

Administrative Letter No.

FSCWS# 05-03

Subject: Urine Drug Screening in Children's Services

Date: December 09, 2003

This administrative letter provides county departments of social services with procedures for obtaining urine drug screening in child protective services. The Division of Social Services requested an advisory opinion from the NC Office of the Attorney General on whether asking a parent or caretaker to submit to a urine drug screen in a child protective services assessment violated the constitutional prohibition against unreasonable searches and seizures.

The Attorney General's opinion, which is attached to this letter, provides that asking a parent or caretaker to submit to a urine drug screen using any type of duress or coercion does violate the constitutional prohibition against unreasonable searches and seizures. However, the opinion also states, "...a social worker conducting a CPS assessment can legally ask a parent or caretaker suspected of substance abuse to consent to a urine drug screen. Please note that when the State attempts to justify a search on the basis of consent, the State must demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied. Thus, it is essential that when a social worker asks a parent or caretaker to submit to a urine drug screen during a CPS assessment, the social worker must express no punitive or negative consequences for a parent or caretaker's refusal in order for that individual's consent to be deemed truly voluntary."

The opinion goes on to state, "Statements a social worker should avoid include, 'If you don't agree to testing, I'll have no choice but to remove your children', or 'you'll have to send your children to live with a relative', or 'you'll have to leave the home', or 'I'll limit your visitation with your children', or 'I'll treat your refusal as a positive test result', etc."

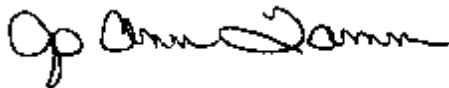
Finally, our child welfare attorneys have also provided us subsequent guidance regarding specific procedures for testing that is also attached to this letter. In that guidance, we are advised that, "...participation by social workers in the testing and collection process unnecessarily exposes the State, county, and individual social workers involved to potential liability for a constitutional deprivation suit especially if a false positive result is a contributing factor in the removal of children from the home. Also, there are 'chain of custody' problems, i.e., in order for the test result to have legal value, there must be a showing that the urine sample taken was indeed the one that tested positive. Therefore, we strongly recommend that any parent or caretaker, whose suspected drug abuse is a contributing factor in the case and who voluntarily consents to a urine screen

during a CPS assessment, be referred to a certified laboratory for the testing and collection of any urine sample. And further, "...the accuracy and reliability of the results of home testing kits used punitively by social workers conducting CPS assessments to screen parents or caretakers for suspected substance abuse would not withstand judicial scrutiny."

Based on these opinions, it is the Division of Social Services' policy that, in order for a county department of social services' social worker to request that a parent or caretaker submit to a urine drug screen in a child protective services assessment, there must (1) be a reason to suspect that substance abuse is an issue, and (2) the consent of the parent or caretaker must be voluntary and the social worker must not indicate any adverse consequences to the parent or caretaker if there is a refusal to submit to the urine drug screen, and (3) the parent or caretaker who does voluntarily submit to a urine drug screen must be referred to a certified laboratory for both collection and testing.

If you have questions about this Administrative Letter, you may contact the Family Support and Child Welfare Services Section WF/CPS Team at (919) 733-4622.

Sincerely,

A handwritten signature in black ink, appearing to read "Jo Ann Lamm". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jo Ann Lamm, Program Administrator
Family Support and Child Welfare Services Section

Attachments*

[Printable Version of Admin Letter](#)

* Attachments are not included with the electronic version of this letter but will be mailed with the hard copy.