

Dram Shop Liability: Bar, Restaurant, and Individual Exposure for Over-Serving Customers and Guests

WEDNESDAY, NOVEMBER 17, 2021

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Drew Hamilton Butler, Shareholder, **Richardson Plowden**, Charleston & Columbia, SC
John Cocklin, Dram Shop, Alcoholic Beverages Regulation and Police Practices Expert,
Exigent, Harleystown, PA

David Lail, Attorney, **Yarborough Applegate Law Firm**, Charleston, SC

Michael J. McCabe, Jr., Ph.D., DABT, Toxicologist/Immunologist, **Exigent**, Harleystown, PA

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SOUTH CAROLINA - RETAIL ON-PREMISE ALCOHOL ESTABLISHMENT'S DUTY-OF-CARE



John A. Cocklin, Dram Shop and Alcoholic Beverage Regulation Expert

John A. Cocklin - Background

- B.S. Criminal Justice & Accounting, MBA, NJ Certified Public Manager
- 12 years as Chief Investigator; NJ Office of the Attorney General, Division of Alcohol Beverage Control – NJABC. Supervised and/or participated in approximately 17,000 investigations of the approximately 10,000 businesses engaged in NJ's alcoholic beverage industry. Investigations included sales to underage patrons and intoxicated patrons.
- 22 years as a detective, Lieutenant, Deputy Chief and Chief; NJ Office of the Attorney General, Division of Criminal Justice.
- 1 year Auditor- United States Army Audit Agency; Received Director's Award for uncovering a kickback scheme involving a meat vendor at the Fort Hamilton (NY) Officer's Club. Led to a successful FBI investigation involving organized crime.
- Uniformed police officer, Pennsylvania.
- 25 years as a licensed NJ Police Training Commission instructor (criminal justice and ABC topics)

Duty-of-Care

- In each case, a court may establish and define the standards of care by looking to:
 - Statutes
 - Industry Best Practices (NOT STANDARDS in SC)
 - The Establishment's own Policies, Procedures, Guidelines, and Practices
- Of the three –
 - No SC statutory requirement for training of alcoholic beverage service staff.
 - TIPs, TAM, ServSafe, etc. are commercial for-profit programs all based upon the same science of alcohol's affect on the human body.
 - **The Establishment's own Policies, Procedures, Guidelines, and Practices – most important**

ServSafe Disclaimer

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The information presented in this publication is provided for informational purposes only. Laws may vary greatly by city, county, or state. This information is not intended to provide legal advice or establish standards of reasonable behavior. Operators who develop beverage alcohol-related policies and procedures as part of their commitment to employee and customer safety are urged to use the advice and guidance of legal counsel. Although National Restaurant Association Solutions, LLC (NRA Solutions) endeavors to include accurate and current information compiled from sources believed to be reliable, NRA Solutions, and its licensor, the National Restaurant Association Educational Foundation (NRAEF), distributors, and agents make no representations or warranties as to the accuracy, currency, or completeness of the information. No responsibility is assumed or implied by the NRAEF, NRA Solutions, distributors, or agents for any damage or loss resulting from inaccuracies or omissions or any actions taken or not taken based on the content of this publication.

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TIPs Disclaimer

Health Communications, Inc. (HCI) hereby disclaims any and all responsibility or liability for any policies or practices of any establishment or individual that serves alcohol subsequent to such establishment's or individual's having been trained by HCI. HCI's TIPS program is intended solely as educational material. There is no guarantee that TIPS training can prevent intoxication and/or its consequences. Any liability that may accrue to establishments or individuals who become TIPS certified cannot and will not be a liability that can or will accrue to HCI. HCI neither assumes nor authorizes any person or entity to assume or accept any liability or responsibility in connection with the TIPS program. If any liability accrues to HCI as a result of any actions by a TIPS-certified trainer or participant, HCI will be indemnified by such individual.

- HCI disclaims any and all responsibility or liability for any policies or practices of any establishment or individual that serves alcohol subsequent to such establishment's or individual's having been trained by HCI.
- TIPs program is intended solely as educational material.
- There is no guarantee that TIPs training can prevent intoxication and/or its consequences.

Commercial Training Programs – Incorporated into an Establishment's Policies and Procedures

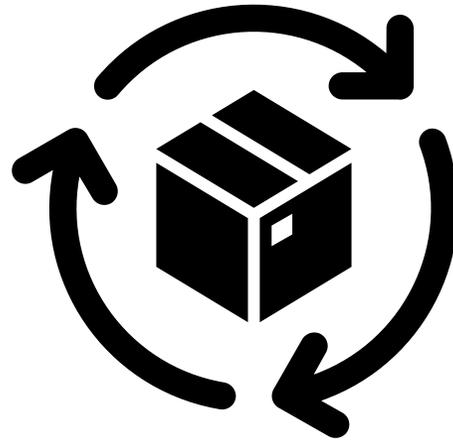
- **When an establishment trains its staff using a commercial training program, that program, by its use and practice, becomes incorporated into the establishment's policies and procedures.**
 - We were trained in that, but we really don't do that here...
 - Training shows one bar and the patrons of a fine Italian restaurant... Establishment is a nightclub with twelve bars and capacity of 3,500.
 - Service staff can't cut off a patron without the manager's approval.
 - If security staff doesn't directly communicate to the service staff. If they see an intoxicated patron in the crowd, there is not procedure to flag him/her with the service staff
 - Patron can open multiple tabs with multiple service staff.

Policies and Procedures - Customs and Practices

#1 - What is my business model to make a profit, and does the model incorporate my Gatekeeping responsibilities?
- There may be things I that would be profitable but violate by responsibilities.

#4 – Supervise and Enforce what taught in #3.

- Empower employees
- Document when there was a problem and what was done to correct
- Don't lie or cover-up

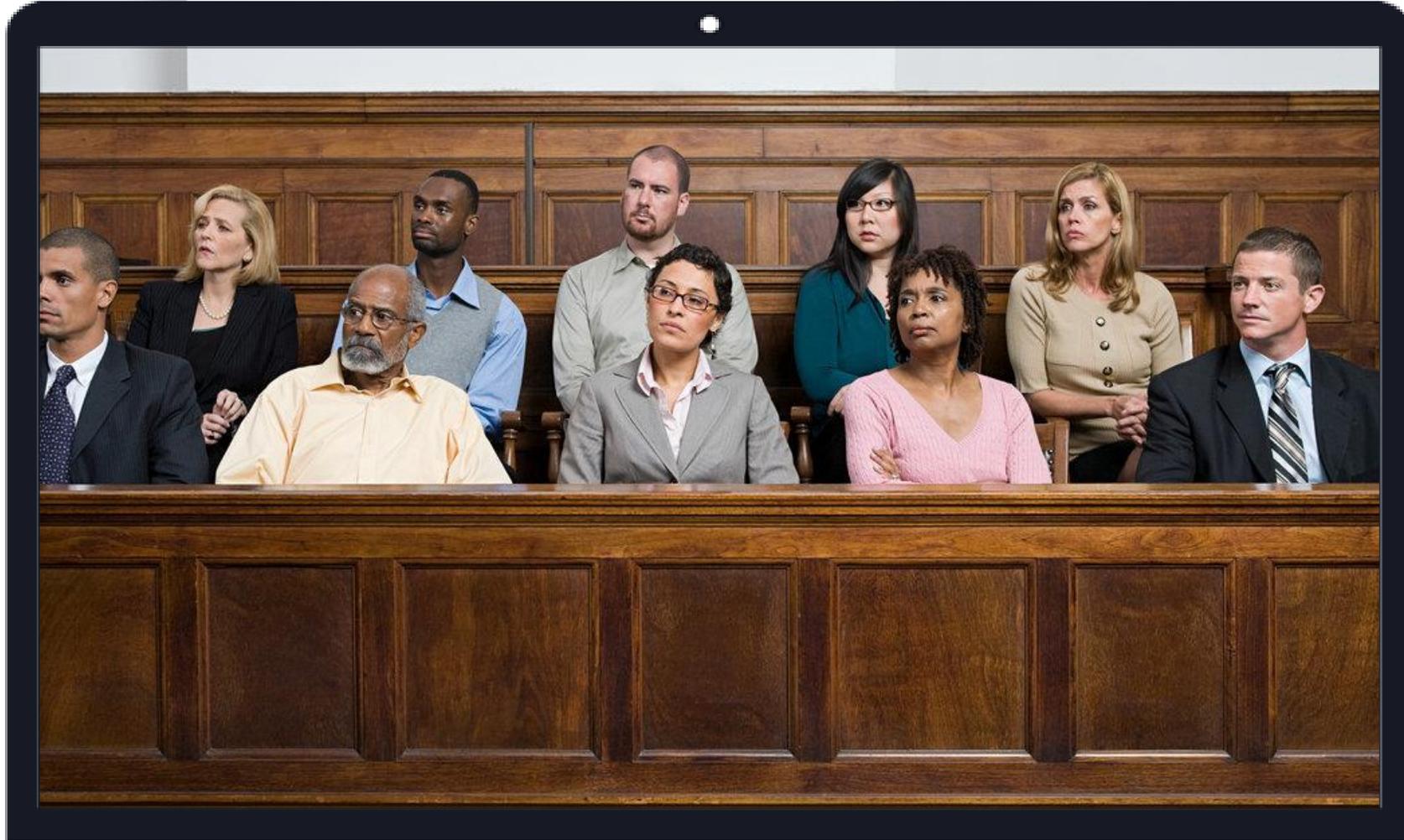


#3 – Train Licensees, Management and Staff in #2.
Provide positive reinforcement for following #2

#2 - Develop Policies, Procedures and Business Practices guided by #1

- Why supersized drinks?
- Why free pouring of liquors?
- Why alcohol intensive drink specials?

Jurors are Familiar with What Goes on Inside a Bar...

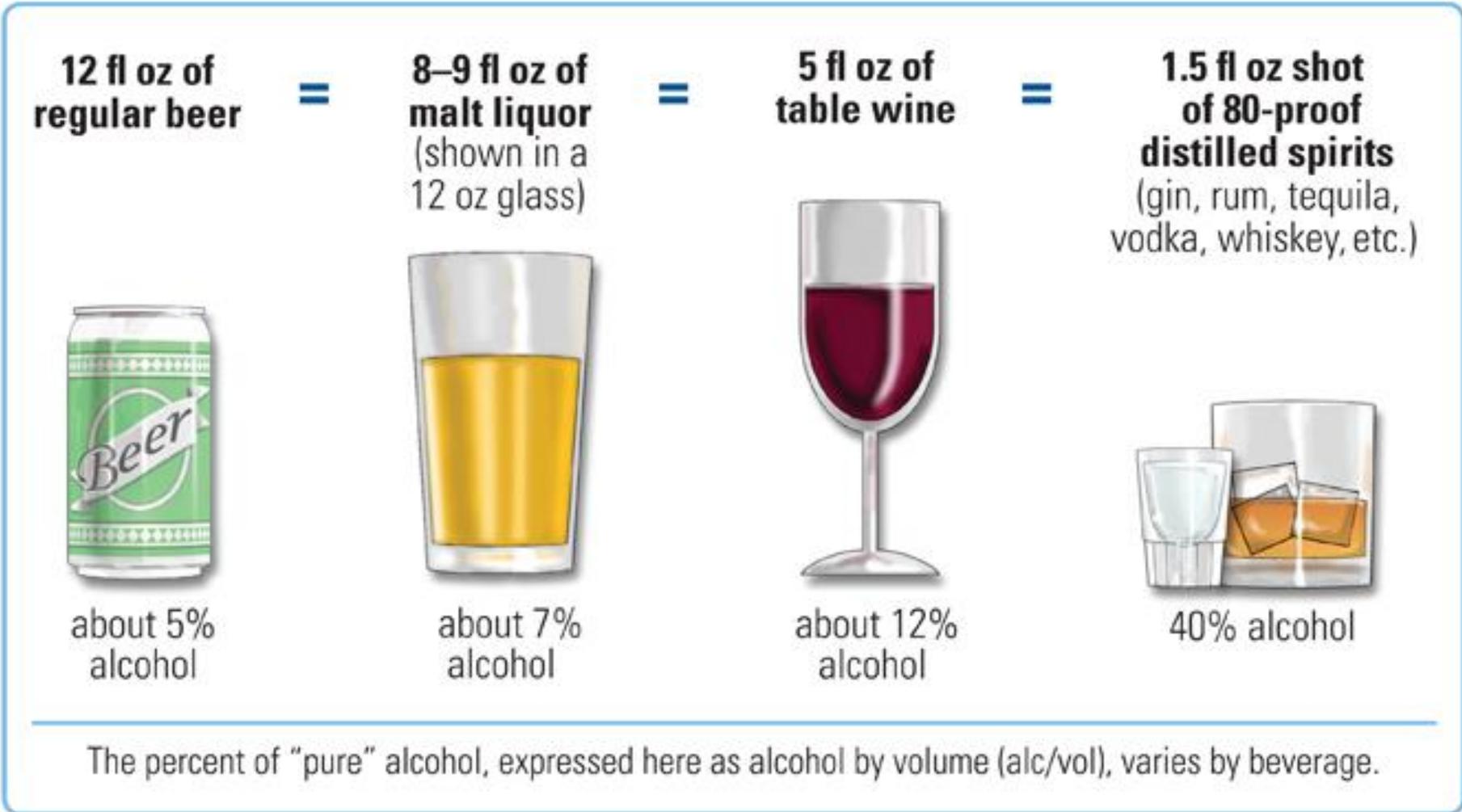


Dose = Fundamental Principle of Toxicology

- “All things are poison and nothing is without poison, only the dose permits something not to be poisonous.”
- Paracelsus, c. 1520
“Father of Toxicology”



Alcohol Dose - Drink Standardization



MEN

KNOW YOUR LIMIT

Approximate Blood Alcohol Content (BAC) In One Hour

Source: National Highway Traffic Safety Administration

Drinks	Body Weight In Pounds								Influenced
	100	120	140	160	180	200	220	240	
1	.04	.03	.03	.02	.02	.02	.02	.02	Possibly
2	.08	.06	.05	.05	.04	.04	.03	.03	
3	.11	.09	.08	.07	.06	.06	.05	.05	Impaired
4	.15	.12	.11	.09	.08	.08	.07	.06	
5	.19	.16	.13	.12	.11	.09	.09	.08	Legally Intoxicated
6	.23	.19	.16	.14	.13	.11	.10	.09	
7	.26	.22	.19	.16	.15	.13	.12	.11	
8	.30	.25	.21	.19	.17	.15	.14	.13	
9	.34	.28	.24	.21	.19	.17	.15	.14	
10	.38	.31	.27	.23	.21	.19	.17	.16	

Subtract .015 for each hour after drinking.

WOMEN

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2	.09	.08	.07	.06	.05	.05	.04	.04	
3	.14	.11	.11	.09	.08	.07	.06	.06	Impaired
4	.18	.15	.13	.11	.10	.09	.08	.08	
5	.23	.19	.16	.14	.13	.11	.10	.09	Legally Intoxicated
6	.27	.23	.19	.17	.15	.14	.12	.11	
7	.32	.27	.23	.20	.18	.16	.14	.13	
8	.36	.30	.26	.23	.20	.18	.17	.15	
9	.41	.34	.29	.26	.23	.20	.19	.17	
10	.45	.38	.32	.28	.25	.23	.21	.19	

Subtract .015 for each hour after drinking.

Common Categories and Signs of Intoxication

Decreased inhibitions	Psychomotor impairment	Cognitive impairment
1. Doing things that would normally not be done when sober	15. Slurred, mumbled, or incoherent speech	28. Loss of concentration or train of thought
2. Saying things that would normally not be said when sober	16. Slow speech	29. Delayed response to questions
3. Boisterous	17. Swaying while sitting, standing, or walking	30. Illogical comments or answers to questions, nonsequiturs
4. Argumentative	18. Staggering, stumbling, holding onto objects for balance	31. Impaired short- or long-term memory
5. Confrontational	19. Difficulty reaching for and picking up objects (money, food, drinks, etc.)	32. Lighting more than one cigarette at a time
6. Obnoxious	20. Inability to maintain eye contact (lack of focus or wandering gaze)	33. Lighting the wrong end of a cigarette
7. Annoying to others (e.g., strangers)	21. Head on bar or asleep	34. Lighting a cigarette but not smoking it
8. Hanging on to people or otherwise intruding on their personal space	22. Falling off stools, chairs, etc.	35. Excessively quiet, sullen
9. Loud comments about other people in the vicinity	23. Bumping into objects or people while walking	36. Denial of impaired driving ability
10. Animated or exaggerated actions	24. Leaning for support while standing or sitting	37. Consumption of large amounts of alcohol without thinking
11. Rapid drinking	25. Exaggerated hand or arm gestures	38. Trouble counting money or with basic math
12. Acting silly or "cutesy"	26. Spilling food or drinks	39. Difficulty following instructions or directions
13. Complains about the strength of drinks or service	27. Fell down or lost balance	
14. Bravado		

JOHN A. COCKLIN
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jcocklin@exigent-group.com



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Thank You!
QUESTIONS?
.....

Pick Your Poison

Fundamental Principles of Toxicology

Applied to Alcohol Cases

Michael J. McCabe, Jr., PhD, DABT | Alcohol Toxicology Expert



My scientific interests and research involve understanding “xenobiotic threats to the integrity of self”

- Chemicals and Drugs = Toxicology
- Pathogens and Biologicals = Immunology, Microbiology, Virology

**Michael J. McCabe, Jr., Ph.D., DABT
Toxicology and Immunology Expert**

Our Team of **Forensic Experts**



John Cocklin

*Dram Shop
Alcoholic Beverages
Regulations*



**Nancy Grugle, Ph.D.,
CHFP**

Human Factors Expert



**Robert J. Marcello, Ph.D.,
LCP, CCHP**

*Licensed Clinical
Psychologist
Correctional Health Expert*

Michael J. McCabe, Jr., PhD, DABT

- Toxicologist / Immunologist
- 25+ year academic career
 - medical school faculty member
 - funded research as PI, published peer-reviewed articles, chapters
 - teaching (graduate, undergraduate, medical, pharmacy students)
- Editorial Board member for 5 toxicology journals
- International/national advisory boards
 - WHO, NIH, EPA, DOD, NAS
- Board certified in general toxicology (DABT)
- Testified (state and federal) many times on alcohol-related matters
- Founder and Executive Director Exigent Forensic Consulting

A Little Bit More About Me

- Ph.D. Microbiology & Immunology (1984 -1990)
 - Albany Medical College; Albany, New York
- Postdoctoral Training in Toxicology (1990 - 1992)
 - Karolinska Institute; Stockholm, Sweden
- Wayne State University, Detroit (1992 - 2000)
 - Institute of Chemical Toxicology; Assistant Professor
- University of Rochester (2000 - 2009/2017)
 - Department of Environmental Medicine; Associate Professor
- Temple University, Philadelphia (2017 – present)
 - Department of Chemistry; Adjunct Faculty
- Research Interests
 - Metal (lead, mercury, arsenic) toxicology – immune-mediated disease
- Forensic Consulting since 2009

Objectives

Key Concepts

- Fundamental Principles of Forensic Toxicology

Principles of Toxicology (Alcohol as Example)

- Dose
- Pharmacokinetics (Exposure) and Pharmacodynamics (Effect)

Learn About Alcohol Toxicology

- Drink Count, Drink Strength
- Body Size, Gender
- Blood Alcohol Concentration
- Impairment
- Tolerance

Jury's Familiarity with Alcohol = Challenge

- Common Misconceptions
- Challenges = Opportunities
- What a Toxicology Expert does to Assist Trier of Fact (and How)

Answer Questions

What is Toxicology?

- Toxicology is the study of the adverse effects of xenobiotics (i.e., drugs and chemicals) on biological systems
- Every toxicology issue involves an analysis of two general aspects → EXPOSURE and EFFECT
pharmacokinetics ↔ pharmacodynamics
- Pharmacokinetics = what the body does to the drug
- Pharmacodynamics = what the drug does to the body

Forensic Toxicology?

- **Forensic toxicology is the application of the principles of toxicology to the purposes of the law**
- **Three Main Areas:**
 - **Post-mortem Analysis of Drugs/Poisons**
 - analytic findings inform cause of death
 - **Human Performance Toxicology**
 - Aspect of Neurotoxicology/Behavioral Toxicology)
 - e.g., Impaired Driving
 - **Workplace Drug Screening (Urine Drug Testing)**
 - analytic findings inform use of drugs tested

Human Performance Forensic Toxicology

- Determine the absence or presence of ethanol and other drugs and chemicals in blood, breath, serum, vitreous, etc.
 - **Exposure**
- Evaluate the role of drugs (e.g., ethanol) in modifying human behavior or performance usually as a determinant or contributory factor in the cause and manner of some incident (e.g., wrongful death, personal injury) - **Effect**

Ethanol and Human Performance

- **Most commonly encountered drug in forensics**
- **Criminal Law**
 - DUI/DWI; Drug-Facilitated Sexual Assault
- **Civil Litigation**
 - Wrongful Death & Personal Injury
 - Vehicle Crashes (automobiles, trucks, motorcycles, bicycles, boats)
 - Pedestrian Knock Downs
 - **Dram Shop (over-service of visibly intoxicated patrons)**
 - Slip and fall (contributory negligence)
 - Worker's Compensation
- **Family**
 - Custody Disputes
 - Unique biomarkers of ethanol metabolism – abstinence compliance

Toxicologist's Scope – Dram Shop Cases

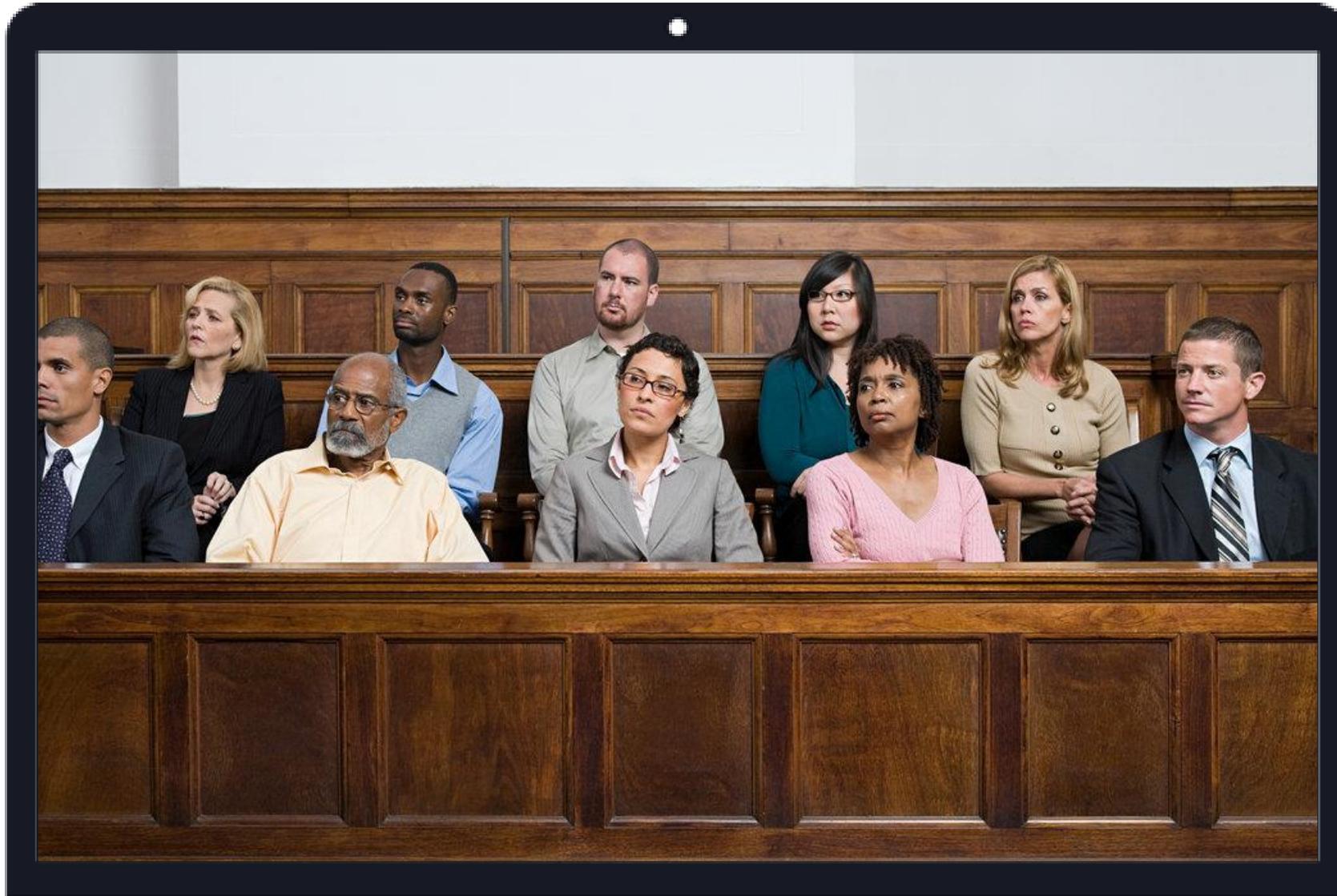


- Reconstruct dose (i.e., # drinks consumed over time) based on blood alcohol test results
- Determine blood alcohol concentration based on dose (i.e., # drinks consumed over time)
- Determine BAC at earlier relevant times based on pharmacokinetic analysis (i.e., retrograde extrapolation)
- Predict effects of intoxication on behavior and performance based on BAC as well as other factors
- Address potential role of other drugs/medications

Pop Quiz

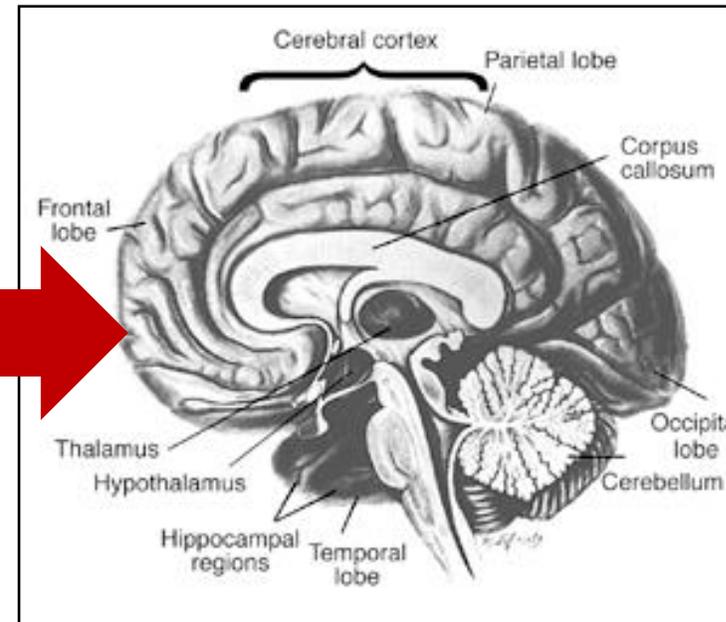
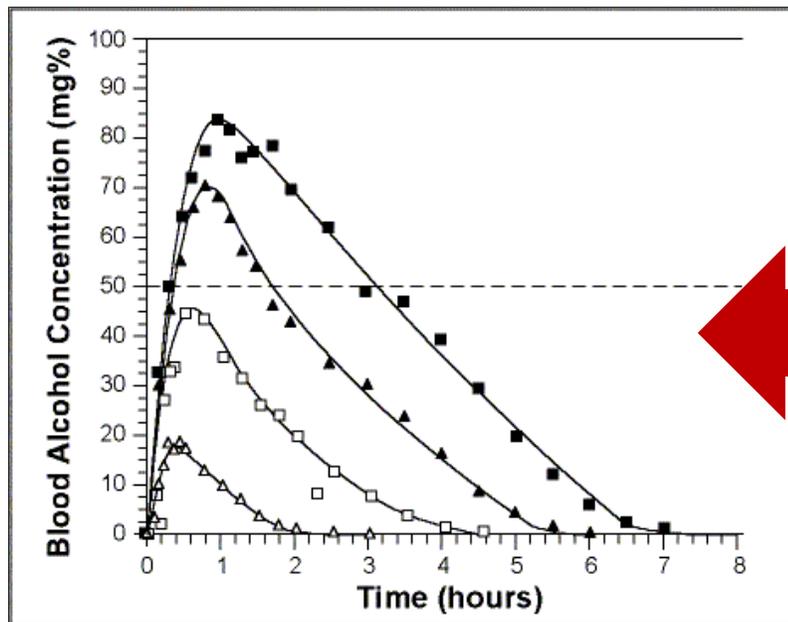
- Which of the following is NOT part of the scope of a toxicologist working on a dram shop case?
 - a. Perform retrograde analysis of BAC
 - b. Determine BAC based on # drinks consumed over time
 - c. Assess adequacy of training and policies of licensee
 - d. Predict effects of intoxication on behavior and performance (including visible cues) based on BAC and the evidence

Jurors are Familiar with Alcohol Toxicology



Jurors Understand Association between Pharmacokinetics ↔ Pharmacodynamics

- Simply put, the more a person drinks, the drunker they become
- more drinks = higher BAC (blood alcohol concentration)
- BAC predicts level of drunkenness
- Toxicologist's role is to define/refine all of the above in scientific terms

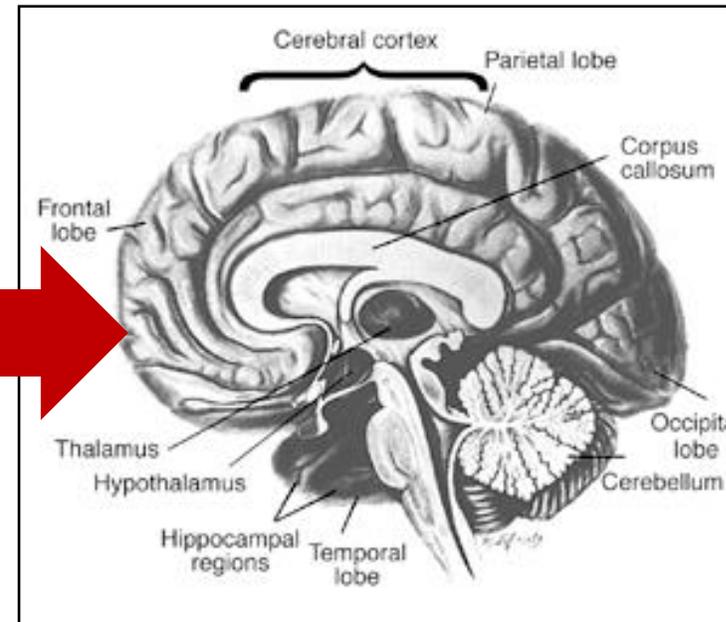
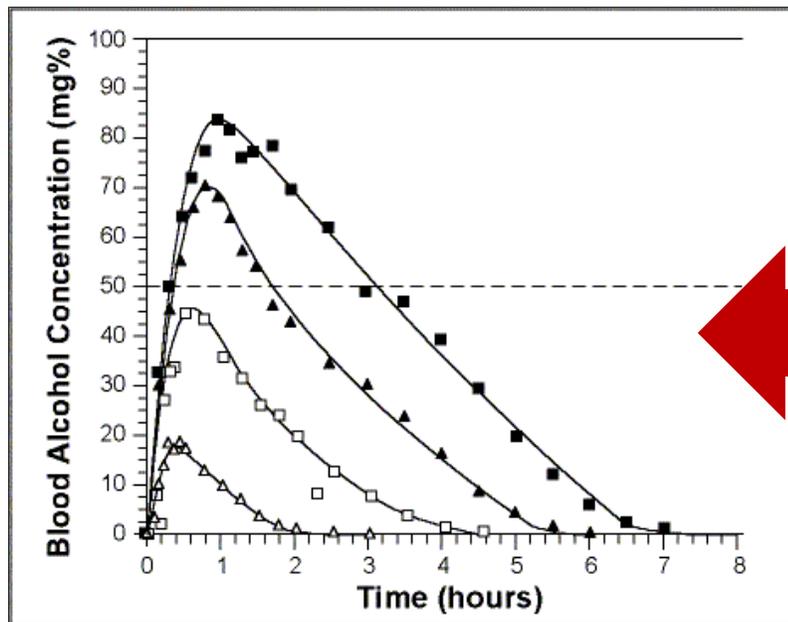


Common Juror Misconceptions About Alcohol

- “He was just drinking beer”
- “Beer and wine are fine, liquor is quicker”
- “He’s a big guy, so he’s more tolerant”
- “A person who’s BAC > 0.08% is legally intoxicated”
- “When he left the bar, he seemed fine to me”
- “Experienced drinkers are okay to drive despite being over the limit because they’re tolerant”
- “Anyone with a BAC *that* high would be dead”
- “She wasn’t visibly intoxicated, she was just *tipsy*”

Jurors Understand Association between Pharmacokinetics ↔ Pharmacodynamics

- Simply put, the more a person drinks, the drunker they become
- more drinks = higher BAC (blood alcohol concentration)
- BAC predicts level of drunkenness
- Toxicologist's role is to **TEACH**



Dose = Fundamental Principle of Toxicology

- “All things are poison and nothing is without poison, only the dose permits something not to be poisonous.”
- Paracelsus, c. 1520
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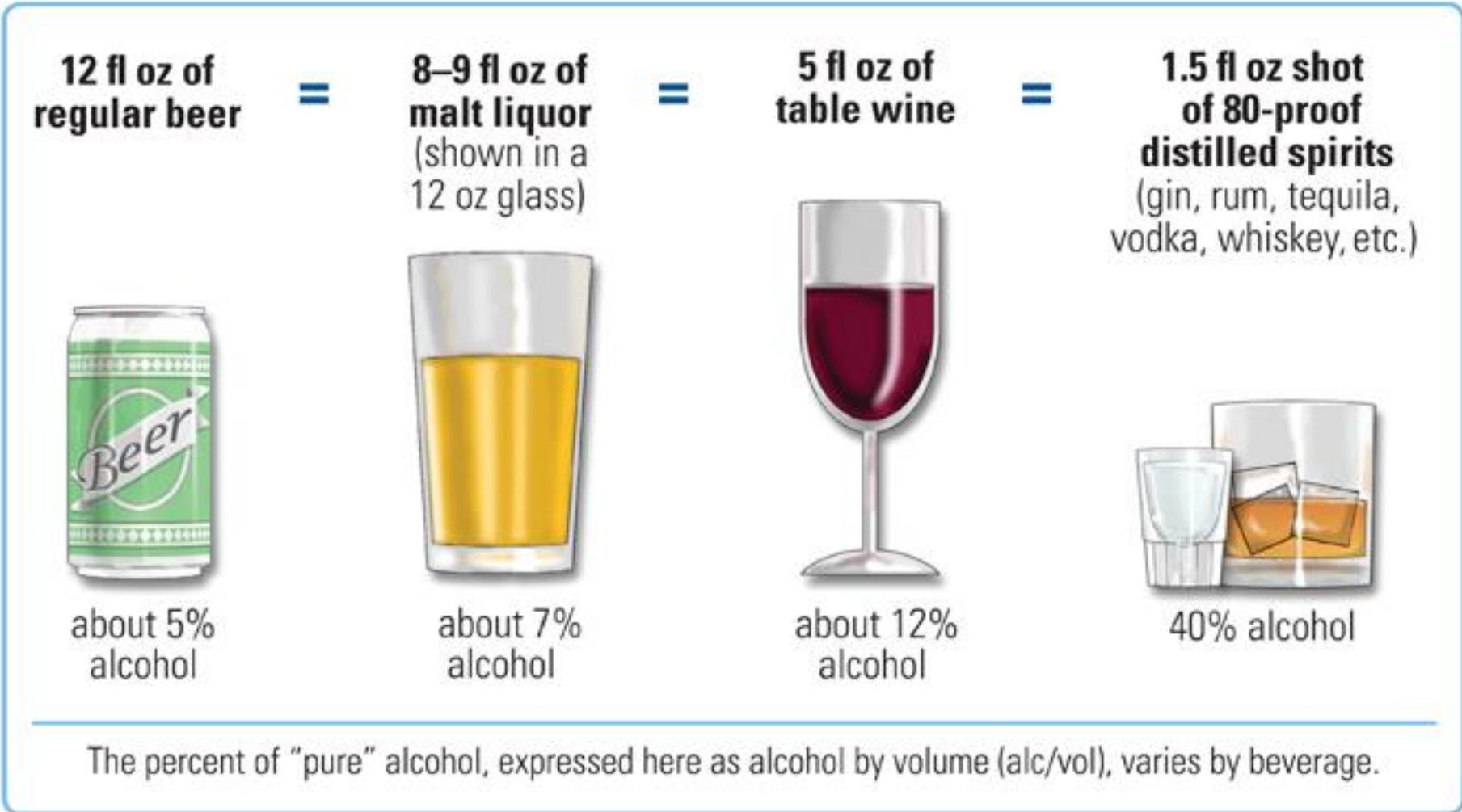


Dose = Fundamental Principle of Toxicology

- Dose = Amount per unit Time
- Timeline Reconstruction **EVIDENCE**
 - Testimony/Statements
 - Actual Time
 - Relative Time (e.g., after work)
 - Descriptive Time (e.g., dusk)
 - Police Reports
 - EMS/First Responder Reports
 - Hospital Records
 - Cell Phone Records
 - Bar Tabs
 - Credit Card Receipts, ATM Receipts
 - Surveillance Video Footage



Alcohol Dose - Drink Standardization



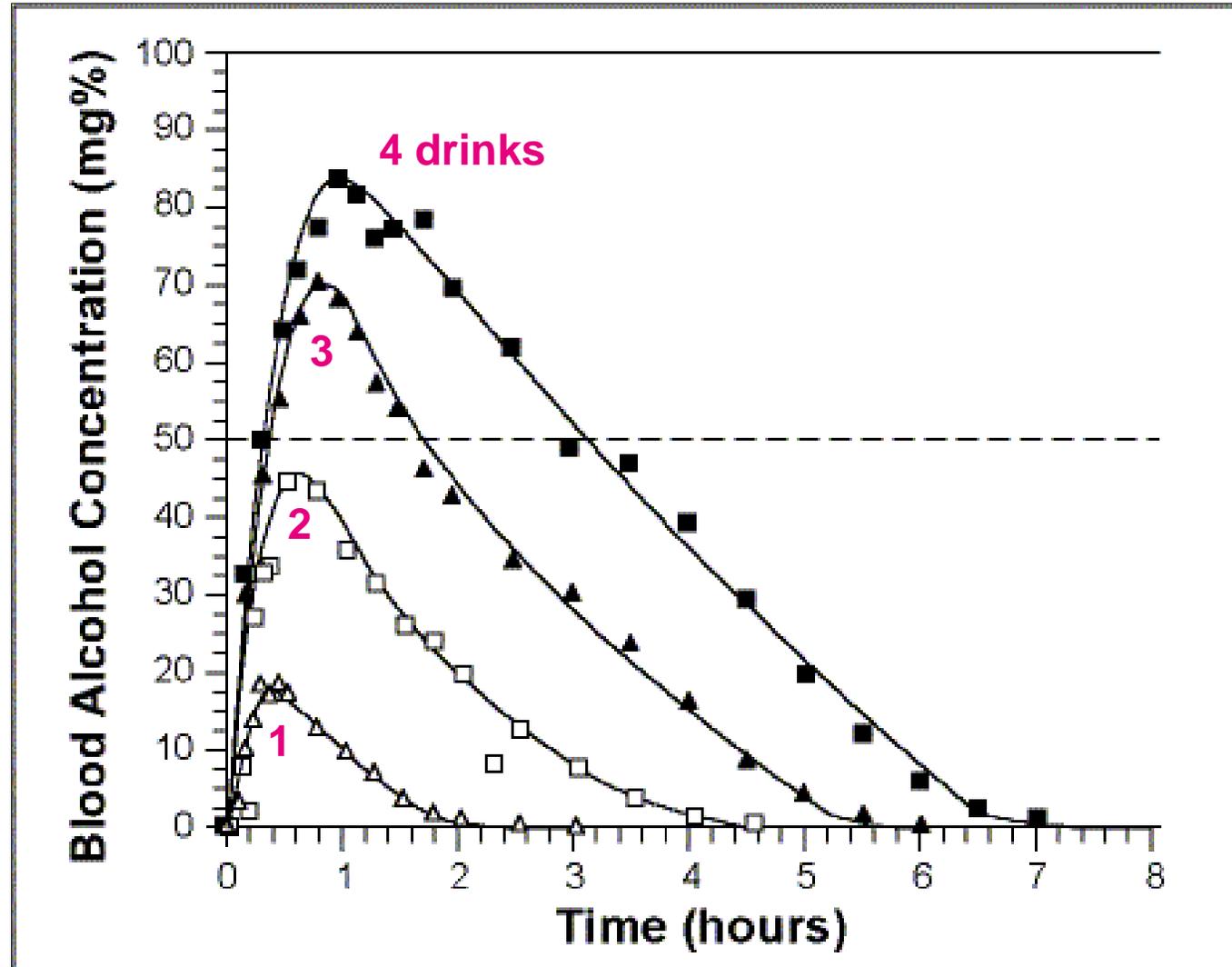
A man walks into a bar...



... and drinks a beer



Blood Alcohol Concentration Curve



MEN

KNOW YOUR LIMIT

Approximate Blood Alcohol Content (BAC) In One Hour

Source: National Highway Traffic Safety Administration

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10	.45	.38	.32	.28	.25	.23	.21	.19	

Subtract .015 for each hour after drinking.

Pop Quiz

- The fundamental guiding principle of toxicology attributable to Paracelsus is,

“the _____ makes the poison”.

- a. distribution
- b. density
- c. duration
- d. dose

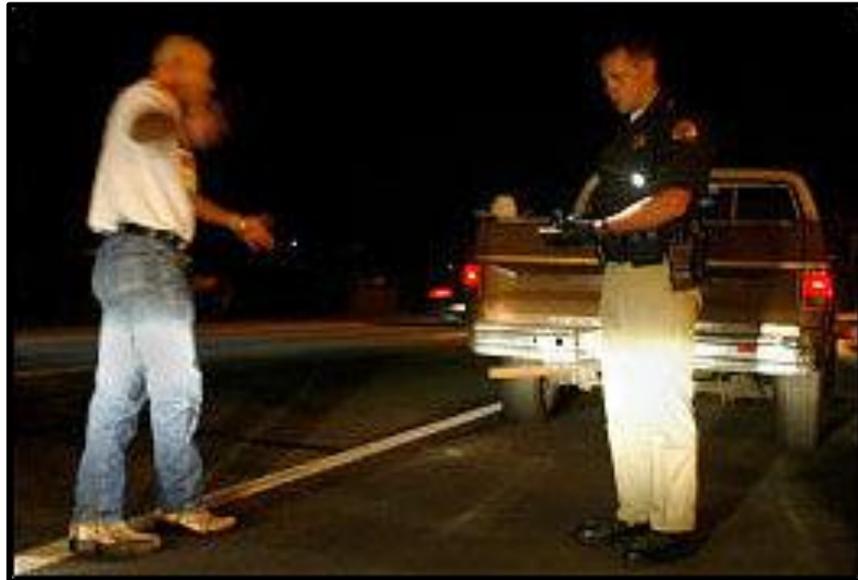
A man walks into a bar...



... and has too many



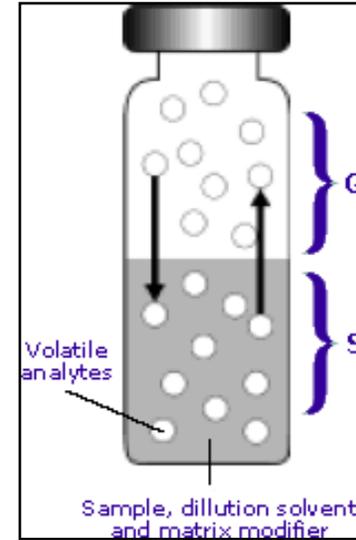




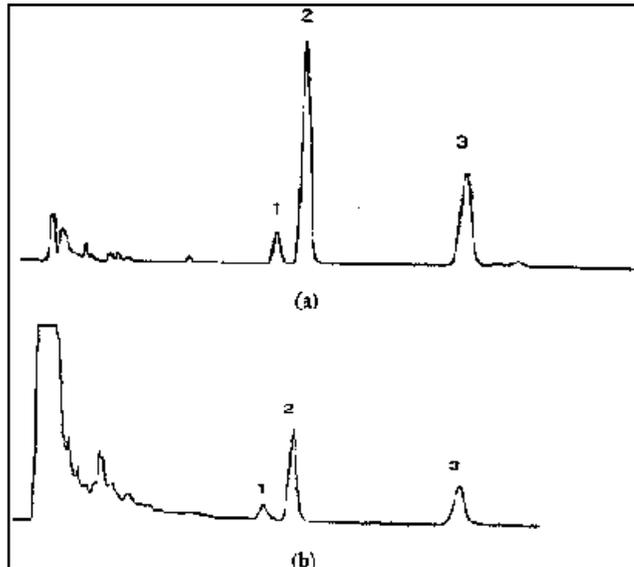
1)



2)



4)



3)



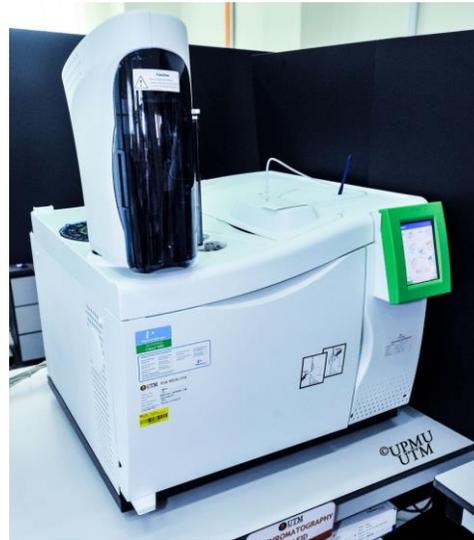
Blood (BAC) or Breath Alcohol (BrAC) Measurements

Hospital Blood Plasma
Screening:
Immunoassay



mg/dL:
Needs conversion to whole
blood alcohol concentration

Whole Blood
Confirmation:
Headspace GC-FID



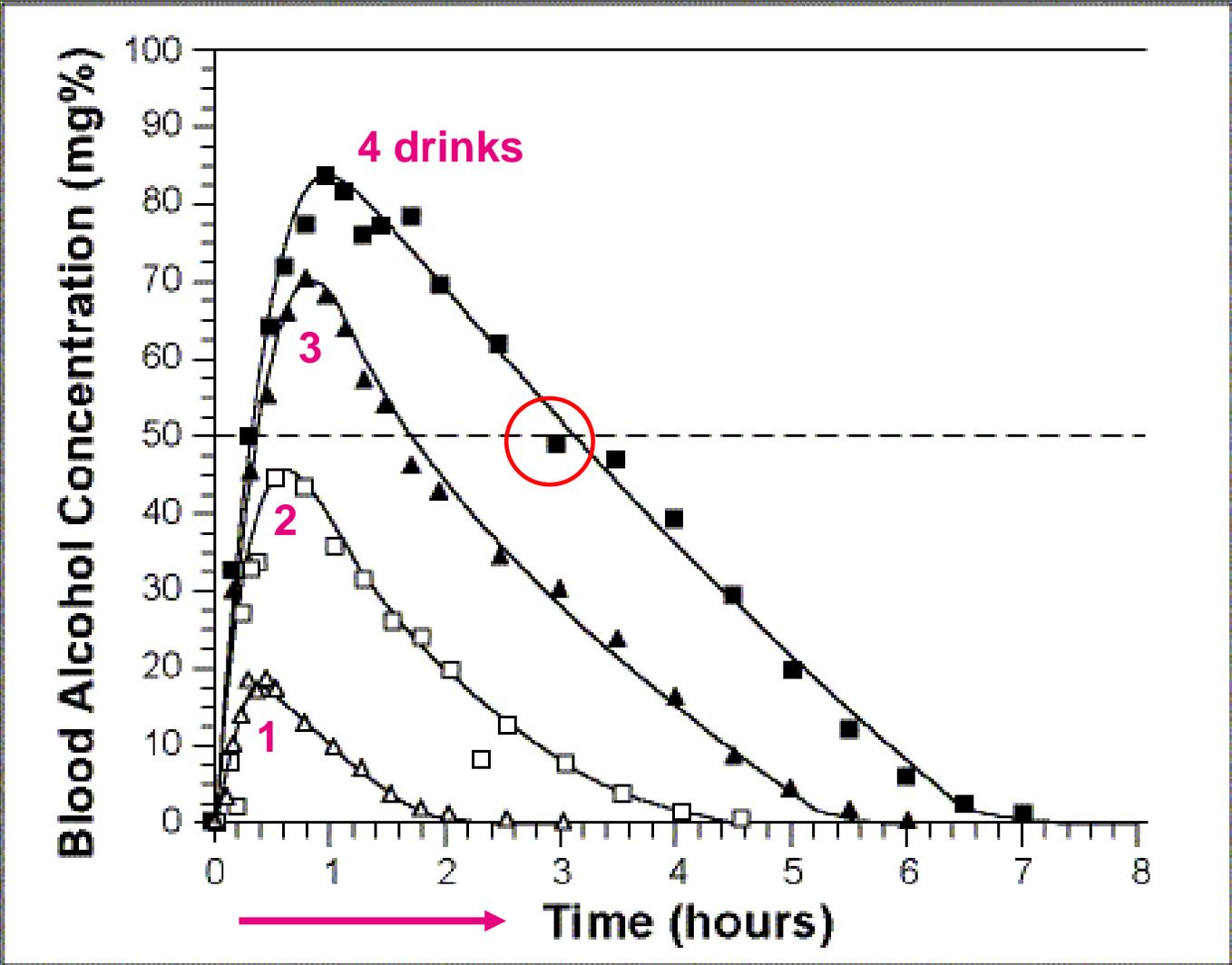
g/100ml

Breath:
Intoxilyzer 9000



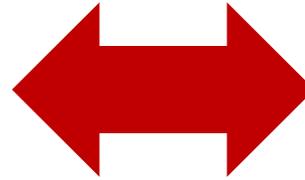
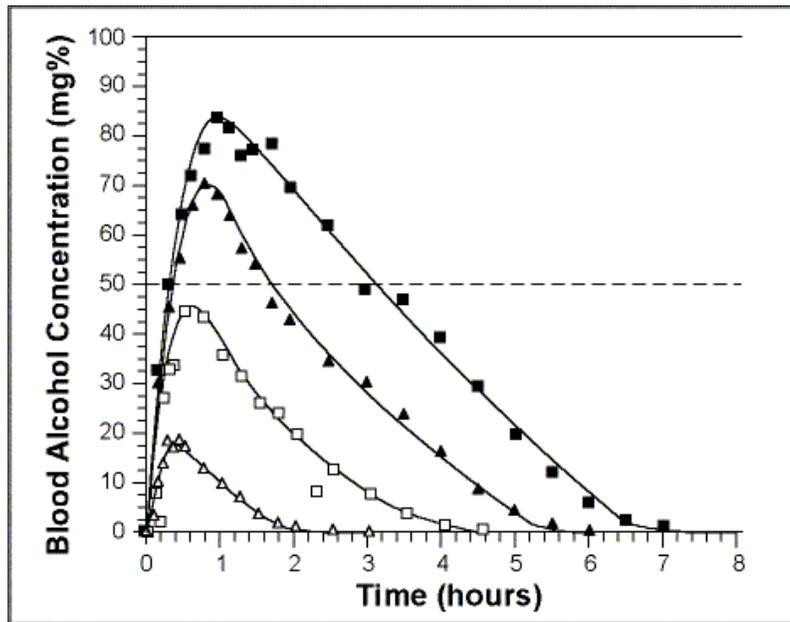
g/210L = equivalent to whole
blood alcohol

BAC Determination

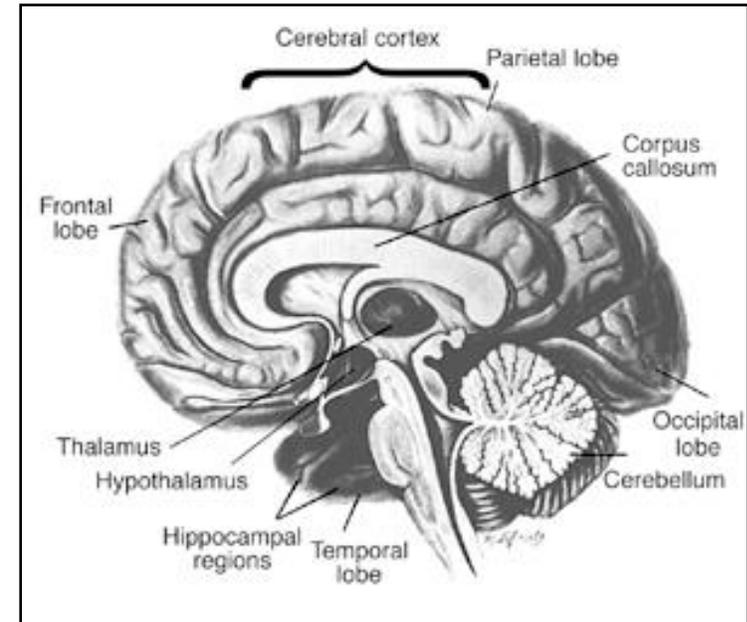


Association between Alcohol Pharmacokinetics & Pharmacodynamics

- Pharmacokinetics
 - what the body does to the drug
 - ADME



- Pharmacodynamics
 - what the drug does to the body
 - CNS depressant



Ethanol – Pharmacokinetics & Pharmacodynamics

- **Pharmacokinetics (ADME)**

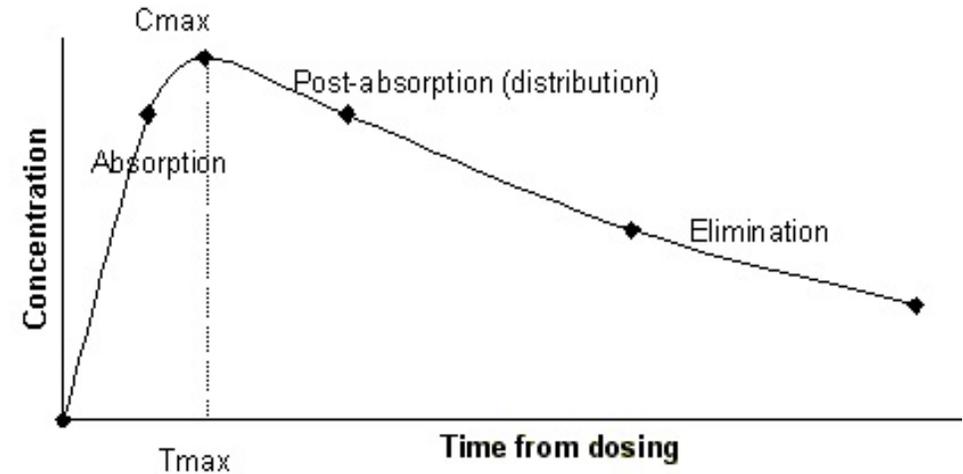
- Absorption
- Distribution
- Metabolism/Elimination

- **Pharmacodynamics**

- CNS effects
 - “I Just Really Care” (I - J - R - C)
 - Progressive Impairment; inhibitions, judgment, **reaction**, **co-ordination**

- **Tolerance**

- Different Types (Functional vs. Metabolic vs. Acute)



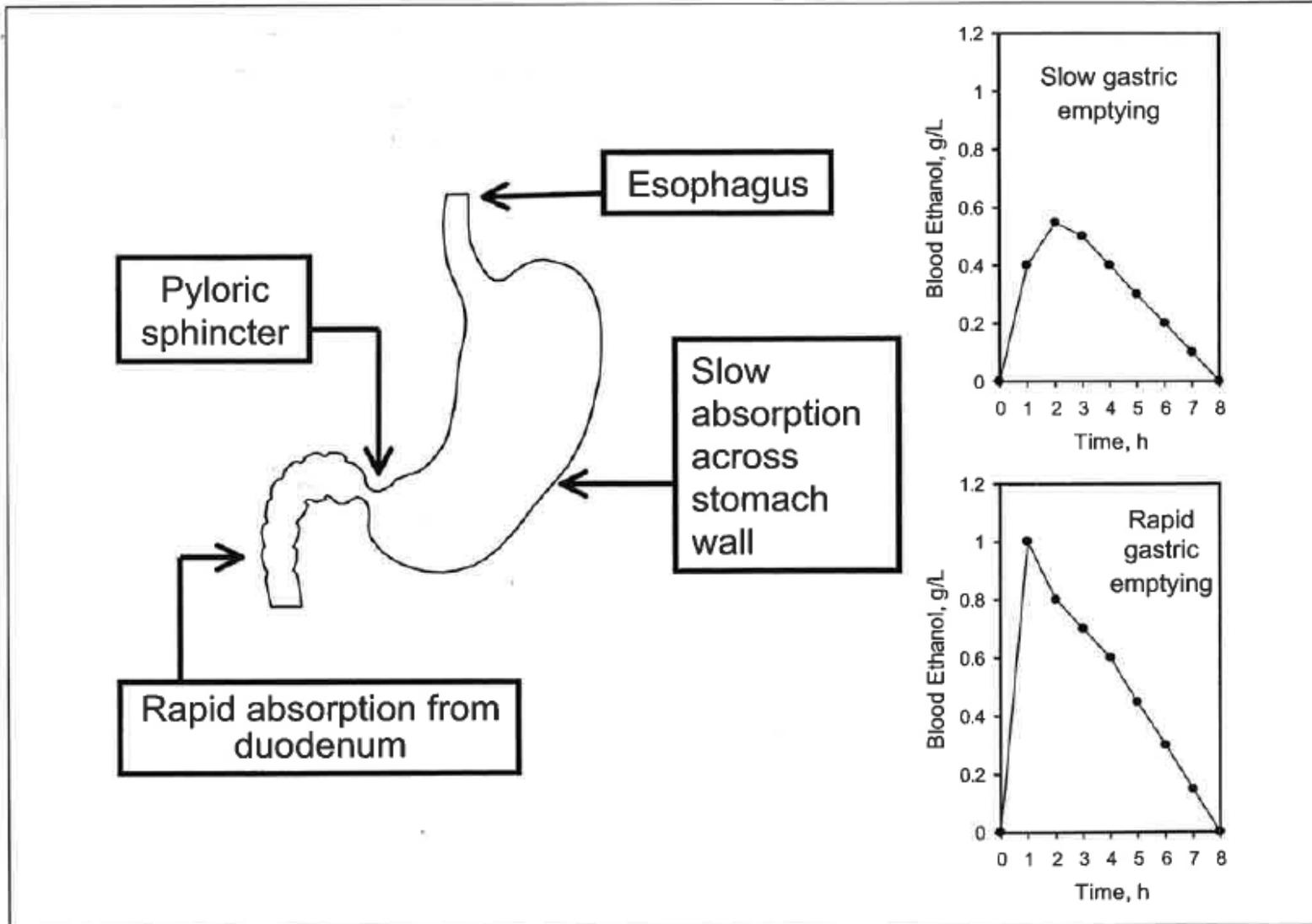
Pop Quiz

- Pharmacokinetics (from the Greek *pharmakon* “**drug**” and *kinetikos* “**moving, putting in motion**”) is a branch of science involving the study of the fate of substances administered to living organisms. The elements of pharmacokinetics include,
 - a. Absorption, Distribution, Metabolism and Elimination
 - b. Adsorption, Distribution, Metabolism and Exposure
 - c. Metabolism, Absorption, Ingestion and Effect
 - d. None of the above

Absorption – Factors to Consider

- **Alcohol (like other nutrients) absorbed primarily from duodenum**
 - rich blood supply
- **Rate of absorption is variable**
 - 30 minutes average; 15 – 90 minutes for completion
 - most variable phase of alcohol pharmacokinetics
- **Peak blood alcohol concentration (BAC) depends on:**
 - Gastrointestinal content (i.e., food consumption)
 - Food composition
 - Number of drinks consumed and alcohol concentration of beverage
 - i.e., drink strength
 - Rate of drinking
 - Gastric emptying and gastric metabolism
 - Hepatic first pass

Alcohol Absorption

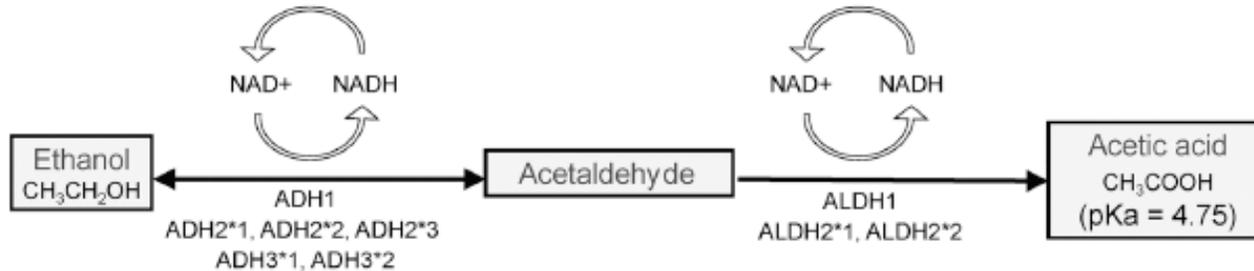


Distribution

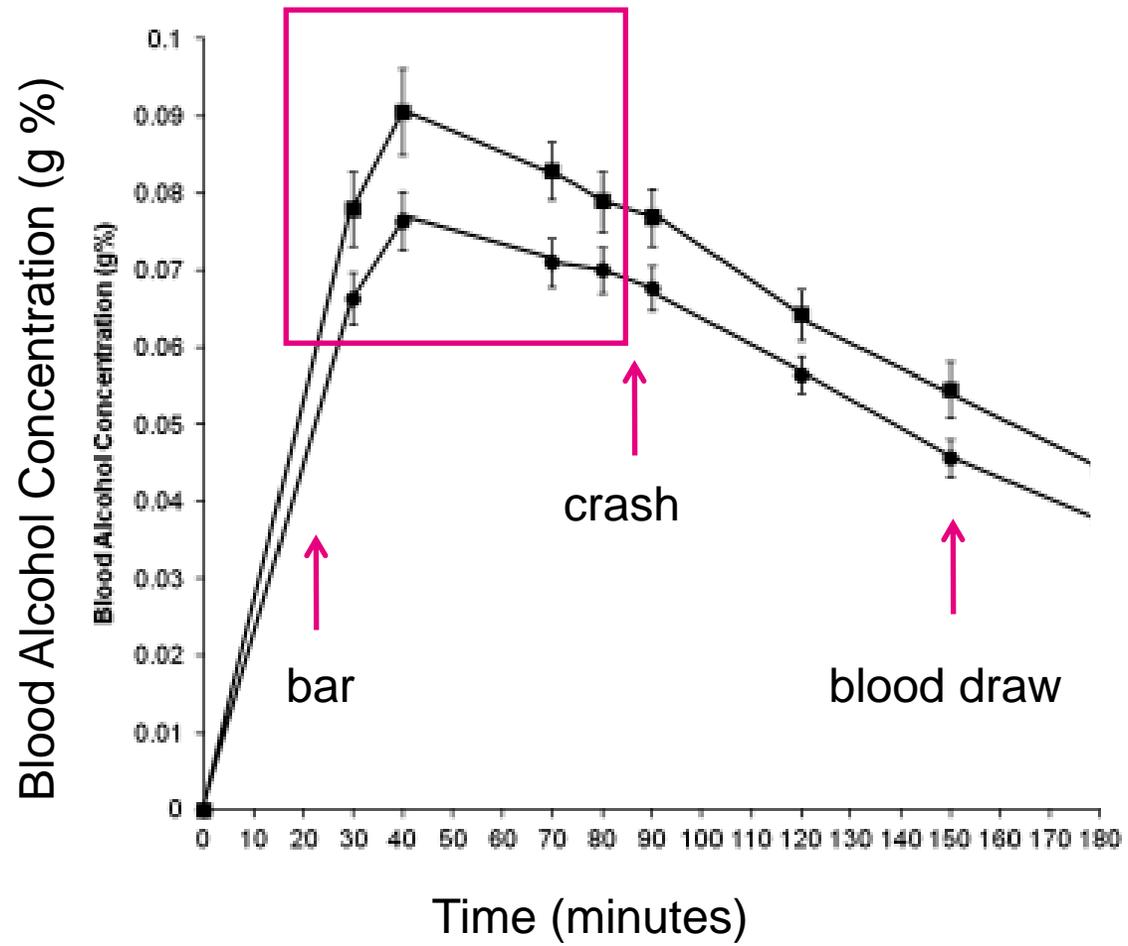
- Alcohol distributes within body as a Fxn of water content
- Volume of Distribution (V_d) = Total Body Water (TBW)
- TBW can be measured or calculated (Fxn of height, weight, gender, BMI)
- **Gender differences in body fat composition** (i.e., women \uparrow % relative body fat)
- **V_d of large man \ggg V_d of small woman**
- Ethanol concentration in body fluids is a fxn of H_2O content
 - e.g., whole blood versus serum
 - hospital derived results = serum; forensic lab = blood
 - hospital units = mg/dL, not g/dL or %
 - **Medical Records \rightarrow Convert mg/dL to percent by dividing by 1000**
 - e.g., 80 mg/dL is numerically the same as 0.08%
 - **Serum Alcohol Concentration $>$ Blood Alcohol Concentration (~ 1.16 times)**
 - Serum \leftrightarrow Blood conversion factor informed by hematocrit
 - 80 mg/dL serum alcohol concentration = BAC of $\sim 0.069\%$
 - Serum, Urine, Vitreous all have higher H_2O percentage than blood

Metabolism

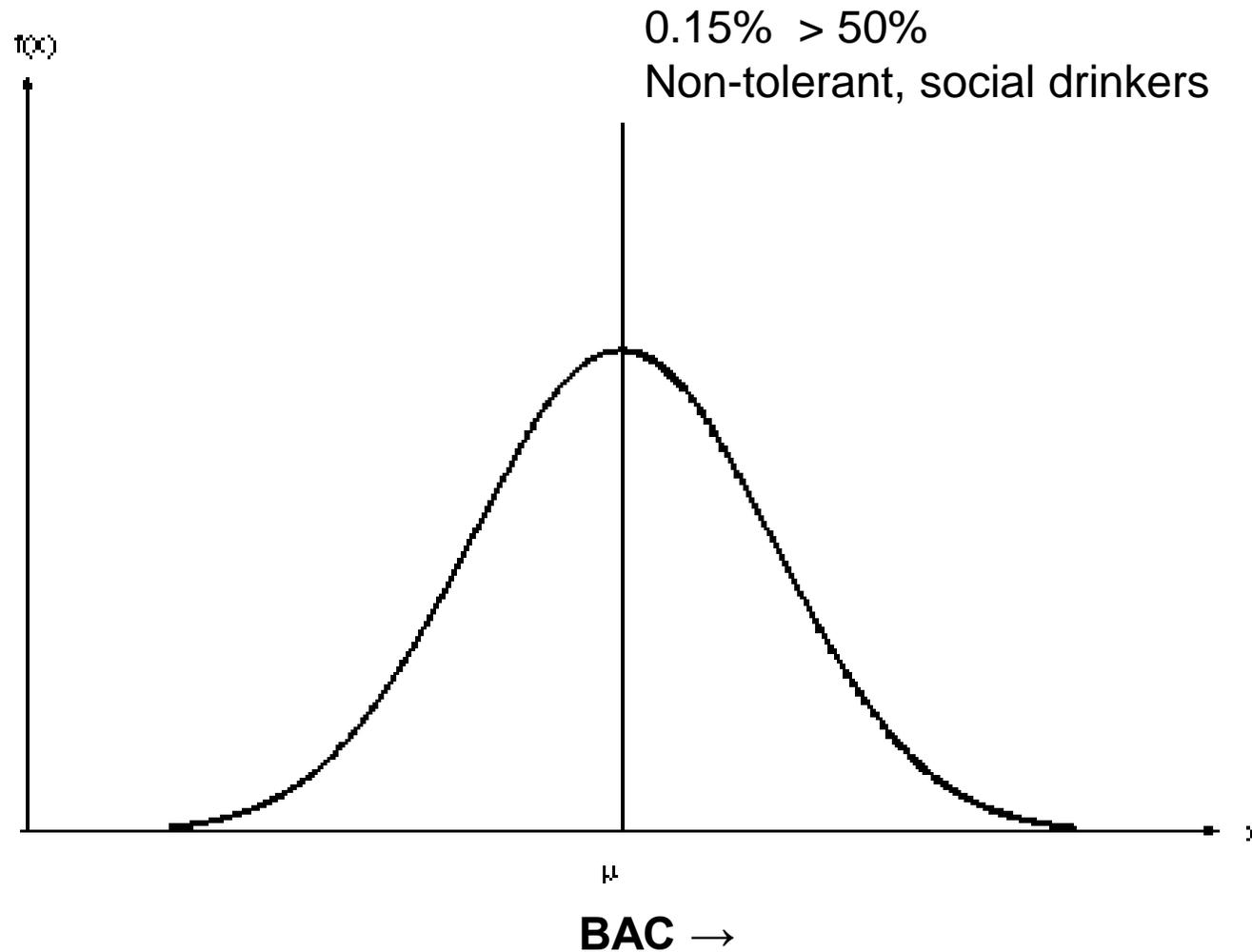
- Metabolism
 - 90-98% of alcohol metabolized in liver



- ADH = alcohol dehydrogenase; ADLH = acetaldehyde dehydrogenase
- Alcohol dehydrogenase saturates at low to moderate BACs
 - At higher BACs CYP2E1 enzyme induction and activity, causes faster rate of alcohol metabolism (not the norm for social drinkers)
- Alcohol dehydrogenase exhibits zero-order Michaelis-Menton kinetics (i.e., linear decrease in BAC over time in post-absorptive phase)
 - Rate of alcohol metabolism = 0.018% per hr (range 0.010% - 0.025%)
 - **BAC declines ~ 0.018% per hour (burn off approx. 1 drink per hour)**



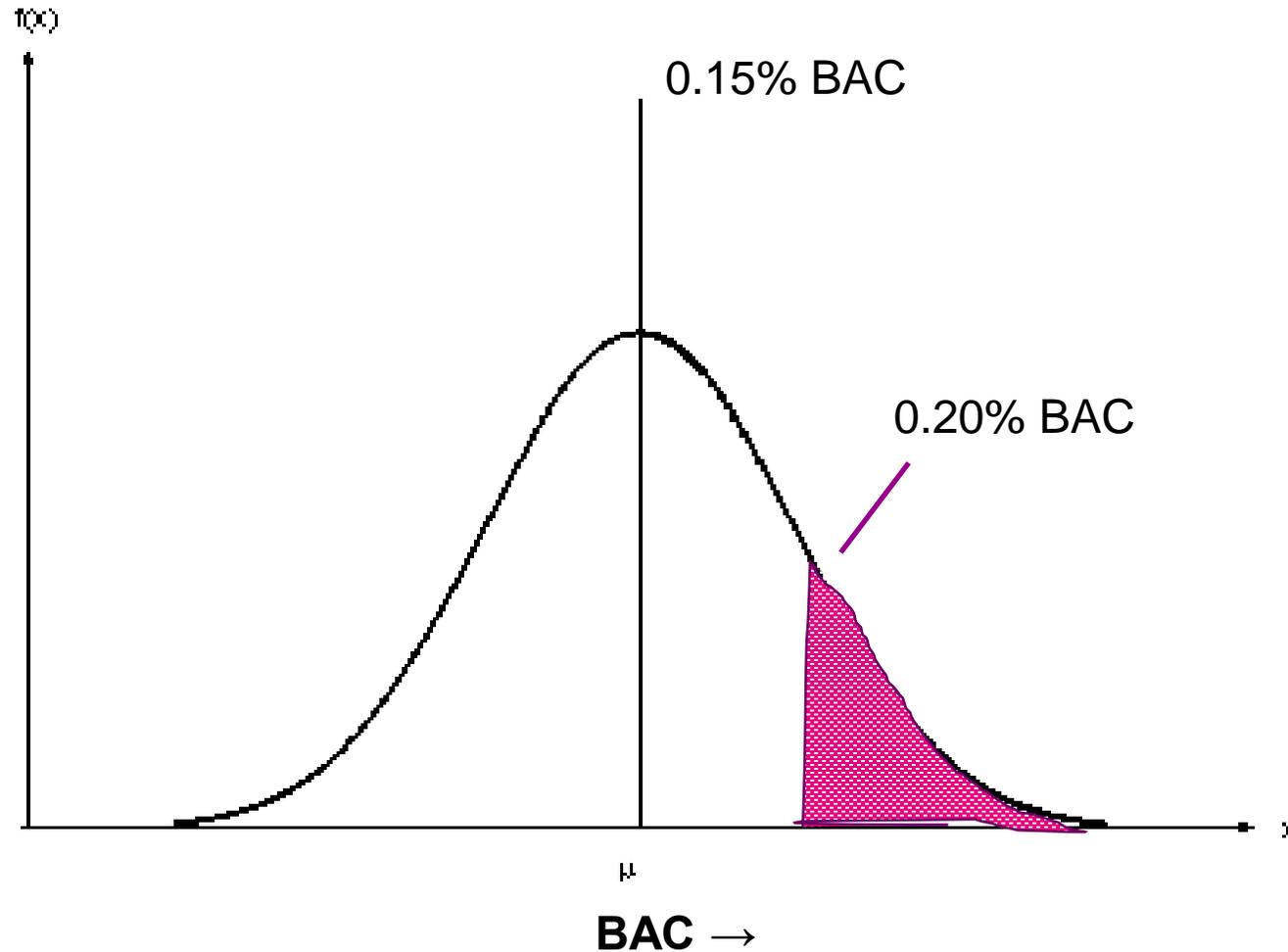
BAC as one Indicator (Predictor) of Visible Intoxication



BAC as one Indicator (Predictor) of Visible Intoxication

- > 50% of population of **social drinkers** will exhibit one or more signs of visible (obvious, apparent) intoxication at a **BAC \geq 0.150%**; general causation “*more likely than not*”
- > 85% of population (including **heavy drinkers**) will exhibit one or more signs of visible (obvious, apparent) intoxication at a **BAC \geq 0.20%**; **specific causation is more relevant issue**; don't really need an expert to tell a jury that alcohol can make people drunk
- → **Functional Tolerance EVIDENCE**
- Drinking History (drinking experience, frequency of being drunk)
- Prior DUIs/DWIs or Frequent DUIs/DWIs
- Other Alcohol-related Offenses
- Alcohol Abuse Treatment or Re-hab
- Diagnosis of Alcoholism
- Chronic Liver Disease (e.g., fatty liver, elevated liver enzymes, etc.)
- High BAC
- Metabolic Tolerance
- Bar Regulars
- Family History
- Video Surveillance Footage

BAC as one Indicator (Predictor) of Visible Intoxication



Tolerance

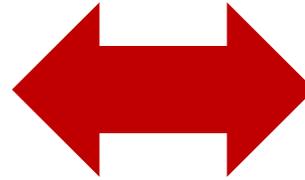
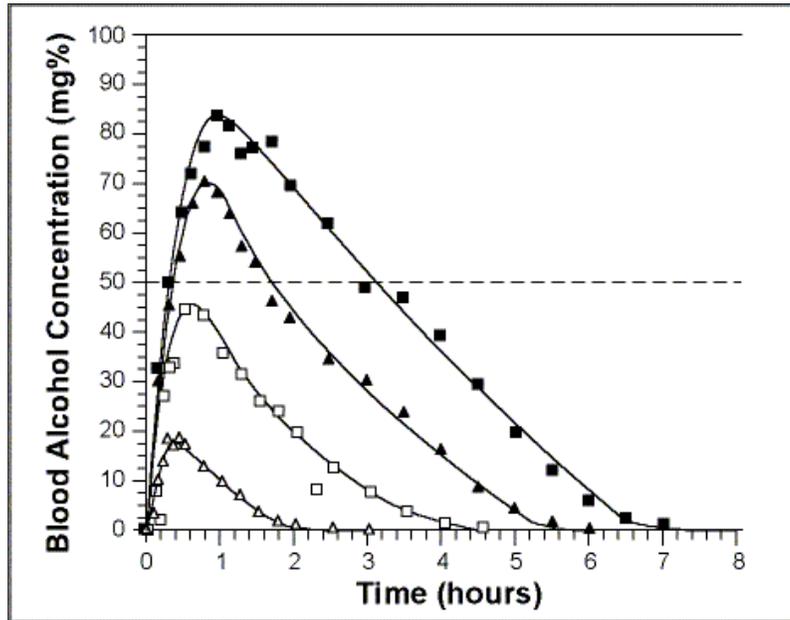
- Tolerance: The phenomenon of decreased effect with prolonged exposure to a drug
- Alcohol affects different people in different ways based on their experience
- **Four Main Types of Tolerance**
 - **Functional** or Conditioned Tolerance
 - reduced signs of visible intoxication at high BAC due to adaptation
 - **Metabolic** Tolerance
 - liver enzyme induction; alcohol metabolized at faster rate
 - **Acute** Tolerance (Mellanby Effect)
 - develops over the time course of a single drinking episode
 - Environment-dependent or Pavlovian Tolerance
 - environmental/circumstantial cues act as conditioned stimuli
 - (e.g., Scared Straight)

Pop Quiz

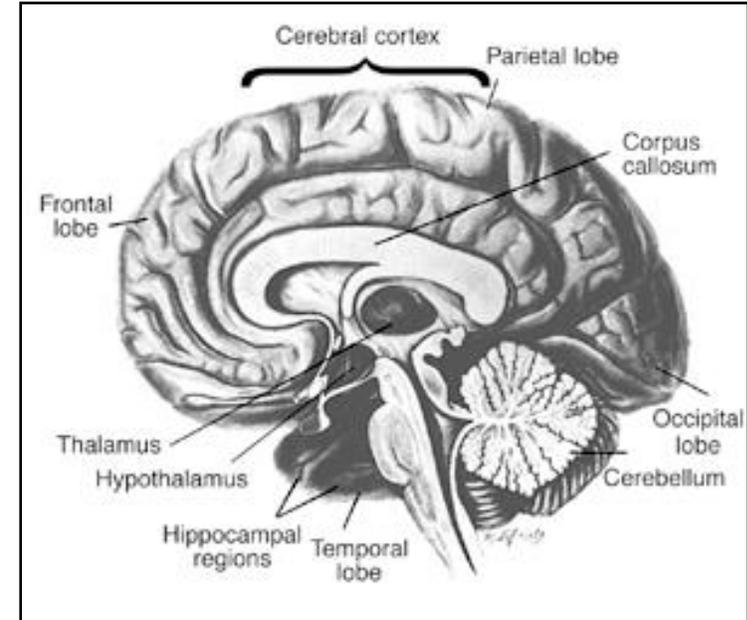
- True or False; with respect to tolerance, it is important to consider that the functionally tolerant drinker, who might be conditionally adapted to alcohol intoxication, also might possess metabolic tolerance, which produces a higher BAC on a retrograde extrapolation analysis.
 - a. True
 - b. False

Association between Alcohol Pharmacokinetics & Pharmacodynamics

- Pharmacokinetics
 - what the body does to the drug
 - ADME



- Pharmacodynamics
 - what the drug does to the body
 - CNS depressant



Alcohol Affects on the Brain

- Alcohol is a **CNS depressant**
- Alcohol is a **Progressive Intoxicant**
 - Higher BAC ↔ more brain functions affected
- Low BAC; apparent stimulatory effects result from depression of inhibitory control mechanisms in the brain; characteristic response = **euphoria**; impaired thought processes, judgement; frontal lobe effects
- Moderate BAC; characteristic response = **excitement**; impaired perception, memory, comprehension; sensory motor coordination; frontal lobe, parietal lobe, occipital lobe
- High BAC; characteristic response = **confusion**; disorientation, slurred speech, staggering, vision disturbances; frontal lobe, parietal lobe, occipital lobe

Stages of Acute Alcohol Intoxication

STAGES OF ACUTE ALCOHOLIC INFLUENCE/INTOXICATION

BLOOD-ALCOHOL CONCENTRATION grams/100 mL	STAGE OF ALCOHOLIC INFLUENCE	CLINICAL SIGNS/SYMPTOMS
0.01-0.05	Subclinical	Influence/effects usually not apparent or obvious Behavior nearly normal by ordinary observation Impairment detectable by special tests
0.03-0.12	Euphoria	Mild euphoria, sociability, talkativeness Increased self-confidence; decreased inhibitions Diminished attention, judgment and control Some sensory-motor impairment Slowed information processing Loss of efficiency in critical performance tests
0.09-0.25	Excitement	Emotional instability; loss of critical judgment Impairment of perception, memory and comprehension Decreased sensory response; increased reaction time Reduced visual acuity & peripheral vision; and slow glare recovery Sensory-motor incoordination; impaired balance; slurred speech; vomiting; drowsiness

		slurred speech, vomiting, drowsiness
0.18-0.30	Confusion	Disorientation, mental confusion; vertigo; dysphoria Exaggerated emotional states (fear, rage, grief, etc) Disturbances of vision (diplopia, etc.) and of perception of color, form, motion, dimensions Increased pain threshold Increased muscular incoordination; staggering gait; ataxia Apathy, lethargy
0.25-0.40	Stupor	General inertia; approaching loss of motor functions Markedly decreased response to stimuli Marked muscular incoordination; inability to stand or walk Vomiting; incontinence of urine and feces Impaired consciousness; sleep or stupor
0.35-0.50	Coma	Complete unconsciousness; coma; anesthesia Depressed or abolished reflexes Subnormal temperature Impairment of circulation and respiration Possible death
0.45+	Death	Death from respiratory arrest

KURT M. DUBOWSKI, Ph.D., D.A.B.C.C., D.A.B.F.T.
The University of Oklahoma
Department of Medicine
Oklahoma City, Oklahoma

Common Categories and Signs of Intoxication

Decreased inhibitions	Psychomotor impairment	Cognitive impairment
1. Doing things that would normally not be done when sober	15. Slurred, mumbled, or incoherent speech	28. Loss of concentration or train of thought
2. Saying things that would normally not be said when sober	16. Slow speech	29. Delayed response to questions
3. Boisterous	17. Swaying while sitting, standing, or walking	30. Illogical comments or answers to questions, nonsequiturs
4. Argumentative	18. Staggering, stumbling, holding onto objects for balance	31. Impaired short- or long-term memory
5. Confrontational	19. Difficulty reaching for and picking up objects (money, food, drinks, etc.)	32. Lighting more than one cigarette at a time
6. Obnoxious	20. Inability to maintain eye contact (lack of focus or wandering gaze)	33. Lighting the wrong end of a cigarette
7. Annoying to others (e.g., strangers)	21. Head on bar or asleep	34. Lighting a cigarette but not smoking it
8. Hanging on to people or otherwise intruding on their personal space	22. Falling off stools, chairs, etc.	35. Excessively quiet, sullen
9. Loud comments about other people in the vicinity	23. Bumping into objects or people while walking	36. Denial of impaired driving ability
10. Animated or exaggerated actions	24. Leaning for support while standing or sitting	37. Consumption of large amounts of alcohol without thinking
11. Rapid drinking	25. Exaggerated hand or arm gestures	38. Trouble counting money or with basic math
12. Acting silly or "cutesy"	26. Spilling food or drinks	39. Difficulty following instructions or directions
13. Complains about the strength of drinks or service	27. Fell down or lost balance	
14. Bravado		

Pop Quiz

- Subjective evidence that supports a toxicologist's scientific analysis concerning visible intoxication include the following,
 - a. Police report documentation of failed standardized field sobriety testing
 - b. Eyewitness testimony that the alleged intoxicated person (AIP) was boisterous, belligerent and had a strong odor of alcohol on his person
 - c. Eyewitness testimony that the AIP was slurring speech, staggering and was glassy-eyed
 - d. A and C



Three Types of Studies of Impairment

- **Epidemiology (Drunk vs. Sober Drivers)**

- Grand Rapids Study
- NHTSA

- Blomberg R.D., Peck R.C., Moskowitz H., Burns M. and Fiorentino D. The Long Beach/Fort Lauderdale relative risk study. *J. Safety. Res.* 40: 285-292, 2009.

- **Laboratory – empirical (Divided Attention Functions)**

- Ogden E.J. and Moskowitz H. Effects of alcohol and other drugs on driver performance. *Traffic Inj. Prev.* 5: 185-198, 2004.
- Moskowitz H., Burns M.M. and Williams A.F. Skills performance at low blood alcohol levels. *J. Stud. Alcohol.* 46: 482-485, 1985.

- **Closed Course (Driving Simulator Studies)**

Relative Risk of a Crash as a fxn of BAC

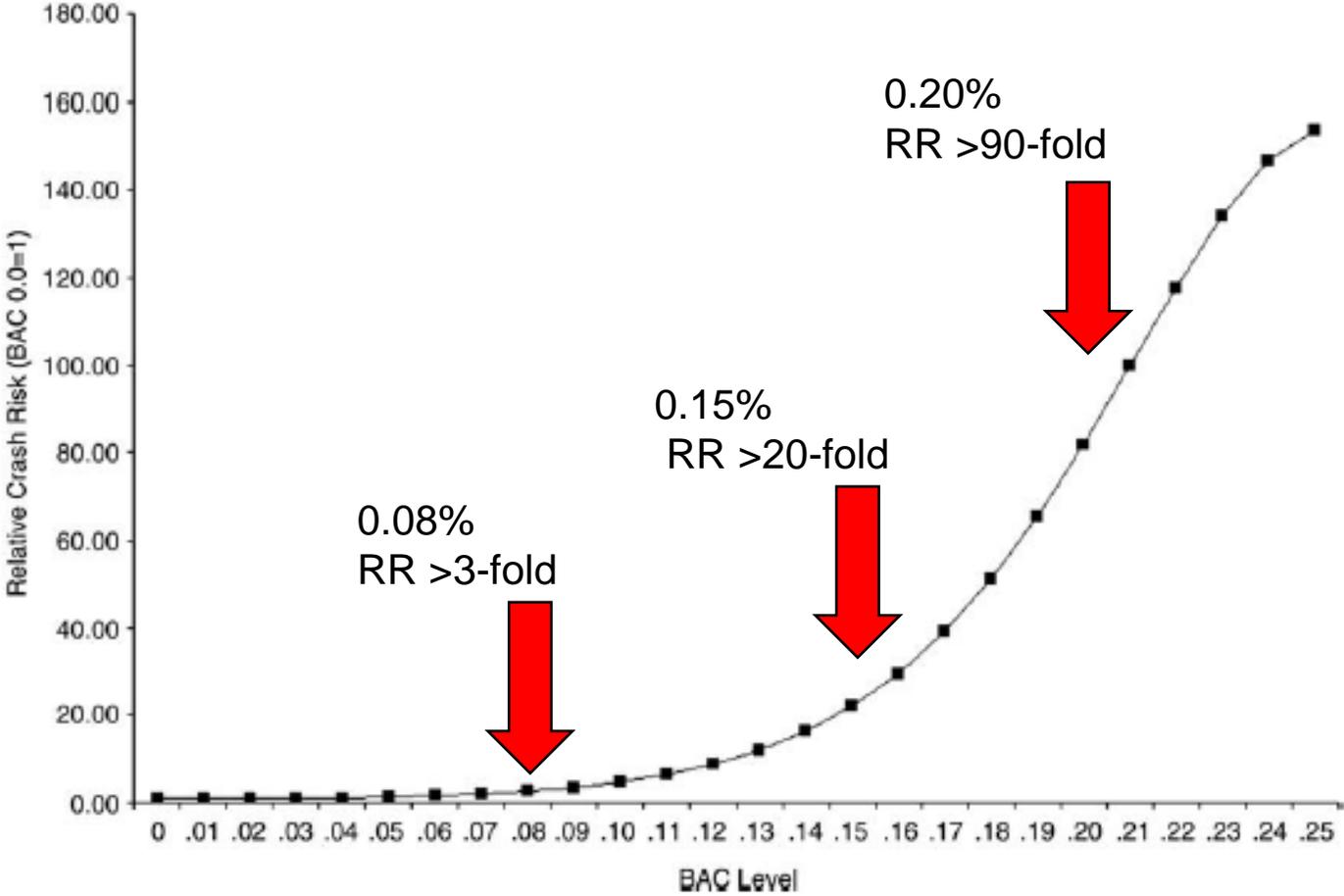


Fig. 1. Final Adjusted Relative Risk Estimate.

Summary: What a Toxicology Expert Provides

- Properly analyzes BAC level
- Calculates Circulating Alcohol Burden at time of testing
- Calculates Total Alcohol Consumed & Number of drinks for an incident
- Determines Retrograde Extrapolation of BAC
- Determines Dose-Response Impairments
- Analyzes Relative Risk for crashes, slip/fall, etc.
- Determines Ethanol-Drug Interactions & Their Effects
- Reports and rebutts, depositions & trials, collaborative work with Standard of Care experts



.....
Thank You!

QUESTIONS?
.....

A background image of a bar scene. A bartender is pouring a golden liquid, likely beer, into several glasses lined up on a bar counter. The lighting is dim and warm, with bokeh light effects in the background. The overall mood is professional and focused on the subject of litigation.

Plaintiff Dram Shop Litigation: *Lawyers for Victims*

**David Lail, Esq.
Charleston, SC
dlail@yaboroughapplegate.com**

RULE #1:

A lawyer shall provide **competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.**

South Carolina Rules of Professional Conduct 1.1

**Warp-Speed
Investigation**

**POS Data
& Other
Technology**

**Intervening
Criminal
Actor**

**WHAT MAKES
DRAM SHOP
CASES
UNIQUE?**

**Industry
Standards,
Rules &
Regulations**

**Toxicology
&
Chemistry**

**Complex
Legal Issues**

SOURCES OF INFORMATION:

- **WITNESSES**
- **PASSENGERS**
- **RECEIPTS IN CAR**
- **CELL PHONES**
- **VEHICLE GPS**
- **SOCIAL MEDIA**
- **CREDIT/DEBIT CARDS**
- **EMPLOYER & BANK RECORDS**
- **SECURITY CAMERA FOOTAGE**
- **POLICE INTERVIEWS**
- **JAIL COMMITMENT FORM**
- **JAIL PHONE CALLS**
- **POLICE BWC & DASHCAM VIDEO**
- **FIRST RESPONDER RECORDS**

THE PRESERVATION LETTER



Tavern & Table
July 17, 2020
Page 2 of 3

VIA PROCESS SERVER
ATTN: Manager
Tavern & Table
100 Church Street
Mount Pleasant, SC 29464

RE: Our Client: Chris
Date of Loss: June 20, 2020
Our File No.: 19-118

Dear Manager:

This letter is to inform you that we are investigating the incident involving Christian Woods who was seriously injured while driving by Courtney Pleasant, driver of our investigation of this matter. We are requesting that you provide us with any and all video surveillance from the Tavern & Table on either June 20, 2020 and June 21, 2020. We are happy to reimburse you for the cost of producing the video footage, or if you prefer, we can pay for it on my expense, please let me know and we will get it set up.

I am also writing to specifically place you, El Jefe Texican Cantina, and any other affiliated entities or individuals on notice to preserve all evidence in this matter. Specifically, and without limitation, we hereby place El Jefe Texican Cantina on notice to preserve, continuing through adjudication of this matter, any and all:

- A) Any and all videotape footage from surveillance cameras, security cameras, or any other recording device located in, at, or near El Jefe Texican Cantina, located at 468 King Street, Charleston, South Carolina, 29403 for the time period including 11:00 a.m. on June 20, 2020 through 3:00 a.m. on June 21, 2019;
- B) Indoor and outdoor security video footage from June 20, 2020 and June 21, 2020;
- C) Any and all receipts from sales, bar tabs, or signed tickets on June 20, 2020 and June 21, 2020;
- D) Any and all receipts for food and alcohol sold to Courtney Pleasant or anyone else in her party either on the same date as the incident or on either June 20, 2020 and June 21, 2020;
- E) Copies of every itemized receipt, including but not limited to, for food and alcohol sold to Courtney Pleasant or anyone else in her party either on the same date as the incident or on either June 20, 2020 and June 21, 2020;

291 East Bay Street / Floor 2 / Charleston, SC 29403

incurred or payment for food and alcohol sold to Courtney Pleasant or anyone else in her party either on the same date as the incident or on either June 20, 2020 and June 21, 2020;

- F) Copies of the itemized breakdown of the food and alcohol sold to Courtney Pleasant or anyone else in her party either on the same date as the incident or on either June 20, 2020 and June 21, 2020;
- G) Any and all photographs, images, or video records on June 20, 2020 and June 21, 2020;
- H) Electronic files or other any other storage media which contain any information related to the incident or on either June 20, 2020 and June 21, 2020;
- I) Files or data containing information related to the incident or on either June 20, 2020 and June 21, 2020;
- J) All social media content, including but not limited to, Facebook, Instagram, Twitter, and any other social media platform, for the time period including 11:00 a.m. on June 20, 2020 through 3:00 a.m. on June 21, 2019;

We understand that you may have stored in paper, magnetic, other electronic, or any other storage media subject to discovery. Be advised that the source of discoverable information in litigation and admissible at trial.

You are very specifically notified that you are prohibited from any way ALTER ANYTHING FROM THE ORIGINALS OUTSIDE OF Tavern & Table on June 20, 2020 and June 21, 2020.

By way of specific explanation, you are prohibited from deleting, altering, or destroying, in any way, all copies of electronic mail (e-mail), text messages, or electronic files, and/or transmittals; voice-mail; audio or video recordings of any kind; computer programs (whether private, commercial, or a work-in-progress); programming notes or instructions; output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs, and outlines; operating systems, source code of all type; PIF files; batch files; ASCII files; and all miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, deleted file or file fragment. Electronic data also includes any and all information stored in hard disks, floppy disks, CD-ROM disks, Bernoulli disks and their equivalents, magnetic tapes of all kinds, and computer chips (including but not limited to EPROM, PROM, RAM, and ROM). Electronic data also includes the file, folder tabs, containers, or labels appended to any storage device containing electronic data. You are hereby placed on notice that you are prohibited from:

- A) Initiating any procedures that would alter any active, deleted, or fragmented electronic data. Such procedures may include, but are not necessarily limited to, deleting or attempting to delete any electronic information, saving newly created files

I am also writing to specifically place you, El Jefe Texican Cantina, and any other affiliated entities or individuals on notice to preserve all evidence in this matter.

Specifically, and without limitation, we hereby place El Jefe Texican Cantina on notice to preserve, continuing through adjudication of this matter, any and all:

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- B) Indoor and outdoor security video footage from June 20, 2020 and June 21, 2020;
- C) Any and all receipts from sales, bar tabs, or signed tickets on June 20, 2020 and June 21, 2020;

Damned if you do, damned if you don't

WARP-SPEED INVESTIGATION



6.1x



WARP-SPEED INVESTIGATION



**JAIL
CALLS**

WARP-SPEED INVESTIGATION

SOCIAL MEDIA

Verizon 7:47 AM 100%

Wade Boals is with Meta Carter Boals and 4 others.



Wade Boals is with Meta Carter Boals and 4 others.

10h · 🌐

We were doing a little test drive this evening on our new specialty drink coming soon to Saltwater Cowboys.

"The Shipwreck" 🏴‍☠️ 🍒 🍓 🍊 5 quarts of rum fun that could get you lost at sea if your not careful. Keep on the lookout. Coming Soon!



Wade Boals
10h · 🌐



Like



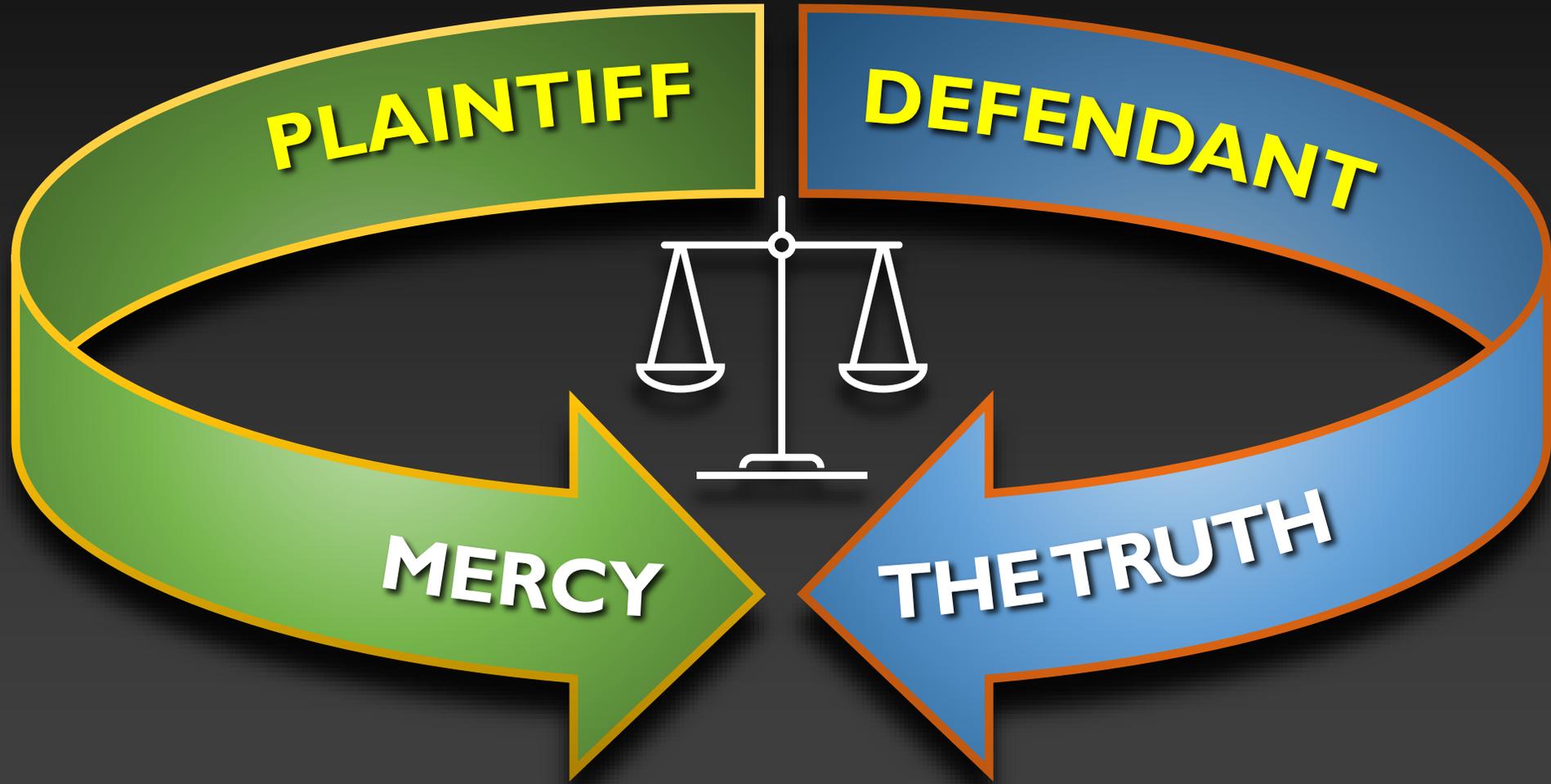
Comment



Share



INTERVENING CRIMINAL ACTOR



INTERVENING CRIMINAL ACTOR

AFFIDAVIT OF THE DEFENDANT

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

AFFIDAVIT OF STEVEN CARLOS
KEAVENEY

Personally appeared before me, Steven Carlos Keaveney, who, being duly sworn,

deposes

mind to

Rd, Sun

began drinking beer. My friend, Richard Coomes, met me at Shooters around 12:00 noon and

we stayed at Shooters until ar

3. Richard and I

that I rent on Miles Road to w

car until around 3 or 4 pm and

best of my recollection, I dra

an hour after arriving.

4. After leaving Side Pocket, Richard ar

my dog. We stayed there approximately 15 to 30 m

at my house.

5. Next, we left my house with the dog

between 5:00 pm. or 6:00 pm.

6. I parked my pickup truck in Shooters' parking lot and went inside, along with

Richard, and we joined my wife at a table inside the bar and I began ordering rounds of drinks

and shots for the three of us.

7. To the best of my recollection, I drank at least 8 or 9 beers and also took some shots of liquor over the next few hours at Shooters.

9. From 5:00 pm until I was involved the wreck, all of the alcohol that I drank was served to me by the bartender at Shooters.

11. I was over-served by the bartender at Shooters. While at Shooters, I was drunk, slurring my words, and unsteady on my feet.

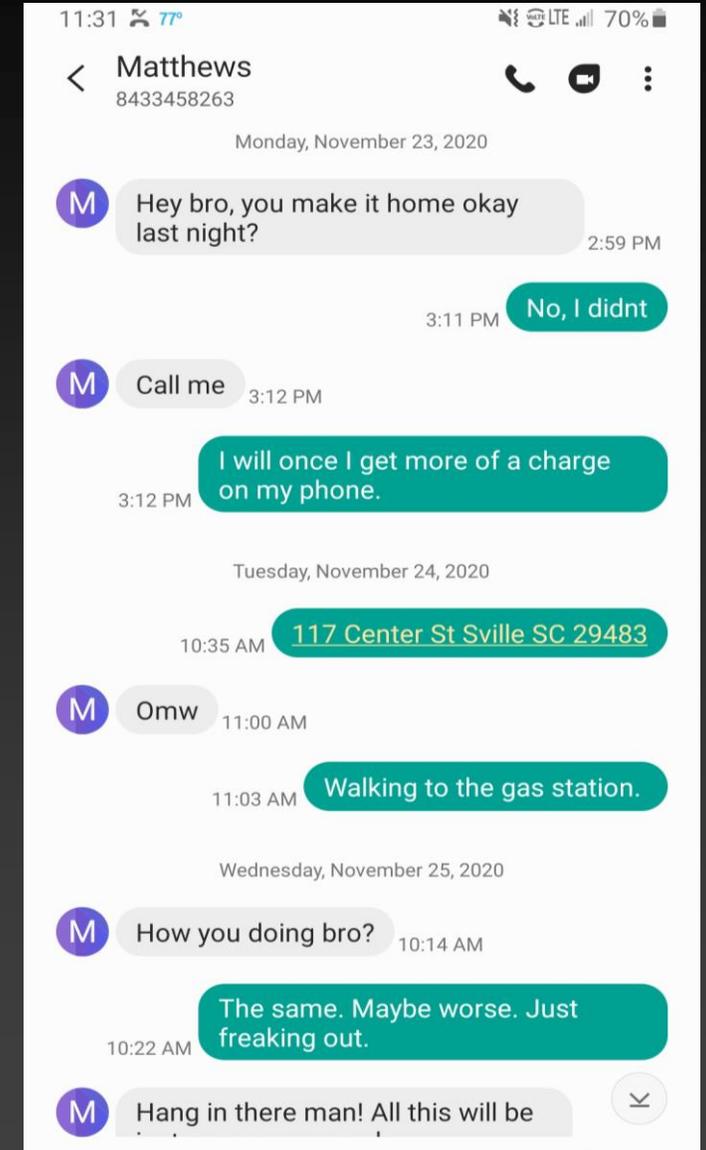
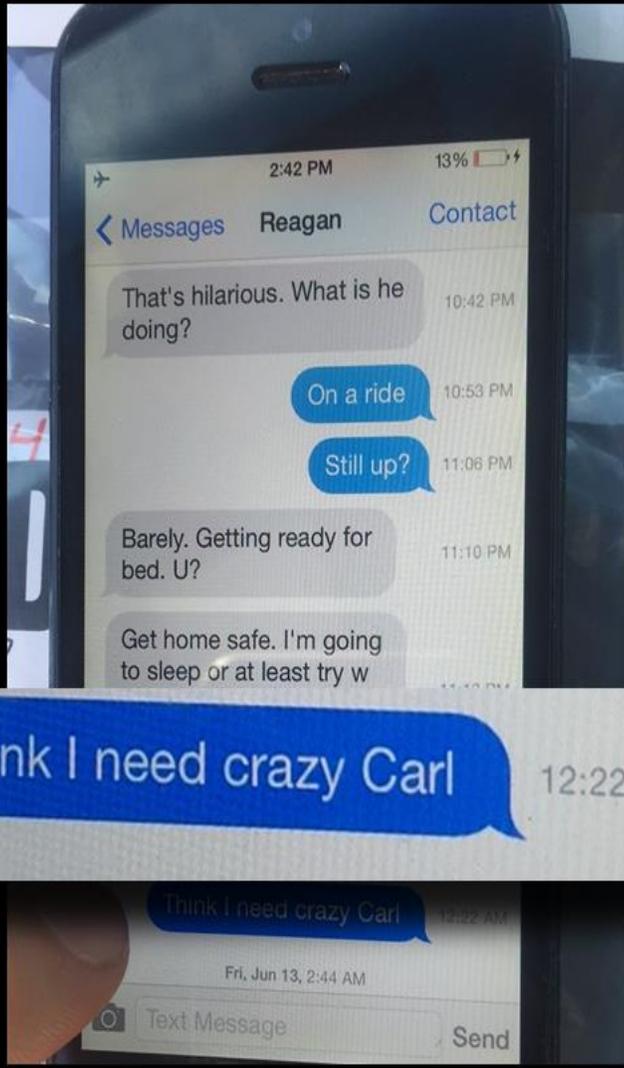
Steven Carlos Keaveney

Subscribed before me
of March 2014.

CR Kuttan

Notary Public for the State of S. C.
My commission expires: 10-14-18

INTERVENING CRIMINAL ACTOR



INTERVENING CRIMINAL ACTOR



**KNOW
THE
SCIENCE**

BLOOD ALCOHOL CHART

The % of alcohol in the drinker's blood can be estimated by counting his or her drinks (one drink equaling 1 volume oz. of 100 proof alcohol or one 12 oz. bottle of beer or 5 ozs. of table wine).

FEMALE

MALE

		BODY WEIGHT IN POUNDS																
	90	100	120	140	160	180	200	220	240	100	120	140	160	180	200	220	240	
Drinks	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	
1	.05	.05	.04	.03	.03	.03	.02	.02	.02	.04	.03	.02	.02	.02	.02	.02	.02	IMPAIRMENT BEGINS
2	.10	.09	.08	.07	.06	.05	.05	.04	.04	.08	.06	.05	.05	.04	.04	.03	.03	
3	.15	.14	.11	.10	.09	.08	.07	.06	.06	.11	.09	.08	.07	.06	.06	.05	.05	
4	.20	.18	.15	.13	.11	.10	.09	.08	.08	.15	.12	.11	.09	.08	.08	.07	.06	POSSIBLE CRIMINAL PENALTIES
5	.25	.23	.19	.16	.14	.13	.11	.10	.09	.19	.16	.13	.12	.11	.09	.09	.08	
6	.30	.27	.23	.19	.17	.15	.14	.12	.11	.23	.19	.16	.14	.13	.11	.10	.09	—
7	.35	.32	.27	.23	.20	.18	.16	.14	.13	.26	.22	.19	.16	.15	.13	.12	.11	
8	.40	.36	.30	.26	.23	.20	.18	.17	.15	.30	.25	.21	.19	.17	.15	.14	.13	LEGALLY INTOXICATED
9	.45	.41	.34	.29	.26	.23	.20	.19	.17	.34	.28	.24	.21	.19	.17	.15	.14	
10	.51	.45	.38	.32	.28	.25	.23	.21	.19	.38	.31	.27	.23	.21	.19	.17	.16	CRIMINAL PENALTIES

Principles of Clinical Toxicology

Third Edition

ORIGINAL RESEARCH & CONTRIBUTIONS

Special Report

The Limits of Tolerance: Convicted Alcohol-Impaired Drivers Share Experiences Driving Under the Influence

Sandra C Lapham, MD, MPH, FASAM

Driving After Binge Drinking

Timothy S. Naimi, MD, MPH

Background: Although binge drinking is associated with increased risk of motor vehicle crashes, the extent of the risk is unclear. This review examines the relationship between binge drinking and motor vehicle crashes.

Effects of Dram Shop Liability and Enhanced Overservice Law Enforcement Initiatives on Excessive Alcohol Consumption and Related Harms

Two Community Guide Systematic Reviews



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Contents lists available at ScienceDirect

Forensic Science International

journal homepage: www.elsevier.com/locate/forsciint



Review

Evidence-based survey of the elimination rates of ethanol from blood with applications in forensic casework

Alan Wayne Jones*

Department of Forensic Genetics and Forensic Toxicology, National Board of Forensic Medicine, Umeå University, Umeå, Sweden

INDIANA UNIVERSITY

Center for Studies of Law in Action

BORKENSTEIN COURSE

Stages of Acute Alcoholic Influence/Intoxication

A Review of Alcohol-Impaired Driving: The Role of Blood Alcohol Concentration and Complexity of the Driving Task

Article in Journal of Forensic Sciences · July 2013

DOI: 10.1111/1556-4029.12227 · Source: PubMed



Effects of Low Doses of Alcohol on Driving-related Skills: A Review of the Evidence

vention for by reduced comes late e had the

SC Dram Shop Legal Issues:

- **Commercial Defendant – Duty Based on Statutes**
- **Non-Commercial Defendant – “Social Host” Duty Based on Common Law**
- **Intoxicated Customer or Underage Customer**
- **Transfer vs. Sale of Alcohol**
- **Intoxicated: Knew or should have known**
- **Pure Joint & Several Liability**
- **Proximate Cause**
- **Fifth Amendment**

INDUSTRY STANDARDS, RULES & REGS

TIPS® eTIPS On Premise 3.0



Welcome to eTIPS On Premise

Welcome to eTIPS On Premise, the web-based version of the TIPS for On Premise program.

As a server of alcohol, you have an important job. You are expected to balance the needs of your guests with the expectations of your managers and the requirements of the law. That is a lot to do!

eTIPS On Premise can help you. This course is designed to build on your existing skills as a server of alcohol to prevent intoxication, drunk driving, and underage drinking. You will learn strategies and skills that can help you balance providing excellent customer service with ensuring only legal alcohol sales.

The course is broken down into three main sections: Legal Information, Alcohol Information, and Intervention Information. Once you complete the course and pass the certification exam, you will receive your eTIPS On Premise certification card!

If you need to leave this course before you finish it, you MUST click the LOGOUT button. Otherwise, your course progress may be lost and the course may no longer be usable.

Click **NEXT** to continue.

Welcome to
eTIPS On Premise

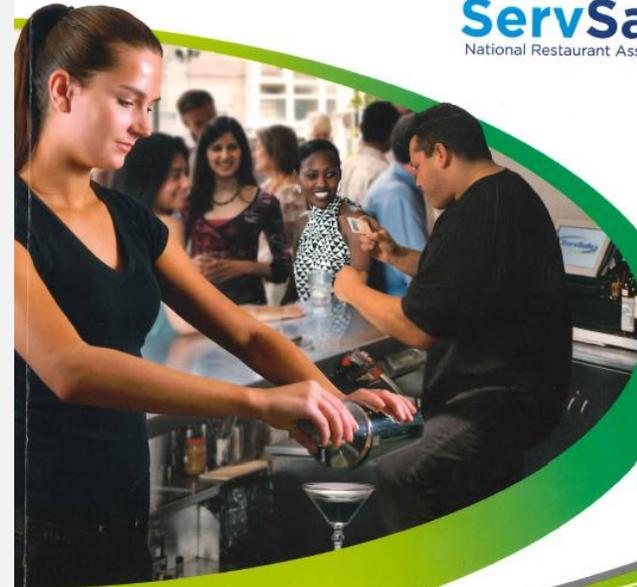


<
BACK

NOTES

SCREEN 1 OF 230

>
NEXT



SERVSAFE ALCOHOL®
Fundamentals of Responsible Alcohol Service
SECOND EDITION

INDUSTRY STANDARDS, RULES & REGS

ALCOHOL AWARENESS

ALCOHOL

- **PURPOSE AND OBJECTIVE:** TO DEFINE THE PROPER HANDLING OF ALCOHOL RELATED PROBLEMS.

- **PURPOSE AND OBJECTIVE:** TO DEFINE THE PROPER HANDLING OF ALCOHOL RELATED PROBLEMS.
- THE LEGAL DRINKING AGE IS 21 YEARS OF AGE.
- ID'S MUST BE CHECKED FOR ANYONE WHO APPEARS TO BE YOUNGER THAN 21.
- THE FOLLOWING ID'S ARE ACCEPTABLE ONLY:
 - STATE ISSUED DRIVER'S LICENSE WITH PICTURE
 - PASSPORT
 - STATE OR MILITARY PICTURE ID
- THE MANAGER ON DUTY MUST BE NOTIFIED OF ANY ALCOHOL RELATED PROBLEMS.
 - MISUSE OF IDENTIFICATION
 - NO ID OR QUESTIONABLE LOOKING ID (OUT OF STATE)
 - A PICTURE OF A PICTURE ID IS NOT ACCEPTABLE
 - FAKE, ALTERED OR TAMPERED ID
 - EXPIRED ID
 - SIGNS OF INTOXICATION
 - SLURRED SPEECH
 - BELLIGERENT BEHAVIOR
 - FOUL LANGUAGE
 - LOSS OF COORDINATION
 - DISRUPTING OTHER GUESTS
 - GLASSY EYES

○ SIGNS OF INTOXICATION

- SLURRED SPEECH
- BELLIGERENT BEHAVIOR, ATTENTION GRABBING BEHAVIOR
- FOUL LANGUAGE
- LOSS OF COORDINATION
- DISRUPTING OTHER GUESTS
- GLASSY EYES

- ANY DECISION REGARDING THE SERVICE OR NON-SERVICE OF ALCOHOLIC BEVERAGES SHOULD BE MADE BY THE MANAGER ON DUTY; HOWEVER, A BARTENDER OR SERVER HAS THE RIGHT AND OBLIGATION TO REFUSE SERVICE, BUT MUST NOTIFY THE MANAGER ON DUTY.

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○ **REMEMBER:**

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 - DO NOT SERVE ALCOHOL TO AN INTOXICATED GUEST UNDER ANY CIRCUMSTANCES
 - NO ALCOHOLIC BEVERAGES OF ANY TYPE MAY BE REMOVED FROM THE PREMISES
 - NO GUEST KNOWN TO BE DRIVING ANY MOTOR VEHICLE SHOULD BE ALLOWED TO LEAVE OUR PREMISES IN AN INTOXICATED STATE. ALL REASONABLE ACTIONS SHOULD BE TAKEN FOR THE PROTECTION OF OUR GUESTS. THESE MAY INCLUDE:
 - FREE NON-ALCOHOLIC BEVERAGE
 - OFFER TO CALL A RIDESHARE SERVICE ON THEIR BEHALF
 - IF GUEST REFUSES ALL COURTESIES, DOCUMENT THE INCIDENT, AND CALL 911 IF NECESSARY. RECORD LICENSE PLATE, MODEL, AND COLOR OF VEHICLE.

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INDUSTRY STANDARDS, RULES & REGS

GUIDELINES AND EXPECTATIONS FOR ALL BAR STAFF

EVERY ENCOUNTER, EVERY PARTY, EVERY GUEST

1. Make sure you, your bar top and your wells are picture perfect 15 minutes prior to opening
 - Have at least one bartender behind the bar ready to serve first guests

4. Maximize customer spending

- Highlight the premium cocktails
- Be knowledgeable about your liquor section
- Give opinions and note crowd-pleaser cocktails (not suggestions, which may lead to send-backs)
- Ask guests if they want another beverage before their last sip, half a drink when busy
- Remember guests' drink preference if possible (especially hotel guests and locals)
- Remove empty beverages, but ask first (it creates the feeling of needing something in front of them)
- Keep visually checking on your guests (make eye contact so they know you are noticing them)
- Communicate with each other so the service bar is taken care of
- BE WARM, GENUINE AND CORDIAL WHEN YOU THANK THEM AND PRESENT THE CHECK (\$\$\$)

5. Make your guests actually like you and remember you

- Talk to your guests more than you talk to your co-workers
- Show your personality and use your sense of humor
- It's their party, but you are there to enhance it
- Be attentive and focused at the bar
- Establish a rapport with guests
- Don't over-socialize with one group and ignore another
- Never make light of a customer complaint
- Don't make excuses for anything
- Figure out a way to make requests happen unless they break rules
- Always appear capable and in control, regardless of the chaos
- Avoid the "I'm doing you a favor attitude," unless you are, in fact, doing them a favor
- Do not whine, complain or argue in front of or with guests (It's the only thing they will remember)

POS DATA & OTHER TECHNOLOGY



 toast

 Aloha®

 Upserve

 BrewPOS™

 Revel
SYSTEMS

THINGS AREN'T ALWAYS WHAT THEY SEEM

IBER

**Chill's
Grill & Bar**
2505 Broad Street
Sumter, SC 29150
803-905-5600

Server: Amanda 09/17/2008
82/1 7:24 PM

Eco Domani Pino Glass (3 @5.49) 16.47 ⁴

Eco Domani Pino Glass (3 @5.49) 16.47
Spinach Dip 7.29

Subtotal 23.76
Tax 2.14

Total 25.90

M/C 25.90
Gratuuity 4.00
Total 29.90
Auth:080088

X _____

IBE

**Chill's
Grill & Bar**
2505 Broad Street
Sumter, SC 29150
803-905-5600

Server: Amanda 09/17/2008
82/4 7:24 PM

Bud Lt 23 (3 @3.25) 9.75

Bud Lt 23 (3 @3.25) 9.75

Bud Lt 23 4.25

Total 23.21

M/C 23.21
Gratuuity 7.00
Total 30.21
Auth:006851

X _____

IBER.PRT

**Chill's
Grill & Bar**
2505 Broad Street
Sumter, SC 29150

Yueng 23 (2 @4.99) 9.98
Bud Lt 23 (4 @4.25) 17.00
Eco Domani Pino Glass (5 @5.49) 27.45
Bud Lt 23 (2 @3.25) 6.50
Bud Lt 16 2.25
Yueng 16 2.99

Bud Lt 16 2.25
Yueng 16 2.99

Subtotal 66.17
Tax 0.00

Total 66.17

M/C 66.17
Auth:091588

+ Gratuuity: _____

= Total: _____

X _____

POS DATA & OTHER TECHNOLOGY

CALIFORNIA DREAMING-CHARLESTON
CALIFORNIA DREAMING
1. ASHLEY POINT DRIVE
CHARLESTON SC 29407

Check: 0816 Table: 978 #Party: 1
Server: DECK BAR 19:29
BAR

CROWN	5.95
BARTON'S	1.95
14OZ	23.95
WARM R	0.00
FF	0.00
A	0.00
SAL/NO DRESS	0.00
A-HOUSE	5.95
BARTON'S	1.95
KENTUCKY GENTLEMAN	1.95
BARTON'S	1.95
BARTON'S	1.95

Sub Total: 51.45

Tax: 6.48

21:59 Total: 57.93

Payments:	Amt-Tend	Tip/Chg	Tally
AMEX	72.93	15.00	57.93

07/23/2011 22:12 -----
57.93

Memo: 508572,xxxxxxxxxxxx2025,xx/xx, 57.93

Terminal: Bar Left Term
Cashier: DECK BAR

THINGS AREN'T ALWAYS WHAT THEY SEEM

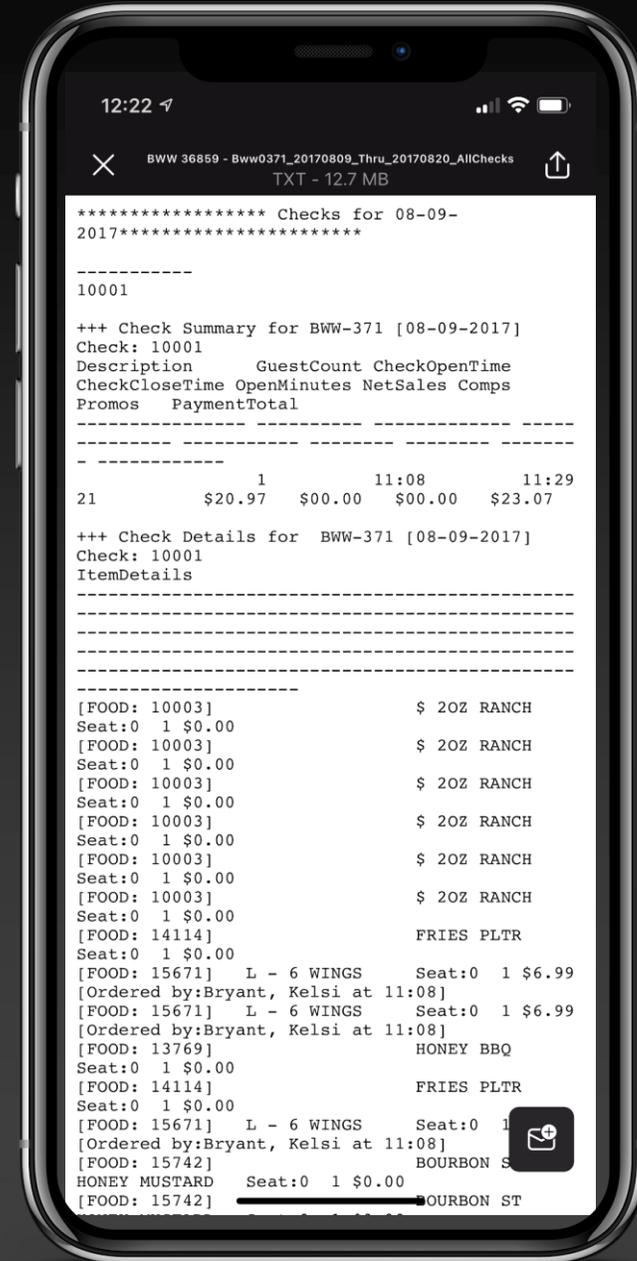


Beware of Multiple Bars

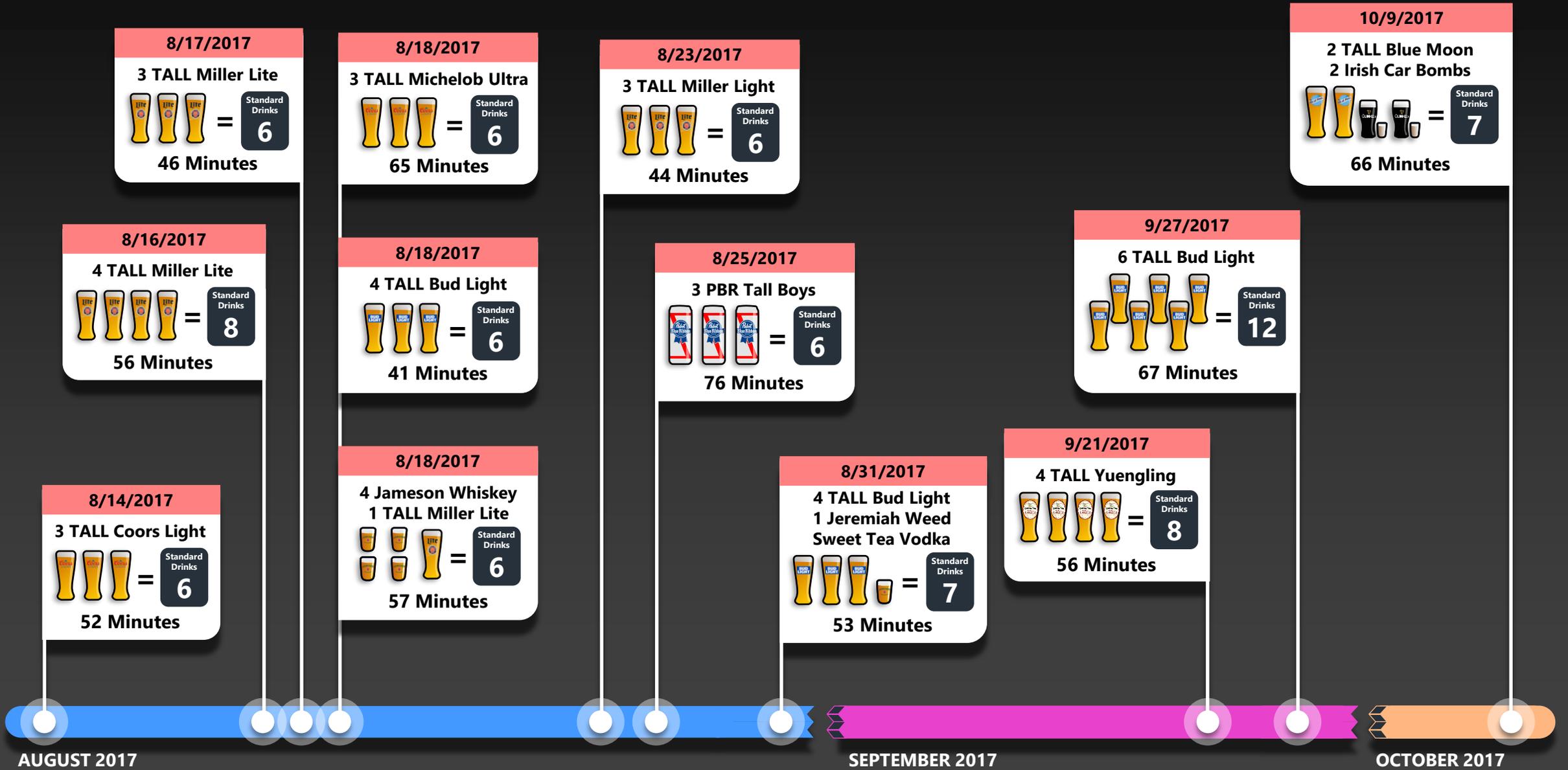
ISOLATED INCIDENT?

38,000+ Pages

What Story Does it Tell?



HISTORY OF OVERSERVICE OF ALCOHOL BY BARTENDER



AUGUST 2017

SEPTEMBER 2017

OCTOBER 2017

A blurred background of a bar with people and glasses of beer. The scene is dimly lit with warm, bokeh-style lights. In the foreground, several glasses of beer are visible on a bar counter, with water droplets on the surface. A person's hand is seen on the left, and another person's arm is on the right. The overall atmosphere is social and relaxed.

QUESTIONS?

DRAM SHOP DEFENSE





ALCOHOL TRAINING

- John Cocklin – Alcohol Regulation



exigent



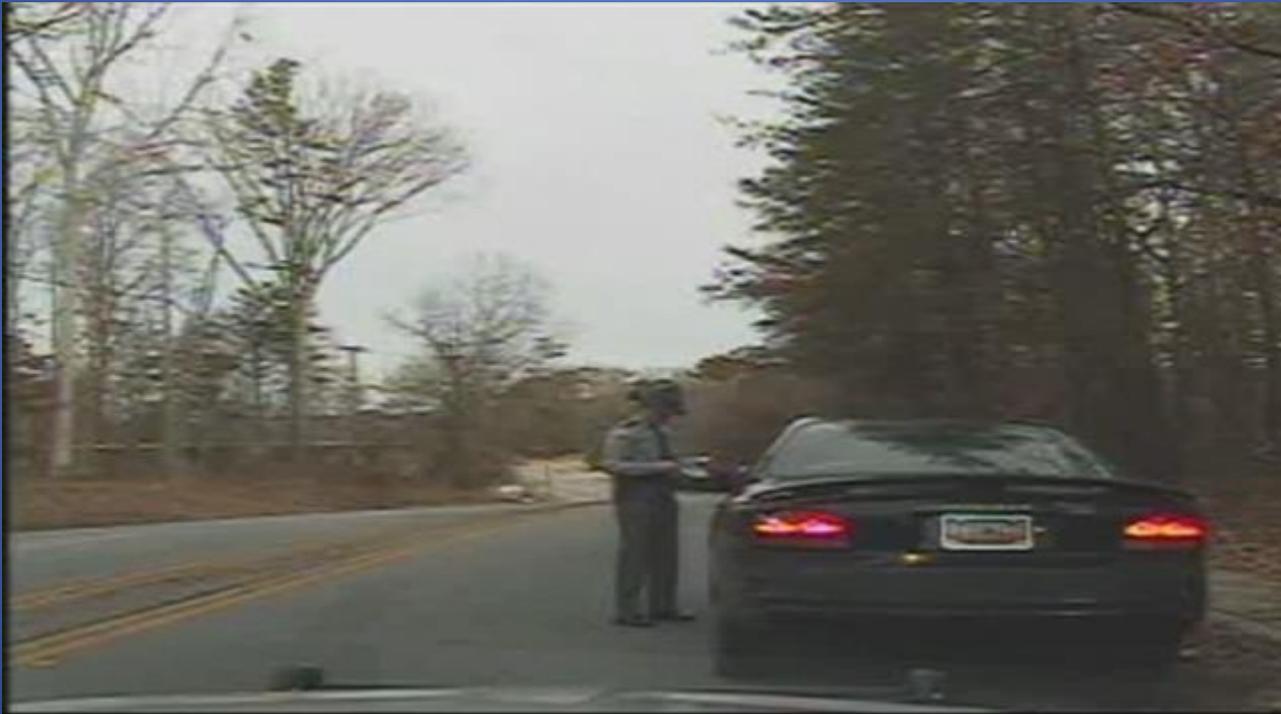
CONSUMPTION AFTER THE FACT



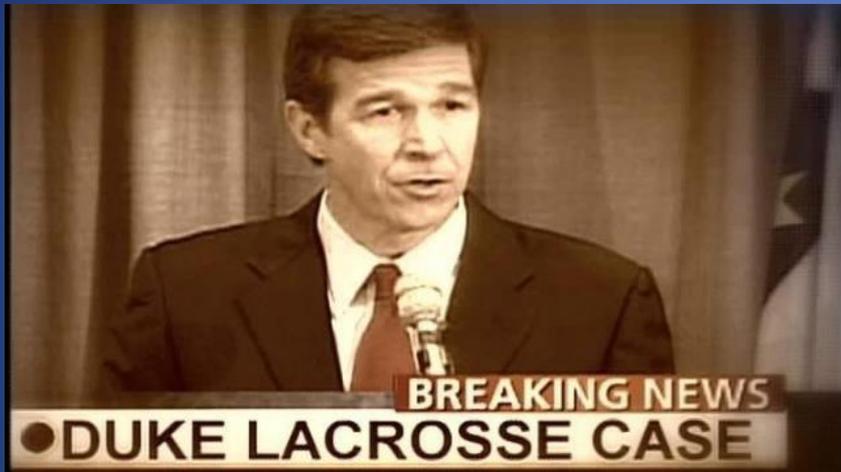
OTHER CONTRIBUTING FACTORS



CRIMINAL RECORDS



SOCIAL MEDIA



POINT OF SALE SYSTEMS

Time	Type	Transaction
9:19 08:19 PM	ORDER ITEMS	Emp 448 NIGHT BAR 2 ordered \$ 8.00 for DODSON BENJAMIN Chk:70190 4.00 Gin 4.00 Gin
9:51 08:51 PM	ORDER ITEMS	Emp 448 NIGHT BAR 2 ordered \$ 8.00 for DODSON BENJAMIN Chk:70190 4.00 Gin 4.00 Gin
10:12 07:12 PM	ORDER ITEMS	Emp 448 NIGHT BAR 2 ordered \$ 12.99 for DODSON BENJAMIN Chk:70190 12.99 3 Shrimp Skew 0.00 LEM PEPPER 0.00 LEM PEPPER 0.00 LEM PEPPER 0.00 W/ BROCCOLI 0.00 W/ RICE
11:12 08:12 PM	ORDER ITEMS	Emp 448 NIGHT BAR 2 ordered \$ 28.00 for DODSON BENJAMIN Chk:70190 4.00 Corona 4.00 Corona 6.00 Rumple 6.00 Rumple 6.00 Rumple
11:52 08:52 PM	ORDER ITEMS	Emp 448 NIGHT BAR 2 ordered \$ 22.00 for DODSON BENJAMIN Chk:70190 4.00 Corona 6.00 Rumple 6.00 Rumple 6.00 Rumple
12:18 09:18 PM	ORDER ITEMS	Emp 448 NIGHT BAR 2 ordered \$ 18.00 for DODSON BENJAMIN Chk:70190 4.00 Corona 6.00 Rumple 6.00 Rumple
12:49 09:49 PM	CLEARED ITEMS	Emp 448 NIGHT BAR 2 cleared \$ 6.00 from DODSON BENJAMIN Chk:70190 6.00 Goldschlager
1:14 09:49 PM	ORDER ITEMS	Emp 448 NIGHT BAR 2 ordered \$ 32.00 for DODSON BENJAMIN Chk:70190 6.00 Goldschlager 6.00 Goldschlager 6.00 Goldschlager 6.00 Goldschlager 6.00 Goldschlager 2.00 Vodka Special
1:40 10:14 PM	ORDER ITEMS	Emp 448 NIGHT BAR 2 ordered \$ 4.00 for DODSON BENJAMIN Chk:70190 2.00 Vodka Special 2.00 Vodka Special
1:40 10:40 PM	APPLY PAYMENT	VISA on DODSON BENJAMIN Chk:70190 by 448 NIGHT BAR 2 146.60 Tip:0.00 ID:442777006393862 Exp:0414
1:40 11:03 PM	ADJUST PAYMENT	VISA on DODSON BENJAMIN Chk:70190 by 448 NIGHT BAR 2

Approximate Blood Alcohol Content (BAC) In One Hour

Source: National Highway Traffic Safety Administration

Drinks	Body Weight In Pounds								Influenced
	100	120	140	160	180	200	220	240	
1	.04	.03	.03	.02	.02	.02	.02	.02	Possibly
2	.08	.06	.05	.05	.04	.04	.03	.03	
3	.11	.09	.08	.07	.06	.06	.05	.05	Impaired
4	.15	.12	.11	.09	.08	.08	.07	.06	
5	.19	.16	.13	.12	.11	.09	.09	.08	Legally Intoxicated
6	.23	.19	.16	.14	.13	.11	.10	.09	
7	.26	.22	.19	.16	.15	.13	.12	.11	
8	.30	.25	.21	.19	.17	.15	.14	.13	
9	.34	.28	.24	.21	.19	.17	.15	.14	
10	.38	.31	.27	.23	.21	.19	.17	.16	

Subtract .015 for each hour after drinking.

One drink equals 1.5 oz. of 80 proof liquor (40%), 12 oz. beer (4.5%), or 5 oz. wine (12%).
 Note: The figures are averages and may vary based on the amount of food in your stomach.



First-Party vs. Third-Party Claim & Case Illustration



South Carolina no longer recognizes a “first party” cause of action against tavern owner by an intoxicated adult for alleged violation of the alcohol control statutes Tobias v. Sports Club, Inc. 323 S.C. 345 (1998)

In Tobias, the Court concluded that our alcohol control statutes do not create a first party cause of action for an intoxicated adult patron, but that they do permit a third party action.

Public Policy is not served by allowing an intoxicated adult to maintain a suit for injuries which result from his own conduct. See Lydia v. Horton 583 S.E. 2d 750, 752 (2003)

First Party vs. Third Party Issues Post Tobias

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
Lindsey Stewart, Personal Representative)
of the Estate of Shaun Robert Moore)
)
Plaintiff,)
)
vs.)
)
Apple J, L.P., doing business as Applebee's)
John/Jane Doe, Manager, and)
Stabler L. Inabinet)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-38- 802

SUMMONS
(Jury Trial Demanded)
(Wrongful Death)

Summary Judgment Granted in Favor of Tavern

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
)
Lindsey Stewart, Personal Representative of)
the Estate of Shaun Robert Moore,)
)
Plaintiff,)
)
v.)
)
Green Apple, LLC, d/b/a Applebee's;)
John/Jane Doe, and Stabler L. Inabinet,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASES NOS.:
2014-CP-38-00802
2014-CP-38-00803

ORDER GRANTING)
SUMMARY JUDGMENT)
TO)
DEFENDANT GREEN APBLE,)
LLC, D/B/A APPLEBEE'S)

2015 AUG 14

FILED
WITH
CLERK OF COURT
ORANGEBURG, SC



Take Away

First Party/Third Party Distinction

- Know your Plaintiff, issues of law, and affirmative defenses
- With a first party Plaintiff, conduct discovery through the lens of general negligence, i.e. legal duty owed to a first-party Plaintiff, as well as through the lens of a dram shop action
- Ensures the record is complete for purposes of appeal