

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 20, 2004

Opinion No. 04-118

Admissibility of Laboratory Reports

QUESTION

Whether the affidavit accompanying a laboratory report, required pursuant to Tenn. Code Ann. § 40-35-311(c)(1), must be signed by the laboratory technician who performed the test.

OPINION

Yes. The statute appears to contemplate that the affidavit be from the laboratory technician who performed the test and who has personal knowledge of the accuracy of the items required by the statute.

ANALYSIS

Tenn. Code Ann. § 40-35-311(c)(1) allows the laboratory report of a defendant's drug test to be admissible in probation revocation proceedings, even though the laboratory technician who performed the test is not present to testify. The report must be accompanied by an affidavit containing at least the following information:

- (A) The identity of the certifying technician;
- (B) A statement of qualifications from the certifying technician;
- (C) A specific description of the testing methodology;
- (D) A statement that the method of testing was the most accurate test for this particular drug;
- (E) A certification that the test results were reliable and accurate;
- (F) A declaration that all established procedures and protocols were followed; and
- (G) A statement of acknowledgment that submission of false information in the affidavit may subject the affiant to prosecution for the criminal offense of perjury pursuant to § 39-16-702.

Subsection (c)(2) further provides:

If the State intends to introduce a laboratory report and affidavit **in lieu of the live testimony of the laboratory technician** as authorized by this subsection, it shall

provide the defendant or the defendant's attorney, if known, with a copy of the report and affidavit at least five (5) days prior to the revocation hearing. (Emphasis added).

You have asked whether a laboratory report concerning a defendant's drug test, which contains all of the required statutory information, but signed by someone other than the technician who prepared the drug analysis, is admissible in a probation revocation hearing.

The language of § 40-35-311(c)(1) and (2) appears to contemplate that the affiant be the laboratory technician who performed the tests and who has personal knowledge of the accuracy of the items required by the statute. This must include a declaration that all established procedures and protocols were followed. Therefore, it is the opinion of this Office that the affidavit accompanying a laboratory report, as required pursuant to Tenn. Code Ann. § 40-35-311(c)(1), must be signed by the laboratory technician who performed the test.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

JENNIFER L. BLEDSOE
Assistant Attorney General

Requested by:

Mike Bottoms
District Attorney General
252 N. Military, Suite 202
Lawrenceburg, TN 38464