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New Mexico's Implied Consent Act Leaves No Room for Indecision in Consent to Alcohol Testing

Under New Mexico's Implied Consent Act, any driver arrested for DWI is deemed to have given consent to "chemical tests of his breath or blood or both." Refusal of the tests results in both the automatic one year revocation of the driver's license and charges for aggravated DWI.

On occasion, a driver may decline the test then later change his or her mind. The question that will arise is whether the change of heart is sufficient to avoid the consequences of a refusal. The answer is that it probably will not.

There are many states that consider any refusal no matter how brief to be a violation of the Implied Consent Act thereby resulting in the all the consequences associated with a refusal. New Mexico takes a more liberal approach. However, it is only slightly more liberal.

The rule in New Mexico was set forth in the 1994 New Mexico Supreme Court case of *State v. Suazo*. The Court in *Suazo* adopted a subsequent consent rule with several strict parameters. The change of heart must come within a reasonable length of time necessary to understand the consequences of a refusal. In The consent must come within a time frame when a test would still be accurate. Finally, there must be no substantial inconvenience or expense to the police necessitated by the change of heart.

This all might seem a little vague but the court cleared things up when it stated that the time allowed for a change of mind would be a "very short time, never more than a matter of minutes." The Court made clear also that the burden is on the driver to prove the reasonableness of the change of mind.

In short, a refusal of the breath alcohol test carries very serious consequences including automatic one year revocation of driving privileges and charges for aggravated DWI which carries mandatory jail time on conviction. Under *Suazo*, the decision of whether to consent must be made almost immediately. Indecision or delay is not in the driver's favor and will be strictly construed against the driver.

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