9-8-2008

Bennett v. State, Dept. of Transp. Appellant's Reply Brief Dckt. 35150

Lawrence G. Wasden
Attorney General

Edwin L. Litteneker
Special Deputy Attorney General
Idaho Transportation Department
PO Box 321
Lewiston, Idaho 83501
Telephone: (208) 746-0344
ISB No. 2297

Attorney for Appellant

IN THE SUPREME COURT OF THE
STATE OF IDAHO

IN THE MATTER OF THE DRIVING LICENSE PRIVILEGES OF STACIE DAWN BENNETT.	Supreme Court No. 35150
STACIE DAWN BENNETT, Petitioner-Respondent, v. STATE OF IDAHO, DEPARTMENT OF TRANSPORTATION, Respondent-Appellant.	APPELLANT'S REPLY BRIEF

APPEAL FROM SECOND JUDICIAL DISTRICT, NEZ PERCE COUNTY

THE HONORABLE JEFF M. BRUDIE, PRESIDING

Edwin L. Litteneker
Special Deputy Attorney General
P.O. Box 321
Lewiston, ID 83501
Attorney for Appellant

Paul Thomas Clark
Clark and Feeney
P.O. Drawer 285
Lewiston, Idaho 83501
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUES

OTHER AUTHORITIES

I. STATEMENT OF THE CASE

a. Introduction.

This is the reply brief of The Idaho Department of Transportation, (hereinafter referred to as "the Department"). The Department has appealed District Court Judge Jeff M. Brudie's decision setting aside the administrative license suspension of Stacey Dawn Bennett's driving privileges previously entered by the Department's Hearing Officer.

Ms. Bennett responded to the initial briefing of the Department contending that the District Court did not error in setting aside the Department's Hearing Officer's Decision suspending Ms. Bennett's driving privileges as a result of her failing an evidentiary test for blood alcohol. The factual statement and procedural history set out in the Department's initial brief is incorporated herein and was not substantially contested by Ms. Bennett.

II. ISSUES ON APPEAL

The Department had identified two issues on appeal:

The Department's Hearing Officer's Decision is supported by substantial competent evidence.

Ms. Bennett's driving privileges should be suspended pursuant to the decision of the Department's Hearing Officer.

Those issues were responded to by Ms. Bennett. No additional issues were asked to be considered by Ms. Bennett.

III. STANDARD OF REVIEW

In considering the appeal of the District Court's Decision in a Petition for Judicial Review of an administrative decision of the Respondent this Court reviews the Department's Record independently of the District Court. *In re Suspension of Driver's*

License of Gibbar, 143 Idaho 937, 155 P.3d 1176 (2006).

Judicial review is limited by the Idaho Administrative Procedure Act, Idaho Code § 67-5279. It appears that whether the Hearing Officer's Decision is supported by "substantial evidence on the Record as a whole" is the only question for the Court's review. Idaho Code § 67-5279(3)(a-e).

IV. ARGUMENT

ISSUE I

The Department's Hearing Officer's Decision is supported by substantial competent evidence. [1]

The issue posed originally by Ms. Bennett to the Department's Hearing Officer was whether the evidentiary test for the presence of alcohol was performed in compliance with Idaho Code § 18-8002A(7) and Idaho Code § 18-8004. To answer this question it is necessary to look at the Hearing Officer's specific findings as to the circumstances of breath testing. The Hearing Officer made specific findings citing the substantial evidence in the Record relied upon by the Hearing Officer, why it was relied upon by the Hearing Officer and concluding that Ms. Bennett did not meet her burden pursuant to Idaho Code §18-8002A and § 18-8004A(4)(a). (Findings of Fact and Conclusions of Law and Order, R. pp. 47-48, ¶ VII-VIII.)

In considering the Record before him, the Hearing Officer concluded that Ms. Bennett's testimony of coughing (Excerpt of the Testimony of Ms. Bennett, Exhibit to the Record, attached as Appendix A hereto) did not implicate any of the circumstances cited in the Idaho State Police Standard Operating Procedure Manual (Appended to the

[1] In hind sight this characterization of the issue is not intended to add an additional standard of "competent" to the courts review pursuant to Idaho Code § 67-5279(3)(d).

Appellant's original brief) to meet her burden to show that Officer Krasselt had not complied with the 15 minute monitoring period.

Neither the suggestion that Ms. Bennett was left alone in the room or the fact that Ms. Bennett was coughing are not sufficient facts to conclude that Officer Krasselt had not complied with the Idaho State Police's Standard Operating Procedure Manual in the administration of the Intoxilyzer.

Relying upon the sworn statement submitted by Officer Krasselt, the Hearing Officer specifically found that Ms. Bennett had not met her burden as required by Idaho Code § 18-8002A and § 18-8004.

However, it is clear that the District Court independently weighed the evidence submitted to the Hearing Officer to come to a conclusion contrary to that of the Hearing Officer.[2]

---

[2] Judge Brudie indicated:

> The evidence before the Administrative Hearing Officer was that Officer Krasselt left the room twice, going down a hall and into another room. The only evidence to the contrary (according to the District Court) was a computer generated form affidavit signed by the Officer that included boiler plate language stating, "The test(s) was/were performed in compliance with Section 18-8003 & 18-8004(4) Idaho Code and the standards and methods adopted by the Department of Law Enforcement."

See Memorandum Opinion and Order on Petition for Judicial Review, R. p. 74.

The District Court weighs the computer generated sworn statement of Officer Krasselt that he had complied with the requirements for the administration of the Intoxilyzer against Ms. Bennett's testimony and simply comes to a different conclusion than the Hearing Officer. The computer generated sworn statement signed by Officer Krasselt included the "boiler plate" language of compliance with the conditions for breath testing that was sufficient for the Court of Appeals in *Archer v. State, Dept. of Transp., 145 Idaho 617, 181 P.3d 543, Idaho App. (2008).*[3]

The Hearing Officer correctly analyzes the burden of the driver while the District Court analyzes the admissibility of the breath test as an evidentiary question when considering the foundational question of the 15 minute waiting period. The admissibility of the breath test is not a question before the Hearing Officer and certainly not before the Court on judicial review.[4]

The correct inquiry is whether there was any reason based on the Record for the Hearing Officer to not rely upon the sworn statement of Officer Krasselt. There is nothing in the Record to suggest that the sworn statement of Officer Krasselt could not be relied upon by the Hearing Officer.[5]

The Hearing Officer did not find any reason not to rely upon Officer Krasselt's sworn statement and properly understanding the burden necessary for Ms. Bennett as

---

[3] "The arresting officer's affidavit submitted to ITD sets forth that the breath test was performed in compliance with statute and the standards and methods adopted by the Idaho State Police." *Archer, 181 p.3d at p. 547.*

There is no argument that the sworn statement of Officer Krasselt is not incompliance with IDAPA 39.02.72.200.01(b).

[4] The Hearing Officer is required by Idaho Code § 18-8002A to consider the documentation submitted by the police officer specifically Officer Krasselt's sworn statement.

[5] Not only is the preprinted form consistent with the Department's rules, the officer's sworn statement promotes consistency and judicial economy and provides a ready reference for the Court.

required by Idaho Code § 18-8002A, concluded that Ms. Bennett had not met her burden.

This case is analogous to the Court of Appeals Decision in *Archer v. State, Dept. of Transp., 145 Idaho 617, 181 P.3d 543, Idaho App. (2008).* There Archer tried by inference to show that the Alco-Sensor (not the breath testing equipment utilized here) had not been calibrated within 24 hours. However, Archer presented no direct evidence and since he had the burden, his proof failed. Just as here, Ms. Bennett attempts by inference to show that Officer Krasselt's absence from the room must mean she was not monitored for 15 minutes. There is still no proof in this record that she was not monitored for 15 minutes.

Finally, Ms. Bennett only testified as to what she could see, Officer Krasselt testified that what he did was in compliance "with § 18-8003 & § 18-8004 Idaho Code and the standards and methods adopted by the Idaho Department of Law Enforcement". (R.p. 23)

Additionally, Ms. Bennett did not testify to any event triggering an extension of the 15 minute monitoring period, for example, had she vomited, burped, or regurgitated. She did not offer any proof to show that coughing was one of the triggers requiring anymore intensive monitoring.

Officer Krasselt testified in his sworn statement that the monitoring required of Ms. Bennett had occurred consistent with the Idaho State Police Standard Operating Procedure Manual. Ms. Bennett only testified that Officer Krasselt was not in the room for brief periods of time. Ms. Bennett can not say as to whether she was monitored or not and to conclude she was not monitored second guesses the Department's Hearing Officer's findings.

It is appropriate for the Hearing Officer to engage in the fact specific analysis necessary to determine whether the "statutes, standards and methods" had been met. However, the Court does not have that luxury. [6]

Ms. Bennett is simply arguing that the Court should accept her interpretation of the evidence submitted, that there was not a sufficient 15 minute monitoring period and reject the Hearing Officer's Findings and Conclusions that a sufficient monitoring period had occurred. It is clear that the purpose of the 15 minute monitoring period was met.[7]

The Record indicates that Officer Krasselt observed Ms. Bennett at 02:57, administering the final Intoxilyzer breath test to Ms. Bennett at 03:18 (R. p. 20). The 21 minutes of observation (without anything more from Ms. Bennett as to the circumstances of Officer Krasselt's absence from the room) is a sufficient monitoring period to comply with the requirements of Idaho Code § 18-8004.[8]

Whether the 15 minute observation period was validly conducted requires the Hearing Officer to consider the facts presented. The Hearing Officer weighed the ambiguous testimony of Ms. Bennett and Officer Krasselt's sworn statement that he complied with the standards for the conduct of the Intoxilyzer and the remainder of the Record, concluding Ms. Bennett did not meet her burden.

---

[6] The Department's Hearing Officer's factual determinations are binding on the reviewing court even when there is conflicting evidence before the Department so long as the Hearing Officer's determinations are supported by substantial competent evidence in the Record. *Archer v. State, Dept. of Transp., 145 Idaho 617, 181 P.3d 543, Idaho App. (2008).*

[7] The Court of Appeals in *Gibbar* is helpful, "The manual requires that the breath test subject be monitored for a period of 15 minutes immediately prior to the administration of the breath test to assure that the subject did not smoke, ingest any substance, vomit, or belch, which actions could render the breath test inaccurate. In the absence of a validly conducted 15 minute wait required by the manual the Hearing Officer should vacate the license suspension because the breath test was not conducted in accordance with the requirements of Idaho Code § 18-8004(4)." *In re Suspension of Driver's License of Gibbar, 143 Idaho 937, 155 P.3d 1176.*

[8] If Officer Krasselt's absence from the room occurred in the first six minutes of the observation period there was 15 minutes of uninterrupted monitoring.

Whether Officer Krasselt was in the necessary physical proximity is a fact question to be analyzed by the Hearing Officer considering the entirety of the Record. The Hearing Officer considering the entirety of the Record concluded that Ms. Bennett had failed to meet her burden.

Reasonable minds may disagree about what Officer Krasselt's sworn statement means and what Ms. Bennett's testimony means, but the Hearing Officer is entitled to make a determination based upon the entirety of the Record if the tests were *validly* administered not just to weigh the well selected and carefully argued facts submitted to the District Court on judicial review. The Court on judicial review should not engage in that exercise. Even if the Court would disagree with the factual findings of the Hearing Officer, there is sufficient substantial evidence in the Record to support the Hearing Officer's decision.

It is also necessary to look at the entirety of the Idaho State Police Standard Operating Procedures not just limited sampling of them. The entirety of the Standard Operating Procedure Manual sets out the purpose of the monitoring. (See Appendix A to Appellant's initial brief, Idaho State Police Standard Operating Procedure for Breath Alcohol Testing, p. 8 § 3.1).[9]

---

[9]

3.1 Prior to evidential breath alcohol testing, the subject must be monitored for fifteen (15) minutes. During this time the subject may not smoke, drink, or chew gum, candy, food, or any tobacco product. Any material which absorbs/adsorbs or traps alcohol should be removed from the mouth prior to the start of the 15 minute waiting period.

3.1.1 The monitor should be a certified breath test operator as described in Section I.C.

3.1.1.1 The breath test must be administered by an operator currently certified in the use of the specific model of instrument used.

3.1.2 False teeth, partial plates, or bridges installed or prescribed by a dentist or physician do not need to be removed to obtain a valid test.

3.1.3 If in doubt, the operator may elect a blood test in place of the breath alcohol test.

3.1.4 During the waiting period, the monitor must be alert for any event that might influence the accuracy of the breath test.

3.1.4.1 If, during the 15-minute waiting period, the subject vomits or is otherwise suspected of regurgitating material from the stomach, the 15-minute waiting period must begin again.

3.1.4.2 The operator must be aware of the possible presence of mouth alcohol as indicated by the testing instrument.

3.1.4.3 If mouth alcohol is suspected or indicated, the operator must begin another 15-minute waiting period before repeating the testing sequence.

Idaho State Police Standard Operating Procedure Manual, P. 8.

There is also sufficient evidence in the Record that the test was validly conducted based upon the test result not indicating the presence of mouth alcohol. The test result indicates that Ms. Bennett's breath samples did not contain mouth alcohol.[10]

ISSUE II

Ms. Bennett's driving privileges should be suspended pursuant to the decision of the Department's Hearing Officer.

The sworn statement of Officer Krasselt is sufficient and the Hearing Officer's Decision should be affirmed. Arguing that the 15 minute observation period was not validly conducted is a factual question that Ms. Bennett wants the court to find in the Record, contrary to the Hearing Officer. However, there is a sufficient basis in the Record to support the Hearing Officer finding that the 15 minute observation period was validly conducted considering Officer Krasselt's sworn statement, Ms. Bennett's testimony, the remaining documentation of the circumstances of the administration of the Intoxilyzer Breath Test.

When the entirety of the Idaho State Police Manuals are considered to determine whether there was compliance with the monitoring requirements the Hearing Officer's decision is supported by substantial evidence. The Hearing Officer relied on all of the Record not just Ms. Bennett's ambiguous testimony.[11]

The only way the Hearing Officer could deliberate toward a supportable

---

[10] The operator would have been notified if the breath samples submitted by Ms. Bennett if containing mouth alcohol.

See Intoxilyzer 5000 Operator's Training Manual, Appendix B, p. 10, indicating the meaning of "breath test" and "air blank" and pp. 21 and 24 indicating the importance of the Intoxilyzer advising of an "invalid sample". Ms. Bennett did not submit an invalid sample. R. p. 20.

[11] Ms. Bennett could have called Officer Krasselt to testify as to the circumstances and nature of his observations or lack thereof.

conclusion would be to consider all of the Department's records including the testimony supplied by Ms. Bennett, Officer Krasselt's sworn statement, the breath test results and all applicable manuals .[12]

V. CONCLUSION

Ms. Bennett has not met her burden pursuant to Idaho Code § 18-8002A(7) to demonstrate that the Hearing Officer's Decision was not supported by substantial competent evidence on the Record.

The Hearing Officer's decision to suspend Ms. Bennett's driving privileges should be sustained and Ms. Bennett's driving privileges should be suspended for ninety days.

DATED this 5th day of September 2008.

Edwin L. Litteneker
Special Deputy Attorney General

[12] At no time does Ms. Bennett assert that Hearing Officer Howell was arbitrary or capricious or abused his discretion. Hearing Officer Howell obviously sees his decision as an exercise of discretion and indicates specifically what he replied upon to make his decision.

Findings of Fact and Conclusions of Law and Order, Findings, VI, VII and VIII, R. pp. 2-3.

I DO HEREBY CERTIFY that a true
And correct copy of the foregoing
Document was:

__X__ Mailed by regular first class mail,
And deposited in the United States
Post Office

_____ Sent by facsimile and mailed by
Regular first class mail, and
Deposited in the United States
Post Office

_____ Sent by Federal Express, overnight
Delivery

_____ Hand delivered

To: Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, Idaho 83501

On this 5th day of September 2008.

Edwin L. Litteneker

APPENDIX A

Excerpt of the Testimony of Ms. Bennett
pp. 13-15

A. Monday. I didn't work on Monday (inaudible).

Q. You had to go to court on this citation?

A. Correct.

Q. So you actually worked on Tuesday?

A. Worked on Tuesday.

Q. But the plan was without the citation, you would have worked on Monday?

A. Yes.

Q. Okay. Now, did you have a -- a -- physical problems, and particularly, were you experiencing a cold?

A. I had a sinus infection.

Q. And were you taking any medication for that?

A. I have an Albuterol inhaler.

Q. Are there any warnings on that with the use of alcohol, to your knowledge?

A. (Inaudible.)

Q. And were you coughing a lot because of your sinus infection?

A. Yes.

Q. Did you cough -- now, after you were arrested you were taken to Latah County Sheriff's Office to the jail area?

A. Yes.

Q. And was it there where you took the breath test?

A. Yes.

Q. And did the officer watch you for about 15 minutes before you took the breath test?

A. He was in and out of the room.

Q. So he put you in a room where the breath testing device was?

A. Yes.

Q. And other than you and the officer, was there anyone else in that room?

A. Somebody walked in to drop off some papers.

Q. Did that person stay in the room?

A. No.

Q. And so during the 15 minutes prior to the breath test, was there times when you were alone?

A. Yes.

Q. And do you know how many times that occurred?

A. At least twice.

Q. Now, this other person that was dropping off papers wasn't in there at the same time then --

A. No.

Q. -- when you were alone?

And when the officer left, did he go out into a hallway area?

A. He went across the hall into (inaudible).

Q. And so to get out of the room that you were in, he would have gone through a door. Right?

A. Yeah.

Q. And then he went across or down a hallway?

A. Uh-huh.

Q. And then he went into another room?

A. Yes.

Q. Okay. And did he do that on both occasions, leaving you alone?

A. Yes.

Q. And do you recall during this 15-minute waiting period, in addition to the officer leaving at least two times, if you were coughing through that period of time?

A. Yeah, I was coughing pretty much the whole time I was in there.

Q. And describe the cough to us.

A. I have a very deep cough. I have chronic bronchitis. Pretty much anytime I get sick, I have a really (inaudible).

MR. CLARK: I need to review my notes here for a second if I can.

HEARING OFFICER: Okay.

MR. CLARK: Those are my only questions of Ms. Bennett.

HEARING OFFICER: I just have a couple of questions.

APPENDIX B

Intoxilyzer 5000
Operator's Training Manual

INTOXILYZER 5000

OPERATOR'S TRAINING MANUAL

Idaho Department of Law Enforcement
Idaho State Police
Forensic Services
August 1, 1999
(March, 2007)

CONTENTS

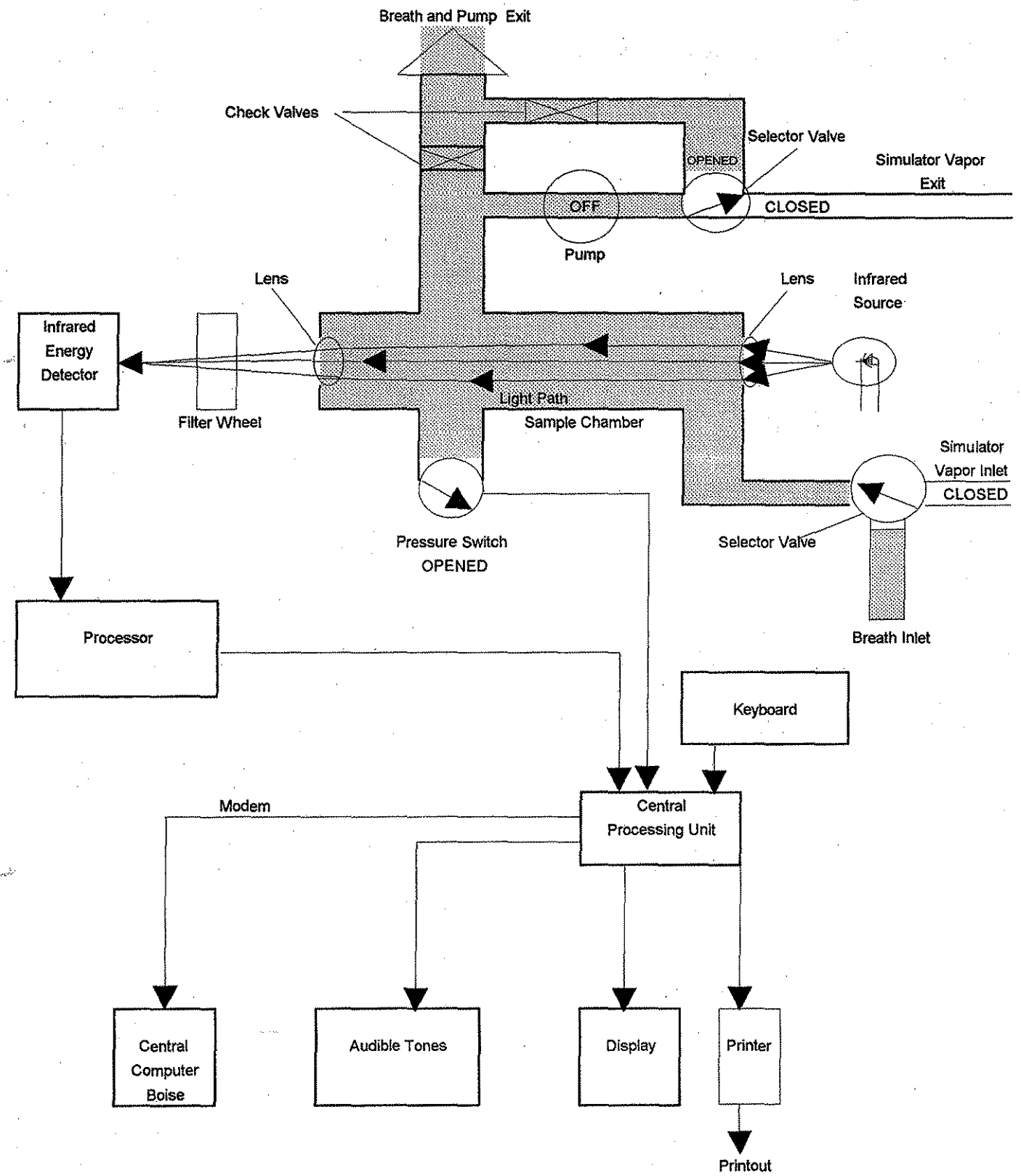
GENERAL INFORMATION

Depending on their physical size and structure, molecules absorb energy of specific frequencies. For example, alcohol molecules absorb certain frequencies of infrared energy. Accordingly, the Intoxilyzer 5000 breath analysis instrument uses an infrared energy absorption technique to find the alcohol concentration of a breath sample.

The heart of the Intoxilyzer 5000 instrument is its sample chamber. At one end of the chamber, a quartz iodide lamp emits infrared energy, which is directed through the chamber by a lens. At the opposite end of the chamber, a second lens focuses the energy leaving the chamber through three rotating filters and onto an infrared energy detector. The filters however, allow only certain wavelengths through.

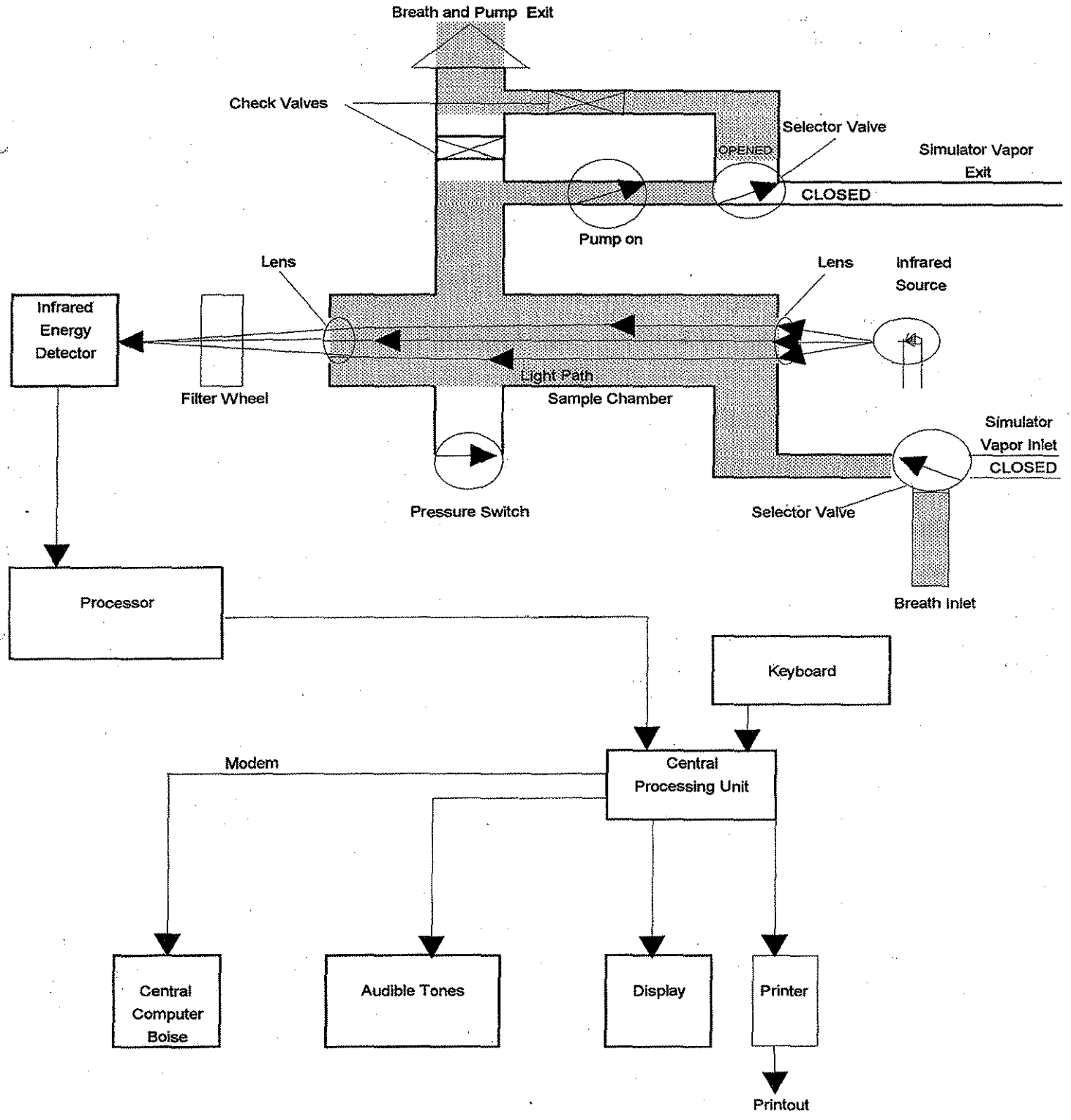
Initially, the instrument establishes a zero reference point by measuring the amount of infrared energy striking the detector when the sample chamber is filled with room air. During a breath test, as the amount of alcohol vapor in the chamber rises, the amount of infrared energy reaching the detector falls. Therefore, by finding the difference between the zero reference point and the breath test measurement, the instrument determines breath alcohol concentration. The unit displays the result in grams of alcohol per 210 liters. To assure accurate test results, the Intoxilyzer 5000 breath analysis instrument also detects and compensates for acetone which absorbs the same infrared frequencies as alcohol.

FUNCTIONAL DIAGRAM



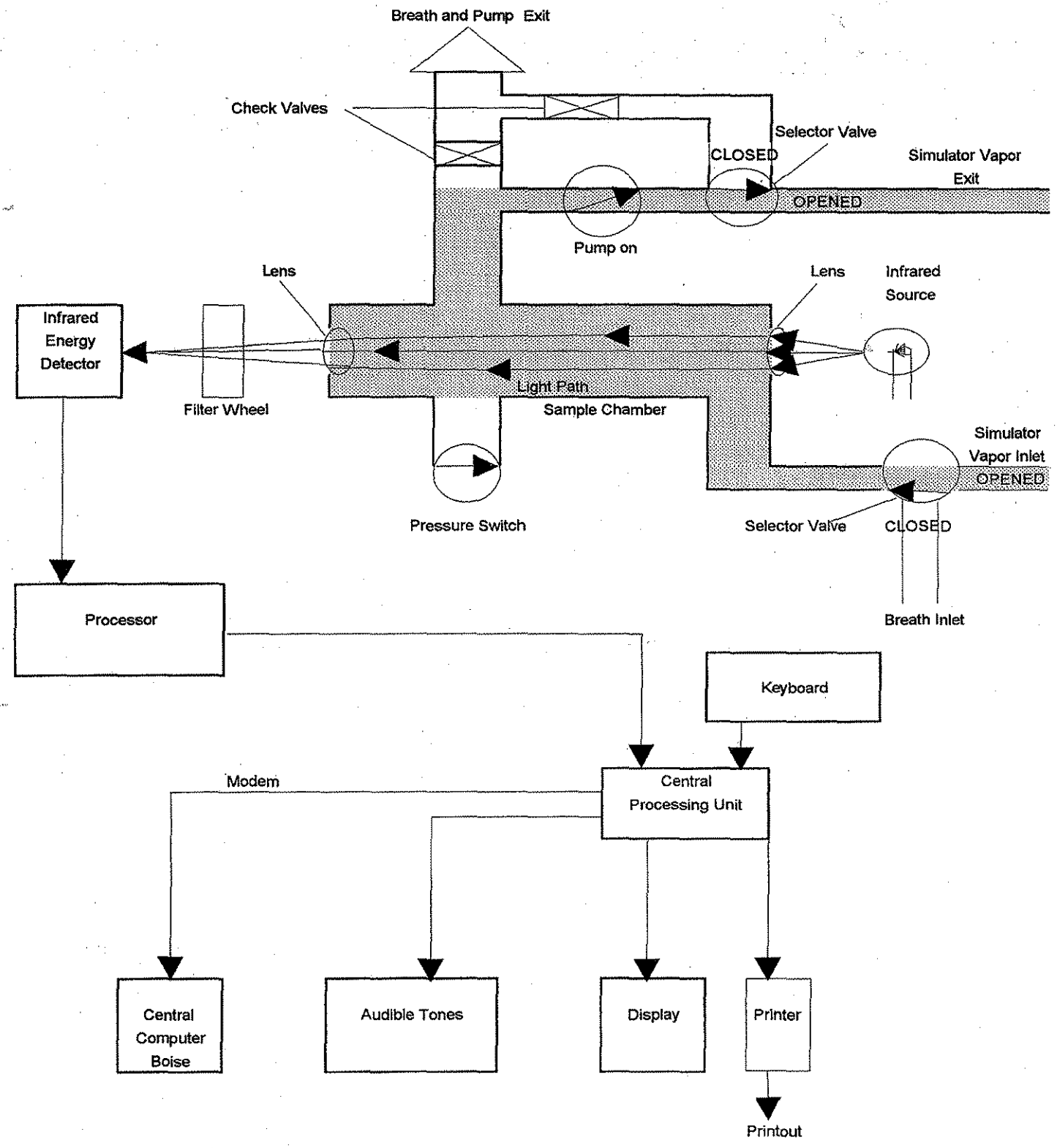
BREATH FLOW

FUNCTIONAL DIAGRAM



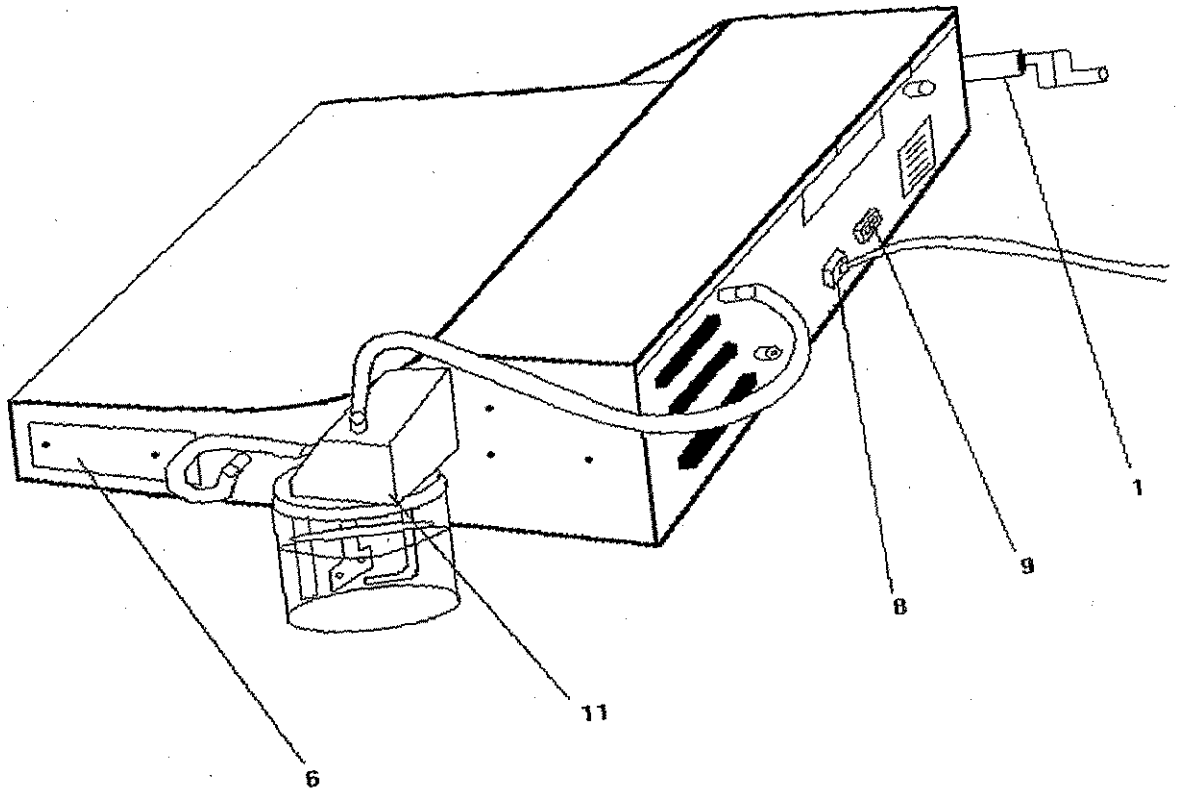
AIR BLANK

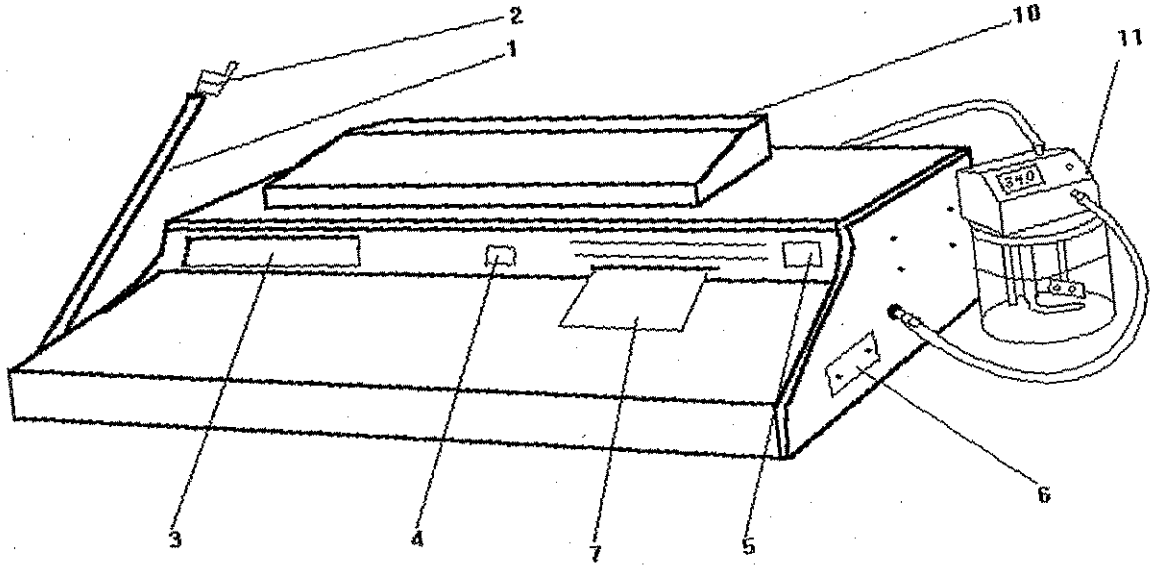
FUNCTIONAL DIAGRAM



CALIBRATION CHECK

FRONT AND BACK VIEWS OF THE INTOXILYZER 5000





PARTS OF THE INTOXILYZER 5000

To familiarize yourself with the parts, controls, and indicators of the Intoxilyzer 5000 breath analysis instrument, refer to the illustration on the previous page and the cross-referenced explanations listed below.

1. Breath Tube - A heated reinforced plastic tube through which the subject blows. It also acts as an antenna to detect RFI.

2. Mouthpiece - A disposable, clear plastic part which fits in the end of the breath tube, accepts the subject's breath, and prevents unwanted substances from entering the instrument.

3. Digital Display - A sixteen character alpha-numeric readout that relates which operation the instrument is performing, alerts the operator to required actions, and expresses Breath Alcohol Concentration in grams/210 liters.

4. Start Test Switch - A green push button switch used to initiate a test or obtain a refusal.

5. Power Switch - A red push button switch used to apply AC power to the instrument.

6. Key Latch - A hardened steel plate that may be unlocked with a key to expose the mode selection switches. Older instruments (66 series) only.

7. Evidence Card - A multi-copy card that provides a printed record of the date, model and serial number of the instrument, test results, time of test, and subject and operator information. It also contains a lot number and simulator check results which are important in determining the instruments approval status. Some instruments utilize an external printer which provide a printed record on a 8.5 x 11 sheet of paper.

8. Power Cord - A cord that supplies power to the instrument.

9. Computer Reset Switch - A rocker switch activated only in isolated circumstances to cancel all operations and return the instrument to its initial "Not Ready" condition.

10. Keyboard - A standard computer keyboard which allows the operator to type answers to questions.

11. Simulator - An apparatus that introduces a alcohol vapor of know concentration into the breath testing instrument to evaluate the calibration of the instrument.

12. Modem - (Not shown) An electronic device allowing the Idaho State Police Forensic Services (ISPFS) to communicate with the Intoxilyzer 5000 "on site". Call-ups of the instruments will typically occur between 4:00 am and 8:00 am Friday mornings. Operators using the instrument will not be affected by the call-up. The modem can be used to diagnose instrument problems, or to recover test data if the printer fails.

SIMULATORS

Alongside the Intoxilyzer 5000 you will notice a Glass Jar with a top containing a thermometer, a heating device, and a propeller. This apparatus is called a simulator. Its purpose is to simulate a breath sample which can be introduced into the Intoxilyzer 5000 and check the calibration of the instrument. **It is essential to the breath testing sequence that the simulator be on and connected properly, if it is not, the instrument will abort its testing sequence and no results will be obtained.**

Things to remember about the simulator.

1. The hoses need to be hooked up in a very specific order. If they are not the Intoxilyzer 5000 may be flooded and put out of service. **If at any time the hoses are disconnected DO NOT try to reconnect the hoses or proceed with a breath test without first consulting your BTS.**

2. The simulator contains a solution of alcohol and water. In the event that the simulator is knocked over or the glass jar is broken a potential for electrical shock may be produced. The safety of the operator and the subject are of prime concern. **DO NOT PROCEED WITH THE BREATH TEST.**

3. When the simulator is knocked over there is a potential for solution to enter the hoses and be sucked into the instrument during the calibration check. This may flood the instrument and put it out of service. **DO NOT proceed with a breath test if the simulator has been knocked over without first consulting with your BTS.**

4. The simulator should be running for approximately 15 min before proceeding with a breath test. If it has not, there is a potential that the calibration check will not be in range and the testing sequence will be aborted.

   NOTE: A good check to evaluate if the simulator is ready to provide a simulated sample is to see if the simulator temperature is between 33.5 °C and 34.5 °C.

5. Your Breath Testing Specialist is trained to handle the majority of problems that may arise. Inform BTS if you experience any problems that prevent you from obtaining a valid breath test.

6. **If at anytime you are unable obtain a valid breath test, obtain a sample using another method and inform your BTS.**

FIFTEEN MINUTE WAITING PERIOD

The mucous lining of the mouth cavity and nasal passages stores alcohol for some time after a person consumes alcohol. Normal body processes eliminate residual mouth alcohol within 15 minutes.

Monitor the subject for 15 minutes. During this time, the subject may not smoke, consume alcohol, eat, belch, vomit, use chewing tobacco, or have gum or candy in the mouth. If belching or vomiting does occur or something is found in the mouth, have it removed and wait an additional 15 minutes.

OPERATING PROCEDURE FOR A BREATH TEST:

Observe subject for 15 minutes.
The subject should not drink, smoke or use **any** type of oral medication during this time.
Insert a new mouthpiece in the end of the BREATH TUBE.
To conduct a breath test, push the green START TEST button and respond to the displayed messages and commands.

REFUSAL: If the subject refuses to provide a sample during the test sequence wait until the message **"PLEASE BLOW/R"** is displayed and then press the green **START TEST** button. After the message **"PLEASE BLOW/R"** is displayed the instrument will automatically printout a refusal if a sample is not obtained within (3) three minutes.

The print card will show: SUBJECT TEST REFUSED TIME
SUBJECT REFUSED TO CONTINUE

TEST SEQUENCE	DISPLAY READS	REQUIRED OPERATOR ACTION
1. Push Green Start Button	"INSERT CARD" (flashing)	Insert an evidence card into the card slot located on the front panel of the instrument
2. Question series for Idaho	See question series on page 15	Answer each question and press the return/enter button to save the information
3. Air blank	"AIR BLANK", displayed then scrolls through the time (TIME HR:MIN ZONE), the date (DATE MM/DD/YY), and then displays the result of the air blank (AIR BLANK .##) where .## is the alcohol concentration obtained during the air blank.	No action needed

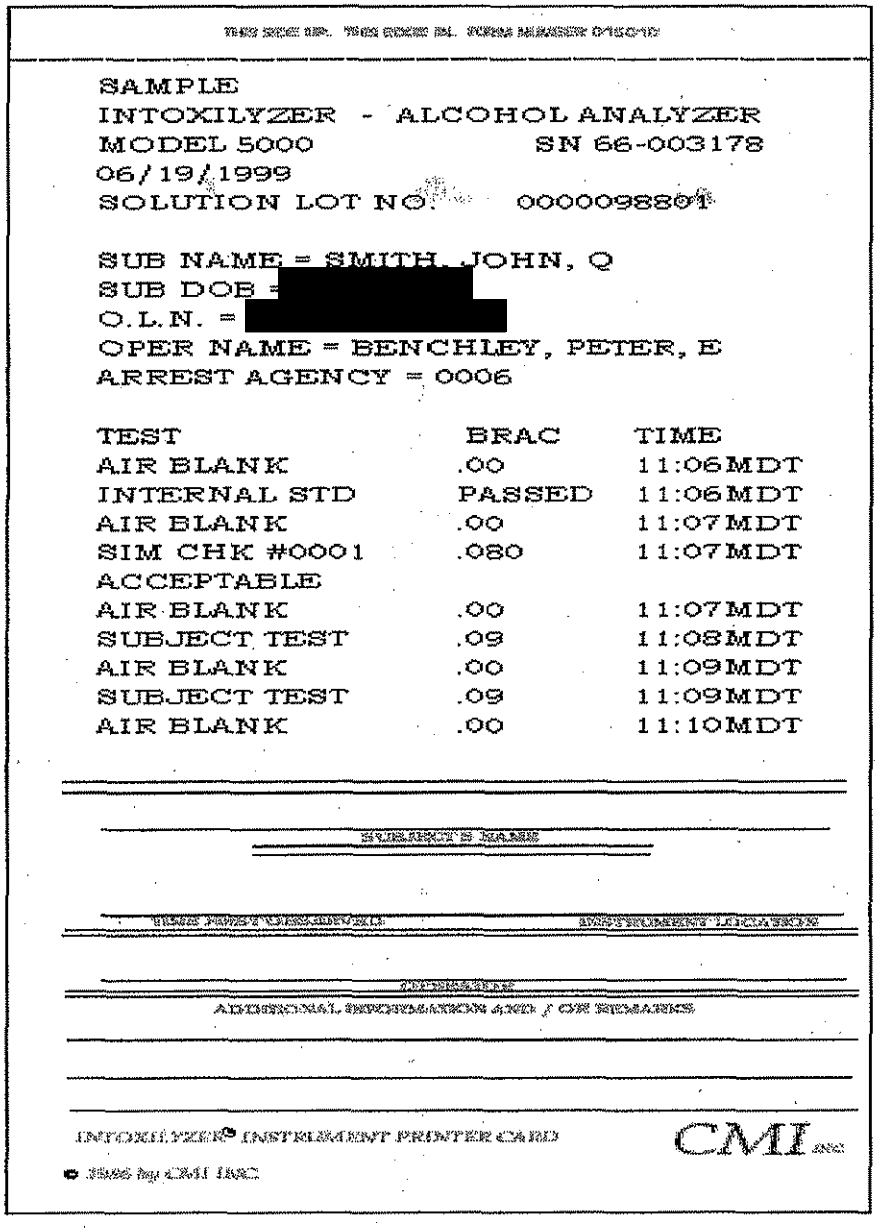
TEST SEQUENCE	**DISPLAY READS**	**REQUIRED OPERATOR ACTION**
4. Internal Standard Check	"INTERNAL STD" A. If the internal standards pass "INT STD PASS" will be displayed and the test sequence will continue. B. If the internal standards do not pass "INTERNAL FAILED" will be displayed and the test sequence ends. (See step 11)	 No action needed. Test sequence continues to step 5. **IF THE INTERNAL STANDARDS FAIL THE INSTRUMENT WILL NOT LET YOU CONTINUE TESTING. FIND ANOTHER METHOD TO OBTAIN A SAMPLE AND THEN INFORM YOUR BTS OF THE PROBLEM.**
5. Air Blank	"AIR BLANK .##" where .## is the alcohol concentration obtained during the air blank.	No action needed
6. Calibration Check	"}}}}}..." Instrument is establishing a zero reference point. "CAL. CHECK " a. If the calibration check passes "CAL CHECK .###" is displayed where .## is the alcohol concentration of the simulator solution. B. If the calibration check does not pass " OUT OF TOLERANCE" is displayed and the testing sequence ends. (See step 11)	 No action needed. Test sequence continues to step 7. **IF THE CALIBRATION CHECK DOES NOT PASS THE INSTRUMENT WILL NOT LET YOU CONTINUE TESTING. FIND ANOTHER METHOD TO OBTAIN A SAMPLE AND THEN INFORM YOUR BTS OF THE PROBLEM.**

TEST SEQUENCE	DISPLAY READS	REQUIRED OPERATOR ACTION
7. Air Blank	"AIR BLANK .##" where .## is the alcohol concentration obtained during the air blank.	No action needed
8. Breath Test #1	"}}}}}..." Instrument is establishing a zero reference point. "PLEASE BLOW INTO MOUTHPIECE UNTIL TONE STOPS" "PLEASE BLOW/R" (flashing) If the subject stops blowing before providing a sufficient sample, "PLEASE BLOW" flashes on the display and a beep sounds every 5 seconds. "SUBJECT .##" is then displayed where .## is the BrAC obtained.	Request the subject to blow into the mouthpiece until you tell him/her to stop. Request the subject to blow into the mouthpiece until he/she hears the tone stop or until you tell him/her to stop. The subject has 3 minutes to provide an adequate breath sample or deficient sample will be triggered.
9. Air Blank	"AIR BLANK .##" is displayed where .## is the alcohol concentration obtained during the air blank.	No action needed

TEST SEQUENCE	DISPLAY READS	REQUIRED OPERATOR ACTION
10. Breath Test #2	"}}}}}..." Instrument is establishing a zero reference point. "PLEASE BLOW INTO MOUTHPIECE UNTIL TONE STOPS" "PLEASE BLOW/R" (flashing) If the subject stops blowing before providing a sufficient sample, " PLEASE BLOW" flashes on the display and a beep sounds every 5 seconds. "SUBJECT .##" is then displayed where .## is the BrAC obtained.	Request the subject to blow into the mouthpiece until you tell him/her to stop. Request the subject to blow into the mouthpiece until he/she hears the tone stop or until you tell him/her to stop. The subject has 3 minutes to provide an adequate breath sample. If the second breath sample differs from the first by more than 0.02, then an air blank and a third breath sample will automatically be requested by the instrument.
11. Air Blank	"AIR BLANK .##" is displayed where .## is the alcohol concentration obtained during the air blank.	No action needed
12. End of Testing Sequence	QUESTION "TEST COMPLETE" "PRINTING" "INTOXILYZER 5000, ect" (rolling across the screen)	A question about drug testing will appear if this is a DUI. Remove the evidence card after it is released by the instrument. Enter all required data in the logbook.

PRINTED OUTPUT

The Intoxilyzer 5000 breath analysis instrument gives a printed record of the date, name and serial number of the instrument, test procedure, test results, time of test, simulator check, lot number, and subject and operator information.



SAMPLE
INTOXILYZER - ALCOHOL ANALYZER
MODEL 5000 SN 66-003178
06/19/1999
SOLUTION LOT NO: 0000098801

SUB NAME = SMITH, JOHN, Q
SUB DOB = [redacted]
O.L.N. = [redacted]
OPER NAME = BENCHLEY, PETER, E
ARREST AGENCY = 0006

TEST	BRAC	TIME
AIR BLANK	.00	11:06MDT
INTERNAL STD	PASSED	11:06MDT
AIR BLANK	.00	11:07MDT
SIM CHK #0001	.080	11:07MDT
ACCEPTABLE		
AIR BLANK	.00	11:07MDT
SUBJECT TEST	.09	11:08MDT
AIR BLANK	.00	11:09MDT
SUBJECT TEST	.09	11:09MDT
AIR BLANK	.00	11:10MDT

SUBJECT'S NAME

TIME FIRST OBSERVED INVESTIGATING AGENCY

OPERATOR

ADDITIONAL INFORMATION AND / OR REMARKS

INTOXILYZER® INSTRUMENT PRINTER CARD CMI Inc

© 1998 by CMI INC

INSTRUMENT LOG

In the event a printout is not obtained the instrument log may become the legal record of the test results (see the SOP section IIIB 3). Because the log can become the legal record, it is essential that it is kept accurate and up-to-date. As an operator of the Intoxilyzer 5000 you should check the simulator temperature prior to the testing sequence. If the simulator temperature is in the appropriate range check the column labeled "SIM TEMP IN RANGE" (see SOP IIB 4). Completely fill out the log including the time, date, the subject's name, the subject's test results, your name, and the calibration check results.

INSTRUMENT OPERATIONS LOG

INSTRUMENT SERIAL NUMBER: 66-001234

LOT NUMBER: 98801

LOCATION: Boise PD

DATE	TIME	SUBJECT'S NAME	SUBJECT TEST RESULTS	OPERATOR'S NAME	CALIBRATION CHECK RESULTS	SIM TEMP IN RANGE (✓)	COMMENTS
6/9/99	2201	John Smith	.18/.17	M Knight	.080	✓	Boise PD
6/9/99	2327	Wild Bill	.20/Refused	T Knopp	.080	✓	ISP
6/10/99	0113	Jane Smith	.12/.15/.14	M Knight	.080	✓	Boise PD
6/10/99	1032	Bobby Child	.02 .03	R Kid	.080	✓	Gooding City PD / Juv
6/10/99	0500			M Knight	.080/.081	✓	Lot 98801 New Solution Bottle # 0521
6/12/99	2034	John Doe	.08 .09	O. Jones	.080	✓	Meridian PD

The column labeled "comments" is for all other information that you feel may be important, such as NON-DUI tests, the agency using the instrument, or the bottle number when the Breath Testing Specialist changes the solution.

AN INCORRECT OPERATIONAL PROCEDURE OR CONDITION will cause the instrument to either cancel or complete a mode sequence and print one of the following messages on the evidence card. For an explanation of corrective actions that may be taken by the operator, see the section entitled TROUBLE SHOOTING INSTRUMENT MESSAGES.

1. **"INVALID TEST"** - Either the Start Test button was pushed at the wrong time, the evidence card was partially pulled from the printer, or the subject blew into the mouthpiece at the wrong time.

2. **"* 23"** – The IR source (lamp) is out. Use another instrument or have blood drawn.

3. **"UNABLE TO OBTAIN STABLE REFERENCE"; "INVALID TEST"** - The microprocessor was unable to obtain a stable reference signal from the processor.

4. **"* DEFICIENT SAMPLE - VALUE PRINTED WAS HIGHEST OBTAINED"** - The subject did not provide an adequate breath sample within three minutes. The instrument printed the highest obtainable BrAC value indicated by the asterisk (*) printed before "SUBJECT TEST".

5. **"INHIBITED RFI"; "INVALID TEST"** - High level radio frequency interference is present.

6. **"INTERFERENT DETECTED HAVE BLOOD DRAWN"** - The subject's breath sample contained a substance, such as acetone, that absorbed the same infrared frequencies as alcohol. Although the instrument has the capability to subtract out the presence of acetone, it does not have the capability to accurately subtract for all possible interferents.

7. **"INVALID SAMPLE .XX"; "REPEAT OBSERVATION PERIOD BEFORE RETESTING SUBJECT"** - The instrument detected residual mouth alcohol in the subject's breath sample and printed "INVALID SAMPLE .XX" in place of "SUBJECT TEST .##".

8. **"INTERNAL STANDARDS FAILED"** - One or more of the Internal Standards did not pass because they were not within their operational range.

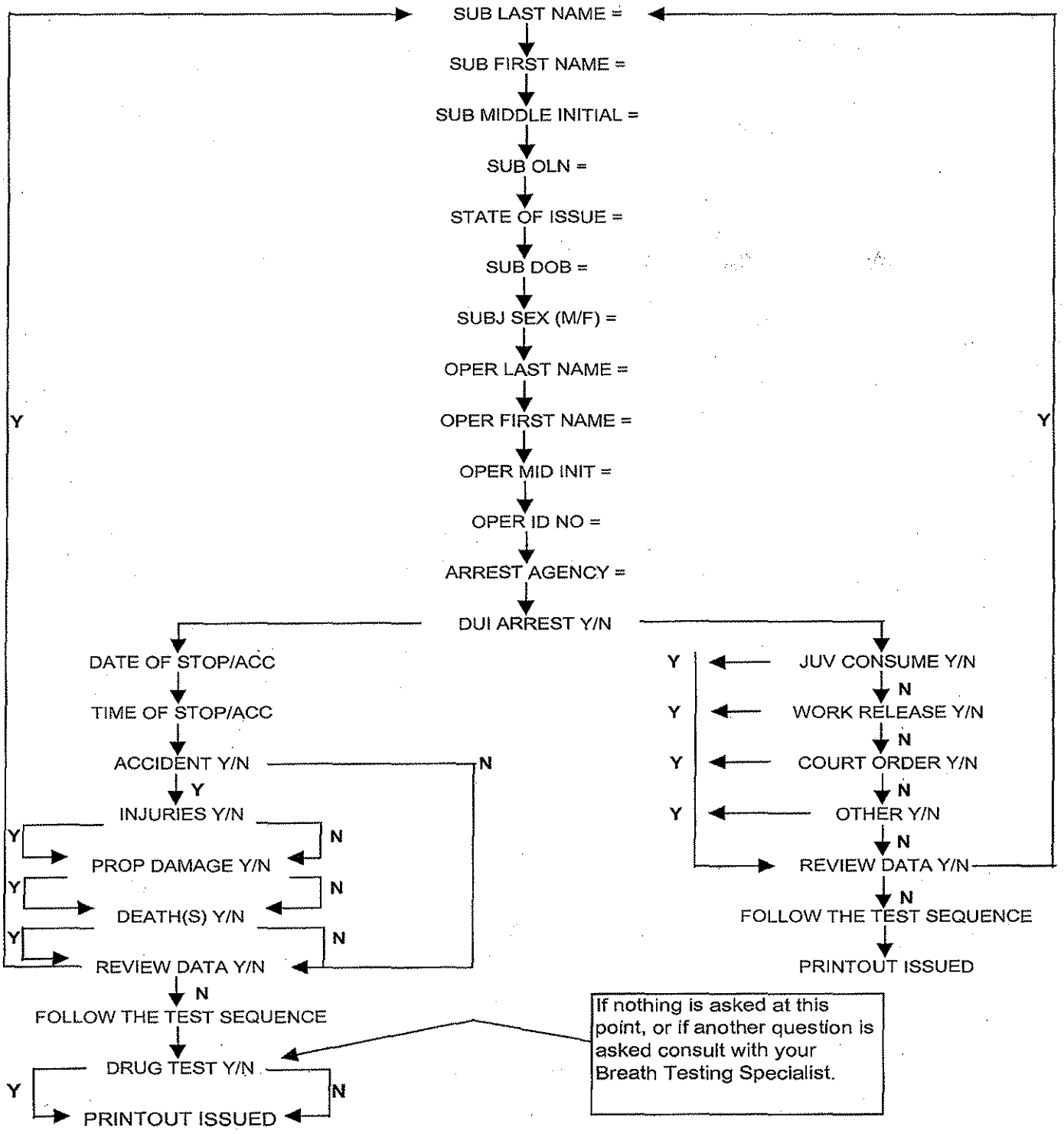
9. **"OUT OF TOLERANCE - SEQUENCE ABORTED "** - The results obtained for the calibration check were outside the high and low limits set for the solution.

10. **"CHECK AMBIENT CONDITIONS"; "INVALID TEST"** - The instrument detected a substance in its surroundings that may interfere with the breath test.

11. **"INSTRUMENT RANGE EXCEEDED"; "INVALID TEST"** - The concentration of the sample exceeded the range of the instrument set at 0.600 BrAC. This **usually** occurs from strong mouth alcohol such as breath spray or mouth wash. However, this may also indicate a possible problem with the instrument.

QUESTION SERIES FOR IDAHO TESTING PROGRAM

Upon pressing the green START TEST button the Intoxilyzer-5000 will ask you a series of questions.
Enter the appropriate data then press ENTER/RETURN to save the data and move on to the next question



EXPLANATION OF USER QUESTIONS FOR IDAHO TESTING PROGRAM

QUESTION ON DISPLAY	CARD COPY	DATA BANK	COMMENTS
SUBJ LAST NAME=	X	X	Up to 20 letters for each, no -:.'etc.
SUBJ FIRST NAME=	X	X	
SUBJ MIDDLE INIT=	X	X	Middle initial.
SUBJ OLN=	X	X	Entered as up to 20 numbers and/or letters.
STATE OF ISSUE=	X	X	Two letter postal code.
SUBJ DOB = MMDDYY	X	X	Entered as month, day, and year (e.g. 070552).
SUBJ SEX (M/F) =		X	
OPER LAST NAME =	X	X	Up to 20 letters for each, no _:.'etc.
OPER FIRST NAME=	X	X	
OPER MID INIT =	X	X	Middle initial.
OPER ID NO=		X	Entered as a number w/o dashes.
ARREST AGENCY	X	X	Entered as 4 numbers; accident report code.
DRINK LOCATION		X	Entered as a 7 digit code, premise number.
DUI ARREST Y/N		X	Answer yes if person arrested for DUI.

If answer is Y: (N skips to the top of page 17)

DATE OF STOP/ACC		X	Date of stop or accident (eg. 062493).
TIME OF STOP/ACC		X	2400 hour military time.
ACCIDENT Y/N		X	Answer yes if person was in an accident.

If answer is Y: (N answer skips next questions only)

INJURIES Y/N		X	Was anyone injured?
PROP. DAMAGE Y/N		X	Was there any property damage?
DEATH(S) Y/N		X	Was anyone killed?
REVIEW DATA Y/N			If you want to check answers, use Y.

On DUI tests a question is asked after a complete breath test is conducted and the subject did not refuse any samples.

DECP/DRE Y/N		X	One question or the other activated; answer
DRUG TEST Y/N		X	yes if you are going to ask the subject to give a blood sample and/or a urine sample for drug testing.

Printout is issued and test is complete.

QUESTION ON DISPLAY	CARD COPY	DATA BANK	COMMENTS
DUI ARREST Y/N if answer is N:			
JUV. CONSUME Y/N		X	Illegal consumption.
WORK RELEASE Y/N		X	
COURT ORDER Y/N		X	Court ordered test.
OTHER Y/N		X	Any other reason not covered above.
REVIEW DATA Y/N			If you want to check answers, check Y.
Complete breath test conducted and printout issued.			End of test.

OTHER INFORMATION

Other information such as the lot number, values obtained for simulator checks, and data for the simulator counter can be found on the printout. This information is also stored in the data bank.

ITEM	CARD COPY	DATA BANK	COMMENTS
LOT NUMBER	X	X	Entered by the breath testing specialist 10 alphanumeric characters.
SIMULATOR COUNTER	X	X	Counts the number of calibration checks that has been performed with a particular solution.
SIMULATOR CHECK	X	X	The results of the calibration check performed during the testing sequence.

DISPLAY MESSAGES AND COMMANDS

The Intoxilyzer 5000 breath analysis instrument visually communicates by displaying the following messages and commands. Commands "flash" to indicate that the instrument expects a response. For operator responses to instrument messages or "UNSTABLE REF", refer to TROUBLE SHOOTING INSTRUMENT MESSAGES Pages 22-25.

MESSAGE OR COMMAND	MEANING
"NOT READY"	The instrument is purging the sample chamber and initializing the computer, processor, and printer.
"PROM CHECK ####"	The instrument is finding a checksum of all program bytes and is comparing it to an internal checksum.
"TEMP CHECK"	The instrument is checking the temperature of the sample chamber.
"RAM CHECK ##"	The instrument is checking each byte in RAM for possible failure.
"PROCESSOR CHECK"	The computer is testing the output of the processor, the stability of the signal, and the speed of the filter wheel.
"PRINTER CHECK"	The instrument is checking the movement of the printer head.
"CAL. CHECK"	The instrument is performing a calibration check by analyzing the vapor produced from the simulator solution.
" INVALID LOT NO"	An invalid lot number was entered during the instrument setup.
"INTERNAL STD"	The instrument is checking to see if the internal standards are within their operational range.
"DIAGNOSTIC OK"	The instrument did not find a malfunction while performing diagnostic checks on its components and operational standards.

MESSAGE OR COMMAND MEANING

"CLOCK ERROR" "PROM ERROR ####" "TEMP ERROR" "PRINTER ERROR" "RAM ERROR"	The instrument is indicating where a malfunction exists. The number following "RAM ERROR" denotes the actual address location of error.
"PROCESSOR ERROR 1"	No sync pulse was found. A problem exists in the sync pulse chain.
"PROCESSOR ERROR 2"	The sync pulse rate is out of range.
"PROCESSOR ERROR 3"	An unacceptable negative processor drift was found.
"PROCESSOR ERROR 4"	An unacceptable positive processor drift was found.
"PROCESSOR ERROR 5"	The processor's reference value is out of range.
Rolling across the display - "INTOXILYZER MODEL 5000 --- PUSH BUTTON TO START TEST"; "PUSH BUTTON (flashing)"; "TIME ##HR ##MIN"	The instrument is ready for operation; you may begin a test by pushing the Start Test button.
"INSERT CARD (flashing)"	The instrument is requesting that an evidence card be inserted.
"AIR BLANK"	The instrument is purging the sample chamber and internal and external breath tubes.
"TIME ##HR ##MIN"	Local time.
"DATE MM/DD/YY"	Current date.
"}}}}..."	The instrument is establishing a zero reference point.

MESSAGE OR COMMAND	**MEANING**

"UNSTABLE REF"	The microprocessor was unable to obtain a stable reference signal from the processor. The instrument halts the test.
"PLEASE BLOW INTO MOUTHPIECE UNTIL TONE STOPS"; "PLEASE BLOW/R (flashing)"	The instrument is requesting the subject to blow into the mouthpiece until the tone stops. The tone does not actually stop until the subject (with alcohol on the breath) stops blowing. Starting when this command appears on the display, the subject has three minutes to deliver an adequate breath sample. If the subject does not provide a sample in this time the instrument will automatically printout a refusal. Another method for obtaining a refusal is to press the green START TEST button while the message "PLEASE BLOW/R" is displayed.
"PLEASE BLOW (flashing)"	The subject stopped blowing before providing a sufficient sample. "PLEASE BLOW" flashes and a beep sounds every five seconds until the subject begins blowing, or until three minutes have lapsed from the time the instrument initially requested the subject to blow into the mouthpiece.
"SUBJECT TEST .##"	The instrument is displaying the subject's breath alcohol concentration in grams per 210 liters of breath.
"AIR BLANK .##"	The instrument is displaying the amount of alcohol remaining in the sample chamber while the sample chamber is being purged. Accordingly, during the purge operation, the number following "AIR BLANK" gradually decreases to .00.
"CAL. CHECK .###"	The instrument is displaying the simulated vapor concentration obtained for the calibration check.

MESSAGE OR COMMAND	MEANING
"INT STD PASS"	The internal standards were within the operational range of the instrument.
"TEST COMPLETE"	The test and all printing are complete.
"INVALID TEST"	Either the Start Test button was pushed at the wrong time or the evidence card was pulled from the printer. The instrument cancels the test.
"INVALID SAMPLE"	The subject's breath sample contains residual mouth alcohol.
"INHIBITED - RFI"	High level radio frequency interference is present. The instrument cancels the test.
"DEFICIENT SAMPLE"	The subject did not supply an adequate breath sample within three minutes.
"INTERFERENT"	The subject's breath sample contains a substance, such as acetone, that absorbs infrared energy at the same frequencies that alcohol absorbs. When this occurs the instrument completes the mode sequence, and prints "INTERFENT DETECTED HAVE BLOOD DRAWN" on the evidence card.

TROUBLE SHOOTING INSTRUMENT MESSAGES

DIAGNOSTIC INSTRUMENT MESSAGES

Given below are the instrument messages that may appear on the display during the diagnostic checks and the actions you should take in response to a given instrument message:

DISPLAYED MESSAGE	CORRECTIVE OPERATOR ACTIONS
"PROM ERROR ###"	Call a Breath Testing Specialist for any of these instrument messages.
"TEMP ERROR"	
"PRINTER ERROR"	
"RAM ERROR ###"	
"PROCESSOR ERROR 3, 4, or 5"	
"INVALID LOT NO"	
"*23" The IR lamp is out.	

After completing the diagnostic checks without finding a malfunction, the instrument displays "DIAGNOSTIC OK". Next, the instrument reactivates the Start Test button and indicates that it is ready for operation by displaying the following message:

"INTOXILYZER MODEL 5000---PUSH BUTTON TO START TEST"; "PUSH BUTTON (flashing)"; "TIME ##HR ##MIN".

TIME AND DATE MESSAGES:

PROBLEMS	CORRECTIVE OPERATOR ACTIONS
Date or time incorrect.	Call a Breath Testing Specialist to reprogram date or time.
Time or date or both are erratic and "CLOCK ERROR" appears periodically on the display with a low-high warning tone.	Call a Breath Testing Specialist.

TROUBLESHOOTING INSTRUMENT MESSAGES

OTHER INSTRUMENT MESSAGES

Following are other instrument messages that may appear on the display. The instrument messages are accompanied by a low-high tone sounding intermittently for five seconds.

DISPLAYED MESSAGE	CORRECTIVE OPERATOR ACTION
"INTERNAL FAILED"	Find another method of obtaining a sample and inform your Breath Testing Specialist.
"*23" (light out)	Find another method of obtaining a sample and inform your Breath Testing Specialist.
"OUT OF TOLERANCE"	
"UNSTABLE REF"	When the display reads "INTOXILYZER MODEL 5000---PUSH BUTTON TO etc., " begin another test by pushing the Start Test button. If "UNSTABLE REF" appears again on the display, call a Breath Testing Specialist.
"INVALID TEST"	Either the Start Test button was pushed at the wrong time or the evidence card was pulled from the printer. The instrument cancels the test, prints "INVALID TEST" (if the card was not pulled from the printer), and prepares itself to start another test. When the display reads "INTOXILYZER MODEL 5000---PUSH BUTTON TO etc.", you may begin another test by pushing the Start Test button. Make sure the Start Test button is pushed only at the proper time and the evidence card remains in the card slot until the instrument releases it.
"INVALID TEST - SAMPLE INTRODUCED AT IMPROPER TIME"	The subject blew into the mouthpiece at the wrong time. Most likely the breath sample was introduced during the "AIR BLANK". Restart the test and have the subject blow when the "PLEASE BLOW/R" message is displayed.

DISPLAYED MESSAGE	CORRECTIVE OPERATOR ACTION
"INVALID TEST - INSTRUMENT RANGE EXCEEDED"	The concentration of the sample exceeded the range of the instrument set at 0.600 BrAC. This **usually** occurs from strong mouth alcohol such as breath spray or mouth wash. However, this message may also indicate that there is a problem with the instrument. You may opt to perform another subject test, or find another method of obtaining a sample (see page 27).
"INVALID TEST - CHECK AMBIENT CONDITIONS"	The instrument detected a substance in its surroundings that may interfere with the breath test. Try to perform an another breath test. If you obtain this message again find another method to obtain a sample and inform your Breath Testing Specialist.
"INVALID SAMPLE"	The instrument detected residual mouth alcohol in the subject's breath sample. The instrument completes the mode sequence, prints "INVALID SAMPLE.XX" in place of "SUBJECT TEST .##", and returns to the beginning of the mode sequence. Print card also shows "REPEAT OBSERVATION PERIOD BEFORE RETESTING SUBJECT". Observe the subject for at least 15 minutes before beginning another breath analysis.
"INHIBITED - RFI"	High level radio frequency interference is present. The instrument halts the test, prints "INHIBITED RFI"; "INVALID TEST" and prepares itself to start another test. Locate the RFI source and either remove the source from the instrument's operational environment or move the instrument to a new environment free from RFI.

DISPLAYED MESSAGE	CORRECTIVE OPERATOR ACTION
"DEFICIENT SAMPLE"	The subject did not provide an adequate breath sample within three minutes. The instrument displays "SUBJECT TEST .##" (the highest value obtainable from the given breath samples) and completes the mode sequence. On the evidence card, the instrument indicates the highest obtainable value by printing an asterisk (*) before "SUBJECT TEST .##". The asterisk (*) is a cross reference to the message printed at the bottom of the evidence card: "*DEFICIENT SAMPLE - VALUE PRINTED WAS HIGHEST OBTAINED".
"INTERFERENT"	The subject's breath sample contains a non-alcohol substance that absorbs infrared energy. The instrument compensates for the amount of infrared energy absorbed by some substances and completes the test. Print card shows "INTERFERENT DETECTED HAVE BLOOD DRAWN".
"NO RESPONSE FROM SIMULATOR"	The 68 series has a cable connection between the Guth digital simulator and the instrument. This message means the instrument is not getting needed information from the simulator. If no error codes are displayed on the simulator, the BTS may be able to work around this problem.

TONES

In addition to communicating through displayed messages and commands, the Intoxilyzer 5000 breath analysis instrument also communicates by sounding three distinct tones:

1. A beep sounds after the completion of each mode (operation).

2. A continuous tone sounds while a subject blows into the mouthpiece.

3. A low-high tone sounds intermittently for five seconds in the event of a malfunction, incorrect operational procedure, unfulfilled test requirement, or when START is pressed for a refusal.

Starting when the instrument displays the command "PLEASE BLOW INTO MOUTHPIECE UNTIL TONE STOPS"; "PLEASE BLOW/R (flashing)", the subject has three minutes to deliver an adequate breath sample. If the subject stops blowing before delivering an adequate breath sample and before the lapsing of three minutes, "PLEASE BLOW" flashes on the display and a beep sounds every five seconds. The beeping stops when the subject again begins to blow or the three minutes have lapsed.

Evidence Card Jammed in Printer

If an evidence card jams in the printer, push the Start Test button. The instrument will invalidate the test and try to return the evidence card. If the instrument does not return the evidence card, gently pull the card from the printer. In the event that a section of the card tears off and remains jammed in the printer, turn the instrument "off" and consult a Breath Testing Specialist.

General Malfunctions

In the event of a general malfunction (e.g., the display gives erratic information), take the following action(s):

1. Push the Start Test button.

2. If pushing "Start Test" fails to correct the malfunction, call a Breath Testing Specialist.

Preventative Maintenance

1. To assure adequate clearance and ventilation, locate the instrument at least one inch away from a back wall and on a hard surface (i.e., not on a surface covered with a rug-like material).

2. Keep the instrument away from extremes of temperature. The instrument's operational temperature range is 68°F to 86°F (20°C to 30°C); storage temperature range is -20°F to 140°F (-29°C to 60°C).

3. Keep the instrument clean and away from dust; any good glass cleaner, such as 409, can be used to clean the instrument's outer surface.

    a. **Spray the cleaner on a cloth and wipe. Never spray directly onto the instrument.**

4. Do not place heavy objects on top of the instrument.

5. Never place anything containing a liquid on the instrument, this includes coffee and soda pop.

OTHER METHODS OF OBTAINING A SAMPLE

If a valid breath sample cannot be obtained from the breath testing instrument you are using, you may elect to obtain a sample using one of the following methods:

1. **A Breath Sample**: Another instrument approved for evidentiary testing in the State of Idaho may be used to obtain a sample. This does not have to be the same type of instrument that was originally used to obtain a sample. Backup instruments and neighboring agencies instruments are all good sources for obtaining a valid breath test.

2. **Blood Samples for Alcohol Determination:** Use a kit that provides 10 milligrams of sodium fluoride per cubic centimeter of blood and an anti-coagulant as required by IDAPA 11.03. The Becton Dickinson #4994, the Terumo T-100 AK (Venoject), and the Peavey 5786 all meet this requirement. However, the Becton Dickinson 4990 does **not** meet the requirement for concentration of sodium fluoride. Most agencies use the Tri-Tech kits supplied by our Pocatello laboratory (208-232-9477).

   NOTE: Other kits may be used if they provide the required amount of sodium fluoride and utilize a non-alcoholic swab.

   The blood should be drawn only by authorized medical personnel as defined in section 18-8003 of the Idaho Code.

3. **Urine Samples for Alcohol Determination**: must be collected in urine collection kits supplied by ISPFS, or other suitable kits providing a tight seal and adequate volume.

   1. **Urine alcohol results may be of questionable value**.

   2. Any urine sample should be collected in urine kits supplied by ISPFS and sealed tightly prior to delivery to the laboratory.

   3. Proper procedure for a valid urine alcohol analysis requires the subject to "void" (empty bladder) and wait the necessary time (approx. 20 minutes) to deliver the actual evidentiary sample.

      a. Note: when collecting urine for the analysis of inhalants or other drugs, it is not necessary to perform a "void" and any initial urine sample that is collected may be used for this purpose.

   4. For best results, urine samples collected for alcohol determination should be frozen or refrigerated and delivered to the appropriate ISPFS laboratory as soon as possible.

GENERAL INFORMATION: QUESTIONS AND ANSWERS

Q. What if I have problems with running the Intoxilyzer 5000?

a. Do not try to solve them yourself. Contact your agency's Breath Testing Specialist he/she is trained to resolve many problems you may encounter with the Intoxilyzer 5000.

Q. Who can run the Intoxilyzer 5000?

a. Any individual certified as an operator by the Idaho Department of Law Enforcement, Idaho State Police Forensic Services, may operator the Intoxilyzer 5000. Certification will be periodically renewed and governed by policy as outlined in the SOP.

Q. How are calibration check and maintenance records to be kept?

a. All records associated with breath testing are to be kept and maintained at the agency. They are to be kept in accordance with the procedures followed by the agency for such records. However the breath testing specialist is responsible to see that this is accomplished.

Q. How long must our agency keep printouts, log sheets, certification records, and maintenance records?

a. To comply with IDAPA rules and regulations they must be maintained for a period of three years.

Q. Why must the results be entered on the log sheet?

a. The log, in lieu of the printout, is the official legal record of all test results. If the printer fails to operate, or if the printout is later lost, or unreadable, the test is still legally acceptable provided the results are recorded correctly on the log sheet.

Q. Can the Intoxilyzer 5000 detect acetone and other interferents?

a. Yes. The instrument will check for acetone and other interferents during the subject test. If an interfering substance is detected the instrument will display "INTERFERENT", complete the test, and print the results. The instrument will also print "INTERFERENT DETECTED HAVE BLOOD DRAWN."

Q. What if the subject provides one breath sample, but refuses to blow a second time?

a. The second sample is required to meet the guidelines for the administration of a legal test on the Intoxilyzer 5000. If the subject refuses to blow the second time, press the green START TEST button when "PLEASE BLOW/R" shows on the display. If the lack of a second sample is the fault of the subject then the first sample is valid for use in court (SOP section III).