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LOCAL NEWS

# Colorado to retest 1,700 blood samples from DUI cases after lab employee's errors uncovered

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By Felisa Cardona  
The Denver Post

POSTED: 04/26/2012 01:00:00 AM MDT  
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The state is retesting 1,700 DUI blood samples after a laboratory employee failed to follow proper procedures, which skewed the results of the tests.

The mistakes open the door for defense lawyers to challenge all of the blood testing in driving-under-the-influence cases conducted by the Colorado Department of Public Health and Environment's lab.

"There was a situation where an outside lab ran a sample that caused us to rerun a sample, and we were able to track that to a certain employee who was not following the standard operating procedures," health department spokesman Mark Salley said.

The lab processes DUI bloodwork for 225 law enforcement agencies in Colorado. Some law enforcement agencies, including Denver



FILE: A Jefferson County Sheriff's recruit runs through sobriety tests during a training session in this 2007 Denver Post file photo. (Nathan W. Armes, Special to The Denver Post)

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### EMAIL

Read the email from lab director Cynthia Burbach regarding retesting of 1,700 samples of bloodwork taken for DUI cases (PDF).

police, have their own labs. Others contract the bloodwork out to an independent lab.

So far, the state has tested 250 of the samples and found 10 with inaccurate results, Salley said.

Salley said the inaccurate results were in the defendants' favor because they showed a lower blood-alcohol reading than the

second analysis. For example, a first, inaccurate reading on which a suspect's charges were based might have said the blood-alcohol content was a 0.10 percent, when in reality it was 0.17 percent.

"As soon as we were aware of the situation we took action," Salley wrote in an e-mail. "We are reanalyzing all samples using standard methodology and standards and controls. Once a retest is completed the appropriate district attorney's office is notified and they can pursue the case with a new analyst."

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Colorado public defender Douglas Wilson said his office hasn't been notified of the laboratory errors.

"You would think somebody might share this with everyone," Wilson said. "I have not heard a peep."

The Denver Post obtained a March 21 e-mail written by lab supervisor Cynthia Silva Burbach that says lab employee Mitchell Fox-Rivera was fired for unsatisfactory performance March 14 and that the

errors were discovered March 9.

Salley declined to confirm the name the employee but said the department is retesting all of the employee's work, which spans a period of about five months.

"Please ask all DDA's (prosecutors) that have pending cases with Mr. Fox-Rivera to call the main lab," Burbach wrote in her memo. "These samples are being moved to the front of the line."

Colorado Springs attorney Steven Katzman was notified that some of his client's cases were tested by Fox-Rivera, and he plans to challenge the evidence.

"A judge or a jury is going to be entitled to know the full extent of what was reported, and you are going to wonder what is the discrepancy and can we trust anything?" he said.

Katzman said DUI laboratory errors occurred a couple of years ago at the Colorado Springs Police Department's lab and several samples had to be retested.

"In some situations, they had people who had pled to cases and they had to reopen some cases," Katzman said. "And in one or two cases, people shouldn't have been charged and it created a mess."

Felisa Cardona: 303-954-1219 or [fcardona@denverpost.com](mailto:fcardona@denverpost.com)

*This story has been corrected in this online archive. Due to incorrect information provided by the state health department, the number of DUI blood tests retested was incorrect. 250 tests have been reexamined.*

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PREVIEW COMMENT

TOGGLE: OLDEST FIRST NEWEST FIRST



Don K

7 days ago

These errors didn't happen before CDPHE began regulating Medical Marijuana ...

Rule #1 = Don't get high on your own supply.

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Sid James

11 days ago

Terry 1 wrote:

*joe hardhat wrote:* It sounds like the Colorado state laboratory is staffed by incompetents. The lab supervisor, Burbach, is either not up to the task, or not doing her job.

One incompetent person doesn't mean the whole lab is.

No, it doesn't.

But it does taint and cast doubt on all the results (evidence) the lab has released while the incompetent person was there, along with the supervisors that are supposed to oversee and make sure the tests are done without error.

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Terry C 11 days ago

joe hardhat wrote: It sounds like the Colorado state laboratory is staffed by incompetents. The lab supervisor, Burbach, is either not up to the task, or not doing her job.

One incompetent person doesn't mean the whole lab is.

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Mary 11 days ago

It appears there is either something wrong with the training or with supervision of new employees if an employee was allowed to fail to follow standard procedure for 5 months. I understand that there were 1700 samples that had to be retested - but based on the retests so far, if that rate of error (less than 2% - 10 out of 850 retests) holds constant - and that the error is always in the defendant's favor, a handful of defense attorneys should be jumping for joy at the lower results - especially if their clients are (as MANY are) repeat offenders.

As far as Consonance C's screed that implies that every DUI bust during that 5 month period has had evidence falsified, I'd like Consonance C to talk to the relative of someone who has been killed by even a "buzzed" driver - or visit some survivors in the hospital and rethink that position. I understand that some defense attorneys may attempt to use this to question the reliability of the results, but is Consonance C suggesting that ALL of the tests out of that lab should for that period should be retested, while whining about having to retest the 1700? I would think that a prosecuting attorney would be able in the case of the 1700 to announce that this evidence was retested AND came out HIGHER - which would give a judge or jury confidence in the results!

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susan c 11 days ago

HMlaw wrote:

broadsquad wrote:

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So far, the state has tested 850 of the samples and found 10 with inaccurate results, Salley said.


Re-testing. Sure it will be better this time because? is there a lawyer around who couldn't get their client off based on this foul-up?

In this case just because there was a bad test doesn't mean that they cannot obtain a good test. Additionally, in Colorado you can be convicted on the basis of voluntary roadside maneuvers alone. Even though these maneuvers are voluntary most people do them even though it is very rare for a report to indicate that someone passed them. It's important to know about this process in advance because these maneuvers can trip up even sober people  
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You can't 'trip up' HGN.

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Plainthinker B

12 days ago

*PETERCOULTER wrote:*

"Please ask all DDA's (prosecutors) that have pending cases with Mr. Fox-Rivera to call the main lab," Burbach wrote in her memo. "These samples are being moved to the front of the line."

No notice to Defense Attorneys? I wonder who pays Burbach's salary?

There are far fewer DA's offices to notify, and they are more easily identifiable as being affected. And since the DA's office is obligated to inform any defense attorney's of this situation it is actually a matter of shifting the notification to the DA's offices. Presumably to allow direct notification of those who need to know and not waste resources notifying defense, or other, attorney's who have no need to know.

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Steven B

12 days ago

*broadsquad wrote:*

So far, the state has tested 850 of the samples and found 10 with inaccurate results, Salley said.

Re-testing. Sure it will be better this time because? is there a lawyer around who couldn't get their client off based on this foul-up?

And that is the sad part of this screw up. :(

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