



Tribunals Ontario

Licence Appeal Tribunal

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tribunalsontario.ca/lat

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

Introduction

A driver's licence may be suspended for 90 (ninety) days under the *Highway Traffic Act* because the driver refused or failed to respond to a police officer's demand made under section 254 of the [Criminal Code](#) to:

- (a) provide a sample of breath, blood, oral fluid or urine,
- (b) perform physical co-ordination tests, or
- (c) submit to an evaluation.

The driver can appeal this 90-day suspension to the Licence Appeal Tribunal ("Tribunal") on the basis that the driver failed or refused to comply with the demand because the driver was unable to do so for a medical reason.

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](#).

The Tribunal can also hear appeals of administrative driver's licence suspensions on the ground that the appellant (the suspended driver) was not the person who had provided the sample, or that the appellant was not the person who had refused or failed to respond to the police officer's demand. Drivers appealing on this ground should consult the [Information Sheet – Calling Evidence](#).

Medical Evidence

A driver needs to provide medical evidence to prove that a valid medical reason caused the driver's refusal or failure to provide a sample, or respond to the police officer's demand. 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. The report must also link the driver's refusal or inability to provide a sample, or respond to a demand, 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) details of the condition, its diagnosis and the history of the condition that prevented the driver from providing a sample or responding to a demand, including the results of any tests, such as recent pulmonary function tests, medications that have been prescribed, rays, MRIs or scans, other laboratory tests and reports from specialists; and
- h) 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.

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.

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 officers who were there when the demand for a breath sample or other tests was made.

Important Points

- The evidence provided in a doctor's report is very important in an appeal made on the medical ground.
- The doctor's report must say what link there is between the driver's medical condition and the driver's failure or refusal to respond to the demand, as required, on the day the demand was made.
- 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 supplied a sample, or refused or failed to respond to a demand 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 Upper Canada](http://www.lsuc.on.ca) (www.lsuc.on.ca).

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

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