

VERIFIED PETITION FOR PROMPT JUDICIAL REVIEW OF LICENSE SUSPENSION
(Refusal)

The Petitioner, by counsel, respectfully requests this Court, pursuant to I.C. 9-30-6-10, to schedule a prompt judicial review hearing to determine whether the Defendant's license was properly suspended under I.C. 9-30-6-9. In support of the Petition, the Defendant states the following:

1. A charge of Operating While Intoxicated as a Class A misdemeanor is pending against the Defendant.
2. On [insert date], [insert police officer] requested that the Defendant submit to a certified breath test, and the Defendant refused.
3. On [insert date], [insert police officer] completed a Probable Cause Affidavit, which was filed with this Court on [insert date].
4. Prior to the Defendant's initial hearing, this Court recommended suspension of the Defendant's license to the Bureau of Motor Vehicles.
5. As set forth in the Probable Cause Affidavit, prior to the request for the chemical test, [insert police officer] only administered one field sobriety test, being the nystagmus test. The nystagmus test was unreliable under the circumstances of this case. Further, [insert police officer] failed to administer the entire battery of the field sobriety tests standardized by the National Highway Traffic Safety Administration.
6. As set forth in the Probable Cause Affidavit, [insert police officer] had reason to believe the accused was intoxicated due to the Defendant's conversation with him and due to the Defendant's appearance. However, [insert police officer] has no Drug Expert Recognition Training.
7. At the time [insert police officer] requested the Defendant to submit to the chemical test, there was no probable cause to believe the Defendant had committed an offense under I.C. 9-30-5, as required by I.C. 9-30-6-10.
8. Because the Defendant cannot refuse an improperly offered chemical test, the Defendants' driver's license was not properly suspended under I.C. 9-30-6-9.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court, pursuant to I.C. 9-30-6-10, to schedule a prompt judicial review hearing to determine whether the Defendant' license was properly suspended under I.C. 9-30-6-9, and for all other relief just and proper in the premises.

(Attorney's Signature)

I, [insert name], Petitioner, under the penalties of perjury, affirm that the foregoing statements are true, to the best of my knowledge and belief.

(Petitioner Signature)

CASE LAW

Burnell v. State, 56 N.E.3d 1146 (Ind. 2016) (motorist's driving privileges were properly suspended based on refusal to take a chemical test, even though she never verbally refused, because she clearly heard and understood the officer's offer of the opportunity to take a chemical test and stepped away from the officer twice, justifying a belief that she manifested an unwillingness to submit to the test).

Hurley v. State, 49S05-1705-CR-346, 5/31/2017, (Ind.) (trial court erred by denying defendant's motion to vacate her refusal of a breath test. A person does not refuse a chemical test if the officer failed to comply with the rules for conducting it. Without the officer's strict compliance, the defendant cannot refuse the test – and any suspension of driving privileges premised on refusing the test cannot stand. Unless a person clearly manifests an unwillingness to submit to a chemical breath test, Title 260, Section 2-4-2 of the Indiana Administrative Code requires a law enforcement officer to administer a second test if the first returns an “insufficient sample” message. A person can manifest an unwillingness to submit to the breath test in varying ways, including verbally refusing to submit, by pretending to blow, or by repeatedly blocking the machine's mouthpiece with his or her lip).