



STATE OF WASHINGTON  
DEPARTMENT OF LICENSING  
PO Box 9020, Olympia, WA 98507-9020

September 5, 2007

Mr. Mark Garka  
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Lynnwood, WA 98036

Mr. Ted Vosk  
8105 N.E. 140<sup>th</sup>  
Bothell, WA 98011

Re: Lance Olson hearing  
Hearing Officer: Ann Lange  
**Continued Hearing Date: September 10-11, 2007**  
**8:30 a.m.-5:30 p.m.**

Gentlemen:

This letter will outline the arrangements made in connection with subpoenas issued by the Hearing Officer for the testimony of the forensic toxicologists at the Washington State Toxicology Laboratory regarding their preparation and/or testing of simulator solution used in the simulators attached to the Datamasters utilized for statutory breath tests.

Subpoenas were issued to those toxicologists at the State Toxicology Lab who prepared or tested simulator solutions used for statutory breath test between May 1, 2007 and August 1, 2007. This includes all the toxicologists whose signatures are affixed to the certification regarding the preparation/testing of the simulator solution used for your client's statutory breath test and are included in Exhibit 9A, excepting Ms. Anne Marie Gordon. The testimony of Ms. Gordon has been reset in this case to September 24, 2007, at 11:00 a.m., (by telephone) to determine if she is able to testify about issues related to the four issues before the Hearing Officer.

Mr. Vosk's previous motion to dismiss because of the unavailability of Ms. Gordon to testify on August 22, 2007, will not be re-entertained on September 10-11, 2007. That motion may again be raised on September 24, if Ms. Gordon does not appear.

The testimony will be taken at the State Toxicology facility, 2203 Airport Way South # 360, Seattle, WA 98134. The proceedings will begin promptly at 8:30 a.m. on September 10, 2007, and continue until completed on September 11, 2007, or 5:30 p.m. Copies of the subpoenas are appended to this letter as attachment "A".

I have also attached the response made by Dr. Logan to the subpoena duces tecum I issued, which identifies the simulator solutions used for breath tests between 5/1/07 and 8/1/07. See attached "B", Dr. Logan's emailed response.

Other evidence to be introduced during the proceedings will include:

1. the simulator solution certificates
2. the individual toxicologist affidavits regarding the preparation/testing of the simulator solutions
3. the curriculum vitae of individual toxicologists
4. the two protocols for preparation and testing of the simulator solutions in effect during the times the pertinent solutions were prepared and tested at the Toxicology Lab.

Mr. Vosk indicated to me in a telephone conversation that a number of attorneys want to attend the proceeding regarding the subpoenaed witnesses in person. As I indicated during that conversation, those requests should be forwarded to me, to ensure there is sufficient space to accommodate all participants and observers. Please provide a list to me of all persons you anticipate will attend the proceeding in person. There will not be arrangements for a conference call for participation by phone for interested attorneys.

The testimony will be taken before a court reporter. The transcripts prepared from the testimony will be posted on the Department of Licensing web site approximately 10 days after the testimony is taken. A transcript of the testimony elicited from Ms. Gordon on September 24, 2007, will also be made by a court reporter and posted on the Department's web site. You may submit briefing and written arguments related to issues before the Hearing Officer, including the testimony of the toxicologists, and relevant motions, up to 14 days after the date the statements are posted. No video record will not be kept of the proceeding.

Since I, as the Hearing Officer, subpoenaed the witnesses, I will begin questioning the toxicologists regarding issues before the Hearing Officer. See, WAC 308-103. As regards the toxicologists, that will include:

1. individual training and educational background of the witness
2. training regarding the preparation and testing of the simulator solutions
3. preparation and/or testing of simulator solutions used in breath tests between 5/1/07 and 8/1/07
4. conformity to the protocols for any solutions prepared by the individual toxicologist
5. conformity to the protocols for any solutions tested by the individual toxicologist
6. execution of affidavits regarding testing/preparing simulator solutions
7. executing the certification delineating all test results for individual simulator solutions
8. any incidents of preparing and/or testing solutions on behalf of other toxicologists
9. other relevant inquiry developed from the testimony.

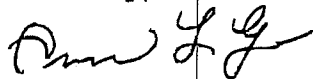
Mr. Vosk will serve as lead counsel on behalf of the petitioner. Questions already answered will not be re-introduced. Other counsel may submit questions. The Hearing Officer will determine if the questions are relevant and are not cumulative or duplicative of previous inquiries. If attorneys wish to submit questions in advance,

they can be submitted to the Hearing Officer at: [alange@dol.wa.gov](mailto:alange@dol.wa.gov) or faxed to: Ann Lange, 206-706-4267. The proceeding will not explore issues beyond the preparation and testing of the simulator solutions used in the statutory breath tests in Washington.

I should bring to counsel's attention that I attended a lecture led by Dr. Barry Logan on August 22, 2007, regarding the preparation and testing of simulator solutions. (Balance of this paragraph has been redacted when copies were forwarded to other DOL Hearing Officers.) During that lecture, I learned that affidavits executed by Ms. Anne Marie Gordon regarding testing/preparation of simulator solutions had been removed from the attachments to the simulator solution certificates on the Washington State Patrol web site. Dr. Logan reported this action had been taken because an external audit revealed that Ms. Gordon had not personally tested simulator solutions for approximately the last three years. The State Toxicologist reported that Ms. Gordon had delegated that testing duty to another toxicologist in the lab, Mr. Edward Formoso. Mr. Formoso reportedly prepared and tested five additional aliquotes for testing; the results were included in the values recorded on the simulator solution certificates. No other toxicologists prepared or tested simulator solutions on behalf of or at the direction of Ms. Gordon. In March, 2007, Dr. Logan directed Ms. Gordon to stop preparing or testing simulator solutions; to his knowledge, she had complied with that directive.

If you have any questions or comments, please call. For counsel identified below as receiving courtesy copies of this missive, please contact Ms. Lange at the email or fax number listed above to confirm that you will appear in person for the hearing.

Sincerely,



Ann L. Lange  
Hearing Officer  
Department of Licensing

Encls.

CC: (correspondence only) Mr. Richard Sybrandy, Ms. Diana Lundin/Mr. Nathan Webb, Mr. James Walker, Mr. Kevin Trombold, Mr. Brian Roach, Ms. Anna Woods, Mr. John Clark, Mr. J.P. Nichols, Mr. Nicholas George

CC: (redacted correspondence) Hearing Officers, implied consent statute, DOL

CC: Dr. Barry Logan, State Toxicologist