



**STATE OF OKLAHOMA
BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE**

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DECLARATORY RULING
September 17, 2007

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The following declaratory ruling is issued by the Director of the Board Of Tests For Alcohol And Drug Influence pursuant to OAC 40:1-1-5(e) under the authority granted by OAC 40:1-1-3(e).

The word "regurgitated" was deleted from the activities which must be prohibited during the deprivation period described by OAC 40: 30-1-3. The word is defined by Webster Dictionary as "To be thrown or poured back; to gush, rush or surge back, often to vomit." To the extent it may have ever referred to a burp of gas only, silent or otherwise, the requirement to exclude the action from the time period is now excised. "Regurgitate" was also the word which applied to bringing liquids or solids from the stomach which were not expelled from the mouth.

The word "vomit" is the remaining word proscribing the bringing of anything from the stomach. The word is defined as to "eject matter from the stomach *through* the mouth." (emphasis added) Therefore, if no matter has come from the mouth of the person to be tested, the deprivation period has not been violated.

The same rule change replaced the requirement to remain in constant observation of the individual to be tested. The testing officer must now observe the individual sufficient to determine that, basically, nothing went into or out of the persons mouth, and that (s)he did not smoke. The rule was intentionally written to allow an officer to tailor the method of deprivation to his/her particular circumstances. If the determination cannot be made, a period of time may not be used as part of the required deprivation period. However, if the observing officer can sufficiently determine the proscribed requirements, the rule is satisfied. It is not intended that officers try to see how far this rule can stretch. Nor is it intended that one method or another be predetermined to acceptable or unacceptable prior to a hearing.