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FOR IMMEDIATE RELEASE: June 10, 2015

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Mass. Bar Association Secures Release of Breathalyzer Records

Full disclosure means AG review no longer necessary

BOSTON, Mass. — Working with Secretary Daniel Bennett of the Executive Office of Public Safety and Security (EOPSS), Massachusetts Bar Association (MBA) President-elect Robert W. Harnais has secured records pertaining to 39,000 cases where the Draeger 9150 alcohol breath test device was involved. An earlier EOPSS review of the Draeger 9150 cases found approximately 150 instances of invalid results due to “operator error.” The MBA will now be able to review the same information about potentially faulty drunk driving tests, which has also been provided to district attorneys and the Committee for Public Counsel Services (CPCS), the state public defender’s office.

“While the number of cases impacted by improper use or calibration of the Draeger 9150 appears to be limited, both Secretary Bennett and I agree that any miscarriage of justice is unacceptable and that lawyers should also have the opportunity to review these records in order to determine exactly which cases may have been tainted by error,” said Harnais.

“The Massachusetts Bar Association has a long-standing commitment to ensuring fairness in our criminal justice system,” Harnais continued. “We appreciate Secretary Bennett’s willingness to work with the bar to help make sure drunk-driving convictions in the commonwealth are based on accurate and reliable information.”

In May, after concerns about accuracy of the machines, several district attorneys suspended use of the breath tests. Following calls from the Massachusetts Bar Association for more transparency, Secretary Bennett met with Harnais to address the bar’s concerns and agreed to give defense attorneys, via the district attorneys, access to the same information and data previously shared with the district attorneys. Harnais said: “The release of this information makes unnecessary the need for any additional review by the Attorney General’s Office, but we are grateful for Attorney General Maura Healey’s work with the MBA and her continued commitment to fairness and transparency in the criminal justice system.”

Due to CORI restrictions, the materials provided are restricted to lawyer-review only. Defense lawyers with concerns or questions about particular cases should contact CPCS.

Incorporated in 1911, the Massachusetts Bar Association is a non-profit organization that serves the legal profession and the public by promoting the administration of justice, legal education, professional excellence and respect for the law. The MBA represents a diverse group of attorneys, judges and legal professionals across the commonwealth.