

4.

These facts caused the arresting officer to believe that Petitioner had consumed an unknown quantity of alcohol in such a manner as to make Petitioner a less safe driver. He placed Petitioner under arrest for Driving Under the Influence and informed Petitioner of his implied consent rights and the consequences of submitting or refusing to submit to a State-administered chemical test. Petitioner refused testing. *Testimony of Officer Stachowicz.*

5.

Petitioner maintains he has no recollection of refusing the testing. He also notes that he was taking heart medication at the time of the incident, was very tired, and suffers from sleep apnea.¹ *Testimony of Petitioner; Petitioner's Exhibits 1-3.*

III. Conclusions of Law

1.

Respondent has the burden of proof. OSAH Rule 7(1). The standard of proof is preponderance of the evidence. OSAH Rule 21(4).

2.

Based on the facts articulated by Officer Stachowicz, the arresting officer had probable cause to believe that Petitioner was operating and in actual physical control of a motor vehicle while under the influence of alcohol. Petitioner had fallen asleep while driving a vehicle, smelled of alcohol, was unsteady and confused, and exhibit multiple manifestations of intoxication during field sobriety testing.

3.

Officer Stachowicz gave credible testimony that he properly informed Petitioner of his implied consent rights and the consequences of submitting or refusing to submit to a state-administered breath test. In this case, Petitioner suggests that he did not hear his implied consent rights as read by the Officer, and thus did not knowingly refuse testing. Nonetheless, Georgia law only requires an officer to advise a defendant of his implied consent warnings and does not require the officer to make sure an individual understands these rights. *Chancellor v. Dozier*, 283 Ga. 259 (2008); *Rodriguez v. State*, 275 Ga. 283 (2002).

¹ Petitioner noted that the officer had given him two forms, arguing one of the forms did not indicate he refused testing. After reviewing these forms, the undersigned believes that both indicated that Petitioner refused testing. Moreover, the officer offered a credible explanation for the duplicate forms, explaining he had made an error on the first form and reissued the correct form.

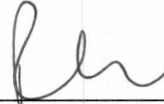
4.

Refusal to submit to testing mandates suspension of the driver's license. Accordingly, the suspension of Petitioner's driver's license and driving privileges by DDS was proper. O.C.G.A. § 40-5-67.1.²

IV. Decision

For the aforementioned reasons, Respondent's action suspending Petitioner's driving privileges is **AFFIRMED**.

SO ORDERED, this 20th day of July, 2013.



RONIT WALKER
Administrative Law Judge

² Although Petitioner asks for a limited permit, the undersigned is not authorized to issue limited permits in an Administrative Hearing.