

ADLS APPEALS
WHAT INFORMATION DO YOU NEED FROM YOUR DOCTOR?

This information sheet is intended to provide general information to Applicants and their doctors. It does not constitute legal advice and is specific to the time when it is first issued. If a person wants to obtain legal advice, the person should consult someone licensed by the Law Society of Upper Canada (www.lsuc.on.ca) for representation.

Introduction

A driver's licence may be suspended under the *Highway Traffic Act* on the grounds that the driver failed to comply with the demand to provide a breath sample. The driver may launch an appeal at the Licence Appeal Tribunal ("Tribunal") challenging the suspension on the grounds that their failure to provide a breath sample on the day of the refusal was due to a valid medical reason. The driver is required to provide **certain** information from a doctor **if** they intend to rely on a **medical report** to support the appeal. The information the doctor provides in the report, which must be signed by the doctor, must include:

- a) the doctor's name, telephone number and address with the postal code
- b) the driver/patient's name, date of birth and address
- c) a statement that the doctor has prepared the report or is aware that the report may be used in support of the patient's appeal from suspension of his/her driver's licence under Section 50.1 of the *Highway Traffic Act*
- d) how long the doctor has been caring for this driver as a patient and the date of the most recent examination that supports the doctor's findings in this report
- e) whether or not the doctor is the driver's family physician
- f) if the doctor is a specialist, the field of specialty
- g) details of any present condition, diagnosis and history of the condition that precludes the driver from providing a breath sample, including the results of any tests.

The Tribunal has heard evidence of many medical conditions such as asthma, pulmonary obstructive disease, bronchitis, pneumonia, flu, allergic reactions, collapsed lung, or injuries suffered in a car/boat accident, or mental conditions such as severe anxiety that leads to panic attacks where breathing is difficult.

Evidence at the ADLS Hearing

At the hearing of an appeal, the onus is on the driver to provide the medical evidence in support of the appeal to satisfy the Tribunal that the driver had a **valid** medical reason for failing to provide a breath sample. The driver **frequently testifies** about what occurred when the breathalyser test was requested. It is in the driver's best interest to provide medical evidence from a doctor with respect to the medical reason why the driver could not provide the breath sample demanded on the day of the refusal. Normally, the doctor does not need to attend the hearing, though some applicants do choose to have the doctor attend as a witness.

A representative of the Registrar of Motor Vehicles will present the Registrar's case. **Information as to the position taken by the Registrar's representative on other appeals and the medical evidence the Registrar has relied on in the past is set out in the Tribunal decisions which are published at www.lat.gov.on.ca. For instance, in some cases the Registrar has said that taking a breathalyser test is similar to taking a pulmonary function test, using a similar expiratory effort.**

What information does the Tribunal need from the driver's doctor?

The Tribunal normally seeks as much information as possible about the driver's relevant medical condition. Therefore a doctor's report should include **any other relevant information such as**

- pulmonary function tests **results**,
- medicines that have been prescribed including dosages and usage directions,
- information from x-rays, MRI's or scans,
- other laboratory test results, or
- reports from specialists.

The driver may also choose to file other documents as evidence, such as relevant emergency room discharge notes or hospital charts to support the appeal.

It is not sufficient for the driver to establish that they have a medical condition, ie asthma. The report should, ideally, link the driver's inability to blow into the breathalyser, as required on the day of the refusal, with the identified medical condition.

Important Points

- The doctor's report is very important to the potential success of the driver's appeal.
- The doctor must sign the report and include the information requested in the notice of appeal form.
- The report should include any relevant test results.
- The doctor must link the medical condition to the failure to blow in the breathalyser as required on the day a breath sample was demanded.

Other Sources of Useful Information

- Tribunal's other Information Sheets
- Tribunals Rules of Practice and Practice Directions
- Tribunal Booklet for the ADLS appeal
- FAQ, **previous Tribunal decisions** and other information at www.lat.gov.on.ca