

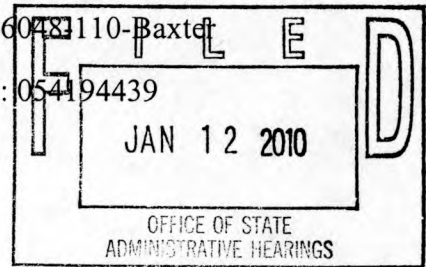
**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

████████████████████  
Plaintiff,

v.

DEPARTMENT OF DRIVER SERVICES,  
Defendant.

:  
: Docket No.:  
: OSAH-DDS-ALS-1016048110-Baxtd  
:  
: Agency Reference No.: 054194439  
:



**CORRECTED FINAL DECISION**

Plaintiff requested a hearing in response to Defendant's issuance of an administrative license suspension of Plaintiff's driver's license or privilege to drive in the State of Georgia in accordance with the provisions of O.C.G.A. § 40-5-67.1. The undersigned issued an Order on January 8, 2010, which is hereby **VACATED**. Based on a review of the facts and additional review of the law, Defendant's action is **REVERSED**.

**I. Findings of Fact**

**The Judge has considered the entire evidence in this case, and based upon a preponderance of the credible evidence makes the following findings of fact:**

1. Plaintiff was stopped as part of a road block at approximately 10:52 p.m. The initial officer smelled an odor of alcohol coming from the Plaintiff and directed him to the arresting officer.
2. The Plaintiff was in actual physical control of a moving motor vehicle in this State at the time of the initial stop.
3. Plaintiff admitted to consuming three to four beers during the day and that he had been drinking all day.
4. The arresting officer requested that the Plaintiff perform the following field sobriety evaluations which were not completed to the satisfaction of the arresting officer HGN and alco-sensor. The Plaintiff also completed the One Leg Stand and Walk and Turn, but the evidence is not clear whether Plaintiff presented sufficient indications of impairment on those evaluations.
5. These facts caused the arresting officer to believe that the Plaintiff had consumed an unknown quantity of alcohol in such a manner as to make the Plaintiff a less safe driver.
6. The Plaintiff was thereupon lawfully placed under arrest for driving under the influence of alcohol and properly read the applicable implied consent notice. Plaintiff is legally deaf, but can read lips. He cannot read sign language. Plaintiff testified that while he heard the implied consent, he did not understand it.
7. After being properly advised of the applicable implied consent notice, the Plaintiff refused to submit to the state designated test(s) as requested by the arresting officer. Since Plaintiff had already submitted to the alco-sensor, Plaintiff requested a blood test instead, and believed that he was going to receive a blood test.

**II. Conclusions of Law**

**Based upon the above findings of fact, the Judge makes the following conclusions of law:**

In the case of a hearing impaired driver, the law requires that the implied consent notice must be conveyed by a qualified interpreter, or, in certain circumstances, in writing. O.C.G.A. § 24-9-103; Yates v. State, 248 Ga. App. 35, 37 (2001). Neither process was followed here. As such, this Court finds that the arresting officer failed to provide a proper implied consent notice. Accordingly,

**III. Decision**

**IT IS HEREBY ORDERED THAT** the decision of Defendant to administratively suspend the Plaintiff's driver's license, permit or privilege to operate a motor vehicle or commercial motor vehicle in this state is **REVERSED**.

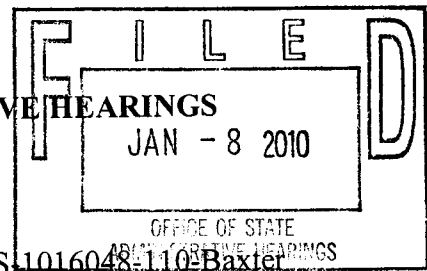
**SO ORDERED**, this 12th day of January, 2010.

*AC Baxter*

AMANDA C. BAXTER  
Administrative Law Judge



BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



\_\_\_\_\_  
Plaintiff,  
v.  
DEPARTMENT OF DRIVER SERVICES,  
Defendant.

Docket No.:  
OSAH-DDS-ALS-1016048-110-Baxter  
Agency Reference No.: 054194439

**FINAL DECISION**

Plaintiff requested a hearing in response to Defendant's issuance of an administrative license suspension of Plaintiff's driver's license or privilege to drive in the State of Georgia in accordance with the provisions of O.C.G.A. § 40-5-67.1. For the reasons indicated below, Defendant's action is **AFFIRMED**.

**I. Findings of Fact**

**The Judge has considered the entire evidence in this case, and based upon a preponderance of the credible evidence makes the following findings of fact:**

1. Plaintiff was stopped as part of a road block at approximately 10:52 p.m. The initial officer smelled an odor of alcohol coming from the Plaintiff and directed him to the arresting officer.
2. The Plaintiff was in actual physical control of a moving motor vehicle in this State at the time of the initial stop.
3. Plaintiff admitted to consuming three to four beers during the day and that he had been drinking all day.
4. The arresting officer requested that the Plaintiff perform the following field sobriety evaluations which were not completed to the satisfaction of the arresting officer HGN and alco-sensor. The Plaintiff also completed the One Leg Stand and Walk and Turn, but the evidence is not clear whether Plaintiff presented sufficient indications of impairment on those evaluations.
5. These facts caused the arresting officer to believe that the Plaintiff had consumed an unknown quantity of alcohol in such a manner as to make the Plaintiff a less safe driver.
6. The Plaintiff was thereupon lawfully placed under arrest for driving under the influence of alcohol and properly read the applicable implied consent notice. Plaintiff is legally deaf, but testified that he heard the implied consent.
7. After being properly advised of the applicable implied consent notice, the Plaintiff refused to submit to the state designated test(s) as requested by the arresting officer. Since Plaintiff had already submitted to the alcosensor, Plaintiff requested a blood test instead.

**II. Conclusions of Law**

**Based upon the above findings of fact, the Judge makes the following conclusions of law:**

1. The arresting officer had reasonable grounds to believe the Plaintiff was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or a controlled substance and was lawfully placed under arrest for violating O.C.G.A. § 40-6-391 and O.C.G.A. § 40-5-67.1(g)(2)(A)(i).
2. At the time of the request for the test or tests the arresting officer informed the Plaintiff of his implied consent rights and the consequence of submitting or refusing to submit to such test. O.C.G.A. § 40-5-67.1(g)(2)(B).


3. The Plaintiff refused the state designated test(s), and instead, offered to take a blood test. O.C.G.A. § 40-5-67.1(g)(2)(C)(i). A driver does not have the option of which test he may initially take. Only after submitting to the state designated test may the driver then request an additional chemical test of his choosing.

4. Accordingly, the suspension of the Plaintiff's driver's license and driving privilege by Defendant was proper. O.C.G.A. § 40-5-67.1.

### III. Decision

**IT IS HEREBY ORDERED THAT** the decision of Defendant to administratively suspend the Plaintiff's driver's license, permit or privilege to operate a motor vehicle or commercial motor vehicle in this state is **AFFIRMED**.

**SO ORDERED**, this 8th day of January, 2010.

  
AMANDA C. BAXTER  
Administrative Law Judge

