who is impaired on intoxicating substances? Some background and maybe some potential solutions follow.

Some of us who can attest to the fact that the intoxicating effect of alcohol has a relatively short time frame; usually <24 hrs. Human metabolism tends to convert ethanol (drinking alcohol) to less intoxicating forms rather quickly. So, usually a day after consuming some libations, you are generally functioning normally (depending on the quantity consumed). You could drink more than a few libations (and sing Karaoke in the bar parking lot) on Friday evening when socializing with friends and be good to go on Monday morning. Good to go by chemical test and/or appearance on Monday AM.

Cannabis has a different metabolic path. THC is fat soluble; as a result, the metabolic pathway that converts THC to a less intoxicating form is quite a bit slower and it is present for a much longer time. Long after the intoxicating effect has passed, the usual screening tests for THC metabolite (urine, hair) will test positive after use; it may be detected in urine for up to 30 days after use, depending on how much was consumed and the form it was consumed in. This raises a question that is addressed in MRTA; the law states that an employer cannot take adverse actions against an employee who does something legal when not at work. Look at it this way; if someone consumes some cannabis when socializing with friends on Friday night; they will be penalized on Tuesday when they are called for a random drug screen.

Given the above facts and conundrum, just what should be the goal of the program? Is it to penalize the use of an intoxicant based on individual choice **or** to ensure that our employees are **fit for duty**, ready and able to perform their assigned jobs efficiently and safely? I will presume that the goal of a drug and



alcohol screening program is to **compliment** the fit for duty program to inform (and reinforce) employees that they must be ready and able to do their job each day they are scheduled to work; do the job efficiently, safely and productively. Given that presumption, drug and alcohol testing is more of a tool in the toolbox to ensure that our workforce is fit for duty.

What about the person who is not fit for duty due to impairment from fatigue, disease or emotional state? Is it OK to be impaired at work, period? If not, how can we make that determination in an objective vs. subjective manner? What follows are some potential solutions and some discussion of each. Keep in mind that if your workplace is covered under the Federal Acquisition Regulations (FAR) or is a covered establishment by US Department of Transportation (DOT) regulations or covered by US Department of Energy (DOE) requirements, then the contract requirements regarding substance abuse screening apply. The following is an opinion, not legal advice.

At the Conference, oral fluid (saliva) rapid screen testing was demonstrated by a vendor, the other, neurophysiological testing, will be the subject of our April Virtual Chapter meeting. Let's look at them and how they may fit in with a goal of identifying impaired employees, and still being within the spirit of the MRTA regulations.

As presented by OraSure Technologies, Inc. they have a rapid screening oral fluid (saliva) tests for recreational and therapeutic pharmaceuticals (similar to laboratory drug screening panels). What is of interest is that the THC metabolite portion of the test has a much shorter look back period than traditional laboratory urine or hair testing. According to the vendor, this type of test looks back approximately 12 hours vs. 30 days. If we consider that most adult humans would be considered intoxicated/impaired within 12 hrs. of using cannabis, then a stronger, legal case may be made for standing down an employee suspected of impairment. If the screening test is negative, then the employee may be OK to go to work. Keep in mind that MRTA does not prevent an employer from prohibiting possession or use (except for therapeutic medical use) of cannabis at work or prevent an employer from prohibiting intoxicated or impaired employees to work. What the rapid screening technology allows for is an immediate indicator of the employee's fitness for duty regarding consumption of recreational pharmaceuticals and/or alcohol. The employee chews on a saliva swab, it's inserted in a test chamber and the test results will appear. The employer then takes appropriate action based on the results. *But this type of test is only applicable to substances a person ingests.*

What we will be witnessing from Impairment Science is a much broader screening technique that accounts for physical states of being regarding fitness for duty. By establishing a baseline reaction speed to visual and/or audio stimulus as well as balance ability and comparing it to performance on a given day, the app can calculate whether or not a person is physically and (to a degree) psychologically fit for performing their job. This 3 minute long screening is delivered electronically and does not involve collection of a biological sample. It may be repeated as often as necessary and results may be logged by an organization with the opportunity to compare results per employee and per group over time. Neurophysiological screening does not identify the impairment type, just that the employee has a deterioration of neurological and physical capabilities that may render them not fit for duty at this time. Because of that feature, the test itself is non-discriminatory and any employment actions taken are not specifically related to a drug



screening test. Potentially, that keeps us out of the quagmire related to MRTA requirements and fulfills the duty of an employer to maintain a safe and healthy workplace.

What type of testing and how an organization integrates it in to their workplace HR and Safety programs will be up to management. However, either of these types of testing may prove advantageous in helping to ensure that employees are fit for duty and preventing impaired persons from impacting workplace safety.

OK, back to the fun stuff and the positive aspects of the Conference! We have a SPY award winner; Dr. Laura Cavuto from UB was the 2022 winner! Her contributions to the field of Ergonomics are too numerous to list; her presentations have been world class and she is a very approachable, practical minded person who is willing to share knowledge to make for a safer workplace. Congratulations, Laura! As we don't notify our award winners until the last second (more like: Be at the WNYSC on day 2 at lunchtime without fail.), Dr. Cavuto was stuck aboard an airplane at the time of presentation. Accepting on her behalf, was her husband, Steve Razzolini from HazMat Environmental group. Delegation is a critical part of a relationship!

The Edward Waring award winner from the Conference was Brooke Smith, loss control department lead from Lawley. Brooke has been involved in furthering construction safety for many years, starting her career working with Robert Overhoff at LP Ciminelli back in the day. Her contributions to the field; facilitating construction safety from a hands-on to a consulting role have allowed workers to go home at the end of the day. She is also quite involved in her community as well. Congrats, Brooke!

If there is a takeaway regarding the award winners at this year's conference, it's that Safety is not a field dominated by men. Take note, we all contribute to the effort at all levels; respect, knowledge, skill and the desire to learn to perform our chosen profession well is what distinguishes the best practioners.



Steve accepting the SPY award on behalf of his wife, Dr. Laura Cavuto; Brett Carruthers and Carol Schmeidler presenting.



Brooke Smith accepting the Edward Waring award, Robert Overhoff presenting.

