



CHALLENGING BLOOD TESTS IN DUI ARRESTS

Most DUI investigations involve either blood being drawn or a breath test being taken. This article addresses some of the issues that arise regarding blood testing. Most people (and unfortunately many “DUI” Lawyers) generally believe that if you take a blood test in a DUI investigation the results of an analysis of the blood are highly accurate and not subject to contest. Nothing could be further from the truth. This perception is not reality and simply stems from a lack of knowledge.

Condition of the Blood Sample Being Analyzed

The theory of blood testing is that the blood that is being analyzed is in the same condition as the blood that is in the person’s vein at the time it is drawn. However this is rarely the case. The law requires that the integrity of the blood sample be maintained from collection to analysis to reporting. Science recognizes that the integrity of the blood specimen can be adversely affected from the point of collection through reporting of the result.

Collection of Blood

The manner in which the blood is collected, or drawn can affect the integrity of the blood specimen. Studies have shown errors associated with the blood draw can lead to false positive analysis as high as 50%. The drawing of blood is a sensitive medical procedure. While there are exceptions, most persons typically performing the blood draws have limited background or training in the medical field. Despite a lab coat or laminated ID card most of these individuals have completed a program consisting of no more than a 40-hour training course and 40 hours on the job training without any real understanding of the significant medical aspects of drawing blood. As a result of this minimal training the integrity of the specimen is often compromised.

Storage of the Sample

The manner in which the blood is stored and maintained prior to being analyzed is a further source of error leading to false positive results. Studies have shown error rates well over 100% can result from delays and improper storage of blood specimens. All the conditions necessary for fermentation are present within the blood vial. This includes amongst others the presence of yeast, bacteria and sugar that are normal substances in your body. Even short delays or changes in temperature can exacerbate the conditions leading to fermentation. Fermentation is the process by which alcohol is formed. As a result of fermentation the amount of alcohol in the blood vial where the specimen is held will increase so that the total amount of alcohol in the blood specimen is a false high representation of what was contained in the person’s veins.

Testing of the Blood

Most forensic labs involved in analyzing blood specimens for alcohol on behalf of law enforcement use a procedure involving a machine known as a Gas Chromatograph. Often times the manner in which this equipment is employed results in a presumptive determination of alcohol as opposed to a confirmatory

method specific to alcohol. This method can cause compounds which may respond to the method of detection in a manner similar to alcohol to be falsely measured as alcohol. Additionally, this method cannot determine whether the alcohol being measured was originally present in the person's vein or whether the alcohol being measured is that formed during the delay before analysis has occurred.

Manipulation of Analysis Data

Another serious problem that must be investigated has to do with the parameters being set during the stage of analysis when data is being collected. Most forensic labs will set parameters on reporting data that conceal significant shortfalls in their chromatography method. They accomplish this by setting the data reporting parameters to exclude accounting for volatile compounds that would disclose errors in their method, as well as indications of contamination and fermentation of the subject specimen. Because most forensic labs are involved with a high level of volume in their specimen analysis they do not take the time to be precise and accurate in their methods but rather will engage in this practice to cover up their systemic problems. This practice persists for the simple reason that very few attorneys have the capacity and understanding to address this problem.

Lack of Error Reporting by Forensic Labs

Finally, most forensic labs are reporting the results of their analysis without having scientifically determined the actual rate of errors involved with their process. Failure to ascertain the total uncertainty or range of error associated with the lab's method is not a scientifically sound or valid procedure. Most lab accreditation organizations are now requiring labs to ascertain and report the range of uncertainty associated with their method. This is a complex process that requires the lab to continually ascertain, update and maintain that determination. Law Enforcement Forensic Labs are often either not competent or not concerned with adhering to sound scientific procedures. As a result forensic labs often report an arbitrary and scientifically invalid blood alcohol concentration level.

It's Best to Have Professional Representation After a DUI

This article is not meant to be a technical discussion but rather to help the reader understand that when a person gets pulled over and arrested for Driving Under the Influence - DUI - and takes a blood test; the results from the analysis are not always valid. If you or someone you know has been arrested for a DUI you can fight the allegations being made against you that often times might be based on false evidence.

If you or someone you know needs representation fighting a DUI Charge you should contact an experienced and knowledgeable DUI attorney. Not all DUI attorneys are experienced and knowledgeable in the science associated with DUI representation.

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