

continued from "Drunk Driving" page 2  
\$1000. If there is a prior DWI conviction within the past 5 years, a 5-day jail sentence or 30-day community service sentence will be imposed, and enhanced fines and license revocation periods will apply.

**DWAI:** A maximum jail term of 15 days and a mandatory license revocation period of 90 days. Mandatory fines range from \$300 to \$500.

#### What is the effect of refusing the chemical test?

Refusing the chemical test can have serious consequences. The driver's license will be immediately suspended and he will be summoned to a NYS DMV "refusal hearing". If it is determined that the driver refused the chemical test, his license will be revoked for one year, even if he is ultimately found not guilty of an alcohol-related offense. The refusal is admissible at trial, so long as the person was warned of the consequences of refusing. In the absence of a compelling reason to

refuse the test, this can have a highly prejudicial effect on the outcome of the trial.

Most District Attorney's offices have a policy of not offering a guilty plea to the lesser offense of Driving While Impaired to drivers who have refused the test, especially where there have been personal injuries or property damage.

If you have any uncertainty about whether to take the test, request an opportunity to call your attorney. Inform the arresting officer that you are not refusing the test, just requesting advice from your attorney. Police are required to make a "reasonable" effort to contact your attorney at a telephone number that you provide them - as long as it does not interfere with the administration of the breath test within 2 hours of the arrest. Most arresting officers will disallow your request and consider it a refusal, but their disallowance may explain the decision for a refusal of the breath test.

#### Will there be a Video-tape?

The NYPD routinely videotapes the

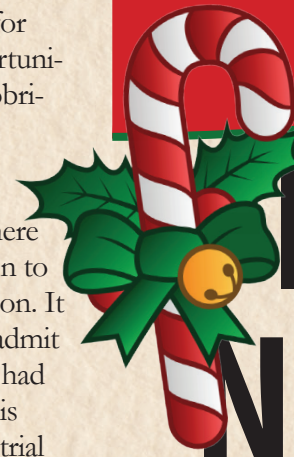
officer's request to submit to the chemical test at a precinct within two hours of the arrest. Because the tapes are played for the jury, they provide a unique opportunity for the motorist to establish his sobriety and/or shed light on his refusal.

#### Should I speak to the officer?

You should be cooperative, but there is no penalty for limiting conversation to pedigree information. Don't ramble on. It is not uncommon for a motorist to admit having come from a party or having had one or two drinks. Admissions of this nature will be offered as evidence at trial and where the motorist elects not to submit to the chemical test, will confirm the presence of alcohol.

Once placed under arrest, a clear and unequivocal request to speak with an attorney will effectively invoke the constitutional right to counsel. This right cannot be waived unless the attorney is present and will generally render any subsequent statements inadmissible.

Vol. 79



# FIREFIGHTERS' NEWSLETTER



## YEAR IN REVIEW

### The Victim Compensation Fund is Permanently Extended Here's what you have to do now

This year, the 9/11 community achieved a historic victory, the permanent extension of the Victim Compensation Fund. Thanks to the extraordinary efforts of activists and advocates, the 9/11 community will have access to health care and compensation for 9/11 illnesses for the rest of their lives.

#### What To Do Now

**Get medical monitoring and treatment:** All active and retired FDNY members who responded on 9/11 should make sure to go to their WTC medicals. Do not blow this off. As responders, you were in the epicenter of the disaster, and had the most severe exposure. You must be diligent about monitoring your health. Early detection can save your life.

**Get a skin cancer check yearly:** Everyone who was exposed should go for annual skin checks. 68 different cancers have been linked to exposure to the toxic dust, and skin cancers are the most common.

**Find out whether you have been certified:** Once an illness has been certified as WTC-related, you are entitled to health care and compensation for that condition. Therefore, it's extremely important that you know which conditions you have been certified for. You can find out whether you have been certified when you go for your WTC medical exam, or you can call the WTC Health Pro-

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Mike Barasch signing the bunker coat Carolyn Maloney wore daily for 7 months, until the VCF was permanently extended.

## PREPARING A CD-72 THE RIGHT WAY

By popular request, we are reprinting our tips for properly preparing a CD-72. For those probies who are just starting out, and as a reminder to those with more experience, your CD-72 can mean the difference between an accident-disability pension and an ordinary-disability pension. But firefighters and officers are given surprisingly little guidance on how to fill out a CD-72 in a way that takes your legal rights into account. This article is intended to give you some pointers.

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Happy Holidays From All Of  
Us At Barasch & McGarry

During this season of giving, we want  
to remind you that our firm prepares  
free wills and health care proxies for all  
members and their spouses.  
Please call us for yours.

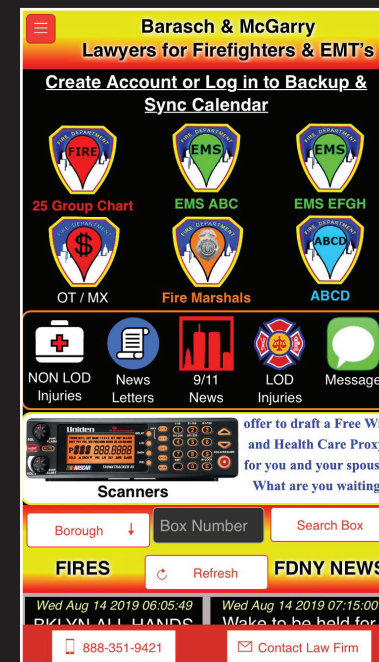
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We have been  
hearing rave  
reviews about the most  
recent version of our  
FREE FDNY app. We  
are so glad you've been  
enjoying it. Here are a  
few of its important  
features:

- A group chart calendar that backs up and syncs to your home computer (most group chart apps do not have this capability)
- SCANNERS that broadcast Borough, Citywide and Fire-ground radio traffic
- Tracks your OT, sick time, vacation, comp time and gives you the ability to pick your mutual partners number
- It has an alarm box search tool, 10-codes, company maps, contacts and links to news of interest to both FDNY & EMS members
- In-app messaging
- Company Location Chart





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gram Help Line at 888-982-4748.

If you believe that you have a condition that should be certified, make sure you bring this up at your WTC medical exam.

#### **File a claim with the Victim**

**Compensation Fund:** You have two years from the date of certification to file a claim with the Victim Compensation Fund. Wrongful death claims must be filed within two years of death. Filing a claim does not waive your rights for illnesses or economic losses that you suffer in the future. Speak to us about how we can help.

**Get your Proof of Presence Affidavits NOW:** All applicants to the VCF must submit proof of presence along with their claim. For FDNY firefighters who were active on 9/11, the FDNY Pension Unit has a Notice of Participation on file for you.

For those of you who were already retired on 9/11, sworn affidavits from witnesses who saw you in the exposure zone are the best proof. Finding witnesses gets harder every year as people move, grow apart, businesses close, and life changes. If you know that you can serve as a witness for someone, reach out to them and let them know. And if you were exposed and don't have your proof of presence, find your witnesses now, and have them fill out a form affidavit. These affidavits do not need to be notarized and are available at our website ([www.wtclawyers.com](http://www.wtclawyers.com)).

**Spread the word:** Many people are under the impression that the WTC Health Program and the VCF are only for first responders. That's absolutely incorrect. People living, working, or going to school in lower

Manhattan on 9/11 or during the 8 months that followed qualify. It is so important that victims know their rights. There were more than 400,000 people in Lower Manhattan. Responders came from all over the country, office workers returned to work, students and teachers and staff went back to school, and residents and workers resumed life in their homes and neighborhoods. Hundreds of thousands of people are unaware of the free health care and compensation they are entitled to. If you know someone who might qualify, please let them know. We would be happy to talk to them about their rights.

As always, please call us at 212-385-8000 if you have any questions.

## SPOTLIGHT ON DRUNK DRIVING

With the holiday season upon us, the best decision you can make is to refrain from drinking and driving. Whether it's handing over the car keys, designating a driver, or taking a taxi, it's the right thing to do.

The New York State Stop-DWI Foundation together with the Governor's office have created the Have a Plan App, which can help you to avoid running into trouble. You can find it at <http://www.stopdwi.org/mobileapp>

Bruce Kaye, Esq., offers answers to some of the most frequently asked questions concerning alcohol-related offenses.

#### **What is the difference between Driving While Intoxicated (DWI) & Driving While Impaired (DWAI)?**

Driving While Intoxicated is a Misdemeanor offense. Conviction will result in a criminal record and expose the driver to enhanced sentencing for subsequent DWI convictions, including elevation to a felony offense.

A conviction for Driving While Impaired is a not a crime, it is classified as a traffic infraction.

#### **How will the DA prove intoxication?**

A Blood Alcohol Concentration of .08 % or more creates a rebuttable presumption that the operator is guilty of DWI. A BAC of at least .05% but less than .07% creates a rebuttable presumption that the operator is guilty of DWAI. The driver's physical condition and appearance, balance and coordination, manner of speech, the odor of alcohol, the manner in which the vehicle was operated and BAC level, may all be used to prove intoxication.

#### **What are the penalties for driving while intoxicated as compared with driving while impaired?**

**DWI:** Up to one year in jail, a mandatory revocation of driving privileges for 6 months, and fines ranging from \$500 to



continued from "CD-72" page 1

#### **No injury is too minor for a well-prepared CD-72**

Every time you are injured, even if you think it's probably minor, a CD-72 must be completed, and it must be done completely, carefully, accurately, and descriptively. The long-term implications of your injuries will likely not be immediately apparent, and you may be creating the report that the pension boards will scrutinize in determining your pension rights, or that a jury will see when it decides whether you are entitled to compensation for your injuries. Every time you prepare or review a CD-72, remind yourself that this is an extremely important record of the injuries and the accident.

#### **The Injuries**

When it comes to identifying your injuries, the biggest mistake that you can make on your CD-72 is leaving out an injured body part.

When someone injures more than one body part in an accident, they tend to focus on the areas that hurt the most, and to ignore areas that feel less serious. People also mistake where their pain is coming from. Pain in your hip can actually mean a problem in your back. Pain in your shoulder may actually happen because of a problem in your neck. Pain is tricky - it can radiate and it can be diffuse. Pain may not be immediately apparent, it may come on over hours or even days. But there are things that you can do to minimize the risk of leaving an injury out of your CD-72.

Take a head-to-toe inventory. If you feel pain, tenderness, discomfort, stiffness, achiness, numbness, tingling, throbbing, pressure, tightness, sore-

ness, or anything unusual to any body part, no matter how minor, include that body part in your CD-72. It's better to err on the side of inclusion.

If you aren't sure where your pain is coming from, list all possibilities. For example, if you feel pain in your shoulder, consider including your neck as well. If you leave the neck out, it may be difficult to relate a neck injury to the accident later on.

If you realize that you did not list an injury in your CD-72, you certainly want to consider an amendment. This should be done as soon as possible after you recognize the problem.

#### **The accident description**

The most common problems that we have seen in the accident description section of the CD-72 is inadequate detail and errors in the description of the accident. The errors often happen because the report is not adequately reviewed or corrected by the member. If you are not filling out the accident description yourself, and chances are you won't be, you must review it carefully, and you must not let it go in with mistakes.

For pension purposes, the difference between an "accident" and an "incident" can turn on the level of detail in the accident description. You may have heard that New York courts define an accident as a "sudden fortuitous mischance, unexpected, out of the ordinary, and injurious on impact." But you cannot just use those words. In fact, you should not use those words. Rather, you must specifically describe what it was about the accident that made it sudden, unusual and unexpected.

Nothing about your job is routine. It's up to you to describe the unique circumstances that caused your inju-

ry. We have an acronym that can help you to think through your accident description: M.I.C.E. (Movement, impact, conditions, emergency care).

**Movement:** Describe the movement involved in the accident. Was it caused by twisting, falling, or jerking? Was it caused by a striking blow? Or a crushing impact?

**Impact:** Note any body parts that received an impact and describe the chain of events leading to the impact.

**Conditions:** Note any condition that contributed to the injury such as heavy smoke, ice, poor lighting, a hole in the floor, a broken step, a loose floor tile, a Collyer's mansion, a falling object, a missing railing, defective equipment, etc. If your equipment contributed to the accident, for example, if you landed on your Scott pack, say so.

**Emergency Care:** Describe any emergency care and anything immediately noteworthy. Did you go to the ER? Did you see an FDNY physician? Were you removed from the scene on a backboard?

#### **Beyond the CD-72**

While your CD-72 is an extremely important document, your medical records are equally important. You must be careful in how you describe your accident and your injuries to your physicians. When a doctor or nurse asks what happened to you, be accurate and thorough. Moreover, if you are experiencing pain or other symptoms, you must let the doctor know. If you are having problems, your medical records should reflect that. Never go in for a follow-up appointment and say you are doing well if you are still having problems.