

# Beat DMV Plan for Refusal Hearing

## DMV Must Prove:

- (1) That the officer had probable cause to believe you were DUI;
- (2) That you were [lawfully stopped and] lawfully arrested for DUI; and
- (3) That you were advised if you refused a chemical test that your license would be suspended/revoked;
- (4) That you refused/failed to complete the chemical test.

Defense Number 1: \_\_\_\_\_

Defense Number 2: \_\_\_\_\_

Defense Number 3: \_\_\_\_\_

Defense Number 4: \_\_\_\_\_

## Objecting to DMV's Evidence

Exhibit Number	Name of Document	Exhibit Number	Name of Document
	DS 367		
	Other police report (if any)		
	Accident report (if any)		

## When the hearing officer asks if you have any objections, state

"Yes. I object to the admission of the DS 367 form marked as Exhibit \_\_\_\_\_ on the grounds that it contains hearsay, double hearsay, lacks foundation and states legal conclusions of the officer.

[I also object to the police report marked as Exhibit \_\_\_\_\_ and the accident report marked as Exhibit \_\_\_\_\_ on the grounds that it contains hearsay, double hearsay, lacks foundation and states legal conclusions of the officer.]

More specifically, I object to the use of any PAS test results on the ground that there has been no showing of scientific foundation under *People v. Adams* that the officer was competent and qualified, that (s)he administered the test properly or that it was in proper working order at the time of the test."

**Cross-examining DMV's Witnesses**

Witness Number 1: \_\_\_\_\_

Defense Number	Point to Make	Questions to Ask
(examples) 1. No lawful arrest	Stop was illegal because no traffic was impeded.	"Officer, you're trained to write a complete report, right? To include everything relevant to the incident? And you prepared a complete report in this case? You included everything in it that you felt was relevant?" You wrote down that it was 2:00 a.m., right? On a deserted stretch of Old Route One? Mine was the only car on the road, right? Or you would have written down that other cars were there? Because that would have been relevant to your report?
2. No proper admonishment	Never said WOULD be suspended; only said it COULD	"Officer, you checked the box on the DS 367 saying that you gave me the implied consent admonishment, right? And you did that the night of my arrest? You told me I had an obligation to take the chemical test? You told me that if I didn't, my license could be suspended? That's part of your job in DUI enforcement, right? To advise that a refusal could result in suspension?

Witness Number 2: \_\_\_\_\_

Defense Number	Point to Make	Questions to Ask

**Presentation of Your Case**

Witness: \_\_\_\_\_

Defense Number	Point to Make	Questions to Ask or Testimony to Give
(example) 1. Officer-induced confusion	Officer gave <i>Miranda</i> warnings prior to implied consent admonishment.	"The officer told me that I was under arrest for DUI and read me my rights. One of those rights was the right to an attorney. I told him I wanted to speak to an attorney before I answered any questions. Then he told me I had to take a test and asked me which one I wanted to take. I repeated that I wanted to talk to my lawyer first before answering and asked him what he meant by me having the right to talk to an attorney first. Then he told me I was playing games and took me to jail for a refusal.

**Closing Argument**

“To sustain the administrative suspension of my driver’s license, the Department has the burden of proving four things:

- (1) That the officer had probable cause to believe I had violated the drinking/driving laws;
- (2) That I was lawfully arrested for DUI; and
- (3) That I was told if I refused the chemical test my license would be suspended or revoked;
- (4) That I refused or failed to complete a chemical test.

“The Department has failed to meet its burden of proving Issue Number \_\_\_\_\_ [and Issue Number \_\_\_\_\_].

As for Issue Number \_\_\_\_\_, \_\_\_\_\_

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As for Issue Number \_\_\_\_\_, \_\_\_\_\_

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**[Here’s a sample closing argument for the common refusal defense of Officer-induced Confusion]**

“As for Issue Number 4, that I refused or failed to complete the chemical test, the Department has failed in its burden to show a refusal because the officer created confusion by giving me the admonishment after reading me my rights. First he told me I had the right to speak to a lawyer before talking to him. Then he told me I had to choose a test. When I asked him to explain what he meant, he just said I was playing games and took me to jail. The Department has failed to meet its burden of showing Issue Number 4, the actual refusal of a chemical test.

“Accordingly, I request that the Department set aside the suspension of my driver’s license.”