



### **F8 The Use of Standardized Field Sobriety Tests for Drug Impairment: An Evaluation of the Research, Ethical Implications, and Legal Issues**

*Harry L. Miles, JD\*, Green Miles Lipton, LLP, 77 Pleasant Street, PO Box 210, Northampton, MA 01061-0210; and Sabra R. Botch-Jones, MS, MA\*, Boston University School of Medicine, Biomedical Forensic Sciences, 72 E Concord Street, Boston, MA 02118*

After attending this presentation, attendees will understand the challenges associated with the use of Standardized Field Sobriety Tests (SFSTs) assessing impairment in cases involving Driving Under the Influence of Drugs (DUID), the ethical implications, and legal issues which arise (e.g., *Daubert* challenges/due process questions).

This presentation will impact the forensic science community by providing an in-depth exploration of the legal and ethical challenges associated with using SFSTs in cases involving DUID.

SFSTs, which were designed to assess impairment associated with alcohol intoxication, have been used for more than four decades.<sup>1</sup> With the implementation of Drug Recognition Evaluations, cases involving suspected drug use may undergo more extensive evaluation by a trained expert. (the validation and training of drug recognition is beyond the scope of this presentation); however, not all individuals are subjected to this more comprehensive examination and are only evaluated using SFSTs: the Horizontal Gaze Nystagmus (HGN), the Walk and Turn (WAT), and the One-Leg Stand (OLS).<sup>1-3</sup> Research has been conducted on individuals under the influence of compounds such as amphetamine, dl-3,4-methylenedioxymethamphetamine and methamphetamine, and cannabis using SFSTs, with results demonstrating that the use of these tests may not be adequate to assess impairment with specific compounds within a class of drugs or at varying drug concentrations.<sup>4,5</sup> Although validated for accurate impairment with alcohol intoxication, SFSTs have not been evaluated and validated with all possible drug classes that may be encountered during a roadside stop. Therefore, this study asks the questions, “Should testimony about the performance on SFSTs by a driver suspected of impairment because of the ingestion of controlled substances be admitted at trial: (1) at all; (2) as statements of perceived fact without any conclusion or opinion attached; (3) as statements of perceived fact from which the trier of fact may draw inferences and form opinions; (4) as statements of perceived fact from which the testifying witness may draw inferences or form opinions about the operator’s state of sobriety; and/or, (5) as statements of perceived fact from which the testifying witness may draw conclusions about the identity of the substance causing the operator’s behavior.”

The ethical implications arise from the interplay between the expert and the lawyer who presents the expert’s testimony. Attendees will learn about the differences between the ethical rules that govern prosecutors and defense counsel. Attendees will also learn about the American Bar Association’s Criminal Justice Section Standards, Prosecution Function, Standard 3-3.3, “Relations With Expert Witnesses,” and Standard 3-1.2(c), “The Function of the Prosecutor.” The presentation will also explore the American Bar Association’s Criminal Justice Section Standards, Defense Function, Standard 4-4.4, “Relations With Expert Witnesses.” In addition, the American Bar Association’s Model Rules of Professional Conduct, Rule 3.3, “Candor Toward the Tribunal,” Rule 3.4, “Fairness To Opposing Party and Counsel,” and Rule 3.8, “Special Responsibilities of the Prosecutor” will be presented. The question, “Is it ethical to offer the testimony concerning a defendant’s performance on the SFSTs without offering evidence of validation, sources of error, and error rate?” will be discussed.



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Attendees will learn about and discuss legal issues that arise from a proffer of an expert opinion regarding a driver's performance on the SFSTs as an indicator of drug-induced impairment. This presentation will include a discussion of some of the factors enumerated in the Federal Rules of Evidence, 702: helpfulness to the trier of fact, an adequate basis in fact, the necessity of showing both the reliability of the methodology, and the reliability of the application of the methodology to the facts of the case. *Daubert v. Merrell-Dow Pharmaceuticals, Inc.*, 509 US 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993) and its progeny.<sup>6</sup>

### Reference(s):

1. Burns M., Moskowitz H. (1977) *Psychophysical tests for DWI arrest*. U.S. Department of Transportation, National Highway Traffic Safety Administration. Final report, Publication No. DOT-HS-5-01242.
2. O'Keefe M. (2001) Drugs driving—standardized field sobriety tests: a survey of police surgeons in Strathclyde. *J Clin Forensic Med.* 8(2):57–65.
3. Luke A. Downey, Amie C. Hayley, Amy J. Porath-Waller, Martin Boorman, Con Stough. The Standardized Field Sobriety Tests (SFST) and Measures of Cognitive Functioning. *Accident Analysis & Prevention.* 86 (2016): 90-98.
4. Beata Y. Silber, Katherine Papafotiou, Rodney J. Croft, Con K. K. Stough. An Evaluation of the Sensitivity of the Standardised Field Sobriety Tests to Detect the Presence of Amphetamine. *Psychopharmacology.* 182.1 (2005): 153-59.
5. Luke A. Downey, Rebecca King, Katherine Papafotiou, Phillip Swann, Edward Ogden, Con Tough. Examining the Effect of DI-3,4-methylenedioxymethamphetamine (MDMA) and Methamphetamine on the Standardized Field Sobriety Tests. *Forensic Science International.* 220 (2012): E33-36. National Center for Biotechnology Information. U.S. National Library of Medicine. Web. 29 July 2016.
6. *Daubert v. Merrell-Dow Pharmaceuticals, Inc.*, 509 US 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

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### SFSTs, DUID, ABA CJ Standards