[CAPTION]

MOTION TO SUPPRESS BLOOD ALCOHOL TEST

The Defendant, by counsel, respectively requests this Court to suppress evidence of the Defendant's blood alcohol concentration. In support of this Motion, the Defendant states the following:

1. On [insert date], the State charged the Defendant with the offenses of [insert offense].
2. On [insert date], the Defendant was involved in an accident in which he was transported to the hospital. At the hospital, the police, without lawful authority, seized a sample of the Defendant's blood to test for alcohol and other controlled substances.
3. Any information resulting from the blood draw were unlawfully obtained for because:
    a. The police officer did not have either a warrant, probable cause, or consent to obtain a blood sample when the officer ordered the blood draw, thereby violating the Fourth Amendment to the U.S Constitution.
    b. The blood draw was not done for purposes of medical treatment, and thus, violated the Fourth Amendment to the U.S. Constitution.
    c. Considering the totality of the circumstances, the blood draw was unreasonable, thus violating Article I, Section 11 of the Indiana Constitution.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to:

1. Suppress and bar from use as evidence in the trial of this cause any information, including Defendant's blood alcohol level, which resulted from the unlawful blood draw; and
2. Suppress and bar from use in the trial of this cause all testimony relating to any information, including the Defendant's blood alcohol level, which resulted from the unlawful blood draw.

(Signature)

NOTE: Even when a blood draw is constitutional, the results may still be inadmissible if the State is unable to lay the foundation required by statute. For instance, blood samples collected at the request of a law enforcement officer as part of a criminal investigation must be obtained by a "physician or a person trained in obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician." I.C. 9-30-6-6(a); see, e.g., Combs v. State, 895 N.E.2d 1252 (Ind.Ct.App. 2008) (a medical technologist who drew Defendant's blood, pursuant to a warrant, did not testify that a physician prepared or approved the protocol she followed or that she acted under the direction of a physician when drawing Defendant's blood sample; thus, results were erroneously admitted); Brown v. State, 911 N.E.2d 668 (Ind.Ct.App. 2009) (although Defendant consented to blood draw, state failed to lay proper foundation for admission of results; certified lab technician did not follow protocol developed by physician but rather method she learned in school, and a certified lab technician is not a medical professional listed in I.C. 9-30-6-6(j) who can draw blood at the request of a law enforcement officer); Hunter v. State, 898 N.E.2d 455 (Ind.Ct.App. 2008) (inadequacy of foundation is even more pronounced because State failed to present any evidence that nurse was "a person trained in obtaining bodily samples"; existence of search warrant directing hospital personnel to obtain a bodily substance sample should not trump and/or negate statutory requirements for obtaining blood samples).

However, a motion to suppress alleging foundational problems with the blood test results sometimes may alert the State to a problem which it can fix. Thus, some statutory, foundational issues are better addressed at trial.

Note also, I.C. 9-30-6-6 was amended in 2010 following Brown; of particular relevance is I.C. 9-30-6-6(j), which now provides that a sample may be obtained by a physician holding an unlimited license to practice medicine or osteopathy, a registered nurse, a licensed practical nurse, an advanced emergency medical technician, a paramedic, and, with some limitations, any other person qualified through training, experience, or education to obtain a bodily substance sample--and that the subsection does not apply to a sample obtained at a licensed hospital. See State v. Bisard, 973 N.E.2d 1229 (Ind.Ct.App. 2012); Kolish v. State, 949 N.E.2d 856 (Ind.Ct.App. 2011); Boston v. State, 947 N.E.2d 436 (Ind.Ct.App. 2011).

CASE LAW **CASEBANK K.9.a**

Hannoy v. State, 789 N.E.2d 977 (Ind.Ct.App. 2003) (in order to obtain blood for an alcohol or drug screen, the police must have either a warrant, probable cause or consent to obtain a blood sample, regardless of whether there was an accident with serious bodily injury), *affirmed on reh'g*, 793 N.E.2d 1109 (reiterating that there is a clear and substantial difference between allowing police to force a person to submit to having his or her blood withdrawn to look for evidence of a crime, and police receiving blood test results after the fact pursuant to I.C. 9-30-6-6(a)).

Schlesinger v. State, 811 N.E.2d 964 (Ind.Ct.App. 2004) (police unlawfully obtained BAC through blood draw where there was no probable cause and the draw was not for purposes of medical treatment being the defendant was being treated for cuts and a dislocated finger).

Frensemeier v. State, 849 N.E.2d 157 (Ind.Ct.App. 2006) (amount of evidence needed to supply probable cause of operating vehicle while intoxicated (OWI), as will support finding of probable cause to take warrantless blood draw from driver, is minimal; noticing odor of alcohol on driver's breath during course of accident investigation can be sufficient; however, occurrence of traffic accident, coupled with odor of alcohol, will not always rise to level of probable cause that would justify warrantless blood testing of Defendant). See also Hassfurther v. State, 988 N.E.2d 811 (Ind.Ct.App. 2013); cf. State v. Gilbert, 997 N.E.2d 414 (Ind.Ct.App. 2013) (strong odor of alcohol along with driver's acts of running stop sign and stumbling when exiting his car constituted probable cause justifying officer's decision to arrest driver and transport him to roll call site for further testing).

State v. Gunn, 741 N.E.2d 787 (Ind.Ct.App. 2001) (results of administrative breath test taken by police officer who was involved in accident were inadmissible in criminal prosecution because there was no evidence of crime at time test was administered; unlike Oman v. State, 737 N.E.2d 1131 (Ind. 2000), results were not obtained by valid legal process externally initiated from employment setting).

Herbert v. State, 484 N.E.2d 68 (Ind.Ct.App. 1985) (a Defendant does not have the right to an alternative test).

State v. McCaa, 963 N.E.2d 24 (Ind.Ct.App. 2012) (as a general rule, the reasonable suspicion that justifies a traffic stop also fully justifies the administration of field sobriety tests).