



Ontario

Tribunals Ontario

Licence Appeal Tribunal

15 Grosvenor Street, Ground Floor, Toronto ON M7A 2G6
Tel.: 416-326-1356, 1-888-444-0240
tribunalsontario.ca/lat

Information Sheet on Medical Evidence in Appeals of Administrative Driver's Licence Suspensions

(Disponible en français)

Introduction

A driver's licence may be suspended for ninety (90) days under section 48.3 (alcohol only) the [Highway Traffic Act](#) because:

- (a) the driver's blood alcohol concentration was 80 mg or more in 100 mL of blood, or
- (b) because the driver refused or failed to comply with a police officer's demand made under section 320.27 or section 320.28 of the [Criminal Code](#) (Canada) to:
 - i. provide a sample of breath, blood, oral fluid or urine,
 - ii. perform physical co-ordination tests, or
 - iii. submit to an evaluation.

A driver's licence may also be suspended for ninety (90) days under section 48.3.1 (drug or a combination of drug and alcohol) of the [Highway Traffic Act](#) if a police officer is satisfied that the driver's ability to operate a motor vehicle or vessel was impaired by a drug or a combination of a drug and alcohol after examination and evaluation under s. 320.28(2) of the [Criminal Code](#) (Canada).

The driver can appeal this 90-day suspension to the Licence Appeal Tribunal ("Tribunal") on the following grounds:

- In the case of a section 48.3 (alcohol only) suspension, the driver failed or refused to comply with the demand because the driver was unable to do so for a medical reason.
- In the case of a section 48.3.1 (drug or a combination of drug and alcohol) suspension, the driver's ability to operate a motor vehicle or vessel was not impaired by a drug or a combination of a drug and alcohol, and had a medical condition, at that time of the activity for which the suspension was imposed, that impaired their performance of the evaluation that was conducted
- In either type of suspension, the driver is not the same individual to whom a demand was made or who submitted to an evaluation under s. 320.28 of the [Criminal Code](#) (Canada). This is a case of mistaken identity.

In an appeal of an administrative driver's licence suspension, it is the driver's responsibility to present evidence to the Tribunal that will prove their case on "a balance of probabilities." This means that the Tribunal member needs to be satisfied that it is more likely than not that the facts presented are true. Evidence may be provided to the Tribunal in documents sent with the appeal or before the hearing, or through oral testimony as a witness at the Tribunal hearing. For more information about evidence in general, see the Tribunal's [Information Sheet – Calling Evidence](#).

Medical Evidence

In a section 48.3 (alcohol only) suspension, a driver needs to provide medical evidence to prove that a valid medical reason caused the driver's refusal or failure to comply with the police officer's demand

In a section 48.3.1 (drug or a combination of drug and alcohol) suspension, a driver needs to provide medical evidence to prove that the driver's ability to operate a motor vehicle or vessel was not impaired by a drug or a combination of a drug and alcohol, and had a medical condition, at that time of the activity for which the suspension was imposed, that impaired their performance of the evaluation that was conducted.

In almost all cases, the driver will need to provide a medical report that is completed and signed by a doctor.

The report must do more than establish that the driver has a medical condition or had a medical condition at the time of the demand or evaluation. The report must also link the driver's refusal or failure to comply with the demand or their performance at the evaluation with the identified medical condition.

The information provided in a medical report should include:

- a) the doctor's name, telephone number and address;
- b) the driver/patient's name, date of birth and address;
- c) a statement that the doctor is aware that the report may be used in support of the patient's appeal from suspension of their driver's licence under Section 50.1 of the [Highway Traffic Act](#);
- d) how long the doctor has been caring for the driver as a patient and the date of the most recent examination that supports the doctor's findings in this report;
- e) whether the doctor is the driver's family physician;
- f) if the doctor is a specialist, their field of specialty;
- g) for a section 48.3 (alcohol only) suspension, details of the condition, its diagnosis and

the history of the condition that prevented the driver from complying with the police officer's demand, including the results of any tests, such as recent pulmonary function tests, medications that have been prescribed, x rays, MRIs or scans, other laboratory tests and reports from specialists;

- h) for a section 48.3.1 (drug or a combination of drug and alcohol) suspension, details of the condition, its diagnosis and the history of the condition showing the driver's ability to operate a motor vehicle or vessel was not impaired by a drug or a combination of a drug and alcohol, and had a medical condition, at that time of the activity for which the suspension was imposed, that impaired their performance of the evaluation conducted, including the results of any tests, such as recent pulmonary function tests, medications that have been prescribed, x rays, MRIs or scans, other laboratory tests and reports from specialists; and
- i) the doctor's signature.

Normally, the doctor does not attend the hearing, though some appellants ask or summons the doctor to attend as a witness. The appellant has the choice to have their doctor attend the hearing and, if they want their doctor at the hearing, then it will be their responsibility to ensure the doctor's attendance.

To help the appellant's doctor provide medical information in support of the driver's appeal, the Tribunal has created a form (available on the [Tribunal's website](#)) that can be completed and served on the Registrar of Motor Vehicles and filed with the Tribunal.

The driver may also choose to serve and file other documents as evidence to support the appeal, such as relevant emergency room discharge notes or hospital charts. In most cases, the driver also testifies about what occurred on the day the demand was made or evaluation that was conducted.

The Registrar's Evidence

Once the appellant has presented their evidence, a representative of the respondent, the Registrar of Motor Vehicles, will present the Registrar's case. The Tribunal's decisions (published on the [CanLII](#) website) can provide information as to the position taken by the Registrar's representative on other appeals and the medical evidence the Registrar has relied on. In many hearings, there will be testimony from the police officer(s) who were there when the demand was made or the evaluation that was conducted.

Important Points

- The evidence provided in a doctor's report is very important in an appeal made on the medical ground.
- In a section 48.3 (alcohol only) suspension, the doctor's report must say what link there is between the driver's medical condition and the driver's failure or refusal to comply with the demand when the demand was made.
- In a section 48.3.1 (drug or a combination of drug and alcohol) suspension, the doctor's

report must say what link there is between the driver's medical condition and the driver's performance of the evaluation that was conducted.

- The report should include any relevant test results.
- Drivers appealing an administrative driver's licence suspension on the ground that someone other than the driver refused or failed to comply with a demand or submitted to the evaluation that resulted in the suspension should consult the Tribunal's [Information Sheet – Calling Evidence](#) for assistance.

Other Sources of Useful Information

The Tribunal's website at tribunalsontario.ca/lat has Information Sheets, Rules of Practice, Practice Directions, FAQs and other useful information.

This information sheet is intended to provide general information to appellants and other parties. It is not legal advice. If you wish to obtain legal advice, you should consult a person licensed by the Law Society of Ontario (www.lso.ca).

This Information Sheet may be found online at tribunalsontario.ca/lat