

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

#4

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to

the Department of Public Safety
(Agency or Board)

Regulation No. Saf Ad 96 thru 101 (new)

Subject: Standards of Training for Persons Administering Chemical Tests for Intoxication

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

OCT 25 1973 4:35 pm

BY Eda Staudenmaier
AUTH. SIGNATURE EJ

Stamped and filed with the Secretary of State 10-25-73

Rev. 9-72

MINNESOTA DEPARTMENT OF PUBLIC SAFETY

SAFETY ADMINISTRATION DIVISION

CHAPTER TEN: Standards of training for persons administering chemical tests for intoxication.

SafAd 96 PURPOSE AND SCOPE

(a) The purpose of these rules is to establish minimum standards of training for persons administering a chemical test for intoxication at the direction of a peace officer, pursuant to the provisions of Minnesota Statutes 1971, Section 169.123, and acts amendatory thereto.

(b) Scope. The scope of these rules is intended to be consistent with the mandate of the legislature as expressed in Laws 1973, Chapter 555.

SafAd 97 DEFINITIONS

For the purposes of these rules, the following terms shall have the meanings ascribed to them:

(a) Administer. The collection of a specimen of blood, breath, or urine, from a person for the purpose of analyzing such specimen to determine the alcoholic content of the person's blood.

(b) Commissioner. The Commissioner of Public Safety of the State of Minnesota.

(c) Peace Officer. A person described by the provisions of Minnesota Statutes 1971, Section 169.123, subdivision 1, and acts amendatory thereto.

SafAd 98 PERSONS WHO ADMINISTER BLOOD TESTS.

Only a person who has been trained and is employed in the capacity of a physician, registered nurse, medical technologist, medical technician, or laboratory assistant may administer a blood test.

SafAd 99 PERSONS WHO ADMINISTER BREATH TESTS.

Only a peace officer, who has satisfactorily completed a course of formal classroom instruction in the use of an instrument specially manufactured to analyze a specimen of breath to determine the alcoholic content of the blood, may administer a breath test. The course of instruction must be approved by the Commissioner. After completion of the described course such peace officer may be required to periodically demonstrate, to the Commissioner or his duly authorized and acting agents, his competence to satisfactorily operate such instrument.

SafAd 100 PERSONS WHO ADMINISTER URINE TESTS

Any person may administer a urine test.

SafAd 101 PRIOR REGULATION REPEALED.

The provisions of Highway Regulation 2 previously adopted are hereby repealed.

SafAd 102-105 Reserved for future use.

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

OCT 25 1973

BY Ella Stendenmann
AUTH. SIGNATURE

4:35 P.M.

APPROVED AS TO FORM AND LEGALITY

Oct 24 19 73

WARREN SPANNAUS, ATTORNEY GENERAL

BY J. Patrick Wilson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

OCT 25 1973 4:15 pm

Arlen I. Erdahl
Secretary of State

STATE OF MINNESOTA

BEFORE Wallace R. Hoaglund

COUNTY OF RAMSEY

COMMISSIONER OF Public Safety

In the matter of the proposed Adoption of Rules of the State Department of Public Safety establishing standards of training for persons administering chemical tests for intoxication.

ORDER OF HEARING

To effectively implement Laws 1973, Chapter 555, the Minnesota Commissioner of Public Safety deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in me by M.S. 1969, Section 299A.01, Subdivision 6.

NOW, THEREFORE, IT IS ORDERED this 20th day of July, 1973, that a public hearing on the proposed rules captioned above be held in Room B, Veterans Service Building, St. Paul, Minnesota, Thursday September 6, 1973, commencing at 10:00 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

W. R. Hoaglund

COMMISSIONER OF PUBLIC SAFETY

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE Wallace R. Hoaglund

COMMISSIONER OF Public Safety

In the matter of the proposed Adoption of Rules of the State Department of Public Safety establishing standards of training for persons administering chemical tests for intoxication.

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to M.S. 1969, Section 15.0412, Subdivision 4, in the above-entitled matter in Room B, Veterans Service Building, 20 W. 12th Street and Columbus Avenue, St. Paul, Minnesota, Thursday, September 6, 1973, commencing at 10:00 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

A copy of the proposed rules is attached hereto.

Additional copies of the proposed rules are available and may be obtained by writing to Mrs. Diane Hamilton, Department of Public Safety, 210 Highway Building, St. Paul, Minnesota 55155.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

W. R. Hoaglund
COMMISSIONER OF PUBLIC SAFETY

July 30, 1973
DATE

MINNESOTA DEPARTMENT OF PUBLIC SAFETY

SAFETY ADMINISTRATION DIVISION

CHAPTER TEN: Standards of training for persons administering chemical tests for intoxication.

SafAd 96 PURPOSE AND SCOPE

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(b) Scope. The scope of these rules is intended to be consistent with the mandate of the legislature as expressed in Laws 1973, Chapter 555.

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Only a peace officer, who has satisfactorily completed a course of formal classroom instruction in the use of an instrument specially manufactured to analyze a specimen of breath to determine the alcoholic content of the blood, may administer a breath test. The course of instruction must be approved by the Commissioner. After completion of the described course such peace officer must annually demonstrate, to the Commissioner or his duly authorized and acting agents, his competence to satisfactorily operate such instrument.

SafAd 100 PERSONS WHO ADMINISTER URINE TESTS

Any person may administer a urine test at the direction of a peace officer.

SafAd 101 PRIOR REGULATION REPEALED.

The provisions of Highway Regulation 2 previously adopted are hereby repealed.

SafAd 102-105 Reserved for future use.

Chemical Test for Intoxication Regulation

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Correck, Gurovitsch + Wood, P.A.
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Robbinsdale, Minn 55422

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Laboratory
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Minnesota Highway Patrol
Attn. Chief Crawford

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55102

RED OWL STORES INC
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HOPKINS MN
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SAN SIMEON DEVELOP CORP
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PAYNESVILLE MN

ST PAUL BUR HLTH DR P COX
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55101

ST PAUL FOOD RETAILERS ASSN
1220 ARCADE
ST PAUL MN
55106

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55401

SENATE COUN OFF J ST MARIE
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STD AM LIFE & ANNUITY CO
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104

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ST PAUL MN
55101

MINN TURKEY GROWERS ASSN
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NORTH CENTRAL ELEC ASSN
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608 AM NATL BK
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DEGRAFF MN
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MINN HWYS MANAGEMENT SERVICE
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MPLS MN
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GAS HUT INC
4940 VIKING [redacted]
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55435

GREEN DEL CITY MGR
BLOOMINGTON CITY HALL
BLOOMINGTON MN
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HOULE MELVIN
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SHOREVIEW MN
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56201

HUMAN RIGHTS DEPT
60 STATE OFF BLDG
ST PAUL MN
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HUTCHISON R.M. ANOKA CO.COMP
COURT HOUSE
ANOKA MN
55303

INS FED OF MINN
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MPLS MN
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IUOE LOC 49 CHAS SWENSON
2580 UNIV AVE
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JENOS INC
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55407

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366 JACKSON
ST PAUL MN
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55414

ARMOUR AND COMPANY
UNION STOCK YARDS
SO ST PAUL MN
55075

ASSOCIATED INDUST OF MPLS
NATIONAL BLDG
MPLS MN
55402

ASSN OF MINN COUNTIES
55 SHERBURNE AVE #203
ST PAUL MN
55103

BADALICH JOHN P
2025 THOMPSON AVE
SO ST PAUL MN
55075

BARRETT FRED
ST LOUIS CO COURT HOUSE
DULUTH MN

BEECHER EVERETT
10 10 1ST ST SO
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IND DIST #561
GOODRIDGE MN
56725

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ST PAUL MN
55101

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219 N. 2ND ST.
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1231 25TH ST NW
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20037

CARRISON DALE K
MANKATO STATE COLLEGE
MANKATO MN
56001

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BENSON MN
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CHAMBERLAIN WARREN [redacted]
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FARIBAULT MN
55021

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ST LOUIS PARK MN
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ST PAUL MN
55101

CROW WING CO PLANNING & ADV
COURT HOUSE
BRAINERD MN
56401

DANFORTH & ALLEN
731 NW BANK BLDG
MPLS MN
55402

DANIELSON RODNEY L
418 AUDITORIUM
ST PAUL MN
55102

DISPATCH PIONEER PRESS
PRESS RM STATE CAPITOL
ST PAUL MN
55101

DORSEY MARQUART
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DUDLEY E H
RT 7 BOX 122
EXCELSIOR MN
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DUNN OLIVER PLUMBERS LOC 15
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MPLS MN
55404

EDINA FIRE D JAMES MCNELLIS
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EDINA MN
55424

ELDRED R W ARMOUR & CO
UNION STOCK YARDS
SO ST PAUL MN
55075

EMP HANDICAPPED PERSONS COMM
527 JACKSON RM 227
ST PAUL MN
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1409 WILLOW ST.
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EVERETT JERRY NW PETRO ASSN
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55402

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FAEGRE & BENSON ATTN LIBR
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55114

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55401

NEUMAN RALPH W
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710 10TH ST
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56187

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802 GRAIN EXCH BLDG
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55103

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C/O DR A C SPANNAUS DVM
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AUSTIN MN
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ST PAUL MN
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55008

BERGERUD ALF
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55402

BEST FLANAGAN ET AL
1ST NATL BANK BLDG
MPLS MN
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BROEKER JOHN M
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55420

BROOKS WILLIAM F JR
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55401

BRUNING C.R.DEPT.CLINIC.EXP.
BURTON HALL
MPLS. MN
55455

BURGER ALBERT
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ST PAUL MN
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ST PAUL MN
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DEAN
MOORHEAD MN
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MPLS MN
55402

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BROOKLYN CTR MN
55429

DAYTON CHAS. SIERRA CLUB
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ST PAUL MN
55102

DOUGLASS BELL
525 OSBORN BLDG
ST PAUL MN
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EDINA MN
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ENGELWOOD CLIFFS
NEW JERSEY

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42 ASTAR RD
BABBITT MN
55706

FINLEY JAMES F
920 MINN BLDG
ST PAUL MN
55101

FINNEGAN J.R.
55 E. 4TH
ST.PAUL MN
55101

FORBES GORDON MINN RRS ASSN
207 UNION DEPOT
ST PAUL MN
55101

FOX W.E. LINDQUIST VENN
4200 IDSCTR 80 S.8TH ST
MINNEAPOLIS MN
55402

F W WOOLWORTH CO
3316 W 66TH ST
EDINA MN
55424

GLEN. HILLS HOSP.R.VAN HAUER
3901 GOLDEN VALLEY RD.
MPLS. MN
55422

GODIN RALPH J
3824 47TH AVE SO
MPLS MN
55406

GUSTAFSON WALLACE
BOX 567
WILLMAR MN
56201

HAYES,THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

HESS DONALD MIDWEST PLANN
2101 HENN BLDG
MPLS MN
55405

HENN CO WELFARE BRD RM 26
COURT HOUSE
MPLS MN
55415

HILL JIM ASSOC.MILK PROD
BOX.455
NEW ULM MN
56073

HOUSE APPROPRIATIONS COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HOUSE ED STANDING SUB COM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HUNT MRS CHAS L MECCA
26 E EXCH CENTRAL MANOR
ST PAUL MN
55101

HUNT JAMES P JR
11470 GALTIER DR
BURNSVILLE MN
55378

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

INGVALSON VERN MN.FARM BU
3110 WOODDALE DR PO 337
OST PAUL MN
55165

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

JOHNSON M.D. FRUNDT & FRU

BLUE EARTH MN
56013

KANE ANTHONY
LAW DEPT BUR RWY CO
ST PAUL MN
55101

KENNEDY DAVID STATE PLANN
654 E CENTRAL PARK PL
ST PAUL MN
55101

KNUTSON DR KEITH, BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN
56301

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN
55108

LAKE SUPERIOR INDUSTRIAL
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LAUNDERERS&DRY CLEANERS ASSN
W 1ST NATL BK BLDG
ST PAUL MN
55101

LEAGUE MINN MUNICIPALITIE
314 SOC SCIENCES BLDG
MPLS MN
55455

LOOS CALVIN J
6809 LYNDALE AVE SO
MPLS MN
55423

MALONE E I COMM LABOR & I
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MASTOR MATTSON HART ET AL
414 ROANOKE BLDG
MPLS MN
55402

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MERRITT GRANT POLLUTION CONT
OAK & DELAWARE
MPLS MN
55440

MET TFR MEN ASSN A ROSENT
1821 UNIV AVE
ST PAUL MN
55104

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

MINN AFL-CIO, L O LA SHO
414 AUDITORIUM ST
ST PAUL MN
55102

MINN ASSN ELEC COOPERATIVES
4901 W 77TH ST
MPLS MN
55435

MINN ASSN PET RETAILERS
808 TITLE ISN BLDG
MPLS MN

MINN COUNCIL STATE EMP NO 6
475 RICE ST
ST PAUL MN
55103

MINN DEPT HEALTH J C MCKA
717 DELAWARE S E
MPLS MN
55440

MINN ELECTRICAL ASSN INC
525 SO 7TH
MPLS MN
55415

MINN ENV CONTROL CITIZEN
CENTRAL MANOR 26 E EXCH
ST PAUL MN
55101

MINN FARMERS UNION PRES OFF
1275 UNIV AVE
ST PAUL MN
55104

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINNESOTA MASONRY ASSOC.
8053 BLOOMINGTONFREEWAY
MPLS MN
55420

MINN POULTRY & HATCHERY ASSN
BOX 158
MADELIA MN
56062

MINN PUB INT RES DAYTON
2418 UNIV AVE SE
MPLS MN
55414

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN SCH BUS OPERATORS AS

FARIBAULT MN
55021

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN ST BD PHAR P G GRUSS
1965 FORD PKWY
ST PAUL MN
55116

MINN STATE OPTOMETRIC ASSN
333 E HENNEPIN AVE
MPLS MN
55414

MINN STATE RETIREMENT SYS
529 JACKSON ST
ST PAUL MN
55101

MOFFITT R.C. DIR.ENV.CONTROL
MPLS.CITY HALL RM 301M
MPLS MN
55415

MOOD R BLOOMINGTON HLTH D
10200 PENN SO
BLOOMINGTON MN
55431

VILLAGE OF WOODBURY-F.STRONG
561 TOWER DRIVE
NEWPORT MN
55055

VOGEL HOWARD G
814 FLOUR EXCH BLD
MPLS MN
55415

WELLS G W INS FED OF MINN
RT 4 BOX 194
WAYZATA MN
55391

WEST & GOWAN
ATTORNEYS AT LAW
PINE ISLAND MN
55963

WIS FEEDER PIG MARKET CO-OP

FRANCIS CREEK WI

WOLKERSTORTER THEODORE
676 17TH AVE NW
NEW BRIGHTON MN
55112

ZATARGA A E CPA
1800 MIDWEST PLAZA BLDG
MPLS MN
55402

VAN CLEVE JOHN H
2101 HENN AVE
MPLS MN
55405

VERRILL JOHN E
DEPT SECONDARY ED UOF M
DULUTH MN
55812

VOLDNESS PERRY
IDS 8TH & MARQUETTE
MPLS MN
55402

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WM.MITCHEL COLLEGE LAW LIB.
2100 SUMMIT AVE.
ST.PAUL MN
55105

WOZNIAK D D
828 MINN BLDG
ST PAUL MN
55101

WYANT CLINTON W ATTY

ATKIN MN
56431

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption
of Rules of the State Department of
Public Safety Governing
standards of training for persons
administering chemical tests for
intoxication.

CERTIFICATE

I hereby certify that the enclosed 270 general labels and Public Safety list constitute the complete list of persons, associations, and other interested groups who as of 1:45 o'clock P .M., this 2nd day of August, 1973, have requested pursuant to M.S. 1969, Section 15.0412, Subdivision 4, that their names be palced on file with the secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Arlen I. Erdahl

Arlen I. Erdahl

By Ceil Dirlam

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing standards of training for persons administering chemical tests for intoxication.

AFFIDAVIT OF MAILING

Carolyn Breyer, being first duly sworn, deposes and says:

That on the 2nd day of August, 1973, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State as well as to all persons presently being members of the Minnesota Legislature.

Carolyn Breyer

Subscribed and sworn to before me

this 8th day of August, 1973.

Notary Public, Ramsey County, Minn.
My Commission Expires Jan. 21, 1975
OLIVE COE

Olive Coe

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE Wallace R. Hoaglund

COMMISSIONER OF Public Safety

In the matter of the Proposed Adoption of Rules of the State Department of Public Safety establishing standards of training for persons administering chemical tests for intoxication.

STATEMENT OF NEED

The above captioned rules are amendments to previous rules of the Minnesota Department of Highways. Highway Regulation 2 is repealed and its provisions are revised and recodified as Public Safety rules.

The need to adopt these rules arises because of the mandate of the legislature in amendments made to M.S. 169.123 subdivision 3 by 1973 Session Laws Chapter 555, which adds classes of persons who may administer chemical tests for intoxication and eliminates the provision that such persons may interpret such tests.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

W. R. Hoaglund

COMMISSIONER OF PUBLIC SAFETY

10-2-73

DATE

STATE OF MINNESOTA

BEFORE Wallace R. Hoaglund

COUNTY OF RAMSEY

COMMISSIONER OF Public Safety

In the matter of the Proposed Adoption of Rules of the State Department of Public Safety establishing standards of training for persons administering chemical tests for intoxication.

FINDINGS OF FACT

The above-entitled matter came on for hearing before the Commissioner of Public Safety of the State of Minnesota on the 6th day of September, 1973, at 10:00 A.M. in Room B of the Veterans Service Building, St. Paul, after proper notice required by M.S. 1969, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following:

The regulation is being adopted substantially as it was proposed. The two most significant changes were in lines 22 and 31. In line 22 of the proposed rules "employed as a physician,..." was changed to "employed in the capacity of a physician,...", in order to include in this provision qualified persons who are not formally employed by an employer. In line 31 "peace officer must annually demonstrate" was changed to "peace officer may be required to periodically demonstrate". The time and expense involved in mandatory annual demonstration of competence to operate breath test instruments is prohibitive.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

W. R. Hoaglund

COMMISSIONER OF PUBLIC SAFETY

10-2-73

DATE

STATE OF MINNESOTA

BEFORE Wallace R. Hoaglund

COUNTY OF RAMSEY

COMMISSIONER OF Public Safety

In the matter of the Proposed Adoption of Rules of the State Department of Public Safety establishing standards of training for persons administering chemical tests for intoxication.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Commissioner of Public Safety of the State of Minnesota on the 6th day of September, 1973, at 10:00 A.M. in Room B of the Veterans Service Building, St. Paul, Minnesota, after proper notice reguired by M.S. 1969, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules;

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minnesota Department of Public Safety, Safety Administration Division, Chapter Ten: Standards of Training for Persons Administering Chemical Tests for Intoxication, SafAd 96-105, are adopted this _____ day of _____, 19__, pursuant to authority vested in my be M.S. 1969, Section 299A.01, Subdivision 6.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

W. R. Hoaglund

COMMISSIONER OF PUBLIC SAFETY

ORIGINAL COPY

MINNESOTA DEPARTMENT OF PUBLIC SAFETY

SAFETY ADMINISTRATION DIVISION

IN THE MATTER OF:

CHAPTER TEN: STANDARDS OF TRAINING FOR PERSONS ADMINISTERING CHEMICAL TESTS FOR INTOXICATION.

Transcript of proceedings taken in the above-entitled matter before Mr. James Crawford, Chief of the Highway Patrol, on Thursday, the 6th day of September, 1973, commencing at approximately 10:10 o'clock in the morning, at the Veteran's Service Building, Room B, in the City of Saint Paul, Minnesota.

* * *

APPEARANCES:

James Crawford, Chief of the Highway Patrol.

Fred Suhler, Special Assistant Attorney General for the Department of Public Safety.

Lowell VanBerkum, Toxicologist for the Bureau of Criminal Apprehension, Department of Public Safety.

Trouper Richard Wiberg, Administrative Assistant, Chief of the Highway Patrol.

Diane Hamilton, Administrative Analyst for the Department of Public Safety.

* * *

WHEREUPON, the following proceedings were duly had: --

* * *

MR. CRAWFORD: My name is James Crawford. I am Chief of the Highway Patrol. I should probably change that, I am Chief of the State Patrol. And I will be presiding over this hearing in place of the Commissioner. The other members present with me are Fred Suhler, Assistant Attorney General, Department of

Public Safety. Lowell VanBerkum, Toxicologist for the Bureau of Criminal Apprehension, Department of Public Safety. Trouper Richard Wiberg, Administrative Assistant, Chief of the Highway Patrol. Diane Hamilton, Administrative Analyst for the Department of Public Safety. I would like the record to show that other than Court Reporter there are no other persons in attendance at the hearing. This hearing is being held on the 6th day of September, 1973, in Room B of the Veteran's Service Building, commencing at 10:10 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning the proposed adoptions of the rules of the State Department of Public Safety, establishing standards of training for persons administering chemical tests for intoxication pursuant to 1973 Minnesota Session Laws, Chapter 555. The following documents of the State Department of Public Safety are now introduced as Exhibits: Order for the hearing which was executed on July 20, 1973; the Notice of Hearing executed on July 30, 1973; the Secretary of State's certified

mailing list executed on August 2, 1973; affidavit of mailing executed on August 2, 1973. All interested persons will be given the opportunity to give testimony limited to the subject of this hearing. It is permissible to present written material which should be marked as an Exhibit and introduced into the record. Statements or briefs typed on eight and a half by eleven inch paper may be submitted after the hearing to the Commissioner of Public Safety, State Highway Building, Saint Paul, Minnesota, 55155. Such statements must be postmarked no later than midnight, September 26, 1973.

MR. SUHLER: May I make a suggestion, Jim? I think with respect to the Exhibits you referred to in your statement a couple of paragraphs ago that the Reporter ought to mark them and specifically identify them in the transcript.

MR. CRAWFORD: All right. Order for hearing will be marked as Exhibit A. Notice of Hearing, Exhibit B. The Secretary of State's certified mailing list, Exhibit C. Affidavit of mailing, Exhibit D. Since there are no

people outside of the Department of Public Safety in attendance, I will now ask that any interested persons will be allowed to speak. The podium is provided for giving testimony. Please speak clearly into the microphone so that our Reporter does not miss anything. Does anybody present care to speak?

MR. SUHLER: Yes, sir.

MR. CRAWFORD: Before making a statement, introduce yourself and spell your name and give the name and address of the association or organization in which you represent.

MR. SUHLER: I would suggest, Jim, also that Chief Sorensen's letter which you make some reference to -

MR. CRAWFORD: I will introduce that later.

MR. SUHLER: Okay. I am Fredrick Suhler. I am assigned by the Attorney General to the Department of Highways and Public Safety. For purposes of this record I thought at least at this time it would be well to run through these rules and briefly describe what we are doing here and what the affect of these rules will be. And I am describing these rules in the role of the person who did at least have some involvement

with the original drafting of them. These rules have been promulgated pursuant to Laws 1973, Chapter 555. This Act amends certain language contained in Minnesota Statues 1971, Section 169.123, Subdivision 3. Basically these rules are designed to establish minimum standards of training for persons administering a chemical test for intoxication at the direction of a peace officer pursuant to the State's so-called complied consent law, the purpose and scope of the rules set forth in proposed Safety Administration Number 96. Safety Administration Number 97 is a basic definition of section. The word administer is defined. The word commissioner is defined. The word peace officer is defined. The term peace officer is one which we are very familiar with and exists for our purposes in other areas with respect to the complied consent law and has been the subject of definition by the State Supreme Court on prior occasions. Safety Administration 98 is the first substance of part of these rules. This sets forth the requirements as to who may administer a blood test. In light of the spirit, Chapter 555, the number of people who may

administer tests has been expanded. And the purpose of this rule here is to set forth basically a test that the person shall have been trained and shall be actually working or functioning in a position as a physician, registered nurse, medical technologist, medical technician, or laboratory assistant. The difficulty with drafting anything more specific than Safety Administration Number 98, is that the Statute itself, the legislature says prohibits the kind of person who may draw blood to only those kind of named individuals and the Statute really gives no better definition than to describe these people by their job classification and training. And I am not aware of any place in the Statute where certain of these occupational titles are otherwise defined. So for purposes of this rule we have let that word drop. Safety Administration Number 99 refers to people who administer breath tests. Basically this rule requires that a person who administers a breath test be a full time police officer who has had at least eighty hours of formal classroom instruction in general police work and specific instruction in the laws,

techniques and peace officers responsibilities in the enforcement of the Highway Traffic Regulation Act. It is contemplated at the present time that we will continue through the Bureau of Criminal Apprehension to offer a school for instruction in the use of the so-called breathalizer instrument. And that this rule will be implemented by the Bureau through the Commissioner upon the completion of the course. The only other thing of interest in the rule is the requirement in the last sentence which is contained in lines 30 through 33 of these proposed rules. That a person who takes training be able to periodically demonstrate his further competence to demonstrate the instrument to the Commissioner. That will have the affect, we hope of insuring a high standard of quality and making certain that these people who have been to school will continue to maintain their interest and their skill in this instrument. Safety Adminstration 100 with respect to urine tests is very simple. It provides that any person may administer a urine test. This rule then does not require that a police officer be the one administering the

test nor that any person have a special training or skill. And this can be acomplished because the administration of a urine test as the term administration is defined in these rules is a very simple mechanical act which consists mainly of collecting the urine as it leaves the person's body. There seems to be no purpose by requiring a special standard of training or skill for those kinds of persons. In fact, in my judgment it may expedite matters. Especially in cases where, for example, there might be a female prisoner arrested by some male police officers and they have no person in the police department at that time who is a police officer who may administer that test. So that basically is a rundown of these rules. And in light of at least one letter that I have seen here today, I would like to perhaps further discuss whether we might change this draft to reflect some of these concerns that have been expressed.

MR. CRAWFORD: Mr. Suhler, Safety Number 99, persons who administer breath tests. The purpose of this regulation is to use a device commonly called a breathalizer for an

evidentiary test for the purpose of introduction in a court trial. And has no relationship to the prearrest breath test as allowed in Chapter 169.123, Sub. 4.

MR. SUHLER: Yes, sir. My understanding of these rules under the Statute is that the Commissioner only has authority here to promulgate standards for the administration of a so-called evidentiary test. I am aware of the fact that there is another procedure provided for under the Statute relating to something called preliminary screening. But since a preliminary screening test is not an admissible test in any case and since these rules appear clearly to be directed towards a so-called evidentiary test and the authority to promulgate them, I see no problem with respect to a division between an evidentiary test and the so-called preliminary procedure under these rules. I might also add, Mr. Hearing Officer, that I neglected to mention that these rules would repeal the so-called provisions of Highway Regulation Number Two presently in affect. Highway Regulation Number Two is broader in scope than these rules are because the Statute

at that time was broader in scope. And the necessity for Highway Regulation Number Two now has terminated by the passage of the legislation. So Highway Two is going to be repealed explicitly by the passenger vehicles.

MR. CRAWFORD: In Safety Administration 100, any person may administer a urine test at the direction of a peace officer. How about a peace officer who administers his own urine test? Do you think that should be included in that? That a police officer or any person may administer a urine test at the direction of a peace officer?

MR. SUHLER: Well, I think the way that I can answer that is that these rules are to establish minimum standards. And the minimum standards we have established with respect to the urine, anybody can do it. I don't think there would be any difficulty -

MR. CRAWFORD: My question is the term, at the direction of a peace officer. If that has a restrictive -

MR. SUHLER: To the extent that that may be restrictive, I do suggest that it be stricken. At least I notice now from my examination of

Safety Ad. 98 that I had no such modifier or whatever at the end of that particular sentence. And I would say at least as a matter of good English that perhaps we ought to get rid of that language.

MR. CRAWFORD: At the direction of a peace officer? And put the period after the word test?

MR. SUHLER: Yes, sir.

MR. CRAWFORD: And delete, at the direction of a peace officer. Do you have any other suggested changes in Safety Ad. 96?

MR. SUHLER: No, sir. I have none.

MR. CRAWFORD: Safety Ad. 97?

MR. SUHLER: I have none there either.

MR. CRAWFORD: Safety Ad. 98?

MR. SUHLER: I am aware of the fact that Chief Sorensen of the St. Louis Park Police Department in a written communication pursuant to our notice -

MR. CRAWFORD: I think maybe at this time we will introduce as Exhibit E a letter from Chief Sorensen signed by Sergeant David A. Schaefer which brings up on line 21 of Safety Administration 98, the word employed. That they

think maybe it would be interpreted by attorneys and judges that a self-employed person could not administer a blood test. The Webster definition of employed I think includes both the self-employed, somebody who is trained or normally does a job of administering blood tests and so forth. Secondly, on line 25 of Safety Ad. 99, persons who administer breath tests. They raise the question that they would like to see spelled out in Safety Ad. 99, that the training is only necessary for an evidentiary type test. I think we have clarified that in the previous proceedings of this hearing. Do you have any comments on the term employed?

MR. SUHLER: Yes, sir. I understand, I believe, the objection being raised by Chief Sorensen. And this is as I might have mentioned in my presentation a difficult area. The legislation has said that only certain kinds of individuals may take the test. Clearly then if the Commissioner's rules prescribe more than a description of the job classification as a minimum standard then the Commissioner's rules would be somewhat broader in scope than the legislature contended. Another difficulty here

is that we are dealing with a situation where people are relying, I think in some degree on what the normal everyday kind of meaning to be given these terms is. Although, in some cases in the Statute we find that there is a Statutory definition which may be more restrictive than the everyday meaning. In this particular instance I am concerned about the fact that although most people would consider a person working in a hospital emergency room who is a so-called intern to be a doctor which isn't even the same word as physician. In fact, this person is not licensed to practice medicine outside the confines of that hospital. Similarly there are doctors from other countries or other states who have not yet been licensed who work under similar restrictions as to their practice. Yet treat people every day and most people would consider them to be doctors or physicians. The use of the word employed was designed to try to bring this term into a more everyday definition use of the word rather than in the use of the word as a strict matter of licensing. I think perhaps to change that, I have been looking at my draft here. If we inserted the language in

the capacity of after the word employed in line 22. That perhaps this would clear up any ambiguity that the letter relates to. So that the sentence would read, only a person who has been trained and is employed in the capacity of a physician, registered nurse, etcetera. I believe Chief Sorensen's problem was with the exact definition of the word employed. And if we put that modifier in the capacity of after that word it will show that word, employed there means basically a restriction of what one's duties are rather than a definition of the relationship a person has with another.

MR. CRAWFORD: Or licensing requirement.

MR. SUHLER: Yes, sir.

MR. CRAWFORD: So with the word employed in the capacity of an employee of a hospital who has been trained in the capacity of a medical technologist, medical technician, registered nurse, physician, laboratory assistant, even though they are not so licensed to do so, would be able to draw blood under these rules and regulations?

MR. SUHLER: This is our intent. Incidentally, you would have to strike the word

"as" from that sentence. This would clear up any ambiguity I think in the definition of what the word employed means in that context. It is not to describe the relationship a person has with another but it is to describe the relationship a person has with a particular series of tasks or duties.

MR. CRAWFORD: All right. Do you have any proposed changes to Safety Ad. 99?

MR. SUHLER: With respect to 99, perhaps Lowell VanBerkum could give us his thoughts on the present language in this case.

MR. VAN BERKUM: Lowell VanBerkum, Director of Toxicologist Services, Bureau of Criminal Apprehension, Department of Public Safety. With respect to Safety Administration 99, reading down to line 30. "After completion of the described course such peace officer must annually demonstrate, to the Commissioner or his duly authorized and acting agents, his competence to satisfactorily operate such instrument." It is the present practice in the State of Minnesota that the breathalizer operators are required to annually demonstrate their competence. And this requirement only applies to those officers who

are actively engaged in breath testing. The occasion does arise because of transfer of duties of the officers from traffic to detective or some other station within a department. But they may not maintain their breathalicer certification for one, two or three years. Upon being transfered back into traffic they find a need to maintain or reapply for this certification I have a question here whether line 31, "must annually demonstrate," whether this would require that each and every year after their basic training that they must maintain this and prove in court that they had five years or --

MR. CRAWFORD: That is what it means.

MR. VAN BERKUM: So I would suggest making a change here for that reason and also for the reason of giving the Commissioner the authority to monitor the active breath testing operators. And if the occasion arises where a need for or something is brought to the Commissioner's attention where a particular operator needs to be re-examined for some reason or another, I think that under the present situation the Commissioner does not have the authority. So I would suggest that on line 31 they strike the words,"must

annually," and insert after peace officer, may be required to periodically - so that the sentence would read, "After completion of the described course such peace officer may be required to periodically demonstrate, to the Commissioner or his duly authorized and acting agents, his competence to satisfactorily operate such instrument."

MR. CRAWFORD: Thank you. Mr. Suhler?

MR. SUHLER: I concur, Mr. Hearing Officer, with that particular recommendation in light of that problem that Lowell has mentioned. And I think there ought to be a comma at the end of line 30 after the word "course". But I would also indicate for the record that I think the Commissioner has the authority to adopt a rule in this instance. Which would give him the power to require recertification or monitor the training levels or proficiency levels of these individuals even after they have completed the course. In light of the very broad language that he has the power to establish the minimum standard of training and I think that -

MR. CRAWFORD: Have the minimum standard of training been established for the breath

test course by rule and regulation?

MR. VAN BERKUM: Lowell VanBerkum again. Mr. Hearing Officer, under the previous Highway Regulation 2 the requirement as stated was that a peace officer may administer a breath test after completion of a course in breath testing and demonstrating his competence to the Director of the State Crime Bureau Laboratory. That regulation then gave the authority to the Director of the State Crime Bureau Laboratory to determine what would be an approved course.

MR. CRAWFORD: And then you are planning to submit that to the Commissioner for his approval?

MR. VAN BERKUM: That is correct. These regulations would have to be submitted to the Commissioner for his approval.

MR. CRAWFORD: Fine. Thank you.

MR. SUHLER: The point that I was trying to make is that I think the word training does not contemplate or does not restrict the Commissioner to a one time or one shot kind of situation. I think he can require the training to be ongoing for it to exist more than one stage at a time. So I think that this kind of thing is in the scope of the authority under these rules.

MR. CRAWFORD: Is there anyone else who would like to make a statement pertaining to Chapter 10 of the rules, Department of Public Safety?

(No response.)

MR. CRAWFORD: If not, I would like to read into the record the changes and amendments to the original draft that were proposed and made after the original Notice of Hearing. Safety Administration Number 98 is amended to read: "Persons who administer blood tests." "Only a person who has been trained and is employed in the capacity of a physician, registered nurse, medical technologist, medical technician, or laboratory assistant may administer a blood test." Safety Administration Number 99 is amended to read: "Persons who administer breath tests." "Only a peace officer, who has satisfactorily completed a course of formal classroom instruction in the use of a instrument specifically manufactured to analyze a specimen of breath to determine the alcholic content of the blood, may administer a breath test. The course of instruction must be approved by the Commissioner. After completion of the described

course such peace officer may be required to periodically demonstrate, to the Commissioner or his duly authorized and acting agents, his competence to satisfactorily operate such instrument." Safety Administration 100 is amended to read: "Persons who administer urine tests." "Any person may administer a urine test." Is there anyone who has any rebuttals to the proposed changes or the testimony that has been given so far?

MR. VAN BERKUM: I have a question. Mr. Hearing Officer, seeing as the regulations are being promulgated by the Commissioner pursuant to Minnesota Law, I guess I have a question here in line 29. "The course of instruction must be approved by the Commissioner." Perhaps Mr. Suhler could suggest to this. Do you think this would be then proper procedure, the regulations that are supposedly defining the Commissioner's stand on this? And then again, in turn, with the requirement for the Commissioner to approve something in addition to the regulations?

MR. CRAWFORD: Yes. I believe the Statute would allow the Commissioner - in Chapter 555, "That such peace officer shall be fully trained

in the administration of such tests pursuant to standards promulgated by rule by the Commissioner of Public Safety." And in this rule he is setting a standard that the course which is taught on the breath testing devices will be approved by him. And I think it would be in full consistency with that Chapter.

MR. VAN BERKUM: The other point to be made is on line 28, talked about to determine the alcoholic content of the blood. I am wondering whether content would be as well defined as concentration?

MR. CRAWFORD: It comes out of the Statute.

MR. SUHLER: That word content is used as the term is used in the Statute. I believe -

MR. CRAWFORD: For the purpose of determining the alcoholic content therein which is statutory language. Is there any other testimony?

(No response.)

MR. CRAWFORD: If not, I will repeat again. Twenty days will be allowed for posthearing submission of evidence, statements or briefs. Such statements must be typed on eight and a half by eleven inch paper. Must be mailed to the Commissioner of Public Safety, State Highway

Building, Saint Paul, Minnesota, 55155, postmarked no later than midnight, September 26, 1973. I declare the hearing adjourned.

(At this time, at approximately 10:40 o'clock, the hearing was adjourned.)

REPORTER'S CERTIFICATE

I, Kathleen Ricci, do hereby certify that I recorded in Stenotype the hearing of the Minnesota Department Of Public Safety, Motor Vehicle Services Division, on the 6th day of September, 1973, at the Veteran's Service Building, Room B, Saint Paul, Minnesota.

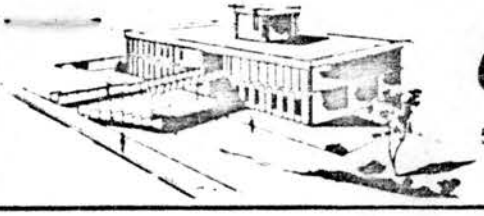
I further certify that thereafter and on this same date I transcribed into typewriting under my direction, the foregoing transcript of said recorded hearing, which transcript consists of the preceding twenty-three typewritten pages;

I further certify that said transcript of such hearing is true and correct to the best of my ability.

Kathleen Ricci

KATHLEEN RICCI
COURT REPORTER

Dated this 10th day of September, 1973.



City of St. Louis Park

5005 minnetonka boulevard • saint louis park, minnesota 55416 • 612/920-3000

August 9, 1973

Mr. Wallace R. Hoaglund
Commissioner of Public Safety
State of Minnesota
State Highway Building
St. Paul, Minnesota 55155

Re: Public Hearing - 9/6/73 at 10:00 AM

Dear Sir:

This is a statement regarding the above hearing. I would like to make a few brief comments on Chapter 10: "Standards of training for persons administering chemical tests for intoxication".

On line 21, SafAd 98 entitled "Persons Who Administer Blood Tests", this section states that "only a person who has been trained and is employed as a physician, registered nurse, medical technologist, medical technician, or laboratory assistant may administer a blood test."

I think the word "employed" is the key word in this section and that it should be changed. I think that some attorneys and Judges may interpret that as to mean that unless a physician is employed, such as being employed by a hospital rather than self-employed, that he could not administer a blood test. Also, it might restrict some small communities that have a local physician available to come down to the jail to administer blood tests or a nurse or somebody of this type rather than take them to a hospital in another community some miles away. As stated in this section, the word "employed" could very well be interpreted as meaning that any one of these particular type of people must be employed by some hospital or clinic or something of that sort before they are qualified to draw blood rather than be qualified at their profession and not necessarily be employed by anybody.

OK

Secondly, starting on line 25, SafAd 99, entitled "Persons Who Administer Breath Tests", basically this section says that only peace officers who have satisfactorily completed the formal course of training as set up by the Commissioner are qualified to administer breath tests. I can foresee problems in this area with our screening test program as being carried out

OK



in Hennepin County with the Borg Warner units. This section could very well be interpreted by the courts as to limiting only officers who have had breathalyzer training course of 56 hours to be qualified to give screening tests. I feel that it should be spelled out in the section that this training is only necessary for an evidentiary type test. I am sure that if this is not spelled out, that in the future we are going to have problems in entering or using the screening tests in Hennepin County.

Sincerely yours,

CLYDE A. SORENSEN, CHIEF OF POLICE
ST. LOUIS PARK POLICE DEPARTMENT

David A. Schaefer

Sgt. David A. Schæfer
Traffic Division

DAS:ky

See attachment

September 6, 1973

Clyde A. Sorensen, Chief of Police
St. Louis Park Police Department
5005 Minnetonka Boulevard
St. Louis Park, Minnesota 55416

Attn: Sgt. David A. Schaefer, Traffic Division

Your letter regarding the hearing on rules and regulations establishing standards of training for persons administering chemical tests for intoxication was referred to me for reply. Your letter was introduced as an exhibit and formally entered into the record of proceedings at today's hearing.

In order to clarify the intent of the term "employed," its definition, within the context of this regulation, was entered into the record of the hearing. "Employed" is intended to denote a relationship between a person and a particular set of tasks and not a relationship between a person and a work establishment. However, in order to more explicitly clarify this intent the phrase "in the capacity of" was added after the word "employed" in line 22, so that SafAd 98, lines 22-24, reads as follows:

> "Only a person who has been trained and is employed in the capacity of a physician, registered nurse, medical technologist, medical technician, or laboratory assistant may administer a blood test."

In reply to your comments concerning SafAd 99, the regulation is being promulgated pursuant to Minnesota Statutes section 169.123, the section of the law which deals with blood, breath, and urine (as a group - evidentiary) tests for intoxication. Because the statute authorizing this regulation deals with evidentiary tests and not preliminary screening tests, the intent of SafAd 99 is to specify the standards of training in administration of evidentiary tests only. Also, since results of preliminary screening tests are not admissible as evidence in court, the problem you pose in your letter, of interpretation of SafAd 99 by the courts, should never occur.

We welcome any further comments you may have. Post hearing evidence and statements will be accepted and given consideration if post marked before midnight September 26, 1973.

Sincerely,

(Mrs.) Diane Hamilton
Administrative Analyst