

DUI Defense with License Suspension and Representation Eligibility

Filed by —

FORUM New Hampshire	
Breathalyzer result: 0.06	Time until court hearing: 4 weeks
Legal BAC limit: 0.08	Attorney cost estimate (user's quote): 2K
Time of marijuana use before arrest: 3-4 hours	Attorney cost estimate (lawyer's quote): 3K
Amount of marijuana used: 2-3 tokes	

This matter resolves whether a DUI charge with below-legal-limit BAC, marijuana admission, ambiguous blood-draw refusal, and alleged officer bias can be defended to avoid felony and misdemeanor conviction while canceling the pending driver's license suspension.

BUCKET 01 ADMINISTRATIVE LICENSE SUSPENSION EXPOSURE

MIXED — evidence-dependent

The client's license has not yet been suspended, but he understands it will be if he pleads down from a felony to a misdemeanor. He wants the suspension 'cancelled' outright rather than merely delayed.

Leans on — The underlying criminal charge/plea dynamics driving suspension exposure are detailed in b.1.

LODE 01 ADMINISTRATIVE LICENSE SUSPENSION EXPOSURE

MIXED — evidence-dependent

CRESTS — leverage

- If the hearing officer's written order specifies a suspension length or an enhancement, that signals every step was found proven; the absence of specifics is itself informative.
- If the written decision says nothing about whether a refusal occurred, that silence cannot be treated as proof of refusal — require an affirmative finding either way.
- Verify whether NH ALS procedure actually requires a separately labeled refusal finding before asserting that its absence voids any enhancement.
- Verify this specific 'void as a matter of form' rule against actual NH ALS hearing procedure before treating it as established.
- Confirm any refusal finding appears in the official hearing record — that is the document to obtain and to challenge if it is missing or unclear.

RIFTS — hazards

- The hearing officer's form may have a blank only for suspension length, with no dedicated box for a refusal finding — don't let a blank field be read as an implicit refusal finding; demand an explicit statement either way.
- If the case stops early on the officer's initial grounds, the written order may not say so — don't spend the four-week prep window arguing impairment or the blood-draw point if the real defect was in the initial stop; demand clarity on exactly which step failed.

BUCKET 02 CRIMINAL CHARGE EVIDENCE AND BIAS DEFENSE

SUB-LIMIT BAC — IMPAIRMENT STILL CONTESTED

This is a first-offense DUI arrest in Bedford, New Hampshire, where a 0.06 breathalyzer result sits below the state's 0.08 legal limit, so the prosecution must build its case on impairment evidence and a contested blood-draw refusal rather than on the number itself, all inside a four-week window to the court hearing.

Leans on — License suspension consequence of a plea-down is addressed in b.2.
Leans on — Counsel selection needed to run this defense within the four-week window is addressed in b.3.

LODE 03 ADVISORY DELIVERY AND ATTACHMENT

WARNING DEFECT EXCLUDES REFUSAL, NOT WHOLE CASE

CRESTS — leverage

- A defective implied-consent warning only supports suppression of the refusal/test evidence; it does not automatically defeat the entire prosecution, since other evidence of impairment may still stand
- Document the officer's exact words at 4:00 AM against what New Hampshire law requires the warning to say, and pin down when it was given relative to when the client made his choice.
- The strongest proof of a warning defect is a contemporaneous bodycam or dispatch timestamp, not the officer's trial recollection weeks later; the arrest report itself should explain any defect at the time, not after the fact.
- NH courts assess implied-consent warnings under a substantial-compliance standard, so an immaterial or technical gap does not automatically invalidate the demand — under Substantial-compliance doctrine applied to implied consent advisories under RSA 265-A:4.
- If the officer denied or delayed the client's access to counsel during the warning, the log should show a specific reason and timestamp for that, not a reconstructed story.

RIFTS — hazards

- The arrest report may record only that the client refused without explaining why the warning was deficient — watch for the officer inventing that justification for the first time at trial.
- Nothing in the paperwork separately tracks whether the warning came before or after the client's choice — this timing detail must be pulled specifically or it will be missed.
- A routine 'warning given' checkbox can mask that the officer never actually confirmed the warning was clear or complete in the moment — don't accept the form at face value.

LODE 04 PRE-ARREST FACTUAL SUFFICIENCY

PRE-ARREST FACTS ONLY, REFUSAL CAME AFTER

CRESTS — leverage

- Force the officer to state precisely what facts he had before the arrest, since the blood-draw refusal happened afterward and cannot count toward probable cause for the arrest itself.
- Ask for a written ruling on whether the pre-arrest facts alone established reasonable grounds — a written finding is harder to walk back later than an oral one.
- If the written ruling claims to rest only on pre-arrest facts but its reasoning leans on the refusal anyway, flag that contradiction as appeal-worthy.
- Object if the prosecution tries to introduce the blood-draw refusal while arguing the probable-cause question — keep that argument confined to what happened before the arrest.

RIFTS — hazards

- Watch for the prosecution bundling the marijuana admission with the 'mixed' sobriety rating so the weaker point rides on the stronger one — insist each fact be tested on its own, not as a combined total.

LODE 05 VIOLATION-TO-REMEDY MAPPING

PROCEDURAL FLAW — EXCLUDE OR JUST WEAKEN?

CRESTS — leverage

- Push for a written ruling stating plainly whether the specific testing mistake was serious enough to exclude the test outright or only affects its weight — locking that in avoids relitigating it later.
- Find New Hampshire precedent holding this exact type of testing error bars the test outright, so the prosecutor cannot downgrade a bright-line violation into a mere weight argument.

RIFTS — hazards

- Without a bright-line New Hampshire rule for this error type, the prosecutor can analogize to lesser problems and argue for weight-only treatment — the client's facts need to be distinguished, not lumped in.
- New Hampshire's testing-procedure statutes often don't say whether breaking a given rule kills the test or just weakens it, leaving that call to case-by-case judicial discretion that may never have addressed this exact violation.
- If this exact type of mistake hasn't been ruled on in New Hampshire before, this case's ruling could be the first word on it — meaning the outcome has no settled precedent to lean on either way.

PRESCRIPTIONS

- 01 **Preserve the iPhone recording immediately.** What exactly did the officer say, and did it reference the Kippah/Tefillin using the word 'Palestinian'? — to be confirmed via the iPhone recording.
- 02 **Resolve the \$1,000 attorney fee gap now, in parallel.** Confirm client's income and public-defender eligibility before committing to the dual-track \$2K/\$3K financing plan as necessary.
- 03 **Engage counsel and pull the full record before the ALS hearing request is filed.** Once representation is secured, have counsel request the arrest report, dispatch log, booking log, bodycam or dispatch timestamps, and the breath/blood-test log right away. This has to happen before the administrative license suspension hearing request is submitted, because once the 'refusal' label goes in unchallenged it becomes the claim the hearing officer will test, and a mismatch against independent timestamped records is the strongest available ammunition right now.
- 04 **Build the probable-cause and implied-consent-warning challenges together.** Have counsel press the officer to separate what he knew before the arrest (the marijuana smell, the admitted 2-3 tokes from 3-4 hours earlier, the disputed 'mixed' sobriety rating) from what happened after (the blood-draw refusal), and seek a written ruling confined to pre-arrest facts. In parallel, challenge the warning's content and timing under New Hampshire's substantial-compliance standard [#03bc43][#e4ae43][#bddd04f], but plan around the fact that even a win there only excludes the refusal/test evidence rather than the whole case [#799357] — pair it with attacking the 'mixed' field sobriety rating on protocol grounds, since such gaps affect weight and credibility rather than admissibility [#e2a87c].
- 05 **Make the sub-limit breathalyzer result the center of the impairment defense.** Because the 0.06 result sits below New Hampshire's 0.08 limit, the prosecution has no per se case and must prove impairment from field sobriety performance and observations alone. Get the officer on the record on every protocol detail for the eye, walk-and-turn, and one-leg-stand tests, since the client disputes the 'mixed' characterization and reports performing sharply.
- 06 **Demand a distinct written refusal finding and verify the refusal label before the hearing closes.** Confirm the hearing officer's decision contains a separate, labeled finding on the refusal question — silence should not be read as an implicit finding against the client — and independently verify the 'refusal' label against the dispatch, booking, and breath/blood-test logs before it locks in with the hearing request, since the hearing officer is free to examine reasonable grounds, lawful arrest, and the refusal question as separate issues [#b7cdd].
- 07 **Confirm the charge level, license status, and ALS proceeding status.** Ask counsel to confirm whether the filed charge is felony or misdemeanor level, whether the license is currently suspended, and whether the New Hampshire DMV has opened an administrative license suspension proceeding. Each of these is currently unconfirmed and materially changes both the plea calculus and how urgently the ALS-track defense above needs to move within the four remaining weeks.

THE BOTTOM LINE

To be verified — The record does not support self-representation given the layered probable-cause, implied-consent-warning, field-sobriety-protocol, and administrative-hearing arguments this matter requires. Between the \$3,000 retained-attorney quote and the \$2,000 the client has in hand, the gap is only \$1,000, so the two live paths are negotiating a payment plan or reduced fee with that attorney and applying now for public defender determination — both should be pursued in parallel, not sequentially, because the four-week window to the hearing (running from August 26, execution-time) does not leave time to try one path, fail, and then start the other. The record does not establish the client's income, his public-defender eligibility, or whether he has already engaged counsel, so a final answer on which path closes the funding gap cannot be given here — but on the facts available, applying for the public defender determination immediately while simultaneously negotiating the attorney's fee is the only sequence that keeps every option open within the time remaining.

OPEN QUESTIONS — WHAT THIS ANALYSIS COULD NOT ANSWER, AND WHO CAN

QUESTIONS ONLY YOU CAN ANSWER

- ? Do you have any prior criminal or license record, and has your public defender eligibility been confirmed based on income? [#8b5170] — parts of this analysis were held back pending this answer
- ? Were field sobriety tests conducted, and is this your first DUI-related arrest? [#7950f] — parts of this analysis were held back pending this answer
- ? What is your current income, and have you applied to the NH public defender program? [#2d51f6] — parts of this analysis were held back pending this answer
- ? Have you also backed up or saved a copy of the recording elsewhere? [#38ce4d] — parts of this analysis were held back pending this answer
- ? Which state did the arrest and hearing occur in? [#4447ea] — parts of this analysis were held back pending this answer
- ? Have you taken any steps to challenge the administrative license suspension separately from the criminal case? [#800d49] — parts of this analysis were held back pending this answer
- ? Self-representation question unresolved [#03bc36a]
- ? Unresolved counsel/public defender decision [#59ceea7]

FACTS THE RECORD STILL NEEDS

- ? Whether client has retained counsel or intends to proceed pro se? The record does not supply it; likely source: Client decision and attorney engagement. [#29ace3] — parts of this analysis were held back pending this answer
- ? What is Exact date of arrest? The record does not supply it; likely source: Court records or arrest documentation. [#d8b55e] — parts of this analysis were held back pending this answer
- ? Whether iPhone recording has been preserved and backed up? The record does not supply it; likely source: Client confirmation of backup location. [#52d4a3] — parts of this analysis were held back pending this answer
- ? What is Client's current annual income? The record does not supply it; likely source: Client financial disclosure or tax returns. [#896a30] — parts of this analysis were held back pending this answer
- ? What is Content and context of officer's discriminatory statement? The record does not supply it; likely source: iPhone recording or police report. [#6b36b7] — parts of this analysis were held back pending this answer
- ? What is Details of field sobriety tests administered (which tests, specific results)? The record does not supply it; likely source: Police report or arrest documentation. [#55f4af] — parts of this analysis were held back pending this answer
- ? What is Current status of driver's license (suspended or not)? The record does not supply it; likely source: New Hampshire DMV records. [#da9e73] — parts of this analysis were held back pending this answer
- ? Whether blood draw was actually refused or declined by client? The record does not supply it; likely source: Police report, arrest documentation, or hospital records. [#309da8] — parts of this analysis were held back pending this answer
- ? Whether administrative license suspension proceeding has been initiated? The record does not supply it; likely source: New Hampshire DMV or court records. [#e8dc94] — parts of this analysis were held back pending this answer
- ? What is Specific charge(s) filed (felony or misdemeanor level)? The record does not supply it; likely source: Criminal complaint or charging document. [#e90b5] — parts of this analysis were held back pending this answer
- ? What is Client's eligibility for public defender? The record does not supply it; likely source: New Hampshire public defender program application and determination. [#4d3cd9] — parts of this analysis were held back pending this answer
- ? What is Exact date of court hearing? The record does not supply it; likely source: Court records or summons. [#5aff25] — parts of this analysis were held back pending this answer

QUESTIONS NEEDING AN OUTSIDE SOURCE

- ? did counsel treat the intake basis tag as contestable, or accept it as an established fact? [#2215d2] — parts of this analysis were held back pending this answer
- ? did compliance review verify actual sequencing or only the completeness of advisory content? [#24d7aa] — parts of this analysis were held back pending this answer
- ? does the disposition record distinguish stages actually reached from stages never reached? [#ea984f] — parts of this analysis were held back pending this answer
- ? What is the current criminal charge or alleged offense, and has prosecution commenced? [#9657c5] — parts of this analysis were held back pending this answer
- ? was the compromise-of-evidence reasoning actually made at the moment of denial or reconstructed afterward? [#bb1b78] — parts of this analysis were held back pending this answer
- ? does the disposition schema distinguish 'enhancement denied' from 'enhancement never reached'? [#9de0b3] — parts of this analysis were held back pending this answer
- ? What is the current criminal charge or alleged offense, and has prosecution commenced? [#bfc565] — parts of this analysis were held back pending this answer
- ? was the implied-consent-vests-at-driving doctrine raised or preserved below? [#a89599] — parts of this analysis were held back pending this answer
- ? was hearing preparation and the resulting determination biased toward the intake-assumed track? [#8958d1] — parts of this analysis were held back pending this answer
- ? did cross-examination establish all three protocol elements or rely on general certification alone? [#550b78] — parts of this analysis were held back pending this answer
- ? did the officer's testimony structurally separate pre-arrest facts from post-arrest facts? [#39334a] — parts of this analysis were held back pending this answer
- ? Forum check: A defective implied-consent warning only supports suppression of the refusal/test evidence; it does not automatically defeat the entire prosecution, since other evidence of impairment may still stand. (basis: NH implied consent remedy (RSA 265-A:14) is exclusion of refusal evidence, not case dismissal.) — confirm against the forum's own authority. [#799357]
- ? Forum check: New Hampshire does not create a standalone criminal 'refusal' offense or a formal DUI-severity enhancer for refusal; refusal to submit to testing triggers a civil administrative license suspension (ALS) through the DMV, separate from the criminal DUI case, and the fact of refusal may be introduced as evidence at the DUI trial. (basis: RSA 265-A:14 (Implied Consent) and RSA 265-A:18 (administrative license suspension procedure)) — confirm against the forum's own authority. [#9d71bf]
- ? Forum check: NH treats the officer's roadside advisement and request for testing—not the act of driving—as the operative moment for judging whether a refusal was knowing and valid; a defective advisement at that moment can invalidate the refusal finding. (basis: RSA 265-A:4's informed-refusal requirement, under which the ALS/refusal hearing examines what the officer told the driver at the time of the test request, not merely the driver's earlier implied-consent status from operating a vehicle.) — confirm against the forum's own authority. [#59c900]
- ? Forum check: A timing defect in the warning does not automatically bar both the test result and any refusal evidence; NH courts assess whether there was substantial compliance overall, not an automatic forfeiture from one timing flaw. (basis: NH substantial-compliance standard applied to implied consent warnings under RSA 265-A:4.) — confirm against the forum's own authority. [#e4ae43]
- ? Forum check: There is no standalone criminal 'refusal' charge under New Hampshire law that could 'stand independently' with its own criminal verdict; refusal consequences run through the civil ALS process, not a separate criminal count. (basis: RSA 265-A:14 / RSA 265-A:18 (civil administrative suspension scheme, no parallel criminal refusal statute)) — confirm against the forum's own authority. [#046ed7]
- ? Forum check: Correct that refusal is not a standalone crime, but incorrect that the only alternative is DUI-sentence enhancement; the actual consequence is a separate civil ALS suspension plus admissibility of refusal as trial evidence. (basis: RSA 265-A:14 (implied consent) and RSA 265-A:18 (ALS hearing), which govern refusal outside sentencing-enhancement statutes) — confirm against the forum's own authority. [#af80b7]
- ? Forum check: NH courts admit field sobriety test results even when NHTSA protocol is not perfectly followed; deviations go to the weight and credibility of the officer's opinion, not to admissibility, and the jury may still consider the results as evidence of impairment. (basis: New Hampshire evidentiary standard for field sobriety test testimony — administration flaws affect weight/credibility, not admissibility.) — confirm against the forum's own authority. [#e2a87c]
- ? What rule governs admissibility of a party's admission of prior drug use in this proceeding? [#8bf242]
- ? What provision or rule in this matter addresses recovery or allocation of attorney fees? [#bdeb77]
- ? Forum check: NH courts assess implied-consent warnings under a substantial-compliance standard, so an immaterial or technical gap does not automatically invalidate the demand. (basis: Substantial-compliance doctrine applied to implied consent advisories under RSA 265-A:4.) — confirm against the forum's own authority. [#0becce5]
- ? Forum check: Timing alone is not dispositive; the content of the warning and its timing are both weighed together under the substantial compliance standard, so the warning's actual wording still matters. (basis: NH substantial-compliance standard applied to implied consent warnings under RSA 265-A:4.) — confirm against the forum's own authority. [#bddd04f]
- ? Forum check: Prosecutors cannot charge refusal as both a standalone crime and a DUI enhancer in New Hampshire because neither theory exists as a criminal charging option; refusal consequences are handled solely through the civil ALS track. (basis: RSA 265-A:14 / RSA 265-A:18 (single civil administrative remedy for refusal, no dual criminal charging scheme)) — confirm against the forum's own authority. [#13f083]
- ? Forum check: An ALS refusal finding made under the looser civil hearing standard does not automatically carry forward as settled fact binding the criminal case; the criminal case requires independent proof beyond a reasonable doubt. (basis: RSA 265-A:18 (civil ALS standard) as distinct from the criminal burden of proof applicable in DUI prosecutions) — confirm against the forum's own authority. [#b7d676]
- ? Forum check: There is no criminal 'refusal charge' to survive suppression; what survives independently is the civil ALS determination, which indeed runs on a separate track from the criminal case, but the item's framing of a criminal refusal charge is inaccurate. (basis: RSA 265-A:18 (ALS proceeding independent of criminal DUI prosecution)) — confirm against the forum's own authority. [#4a0a48]
- ? Forum check: No 'refusal charge' exists in New Hampshire criminal law requiring only proof of refusal; the relevant proceeding needing only proof of refusal is the civil ALS hearing, not a criminal charge unaffected by suppression. (basis: RSA 265-A:14 and RSA 265-A:18 (ALS proceeding standards, distinct from criminal proof requirements)) — confirm against the forum's own authority. [#d0899b]
- ? Forum check: The NH hearing officer decides discrete factual issues—reasonable grounds, and whether a refusal or a qualifying test result occurred—under RSA 265-A:8; the officer is not forced to elect a single exclusive narrative, since a sub-limit breath result and a separate blood-test refusal can both be part of the record. (basis: RSA 265-A:8 (statutory scope/elements of the ALS hearing).) — confirm against the forum's own authority. [#b7cdcd]

NOT COVERED

- 1 line(s) of analysis were removed before this plan was finalised (ungrounded 1).
- The knowledge base has no material addressing 2 fact(s) this matter establishes: Marijuana use admission; Attorney fee shortfall. These are gaps in the knowledge base, not findings against them — nothing here analyses them because there is nothing to analyse them with.
- Sourcing for the section "Representation cost, eligibility, and timing" found fewer supporting knowledge items than the design floor — its coverage is thinner than intended.
- 1 strand(s) of the intake belong to no section of this plan — a further concern-domain may be missing; they stand on the ledger as an open question.