

**ACTION NO. 97-1 BY THE STATE DIRECTOR OF TESTS FOR ALCOHOL AND DRUG
INFLUENCE**

Under the authority of 47 O.S. Supp. 1996, Section 759 and OAC 40:1-1-3 promulgated by the Board of Tests for Alcohol and Drug Influence, the following official **ACTION** is hereby taken by the State Director of Tests for Alcohol and Drug Influence.

**ACTIONS OR EVENTS CONSTITUTING REFUSAL TO SUBMIT TO TESTING OF THE
BREATH FOR ALCOHOL**

- (1) The State Director of Tests for Alcohol and Drug Influence hereby clarifies, for the information of all concerned parties and persons, what actions, inactions, or statements by a tested subject, or other events shall constitute or be deemed refusal of a conscious person under arrest to submit to testing, by or at the directions of a law enforcement officer, of such person's breath to determine the alcohol concentration thereof, under provisions of Title 3, 47, and 63 of the Oklahoma Statutes.
- (2) Any one or more of the following events or occurrences shall per se constitute refusal, or be deemed refusal, by a conscious person under arrest, to submit to testing of his or her breath to determine the alcohol concentration thereof.
 - A. An explicit or express verbal statement of refusal to undergo or to complete breath-alcohol testing, however phrased.
 - B. Failure of the person to respond to a law enforcement officer's demand to submit to breath-alcohol testing, or comply with, or to follow the directions or instructions of a law enforcement officer with respect to any of breath-alcohol testing, or failure of the person to cooperate as required to carry out or to complete such testing, except by reason of illness or injury or other physical condition which makes such compliance or cooperation impossible for the test subject.
 - C. Obstructing, resisting or interfering with the full and proper administration of a breath-alcohol test by or at the direction of a law enforcement officer, or attempting by any means to circumvent or to defeat proper testing elements and procedures, or to alter the outcome of such test.

The common consequence of the foregoing events or occurrences is that a valid breath-alcohol analysis cannot be performed in accordance with rules of the Board of Tests for Alcohol and Drug Influence because of what the person who is subject to testing says or does or does not do, creating a refusal.

- (3) Examples of foregoing events or occurrences which constitute or are deemed refusal include, but not limited to, the following:
 - A. Refusing or failing, except by reason of illness or injury or other physical incapability, to submit to and successfully complete the pre-test observation/deprivation period.
 - B. Inserting a foreign body or any substance into the mouth, or refusing or failing to remove or discharge a foreign object or substance from the mouth during the observation/deprivation period and prior to or while undergoing breath-alcohol testing.
 - C. Refusing or failing, except by reason of illness or injury or other physical incapability, to provide the required number of acceptable breath specimens as directed in the course of a breath-alcohol analysis by the breath -alcohol operator or supervisor performing the breath-alcohol testing.
- (4) The foregoing statements and positions by the State Director are consistent and consonant with the training long provided to breath-alcohol test operators and supervisors in Oklahoma under the authority and sponsorship of the Board of Tests for Alcohol and Drug Influence. They are further consistent with appellate court decisions in Oklahoma and other states involving the issues of refusal to undergo breath-alcohol testing or failure to cooperate with such testing. They are also consistent with policies and procedures for federally-mandated workplace breath-alcohol testing under U.S. Department of Transportation regulations , and with the pertinent parts of U.S. Department of Transportation-approved training for Breath Alcohol Technicians.
- (5) In the event that a person is incapable of submitting to or successfully completing a breath-alcohol analysis by reason of illness or injury or other physical disability, a blood test for alcohol may be administered under authority of 3 O.S. §302(C) or 47 O.S. §751(C) and in accordance with rules of the Board of Tests for Alcohol and Drug influence.
- (6) This ACTION by the State Director of Tests for Alcohol and Drug Influence shall take effect on and after 1 June 1997

12 May 1997



Kurt M. Dubowski, Ph.D.
State Director of Tests
for Alcohol and Drug Influence