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March 16, 2007

VIA FACSIMILE 850-410-7816

Laura Barfield
Alcohol Testing Program Manager
Florida Department of Law Enforcement
PO Box 1489
Tallahassee, FL 32302

RE: Intoxilyzer 8000 Malfunctions

Dear Ms. Barfield:

As you are aware, last September, after receiving reports from the criminal defense bar, FDLE learned that the Intoxilyzer 8000 was malfunctioning. That issue dealt with the machine reporting breath samples with volumes of less than 1.1 liters, but failing to report to the breath test operator that the minimum volume for a reliable breath sample was not achieved. Obviously something was wrong; if the reported breath volume was correct, then somehow the machine was not identifying the fact the volume did not exceed 1.1 liters; if the machine was correct in not displaying the warning flag of "volume not met", then the Intoxilyzer was reporting the wrong volume of the breath sample.

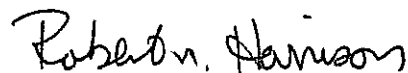
If goes without saying that if the Intoxilyzer cannot reliably report the breath volume, any breath alcohol reported by the machine would be unreliable. As stated by former FDLE Commissioner Guy Tunnell, in his letter to Bruce Colton, President of the Florida Prosecuting Attorney's Association dated August 11, 2005: "Volume is a key component in establishing reliability. Where a breath sample does not meet minimum volume requirements, the instrument cannot determine if there are interferences or mouth alcohol present, and cannot ensure a deep lung breath sample has been obtained." The defense bar was concerned that the source

of the error could be the Intoxilyzer was reporting the wrong sample volume. FDLE, after consulting with the manufacturer of the Intoxilyzer, assured everyone that this was not the case, and the problem was limited to a rare situation where software failed to report the error. We were also assured that the problem had been solved after the 8100.27 software patch was installed.

After reviewing the records of test results of the Intoxilyzer 8000 after the installation of the software patch, the defense bar has once again found the machine is not working properly. On numerous occasions, on machines located all across Florida, the Intoxilyzers are reporting breath volumes of greater than 1.1 liters and a warning flag of "volume not met". This warning is only supposed to occur for breath samples of less than 1.1 liters. If FDLE was correct that the manufacturer corrected the issues with the warning flag, then the only explanation is the Intoxilyzer is reporting the wrong sample volume. For your reference, I have attached two examples, one from Sarasota and the other from Eustis.

The Florida Supreme Court has charged FDLE with the responsibility of ensuring that all breath test results in this state are reliable. Until these issues can be resolved, FDLE is not in a position to ensure the reliability of the Intoxilyzer 8000. In light of this information, it would be improper to continue to utilize the Intoxilyzer 8000 in the State of Florida at this time. It appears we are learning the hard way why other jurisdictions refused to approve the Intoxilyzer 8000 for use. No one should be prosecuted, jailed or stripped of their driver's license by use of this seriously flawed machine. FDLE should immediately call for the cessation of the use of the Intoxilyzer 8000 in this State, pending resolutions of these issues.

Very truly yours,



Robert N. Harrison

RNH/jps

Enclosures

Subject Tests

Intoxilyzer 8000 Serial # 80-001344

Instrument Registered To	Software	Date/Time of Test	Date of Last Agency Inspection
Subject Name	DOB	Sex	Driver License
Operator	Agency	Dry Gas Lot #	Expiration
Arresting Officer	Agency	Arrest Time	Observation Time
			Violation Code

SARASOTA COUNTY SO	8100.27	01/05/2007 11:12:24	12/08/2006
LALONDE-LUMMIS, PATRICIA, M	05/30/1957	Female	FL/L453693576900
JOHNSON, WESLEY, W	Sarasota County	608301G	03/27/2008
STELLWAGEN, CHARLES	Sarasota County	09:50	10:40
			DUI

Type	Result	Time	
Diagnostics Check	OK	11:00	
Air Blank	0.000	11:01	
Control Test	0.080	11:01	
Air Blank	0.000	11:01	
Subject Sample #1	0.221	11:05	Volume Not Met
Breath Volume	0.625	11:05	
Air Blank	0.000	11:05	
Air Blank	0.000	11:07	
Subject Sample #2	0.207	11:10	Volume Not Met
Breath Volume	1.523	11:10	
Air Blank	0.000	11:11	
Control Test	0.078	11:11	
Air Blank	0.000	11:12	
Diagnostics Check	OK	11:12	

Result: 0.000

Subject Tests

Intoxilyzer 8000 Serial # 80-001345

Instrument Registered To	Software	Date/Time of Test	Date of Last Agency Inspection
Subject Name	DOB	Sex	Driver License
Operator	Agency	Dry Gas Lot #	Expiration
Arresting Officer	Agency	Arrest Time	Observation Time
			Violation Code

EUSTIS P.D.	8100.27	01/06/2007 04:13:37	12/31/2006
MCCULLOCH, JOHN,	11/18/1958	Male	FL/M242460584180
JICHA, TRAVIS, A	Eustis PD	515902I	06/13/2007
MCSHEEHY, SHANE	Eustis PD	02:01	02:30
			DUI

Type	Result	Time	
Diagnostics Check	OK	03:59	
Air Blank	0.000	03:59	
Control Test	0.080	03:59	
Air Blank	0.000	04:00	
Subject Sample #1	0.178	04:02	
Breath Volume	1.902	04:02	
Air Blank	0.000	04:03	
Air Blank	0.000	04:05	
Subject Sample #2	0.181	04:08	Volume Not Met
Breath Volume	1.570	04:08	
Air Blank	0.000	04:09	
Air Blank	0.000	04:11	
Subject Sample #3	0.190	04:12	
Breath Volume	1.265	04:12	
Air Blank	0.000	04:12	
Control Test	0.077	04:13	
Air Blank	0.000	04:13	
Diagnostics Check	OK	04:13	

Result: 0.178

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VIA FACSIMILE 861-4342

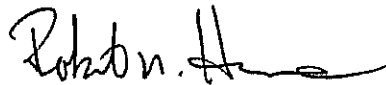
Don Hartery, Assistant State Attorney
State Attorney's Office
2071 Ringling Blvd, Sarasota FL 34237

RE: Intoxilyzer 8000 Malfunctions

Dear Mr. Hartery:

The Intoxilyzer 8000, after installation of the 8100.27 software patch, is still not working correctly. Attached is a letter that I faxed to the Florida Department of Law Enforcement which details the problem. Also included are representative examples of the problem, including one from Sarasota County. While my clients will be made aware of this issue, my immediate concern is everyone being prosecuted where the Intoxilyzer 8000 is being used should be apprised of this glitch, especially those who do not have legal representation. I trust your office will provide proper *Brady* notices to all appropriate parties.

Very truly yours,


Robert N. Harrison

RNH/jps

Enclosures