

JOHNSON & JOHNSON

California DUI Law Newsletter

Fighting for your rights – and your license



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[HTTP://DUI.JJLAW2.COM](http://dui.jjlaw2.com)

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

The Fight for David's License

“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. ■

DUI Law 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 <http://www.jjlaw2.com>.

DUI Defense Factoid

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 effect; 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 convicted of a DUI falsely. Well, 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. They

did not take the units out of service or demand the manufacturer fix the design flaw or replace the units. No, the estimated 1000 units are still in service right now. And of course, the officer was not aware of the memo.

If you or someone you know was arrested for a DUI and did a breath test, call us today at 925-952-8900 or see our website at www.jjlaw2.com to fight the validity of the breath test result.



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

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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