

Professional license endangered by a DUI

In this issue we discuss a successful defense of a client charged with a DUI plus updates to the law and breath tests.

“David” (not his real name) is a driver for a public transit agency and has done so for many years. It’s a good job, pays well, is stable and allows him to support his family. One day, he made an unfortunate mistake on his personal time. David came to us with a pending DUI Charge. It was imperative David win both his DMV administrative hearing and his DUI court case. As a professional driver, losing in either forum would cost him his job and his career. He retained our services.

We fought David’s case

We fought the district attorney’s office over the right to be provided substantial discovery related to the blood analysis, and obtained it. The fight went on.

We fought the district attorney’s office over the legality of the traffic stop leading to his arrest, and lost when the judge would not consider the traffic stop video. *We kept fighting.*

We fought the case to a jury trial. The jury hung with 11 for Not Guilty and one for Guilty based on our cross examination of the Officer and Criminalist. The trial should have been a Not Guilty Verdict and the District Attorney knew it – and told the Judge, **“CASE DISMISSED”**.

The DMV refused to drop the matter

We then fought the DMV. The DMV-employed and trained hearing officer didn’t get it – he didn’t care that there were no criminal charges. Despite losing the administrative per se hearing, we kept fighting. We filed an administrative writ in the Superior Court (similar to an appeal) challenging

the DMV hearing officer’s decision. Shortly after filing the writ, we were contacted by the Attorney General’s office informing us they were dismissing the DMV Case – and making the dismissal date retroactive so there would be no suspension on David’s record!

David still has a career he loves, and no stain on his valuable driving record. Let us fight for you or someone you know. Call today at (925) 952-8900.

DUI Legal Update

Recently the Legislature passed a revision to California Vehicle Code section 23700. This law provides persons convicted of a 2nd DUI an opportunity to obtain a restricted driver’s license after a 90 day suspension (as opposed to one year) with the installation of an Ignition Interlock device. The law went into effect on July 1, 2010. DMV stubbornly says the law only affects persons arrested after July 1. Attorneys are now fighting the DMV’s position in court. Early indications are that the DMV will have to retroactively apply the law. For more information regarding this recent law change and other DUI laws, call 925-952-8900 or see our website at www.duilawyerwalnutcreek.com.

California recently enacted a new “Pilot Project” for DUI offenders requiring the Ignition Interlock Device. Defense attorneys feel that it is only a matter of time before it is mandated state-wide.

Image source: SmartStart of California



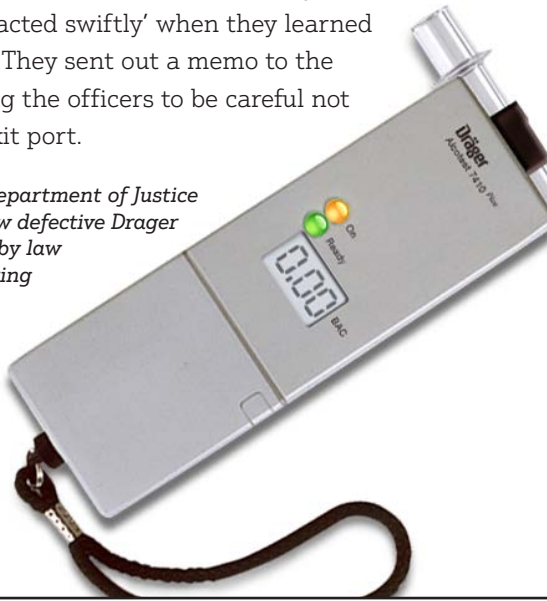


California DUI Newsletter

Defective BAC units used by law enforcement

Did you know a common breath test device used for DUI prosecutions in Northern California was defectively manufactured? The Department of "Justice" for the State of California ordered 1000 units of the EPAS Alco Test 7410 manufactured by Drager Safety Diagnostics. Shortly thereafter the DOJ found out that the device was defective. The defect was that if the exit-port on the mouthpiece was capable of being inadvertently blocked by the officer holding the device during the administration of the breath test. The affect; artificially increase the breath test result. Recently in a jury trial, we got the criminalist to admit that he personally tested the device and received illegal results when the true blood alcohol concentration level was below the legal limit. He admitted a person with a legal blood alcohol level could be arrested and falsely convicted of a DUI. The DOJ 'acted swiftly' when they learned of the defect. They sent out a memo to the agencies telling the officers to be careful not to block the exit port.

The California Department of Justice continues to allow defective Drager units to be used by law enforcement during DUI stops.



The state did not take the units out of service or demand the manufacturer fix the design flaw or replace the units. Amazingly, those estimated 1000 units are still in service right now. And of course, no officers have been notified of the memo.

The Law Office of Johnson & Johnson represents clients in Criminal; DUI, Child Dependency; Juvenile; and Civil Rights Cases. Peter Johnson is our lead Criminal Defense/ DUI/Civil Rights Attorney. Carin Johnson is our lead CPS/ Child Dependency – Juvenile Law Attorney.

Both attorneys have been practicing since being admitted to the California State Bar in 1993.



Peter Johnson



Carin Johnson

The Law Office of Johnson & Johnson attorneys Peter Johnson & Carin Johnson are dedicated to an ongoing effort to educate themselves in Forensic Sciences that are relevant to our client's cases. We have a belief that most cases are driven by medical and scientific principles. We also understand that to effectively use what we learn from our scientific education we must continue to endeavor to educate ourselves in advocacy as well. In order to be successful attorneys we recognize that we must not only educate and inform our listener but also must stir their emotions to make them want to act for our clients' interest.

This newsletter is produced in compliance with the California Business & Professions Code §6157-6159. The results portrayed in the above case examples were dependent on the facts of those specific cases, and in no way imply or guarantee a specific legal result for all clients and situations.

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