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VTL UPDATE 2015

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SCBA Center - Hauppauge, NY**

2015 DMV UPDATE

Table of Contents

| | Page |
|--|-----------|
| Introduction..... | 1 |
| Interesting cases..... | 1 |
| Permanent License Revocation/Problem Driver Restriction..... | 5 |
| Notice of Appeal/Decision on Appeal..... | 12 |
| SCTPVA Trial Practice..... | 20 |
| The Actual SCTPVA Trial..... | 25 |
| Miscellaneous Mentions of Importance..... | 27 |
| Mandatory Ignition Interlock Device..... | 33 |
| Aggravated DWAI §1192-2(a)..... | 37 |
| Aggravated Unlicensed Operation 1st Class E Felony..... | 39 |
| Drinking Driver Program (DDP)..... | 39 |
| The Pre-Conviction Conditional License..... | 43 |
| Zero Tolerance Law..... | 42 |
| Zero Tolerance Penalties..... | 45 |
| Chemical Test Refusal Hearing Zero Tolerance..... | 45 |
| DWI and the Commercial Driver's License..... | 47 |
| Out of State Licensees, Impaired Conviction, Aggravated Unlicensed Operation..... | 48 |
| Collateral Consequences Misdemeanor Conviction of §511..... | 50 |
| Part §136 Denials of License Application..... | 51 |
| Traffic Violations Bureau Appeals..... | 53 |

| | |
|--|-----------|
| Safety Hearing Appeals..... | 54 |
| CPLR ARTICLE §78 – Judicial Review..... | 55 |
| Commercial Driver’s License Non-DWI Offenses..... | 56 |
| Mandatory Suspension – Commercial Drivers Licenses §510-a(3) Suspension of License for Being More than Four Months Behind in Child Support Obligations..... | 57 |
| Suspension of License for Being More than \$10,000 in Past Due Liabilities on State Income Taxes, District Court Etiquette..... | 57 |
| DMV Website, WEBCRIMS Court Appearance Website..... | 61 |
| Younger Law – Class DJ or Junior Licenses VTL §501(3) Graduated Licensing – Very Important VTL Issue in Suffolk County, Suspensions and Revocations of Class DJ/MJ Licenses and Permits VTL §510-c..... | 61 |
| Accident Reexamination – Elder Law §506, Driver Responsibility Assessment, DRA New Math..... | 62 |

Vehicle and Traffic Law UPDATE
NOVEMBER 12 and 18, 2015
DAVID A. MANSFIELD, ESQ.

INTERESTING CASES New York State Official Reports Case

Citator link : <http://www.nycourts.gov/reporter/citations/SearchPage.aspx>

People v. Palu, 47 Misc. 3d 35, 6 N.Y. S. 3d 386 (2015 App Term 2nd Dept 9th and 10 Jud. Dist) Failure to disclose second laser reading of 88 miles per hour does not upset speeding conviction of 90/55.

Matter of Teich v. DMV Appeals Board, 151749/15, NYLJ 1202730329943, at 1* (Sup NY, Decided June 15, 2015) 2015 NY Slip Op 31022(U) .CPLR Article §78 challenge to TVB §1225-c2a conviction upheld. Case not transferred to Appellate Division CPLR 7804(g) as the issue of substantial evidence not raised. The Petitioner was a lawyer who represented himself. End of story.

Reported CPLR Article §78 Supreme Court decisions have upheld the Department of Motor Vehicle Regulations, Matter of Funes v. New York State Department of Motor Vehicles, 2013 NY Slip Op 31082(U), Gaebel v. New York State Department of Motor Vehicles, 43 Misc 3d 185.

A recent decision was rendered by Justice Steven M Jaeger of Nassau County in Matter of Brown vs. New York State Department of Motor Vehicles, 2014 Slip Op 24082. The Department of Motor Vehicles position prevailed in Matter of Acevedo v New York State Department of Motor Vehicles, 2014 NY Slip Op 30422 (U), Matter of Nicholson v. Appeals Board of Administrative Adjudication Bureau, 2014 NY Slip Op 31537 (U), Argudo v. New York State Department of Motor Vehicles, 1428/13, NYLJ

1202665198378. In the Matter of the Application of Araujo v. New York State Department of Motor Vehicles, 5057/14, NYLJ 1202670156299 at *1 (Sup., NA Decided September, 9 2014)) Matter of Rothschild v. N.Y. Department of Motor Vehicles, 2015 NY Slip OP 51351 (U) 000260-2015, NYLJ 1202738316730 at*1(Sup. RO, Decided August 14, 2015).

The Acevedo case is well worth reading. Eric H. Sills, Esq. submitted a brilliant brief which raised constitutional issues, such as improper delegation of authority, separation of powers and preemption.

The Court also considered due process and administrative delay in acting on a driver license application that was initially approved, only to subsequently have that approval withdrawn.

The Court rejected these challenges and upheld the administrative action of the Department of Motor Vehicles in denying the driver license application.

The permanent revocation regulations have been upheld by the Appellate Division, Fourth Department. Matter of Shearer v. Fiala, 124 A.D. 3d 1291, 2015 NY Slip Op 0051.,lv. den., 25 N.Y. 3d 909. The panel rejected arguments that Part §136 was legislative in nature or in conflict with any look-back period in the Vehicle and Traffic Law.

The decision found that the 25 year look back period was correctly applied in denying the Petitioner's driver license application. The Court of Appeals denied a motion for leave to appeal.

The Third Department recently upheld the regulations turning aside legal arguments concerning retroactivity, ex post facto application, legislative preemption and statutory conflict.

Matter of Acevedo v. New York State Department of Motor Vehicles, cite as Acevedo. DMV, 520060, NYLJ 1202734171346 at 1* (App. Div., 3rd Dept Decided August 6, 2015).

The Appellate Division also rejected challenges in Matter of Dahlgren v. New York State Department of Motor Vehicles, 124 A.D. 3d 1400 (App. Div 4th Dept.), Matter of Scism

v.Fiala, 122 A.D. 3d 1197, 2014 NY Slip Op 8283 (App. Div 3rd Dept)

The Second Department has weighed in and reversed Special Term to uphold the determination of the Department of Motor Vehicles permanent denial of a driver license application. Matter of McKevitt v. Fiala, _A.D.3d _ 2015.

The case was remitted to Supreme Court Special Term for determine whether unusual, extenuating and compelling circumstances exist to order The Department of Motor Vehicles to depart from the general policy of permanent denial.

Defense counsel may wish file the appeal within 30 days of the denial letter under unusual, extenuating and compelling circumstances.

Your client will believe that such circumstances apply to their case and the Regulations for “three strikes” rule have been repeatedly upheld by the Courts.

These CPLR Article §78 challenges against the Department of Motor Vehicle regulations have become the third rail for Special Term. A final resolution of these challenges for which there are compelling legal arguments will be eventually be decided by the Court of Appeals.

Please see the adverse Article §78 Decision, in the Matter of the Application of Hugo Funes, 2013 NY Slip Op 31082(U), decided May 15, 2013 at Supreme Court, New York County. Special Term adopts virtually all of the legal arguments set forth by the Department of Motor Vehicles. The highlights are that possession of a driver license is a privilege and not a right which is subject to reasonable regulation.

Judicial review is limited to whether there was a rational basis for the administrative action.

The Court deferred to DMV where the actions are not manifestly irrational and unreasonable.

The Courts appear to be reluctant to substitute their judgment for administrative actions taken by the Department of Motor Vehicles.

The thrust of the legal attacks on the Regulations raise objections of ex post facto application and legislation by regulation.

Out of State (New Jersey) incident served as a basis for “third strike”.

This position had some support when Special Term in Troy struck down the outdoor smoking ban regulation in state parks as a matter for the Legislature. Matter of NYC C.L.A.S.H v. New York State Office of Parks, Recreation and Historic Preservation 41 Misc. 3d 1096. The Appellate Division Third Department reversed Special Term, 125 AD3d 105, 2014 NY Slip Op 09085

The Court of Appeals struck down the City of New York ban on the sale of large sugary drinks as exceeding the scope its regulatory authority.

Matter of New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Dept. of Health and Mental Hygiene, 23 N.Y. 3d 947(2014).

Article §78 to contest the denial of administrative appeal of a driver license application is heard and decided Special Term and does not transfer to the Appellate Division CPLR §7804(g). No evidence was taken at a hearing. Client would be compelled to take a further appeal. Yezek v. State Department of Motor Vehicles Appeals Bd., 62 A.D. 3d 107, 879 N.Y.S. 2d 571 (2 Dept. 2009).

SPEEDING CASE LAW DEVELOPMENTS

Speeding conviction reversed and remanded when the defendant was denied his request for counsel. People v. Rankel, 44 Misc. 3rd 134A, 2014 NYS Slip Op 51160 (U) (White Plains City Court)

Speeding conviction upheld. Laser speed measuring device speed reading admitted without certificate or independent expert scientific based upon the trooper’s laser certification card and visual estimate. Proof of calibration held not to be required as visual speed estimate sufficiently corroborated the device’s readings. People v. Solanet, 44 Misc. 3d 138(A) 2014 NY Slip Op 51253 (U).

§600-1 guilty plea vacated as field appearance ticket found to be the equivalent of simplified traffic information and defendant’s motion to dismiss for failure to serve a supporting deposition should have been granted. People v. Kearns, 2014 NY Slip Op 24226 (Suffolk District Court)

2015 Headlines DWI REGULATIONS FOR RELICENSING OF REPEAT OFFENDERS and lifetime record review have cast a wide net including those currently validly licensed.

Leandra's Law amendments took effect on or about November 1, 2013. S5859.

Highlights:

It is now a Class E Felony when charged with a DWI/Drug related offense while in conditional license status. Formerly, a traffic infraction.

Minimum period installation of interlock device (IID) rose to 12 months.

Court can only waive installation of IID when person goes under oath that they are not the owner of a motor vehicle and will not operate any vehicle during period of restriction. Perjury charges possible in addition to VTL charges.

IID now applies to Y.O.

The Regulations can be found on The Department of Motor Vehicles website at <http://www.dmv.ny.gov/problem.htm>.

There is an excellent chart and FAQ or frequently asked questions section for the technophobes, which can be found at <http://www.dmv.ny.gov/problem.htm>.

The official citation for the heart of the new regulations is 15 NYCRR Parts §132, §136. The title is the definition section of Dangerous repeat alcohol or drug offenders.

A finding of a chemical test refusal not arising out of the same incident will be counted separately. If your client was acquitted or a DWI charge was dismissed in satisfaction of a guilty plea, but found to have refused to submit to a chemical test, that will be held against their driving record as per Part§132.1(a)

Drivers meeting the criteria include five or more alcohol or drug driving convictions or incidents convictions in a lifetime will result in a permanent license revocation under proposed Part §132.1(b)(1).

Three or more alcohol or drug related convictions in the last 25 years plus at least one other serious driving offense in period will be in this classification.

A “serious driving offense” (SDO) is defined Part §132.1(b)(d) as a fatal crash, a driving related penal law conviction, 20 or more points assessed for driving for the past 25 years with two or more convictions each with five points or higher.

It is apparent that if your client has two prior alcohol or drug related driving convictions or incidents, or more that they must be advised that they are in jeopardy of permanent license or privilege revocation in the State of New York.

The citation for the license or privilege sanctions is Part§136.4, (b), §136.5(a) §136.10.

INITIAL INTERVIEW OF VEHICLE AND TRAFFIC CLIENT

Conduct the interview as with any criminal defense matter. Your client’s immigration status should be asked of everyone in a non-offensive manner such as: were you born here? A non-citizen will face vastly different consequences of seemingly ordinary dispositions or convictions .You should have a colleague whom you can rely upon for expert advice even for a fee.

Counsel should be direct but firm in asking about prior DWI, convictions or incident. Does your client hold a valid license and have 3 or more DWIs conviction or refusal incidents in their background if defending a five point or higher driving violation.

Extremely Important: Leandra’s Law: DWI case, any passengers in their vehicle and their ages. Was anyone under 16, even their own child. It is very important to obtain the summons, uniform traffic tickets or information.

Use Internet or telephone if client does not have any paperwork to determine where and when case will be heard.

Be like Sherlock Holmes and use deductive reasoning. Was there a motor vehicle accident? How serious was the MVA? Obtain and carefully review their driving record for suspensions, revocations, convictions, etc.

Defense counsel must be thoroughly familiar with the requirements of the Driver's Privacy Protection Act or DPPA 18 U.S.C. §2721 et seq. You should obtain a signed and notarized MV-15GC or general consent to release information at the time of the interview

<http://www.nydmv.state.ny.us/forms/mv15gc.pdf>. Annexed herein as Exhibit A.

Defense counsel must be able to demonstrate an attorney-client relationship by business records dated prior to the DMV record search.

Such records are traffic tickets, retainer agreements, and e-mails, redacted credit card receipts.

Was the summons handwritten or electronic with "a drive through supporting deposition?" Is it Aggravated DWI? Aggravated DWI with a MVA with serious personal injury can spell Vehicular Assault 1st PL §120.04 or if a pedestrian suffered serious injuries can be Vehicular Assault 3rd Degree PL 120.03-A as a Class E Felony with a license revocation of up to seven years. Does your client face permanent license revocation? Does your client face a mandatory one-year CDL revocation or if a second offense, a 10 year CDL revocation? It is very important to ask your client if they had a previous 1-year CDL revocation. Explain Ignition Interlock Device, costs and application.

What actions must be taken to terminate suspensions and clear the revocation? Was the revocation or suspension the result of a TVB default conviction? Can it be vacated with proof of insurance or meritorious defense and acceptable excuse? Is client eligible for a conditional or restricted license?

Does client have a CDL or other special license? (19-A) Pistol permits, security guard licenses and other licensed professionals have prompt notification requirement in the event of an arrest or the issuance of a field appearance. Should the client be directed to take a point/insurance reduction course?

Was the offense committed with a commercial vehicle? This is especially important for cellphone violations §1225-c2A returnable at

SCTPVA. The Agency does not reduce these offenses except that your client may now be eligible for a diversionary program to obtain a plea to a reduced charge. A trial may be in the offing. Inquire of conversation at the scene and carefully review the electronic supporting deposition.

Was the violation committed on a Class DJ/MJ license or Learner's Permit? Formulate your defense strategy. Was it probationary §510-b?

Determine your client's motivations and expectations and make special notes. Closely review the case file for issues regarding motions, if applicable or jurisdictional defenses. Use a computerized typewritten fact sheet to preserve initial intake as solid foundation for representation. Please see sample intake/consultation sheet annexed, as Exhibit B.

CAVEAT: You will be best served by a copy of your client's lifetime driving record currently available only by MV-15. The Suffolk County Traffic and Parking Violations Agency for traffic infractions other than DWAI makes it very important to have the driving record in your file to discuss and determine the risk of incarceration, DMV administrative hearings for license suspensions and exposure to the Driver Responsibility Assessment fee. The Agency will consider any prior offenses still current on the abstract even if not within 18 months. This will impact the plea bargain offer.

It is imperative for counsel to thoroughly question their client about possible "uncharged violations" or being given a "break" at the scene. The officer will be sure to mention other alleged infractions for which your client was not cited which could influence the judicial hearing officer to take administrative action to suspend your client's license or possibly impose a sentence of incarceration in extreme cases. Be sure to inquire in as much detail as possible as to the conversation with the officer to avoid surprise at trial. This will allow you to properly set your client's expectations concerning a discretionary license suspension or incarceration or to justify a plea bargain.

Build rapport with client. The best practice is to use written fee agreements to specify what the retainer covers. Cases where the fee for representation will exceed three thousand dollars (\$3000) require a Letter of Engagement Part §1215 of the Joint Rules of the Appellate Division, which I usually use in addition to the Letter of Engagement.

Most importantly, clearly spell out the services which are NOT included such as a jury or other trial, appeals, judicial review, defense or commencement of civil forfeiture actions or appearances at preliminary administrative hearings concerning seized property, representation at DMV administrative hearings most likely motor vehicles incident to a DWI arrest, or serving so ordered subpoenas to obtain governmental records such as 911 tapes and speed detection maintenance and calibration records.

BEWARE OF VTL §600(1) CDL TRAP DOOR WHEN OPERATING ANY VEHICLE.

The traffic infraction of leaving the scene of a property damage incident without reporting is treated as an ordinary 3 point moving violation for non-CDL drivers/clients. Conviction for CDL licensed while operating ANY vehicle client will result in a minimum mandatory CDL revocation of one-year and a possible 10 year or permanent CDL disqualification if previous one-year CDL revocation.

PROBLEM DRIVER RESTRICTION

Should your client have three or four alcohol convictions but no other serious driving offenses in the last 25 years, the Department of Motor Vehicles will add on five years to the statutory minimum revocation period if revoked for an alcohol or drug related driving offense.

The Department of Motor Vehicles will add an additional two years to a minimum period of revocation if your client has three or more alcohol/drug related driving convictions is revoked for a non-alcohol/drug related driving offense such as operating without insurance, speeding, reckless driving or an administrative finding after a fatal accident hearing.

The Department of Motor Vehicles intends to restore a license to a client in this category with an additional two year period of a restricted use license which will limit your client's driving to and from work, school and medical visits. An ignition interlock device is not required.

CAVEAT: The two-year revocation does not apply to Part §132 revocations which are governed by Part§136.5 as a permanent revocation of at least 5 years and in many cases permanent revocation as a dangerous repeat or alcohol drug offender.

Five year restricted-use license subject to revocation if convicted of §1129 (a), speeding, §1182 speed contest, operating out of restriction, §1212 or cellphone, texting, seatbelt. These offenses will not result in a revocation of a problem driver restriction restricted-use license: parking, stopping standing, equipment or inspection. If you, as a defense lawyer have a choice, choose the parking offense.

Those clients who are approved to relicensed after three or more alcohol and drug related driving offenses or incidents, the Department of Motor Vehicles will require the installation of an approved ignition interlock device on any owned or operated vehicle for a period of five years and a problem driver restriction for five years.

The Department has extended the minimum §1192 related suspension or revocation period. Completion of the Driving Driver Program will not terminate the revocation and entitle repeat offenders defined as two or more, to have their full licenses restored. This does not apply to first offenders. Please see Parts §134.10, §134.11.

The defense lawyer is at a disadvantage in terms of lifetime driving records because our access is limited to ordinary printouts which only list most DWI convictions for 10 years and chemical test refusals for less than that time. Your client can file a Freedom of Information Law request with Form MV-15 Annexed as **EXHIBIT C** for their lifetime driving record. The problem is that it may take four to six weeks to obtain this vital information.

There should be some mechanism for defense lawyers to have immediate access to the lifetime record if already enrolled with the Department of Motor Vehicles to obtain driving records online in accordance with the Department's rules and regulations and the Drivers Privacy Protection Act 18 U.S.C. § 2721 et. seq.

DWI convictions are kept on the abstract for 10 years except those involving personal injury accidents and fatal accidents.

Convictions for most other traffic offenses are off the record after about four years after the date of conviction.

You need to know your client's lifetime driving record at the initial intake. Any client who appears to have two previous alcohol or drug related driving offenses or incidents will be subject to the severe sanctions. Defense counsel must be able to properly advise the client of the plea bargain offer

and the collateral consequences. Missouri v. Frye, 132 S.Ct. 1399 (2012), Lafler v. Cooper, 132 S.Ct. 1375, (2012).

Please see attached DMV webpage annexed as **Exhibit D**.

Please see the attached Regulations Annexed as **Exhibit E**.

This section will be an anatomy of Department of Motor Vehicle Denials of Driver License Applications for Repeat DWI Offenders, three or more convictions or incidents with the benefit of three years of experience with the subject matter.

Regulations took effect on September 25, 2012.

It applies to clients who have three or four alcohol or drug related driving convictions or incidents within the past 25 years or five or more alcohol/ drug related driving convictions or incidents lifetime review of driving record. Please see DMV policy summary or “quick guide”, annexed as Exhibit F.

Your client receives a Part §136.5 denial letter. Please see a copy of the DMV Denial Letters annexed as Exhibits. There are at least four types: the five year (Exhibit G) and permanent revocations (Exhibit H). The five-year revocation adds five years to the minimum statutory revocation. Relicensing is conditioned with a five year restricted-use license with the further requirement of the installation of an ignition interlock device. The holder of a post-conviction conditional license §1198(3) (a) may be denied approval for restoration of full license status, but allowed to retain the post-revocation conditional license until expiration.

The holder of a letter of clearance issued prior to 9/25/12 will be denied approval for a regular New York State Driver's license or new letter of clearance (Exhibit I). A currently dated letter usually within six months to one year is required in order to secure an out of state license.

Your client decides to appeal. There are two options within 30 days of the date of denial letter an appeal by letter to Driver Improvement based upon unusual, extenuating and compelling circumstances. Experience has shown that is very unlikely that your client will prevail. The other option is within 60 days to file an appeal to the Department of Motor Vehicles Appeals Board to contest the entire validity of the action.

Please see Notice of Appeal/Decision on Appeal.

Another interesting question is whether a client who was previously revoked permanently under §1193 defined as five years or eight years at the end of the revocation period will DMV add on another five years to the statutory revocation or permanently, for real, impose a lifetime revocation?

The answer appears to be yes. Please see the annexed case study Annexed as Exhibit J. The Department of Motor Vehicles has taken the position that the regulations take precedence over existing statutory provisions for minimum periods of revocation.

Your client has a post revocation conditional license and has three or more alcohol related offenses. Applications to restore post revocation

licenses must go through the regular application process in Albany. Albany denied the application but allowed the client to retain their post-revocation conditional license until the date of expiration which was 2020.

You client is still aggrieved and wishes to file an Article CPLR §78 within four months of the date of the adverse determination. Please refer to the adverse Article 78 Decisions.

Part §132 Lifetime Review of Driving Records- Case Study

Your client has five or more previous DWI convictions or incidents but was relicensed well before the new regulations and holds a valid license.

Client pleads guilty by mail to a six point speeding offense of 76/50. A separate issue is whether TVB accepted guilty plea in violation of Part § 123.5, in that a personal appearance should be required. Client previously pleaded guilty to a four point speeding offense without any collateral consequences. Please see Exhibit K.

The Appeals Board will decline to stay the administrative hearing process because the suspension or revocation was not issued by TVB.

Your client receives a Notice of Proposed Revocation of the license under Part §132. The client files for an administrative hearing and the hearing procedures will be governed under Part §127 and that the administrative law judge must find unusual, extenuating and

compelling circumstances otherwise the administrative law judge shall issue an order of revocation.

Those with three or four alcohol related incidents are subject to 25 years look back from the date of commission of the high-point value offense of five or more points will trigger a notice of proposed revocation.

The Department of Motor Vehicles' position is if that the conviction for the high-point driving offense results in a revocation either after a waiver of hearing or an administrative hearing subjects your client's application for relicensing to Part §136.5 permanent revocation provisions as the revocation is for being a "dangerous repeat alcohol or drug offender".

The revocation for the conviction for the non-alcohol related high-point driving violation is not considered a non-alcohol related revocation.

Improper Cellphone Use and Use of Portable Electronic Devices

The war on distracted driving continues with the five points assessed 15 NYCRR Part§ 131.3(b) (4) (iii) for improper cell phone use §1225-c and use of a portable electronic device while operating a motor vehicle §1225-d. §1225-d is much broader than just texting. If you are caught even looking at the device, your client could be issued a summons.

Convictions for §1225 violations have been added to the probationary license suspensions or revocations under §510-b, for offenses committed on or after November 1, 2014, making these offenses primary offenses

for a conviction that will result in a mandatory suspension of 120 days for a permit holder, Class DJ or MJ or revocation if committed during probationary license period of six months.

Eligibility for a restricted use license will be determined by §530-6 and 15 NYCRR Part §135.

Upon restoration of a probationary license when the full license is restored or the 60 days is deemed served, that person will commence a new six- month probationary license period under §510-b(3)

Please note that a conviction for this type of an offense committed while in the second probationary license status after having a probationary license restored will result in a mandatory minimum six month revocation. Many times your client will be ineligible for a restricted-use license as they previously opted to obtain one to serve the initial probationary suspension with a restricted-use license.

Improper Cellphone Use and Use of Portable Electronic Devices are 5 points §131.3(4) also “high-point driving offenses” §132.1(c). Improper cell phone use violations §1225-c committed on or after and texting while driving, §1225-d is now a primary offense 2/16/11-10/4/11 are two-point offenses and, §1225-d §1225-c2a. Both were three point offenses 15 NYCRR Part §131.3 (b) (6) (vii) effective 10/5/11-5/31/13.

Effective 10/28/13, new restrictions on operators of commercial motor vehicles prohibited from using cell phones or portable electronic devices while stopped temporarily in traffic or a traffic signal. Operator must pull off the road.

Commercial drivers have a broader presumption of “using” the cellphone or electronic device for operators of commercial vehicles. Dialing

or answering a mobile telephone by pressing more than a single button or reaching in a manner no longer in a seated driving position, restrained by a seat belt. Now considered serious traffic violation §510-a(4)

The assignment of five points 15 NYCRR Part §131.3(4) (iii) means that these violations are now defined as a high-point value of Part §132.1(c.) In an extreme case, if your client is validly licensed, but is subject to lifetime review under the regulations Part §132 could lead to a permanent license revocation for a conviction for these offenses.

The cell phone law was enacted in 2001 as a no point violation effective December 1, 2001. On February 16, 2011, it was designated a two point offense. It was raised to three points on 10/5/11.

There is a presumption that holding a mobile telephone to or in the immediate proximity of the user's ear is that someone is engaged in a call.

The presumption is rebuttable and the vehicle must be in motion except for operators of commercial motor vehicles effective, 10/28/13.

The exemptions are calls made regarding an emergency situation to an emergency response operator, a hospital, physicians or Ambulance Company or corps, a fire department, a fire district or Fire Company or a police department.

Effective October 28, 2013, under §1225-c (2) (a) no person shall operate a commercial motor vehicle as defined by Transportation Law §2 (4) (a)

4-a. "Commercial motor vehicle" means any self-propelled or towed motor vehicle used on a highway in intrastate, interstate or international commerce to transport passengers or property when the vehicle (a) has a gross vehicle weight rating or gross combination weight of ten thousand one pounds or more, whichever is greater; or (b) is designed or used to transport more than eight passengers including the driver for compensation; or (c) is designed or used to transport more than fifteen passengers including the driver and is not used to transport passengers for compensation; or (d) is used in transporting material found by the United States secretary of transportation to be hazardous under §5103 of title 49 of the United States Code and transported in a quantity requiring placarding under regulations prescribed by such secretary under subtitle B, chapter I, subchapter C of Title §49 of the code of federal regulations.

while using a mobile telephone call to engage in a call on a public highway including while temporarily stationary because a traffic control device or other momentary delays using a as a commercial person operating a commercial motor vehicle.

A person operating a commercial motor vehicle will not be deemed to be operating a commercial motor vehicle while using a mobile telephone to engage in a call if such vehicle is stopped at the side of or off on a public highway or in a location where such vehicles are not otherwise prohibited to stop by law or regulation or lawful order. There is an exception for calls made at the direction of a police officer.

§1225-c(2)(b) creates a new presumption for the operator of a commercial motor vehicle who holds a mobile telephone, even if temporarily stationary because of stopped traffic, a traffic control device or other momentary delays is presumed to be engaged in a call unless the vehicle is off the roadway in a legally permitted area.

§1225-c(1)(c) creates a separate definition of using a mobile telephone for operators of commercial motor vehicles as holding a mobile telephone to in the immediate proximity of the user's ear or dialing or answering a mobile telephone by pressing more than a single button or reaching for a mobile phone in the manner that requires such person to maneuver or he or she is no longer seated in the driving position, restrained by a seat belt installed in accordance with the Title §49,§393(3) of the Code of Federal Regulations.

Commercial drivers convicted of these offenses face civil penalties up to \$2,750 and driver disqualification for multiple offenses. Employers who require their employees to violate the law face civil penalties up to \$11,000. <http://www.fmcsa.dot.gov/driver-safety/distracted-driving>

It is likely these restrictions will eventually be placed on all drivers.

An Article §78 action against the Department of Motor Vehicles Appeals Board upheld the TVB conviction for the use of a speaker enabled iPhone while the operator was using one of his hands to hold the device next to his ear. *Smlow v. New York State Department of Motor Vehicles*, 95 AD 3rd 1023, 944 NYS 2nd, 948 (2012)

A review of the record apparently convinced The Court that the only dispute was how far was the speaker enabled iPhone from the operator's ear.

The use of portable electronic devices law has also been changed §1225-d with additional restrictions on operators of commercial vehicles effective 10/28/13.

Portable electronic devices and any hand held telephones defined by Subdivision 1 of §1225-c as a personal digital assistant, PDA handheld device with mobile data access, laptop computer, pager, broadband, personal communication device, two way messaging device, electronic game, portable computing device and any other electronic device when used to input write, send or read text for present or future communication.

Using a portable electronic device is defined as taking or transmitting images, playing games or for the purpose of present or future communication performing a command or request to access a worldwide web page, composing, sending, reading, viewing, access and browsing, transmitting, saving or retrieving email, text messages, instant messages or other electronic data.

Subdivision 4 has enhanced restrictions on operators of commercial motor vehicles in that it is no longer permissible for to use such devices while momentarily stopped in traffic or at a traffic signal or control device.

The presumption is rebuttable.

A defendant was acquitted on a texting charge in *People v. Seth Goldstein*, New York Law Journal, as reported on March 12, 2013.

The defendant was acquitted based upon the fact that the vehicle was not moving at that time and the charge was found not to proven beyond a reasonable doubt by the Kings Point Village Justice.

Two cases were decided in Brighton Town Justice Court in Monroe County. Justice Karen Morris found the defendant guilty of a cellphone violation while using the phone while stopped at a red light. The statute state “while in motion” but Justice Morris distinguished being stopped at a red light from being pulled over on the side of the road. Justice Morris has adopted the CDL standard. *People v. Dakota Winterhawk* NYLJ 1202591122285 decided February 20, 2013.

Justice Morris also found a defendant not guilty of engaging in a call by activating the “Siri” function on an iPhone citing talking to or listening but include holding a mobile telephone to activate, deactivate or initiate a

function of such telephone. The Court found that the defendant successfully rebutted the presumption of using the mobile telephone. People v. Andrew Welch, NYLJ1202591122251 Decided March 5, 2013.

A Niagara Town Court Justice acquitted a defendant of a §1225-d violation because the phone was merely being used to check the time. People v. Riexinger, 40 Misc. 3d 623, 9968 N.Y.S. 2d 832(2013)

Class DJ, MJ, Learners Permits and Probationary Violations

Cell phone and portable electronic device violations texting violations are especially serious for holders of learner's permits and class DJ and class M licenses as well as probationary drivers.

Convictions for these offenses on or after July 1, 2014, will result in a mandatory 120 day suspension if committed while in probationary status which is defined as six months from the date of the passing of the road test or the date the license was restored under § 510-b(3). Eligibility for a restricted-use license is determined by §530(2).

A learner's permit for a class DJ and MJ licenses under §510-c upon a conviction of a serious traffic violation as defined in subdivision (2) will result in a revocation for a period of a minimum of 60 days except portable electronic device and cell phone convictions.

The takeaway is, of course do not text and drive and use your cellphone in only hands free mode only as absolutely necessary. Touch your device and you are in danger of receiving a summons.

Defense counsel wishes to avoid five point or higher convictions wherever possible because of Part §132. When representing anyone charged with one of these offenses it is imperative to inquire if there is 3 or more alcohol or drug related driving offenses in their background, or if they are on a probationary license, Class DJ or Class MJ or a learner's permit.

Was your client operating a commercial motor vehicle as defined by Transportation Law §2 (4) (a) and was the offense allegedly committed on or after 10/28/13.

Does your client have a legal defense to the charge? What was the nature and extent of the conversation with the officer who issued the violation?

What documentary evidence such as phone bills can be introduced into evidence? What are requirements to be admissible? In Suffolk no TVB means stricter evidentiary requirements.

The defense of these charges requires an in depth review of the case.

SCTPVA.

Plea bargaining is permitted.

TRIAL PRACTICE

Adjournment of actual trial dates is much more difficult unless requested as far as possible in advance. Defense counsel must be prepared to arrive on time at the appointed hour and budget at least 3 hours.

Trial dates are usually set without input from defense counsel. There is generally no choice of dates like at TVB.

The Agency will take a default conviction in absentia if you or your client is not present within 1 hour of the scheduled trial time posted on the notice. Current Agency policy is that applications to vacate must be made within 30 days of default to have the best chance of being acted upon favorably. After 30 days a formal motion will be required and likely opposed by The Agency prosecutors. Current policy is restore to the trial calendar only even if your client defaulted pro se and a plea bargain would be in their best interest.

Defense counsel must have their clients appear in person for a scheduled trial at the Suffolk County Traffic and Parking Violations Agency unless waived in advance on the record with the consent of the prosecutors and judicial hearing officer.

This has been one of the most contentious aspects of defense counsel representation at the Agency.

Defense lawyers at the former Suffolk County Traffic Violations Bureau routinely represented clients in their absence pursuant to written authorization on file.

A simple representation on the record and backed by written authorization on file would suffice.

My experience over many years as a defense lawyer who represented motorists in their absence at Suffolk Country Traffic Violations Bureau was that the system worked well in cases that reflected your client's wishes not to be present.

The Suffolk County Traffic Violations Bureau was governed by 15 NYCRR Part §124 regarding the conduct of hearings.

There was no stated requirement that the motorist appear in person for trial when represented by counsel.

The Suffolk County Traffic and Parking Violations Agency takes the position that the defendant must appear for trial even when represented by counsel.

The Suffolk County Traffic and Parking Violations Agency is an arm of the Suffolk County District Court.

The Suffolk County Traffic and Parking Violations Agency (The Agency) is governed by the Criminal Procedure Law (CPL). One of the main

complaints of defense counsel regarding the predecessor administrative agency was that the CPL did not apply. Now it seems the fact that the CPL applies has been a source of procedural disputes.

The Agency relies upon CPL §340.50 which requires the defendant to appear personally unless defense counsel secures the advance approval of the People and the Court to waive their appearance.

Defense counsel can make a motion to the Court, which will be granted in the absence of an objection by the prosecution. This course of action will require a filing of a written and subscribed statement by the defendant with a waiver of the right to be present at the trial and authorizing their counsel to conduct a full trial.

The Court or the People could object and deny the motion.

Defense counsel has the option to file a motion, but must be aware that The Agency requires all motions to be submitted in person with 20 days as a return date.

Should your client not wish to be present, provisions must be made in advance with the consent of The People and a Judicial Hearing Officer.

You can conference your case well in advance of the trial date with a supervisor to seek to obtain the People's consent to waive your client's appearance.

You must then appear before the Judicial Hearing Officer and seek their approval.

Defense counsel should have a written signed waiver by the defendant that they waive their right to be personally present at trial and authorizing their attorney to conduct their defense. The document should state the full range of fines, civil penalties, points, Driver Responsibility Assessment fees, driver license suspensions or revocations or even in rare cases, incarceration. The waiver should state they are aware that by not appearing they are giving up their right to testify. The waiver should also state that you are authorized to submit them to the jurisdiction of the court.

The defendant may not be able to or desire to appear for any number of reasons.

It should also be noted that these arrangements must be made well in advance as the Agency, once the case is marked for trial and the trial date arrives, unlike its predecessor will not demonstrate any flexibility in adjourning the case for the purpose of getting a waiver or adjourning the case for your client's personal appearance.

The authority for the judicial hearing officer to conduct a trial is contained in CPL §350.20 and Vehicle and Traffic Law §1690.

The enabling legislation for the Agency is §1690 of the Vehicle & Traffic Law. There has been much legal debate about the nature and extent of the authority of the judicial hearing officer.

The adjudication of class B misdemeanors pursuant to statute and signed

consent forms by judicial hearing officers was upheld. People v. Davis, 13 N.Y.3d17, 884 N.Y.S.2d 665 (2009)

The Court of Appeals upheld the authority of the Nassau County Traffic and Parking Violations Agency as an adjunct of the District Court to have judicial hearing officers preside over selected traffic infractions. Matter of Dolce v. Nassau County Traffic and Parking Violations Agency, 7 N.Y. 3d 492, 859 N.Y.S 2d 663 (2006)

Defense counsel must be prepared for trial and have their client present unless an approval of waiver of appearance has been secured in advance of the trial date.

Defense counsel and their client, if required, should arrive at the appointed time for trial and be prepared to budget several hours in order to avoid the possibility of having a default conviction in absentia entered against your client.

The vast majority of cases, except clients charged with §509(1) unlicensed operator represented by defense counsel proceed to disposition at The Agency without any requirement that the defendant appear.

Nonetheless, the minority of cases presents many challenges which defense counsel with enough advance preparation can anticipate most contingencies regarding the appearance of their client.

The short answer is that it is always better if your client can be present at the trial in order to see the process at work. The defendant's personal appearance will eliminate the discussion of their absence and its possible consequences. Your client's appearance and testimony may be integral to your defense. Defense counsel may find that it is easier to have the defendant appear in the ordinary case.

When defense counsel has a compelling reason to request the defendant's appearance to be waived, there is a process to be followed well in advance of the trial date.

Therefore, it is important to be sure your retainer agreement is for disposition without a trial, appeal or appearance at DMV administrative hearings. Your fee arrangement should reflect the amount of time and effort to bring a case to trial.

THE ACTUAL SCTPVA TRIAL

CPL § 350.10

Opening statements are permitted at the discretion of the court. Opening statements are rarely made in trials for non-alcohol related traffic infractions.

The evidence must be presented in the order follows the standard rules governing jury trials under CPL §260.30 (5) (6) (7).

Evidence must conform to CPLR §4518 for business records or risk being excluded from evidence to defend your client. Cellphone records are the common items that would have to conform to a certification from the service provider that it was kept in the regular course of business and the company had a duty to do so.

Summations are also surprisingly at the discretion of the Court §350.10 (3c).

It is important to sum up, because it is what clients expect of their lawyer especially if you have been granted permission to have your client's appearance waived in order to make a record in case your client seeks to appeal or wants to know or what did you do for me.

Practice tip: Explain to your client before the trial that the JHO may decline to let you sum up. Have a checklist which includes a request to sum up. If denied, you can simply explain to your bewildered client that summations while customary, you as a defense lawyer are not entitled in a non-jury case.

Be sure to have a plan to disagree without being disagreeable with the judicial hearing officer to avoid prejudicing your client's case.

It is important to request the opportunity to sum up as our clients have been watching lawyers on TV and movies and give impassioned pleas for their cases.

Clients have been conditioned to expect that their lawyer will speak up for their cause prior to the Judge making a decision.

Peter Preiser's commentary for CPL§350.10 in McKinney's Consolidated Laws takes the position that there is a constitutional requirement to be able to give a summation. Herring v. New York, 422 U.S. 853, 95 S.Ct 2550, 45 L. Ed 593 (1975)

Authorized sentences will include incarceration in some extreme cases.

Prosecutors will routinely request the maximum fines which can be far more substantial when defending third or high speeding violations or uninsured charges.

Be sure to have handy your 2015 Magill's Vehicle and Traffic Law Manual for Local Courts to be aware of fine ranges, points and exposure for incarceration.

Repeated convictions for unlicensed operator for non-citizens or undocumented clients may pose incarceration risk which could lead to deportation.

Clients will be subject to a separate DMV administrative hearings for license suspensions as persistent violators with an accumulation of 11 or

more points or an excessive speed conviction of more than 41MPH or more over the limit as an eleven point violation under 15 NYCRR Part §131. Please review Part §131.4 for administrative actions by DMV.

These functions were merged in Suffolk TVB unless client was convicted by default §226.

Appeals will be filed with the Supreme Court, Appellate Term. This is a major change from the simplified administrative appeals process.

MISCELLANEOUS MENTIONS OF IMPORTANCE

“The compelling circumstances exceptions” remains on the books to waive §510-2 driver license suspensions for felony and misdemeanor drug convictions under Articles §220-221 of the Penal Law. Client may be eligible for a restricted-use license VTL §530, 15 NYCRR Part§135.

The move over for stopped emergency vehicles law §1144-a is a two-point offense. Also includes stopped hazard vehicles. This offense is frequently miscoded as a three point violation for failure to yield right of way to emergency vehicle under §1144(a).

PENAL LAW §120.03-A OF NOTE ELLE’S LAW VEHICULAR ASSAULT IN THE THIRD DEGREE AS CLASS E FELONY

The purpose is stricter punishment FOR SERIOUSLY INJURING PEDESTRIANS BY COMMITTING VIOLATIONS OF THE VTL. MANDATORY LICENSE REVOCATION OF UP TO SEVEN YEARS.

§120.03-A VEHICULAR ASSAULT IN THE THIRD DEGREE. A PERSON IS GUILTY OF VEHICULAR ASSAULT IN THE THIRD DEGREE WHEN HE OR SHE CAUSES SERIOUS PHYSICAL INJURY TO A PEDESTRIAN BY OPERATION OF A VEHICLE WHEN SUCH SERIOUS PHYSICAL INJURY WAS CAUSED IN WHOLE OR SUBSTANTIAL PART BY THE ACTOR'S VIOLATION OF ANY SECTION OR SECTIONS CONTAINED WITHIN TITLE SEVEN OF THE VEHICLE AND TRAFFIC LAW, OTHER THAN SECTION ELEVEN HUNDRED NINETY-TWO OF SUCH TITLE. VEHICULAR ASSAULT IN THE THIRD DEGREE IS A CLASS E FELONY. CONVICTION OF A CRIME PURSUANT TO THIS SECTION SHALL, ALONG WITH OTHER PENALTIES OTHERWISE APPLICABLE, CARRY WITH IT A LICENSE REVOCATION PURSUANT TO SUBDIVISION TWO OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW OF UP TO SEVEN YEARS.]

Effective: November 1, 2013

Vehicle and Traffic Law (Refs & Annos)

Chapter Seventy-One. Of the Consolidated Laws (Refs & Annos)

Title VII. Rules of the Road

Article 31. Alcohol and Drug-Related Offenses and Procedures Applicable Thereto
(Refs & Annos)

§ 1198. Installation and operation of ignition interlock devices

<[Deemed repealed Sept. 1, 2015 pursuant to L.1988, c. 713, § 6]>

1. Applicability. The provisions of this section shall apply throughout the state to each person required or otherwise ordered by a court as a condition of probation or conditional discharge to install and operate an ignition interlock device in any vehicle which he or she owns or operates.

2. Requirements. (a) In addition to any other penalties prescribed by law, the court shall require that any person who has been convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this article is an essential element, to install and maintain, as a condition of probation or conditional discharge, a functioning ignition interlock device in accordance with the provisions of this section and, as applicable, in accordance with the provisions of subdivisions one and one-a of section eleven hundred ninety-three of this article; provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked except as provided herein. For any such individual subject to a sentence of probation, installation and maintenance of such ignition interlock device shall be a condition of probation.

(b) Nothing contained in this section shall prohibit a court, upon application by a probation department, from modifying the conditions of probation of any person convicted of any violation set forth in paragraph (a) of this subdivision prior to the effective date of this section, to require the installation and maintenance of a functioning ignition interlock device, and such person shall thereafter be subject to the provisions of this section.

(c) Nothing contained in this section shall authorize a court to sentence any person to a period of probation or conditional discharge for the purpose of subjecting such person to the provisions of this section, unless such person would have otherwise been so eligible for a sentence of probation or conditional discharge.

3. Conditions. (a) Notwithstanding any other provision of law, the commissioner may grant a post-revocation conditional license, as set forth in paragraph (b) of this subdivision, to a person who has been convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article and who has been sentenced to a period of probation or conditional discharge, provided the person has satisfied the minimum period of license revocation established by law and the commissioner has been notified that such person may operate only a motor vehicle equipped with a functioning

ignition interlock device. No such request shall be made nor shall such a license be granted, however, if such person has been found by a court to have committed a violation of section five hundred eleven of this chapter during the license revocation period or deemed by a court to have violated any condition of probation or conditional discharge set forth by the court relating to the operation of a motor vehicle or the consumption of alcohol. In exercising discretion relating to the issuance of a post-revocation conditional license pursuant to this subdivision, the commissioner shall not deny such issuance based solely upon the number of convictions for violations of any subdivision of section eleven hundred ninety-two of this article committed by such person within the ten years prior to application for such license. Upon the termination of the period of probation or conditional discharge set by the court, the person may apply to the commissioner for restoration of a license or privilege to operate a motor vehicle in accordance with this chapter.

(b) Notwithstanding any inconsistent provision of this chapter, a post-revocation conditional license granted pursuant to paragraph (a) of this subdivision shall be valid only for use by the holder thereof, (1) enroute to and from the holder's place of employment, (2) if the holder's employment requires the operation of a motor vehicle then during the hours thereof, (3) enroute to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training, (4) to and from court ordered probation activities, (5) to and from a motor vehicle office for the transaction of business relating to such license, (6) for a three hour consecutive daytime period, chosen by the department, on a day during which the participant is not engaged in usual employment or vocation, (7) enroute to and from a medical examination or treatment as part of a necessary medical treatment for such participant or member of the participant's household, as evidenced by a written statement to that effect from a licensed medical practitioner, (8) enroute to and from a class or an activity which is an authorized part of the alcohol and drug rehabilitation program and at which participant's attendance is required, and (9) enroute to and from a place, including a school, at which a child or children of the participant are cared for on a regular basis and which is necessary for the participant to maintain such participant's employment or enrollment at an accredited school, college or university or at a state approved institution of vocational or technical training.

(c) The post-revocation conditional license described in this subdivision may be revoked by the commissioner for sufficient cause including but not limited to, failure to comply with the terms of the condition of probation or conditional discharge set forth by the court, conviction of any traffic offense other than one involving parking, stopping or standing or conviction of any alcohol or drug related offense, misdemeanor or felony or failure to install or maintain a court ordered ignition interlock device.

(d) Nothing contained herein shall prohibit the court from requiring, as a condition of probation or conditional discharge, the installation of a functioning ignition interlock device in any vehicle owned or operated by a person sentenced for a violation of subdivision two, two-a, or three of section eleven hundred ninety-two of this chapter, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this chapter is an essential element,

if the court in its discretion, determines that such a condition is necessary to ensure the public safety. Imposition of an ignition interlock condition shall in no way limit the effect of any period of license suspension or revocation set forth by the commissioner or the court.

(e) Nothing contained herein shall prevent the court from applying any other conditions of probation or conditional discharge allowed by law, including treatment for alcohol or drug abuse, restitution and community service.

(f) The commissioner shall note on the operator's record of any person restricted pursuant to this section that, in addition to any other restrictions, conditions or limitations, such person may operate only a motor vehicle equipped with an ignition interlock device.

4. Proof of compliance and recording of condition. (a) Following imposition by the court of the use of an ignition interlock device as a condition of probation or conditional discharge it shall require the person to provide proof of compliance with this section to the court and the probation department or other monitor where such person is under probation or conditional discharge supervision. If the person fails to provide for such proof of installation, absent a finding by the court of good cause for that failure which is entered in the record, the court may revoke, modify, or terminate the person's sentence of probation or conditional discharge as provided under law. Good cause may include a finding that the person is not the owner of a motor vehicle if such person asserts under oath that such person is not the owner of any motor vehicle and that he or she will not operate any motor vehicle during the period of interlock restriction except as may be otherwise authorized pursuant to law. "Owner" shall have the same meaning as provided in section one hundred twenty-eight of this chapter.

(b) When a court imposes the condition specified in subdivision one of this section, the court shall notify the commissioner in such manner as the commissioner may prescribe, and the commissioner shall note such condition on the operating record of the person subject to such conditions.

5. Cost, installation and maintenance. (a) The cost of installing and maintaining the ignition interlock device shall be borne by the person subject to such condition unless the court determines such person is financially unable to afford such cost whereupon such cost may be imposed pursuant to a payment plan or waived. In the event of such waiver, the cost of the device shall be borne in accordance with regulations issued under paragraph (g) of subdivision one of section eleven hundred ninety-three of this article or pursuant to such other agreement as may be entered into for provision of the device. Such cost shall be considered a fine for the purposes of subdivision five of section 420.10 of the criminal procedure law. Such cost shall not replace, but shall instead be in addition to, any fines, surcharges, or other costs imposed pursuant to this chapter or other applicable laws.

(b) The installation and service provider of the device shall be responsible for the installation, calibration, and maintenance of such device.

6. Certification. (a) The commissioner of the department of health shall approve ignition interlock devices for installation pursuant to subdivision one of this section and shall publish a list of approved devices.

(b) After consultation with manufacturers of ignition interlock devices and the national highway traffic safety administration, the commissioner of the department of health, in consultation with the commissioner and the office of probation and correctional alternatives, shall promulgate regulations regarding standards for, and use of, ignition interlock devices. Such standards shall include provisions for setting a minimum and maximum calibration range and shall include, but not be limited to, requirements that the devices:

- (1) have features that make circumventing difficult and that do not interfere with the normal or safe operation of the vehicle;
- (2) work accurately and reliably in an unsupervised environment;
- (3) resist tampering and give evidence if tampering is attempted;
- (4) minimize inconvenience to a sober user;
- (5) require a proper, deep, lung breath sample or other accurate measure of blood alcohol content equivalence;
- (6) operate reliably over the range of automobile environments;
- (7) correlate well with permissible levels of alcohol consumption as may be established by the sentencing court or by any provision of law; and
- (8) are manufactured by a party covered by product liability insurance.

(c) The commissioner of the department of health may, in his discretion, adopt in whole or relevant part, the guidelines, rules, regulations, studies, or independent laboratory tests performed on and relied upon for the certification or approval of ignition interlock devices by other states, their agencies or commissions.

7. Use of other vehicles. (a) Any requirement of this article or the penal law that a person operates a vehicle only if it is equipped with an ignition interlock device shall apply to every motor vehicle operated by that person including, but not limited to, vehicles that are leased, rented or loaned.

(b) No person shall knowingly rent, lease, or lend a motor vehicle to a person known to have had his or her driving privilege restricted to vehicles equipped with an ignition interlock device unless the vehicle is so equipped. Any person whose driving privilege is so restricted shall notify any other person who rents, leases, or loans a motor vehicle to him or her of such driving restriction.

(c) A violation of paragraph (a) or (b) of this subdivision shall be a misdemeanor.

8. Employer vehicle. Notwithstanding the provisions of subdivision one and paragraph (d) of subdivision nine of this section, if a person is required to operate a motor vehicle owned by said person's employer in the course and scope of his or her employment, the person may operate that vehicle without installation of an approved ignition interlock device only in the course and scope of such employment and only if the employer has been notified that the person's driving privilege has been restricted under the provisions of this article or the penal law and the person whose privilege has been so restricted has provided the court and probation department with written documentation indicating the employer has knowledge of the restriction imposed and has granted permission for the person to operate the employer's vehicle without the device only for business purposes. The person shall notify the court and the probation department of his or her intention to so operate the employer's vehicle. A motor vehicle owned by a business entity which business entity is all or partly owned or controlled by a person otherwise subject to the provisions of this article or the penal law is not a motor vehicle owned by the employer for purposes of the exemption provided in this subdivision. The provisions of this subdivision shall apply only to the operation of such vehicle in the scope of such employment.

9. Circumvention of interlock device. (a) No person whose driving privilege is restricted pursuant to this article or the penal law shall request, solicit or allow any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with the device, for the purpose of providing the person so restricted with an operable motor vehicle.

(b) No person shall blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted.

(c) No person shall tamper with or circumvent an otherwise operable ignition interlock device.

(d) No person subject to a court ordered ignition interlock device shall operate a motor vehicle without such device.

(e) In addition to any other provisions of law, any person convicted of a violation of paragraph (a), (b), (c), or (d) of this subdivision shall be guilty of a Class A misdemeanor.

10. Warning label. The department of health shall design a warning label which the manufacturer shall affix to each ignition interlock device upon installation in the state. The label shall contain a warning that any person tampering, circumventing, or otherwise misusing the device is guilty of a misdemeanor and may be subject to civil liability.

MANDATORY IGNITION INTERLOCK DEVICE

Does not apply to Interim Probation CPL§390.30, Penal Law§ 65.10

Mandatory for all convictions for §1192(2) (3) for violations committed on or after 11/18/09 and sentenced after 8/15/10 to a conditional discharge or probation. All convictions for violations of Aggravated DWI §1192 2A committed on or after 12/18/09. Please see Ignition Interlock Conditions of Probation/Conditional Discharge and other related IID forms Annexed herein as Exhibit L.

Applies even if client is not granted to the ability to obtain and possess a post conviction or post revocation conditional license/privilege by terms and conditions of probation. Suffolk County Department of Probation is the designated monitor for the ignition interlock program.

Which vehicles? Owned or operated by client.

Probation to determine which vehicles must have the device. May be estopped from denying operation of non-owned vehicle operated at time of arrest.

Must be installed within 10 business days of sentence or release from incarceration.

Probation is to be furnished proof of installation within 3 business days.

Client doesn't own or operate a vehicle. May be exempted by acceptable letter/affidavit to Probation or even an attorney's letter which states "client has represented to their counsel"...

Minimum term is twelve months or during the period of license revocation or up to discharge from probation or expiration of conditional discharge

COST to be paid by defendant

Installation is about \$100 with monthly service charges of about \$100.

Please see list of approved providers and fee schedules annexed as Exhibit M

Only the sentencing judge can determine if the vendor must absorb the cost due to financial inability to pay.

Could result in current rates being "teasers" subject to sharp increases. Possibility County may have to bailout the providers within several years. Please see Ignition Interlock Device Program-Financial

Disclosure Report annexed herein as Exhibit N.

Employer's vehicle exception §1198(8)

Client must notify court/probation of intent to operate employer's vehicle within the scope of employment/business purposes only. Need written permission from employer and must be carried with client. Employer must acknowledge that the defendant has a conditional license and allows operation of the vehicle within the scope of employment without the ignition interlock. Please see Ignition Interlock Acknowledgement From Employer annexed as Exhibit O.

New Class of IID Crimes- Circumvention, Tampering, and misusing of IID and all are Class A misdemeanors.

Out of State issues-

When sentence of probation is transferable to home state, the conditions go with it.

Where probation is not transferable a CD is the sentence. IID is yet to be resolved.

How does it work? Suffolk County has required Class III with low light cameras to verify compliance. Nassau County is working on implementation of real time GPS.

Must exhale into device every 15 minutes or car lights flash and dim. Must pull over to do so.

PERMANENT REVOCATION §1193(12) WILL BE REPLACED BY TOUGHER REGULATIONS
MINIMUM FIVE-YEAR REVOCATION

2104 Caveat: Part §136 Regulations " three strikes " rule trumps legislation

Four-Year Rule

Twice convicted within 4 years any provision §1192 or two chemical test refusals not arising out of the same incident or any combination of 2 such convictions at least one was a crime, not arising out of the same incident.

Eight-year rule

Your client must have 3 prior convictions in 8 years. At least two were crimes, or finding of chemical test refusal on three separate occasions or any combination thereof.

Minimum Eight-year revocation.

Finding of chemical test refusal after convicted 3 times within 4 years or any combination 3 such convictions not arising out of the same incident 4 years.

For a 4th conviction of any subdivision of §1192 or any 3 in separate incidents in 4 years.

Chemical test refusal after 4 convictions in eight years.

Fifth conviction in 8 years. Or combination of 4 not arising out of the same incident.

Waiver of permanent revocations

Need evidence of voluntary rehabilitation.

No new §511s, §1192s and chemical test refusals.

After voluntary rehabilitation documentation is accepted §701

Corrections Law RFD from court where conviction had required for 8 year and optional 5 year.

See permanent order annexed as Exhibit P- please note a §1192(1) conviction triggered permanent revocation.

§1193(10) DMV can correct any error by sentencing court to impose the period of suspension or revocation as required by law.

THE MEANEST NON-DWI TRAFFIC MISDEMEANORS BY REQUEST

LEAVING SCENE OF AN INCIDENT WITHOUT REPORTING-PERSONAL INJURY§600(2) - AND RECKLESS DRIVING §1212 NO RESTRICTED-USE LICENSE

There is a mandatory revocation of a minimum of six months without eligibility for a restricted use license for §600(2) 15 NYCRR Part§135.7(a)(2). The key word is minimum.

§1212 CONVICTION FOR RECKLESS DRIVING: LICENSE REVOCATION NOT MANDATORY, BUT PRESENTS A SERIOUS RISK TO YOUR CLIENT OF LOSS OF LICENSE WITHOUT ELIGIBILITY FOR A RESTRICTED-USE LICENSE. CLIENT SHOULD BE SO ADVISED.

The collateral consequences of a conviction for reckless driving are a misdemeanor or criminal record, five (5) moving violation points as mandated by 15 NYCRR Part§131(4)(i) and as an unclassified misdemeanor as per Penal Law §65.00 (3)(d) a fine of \$100 up to \$300, sentence of probation for of up to 1 year and up to 30 days incarceration for a first offense within 18 months, a fine of \$100 to \$525 and up to 90 days on a second offense and 3 years probation, and \$100 to

\$1125, 3 years probation and up to 180 days on a third offense.

There are several significant trap doors which defense counsel should be able to advise their client regarding possible license sanctions.

Vehicle & Traffic Law §510 or §1212 does not provide a mandatory revocation or suspension but conviction of a violation of §1212 may result in license sanctions.

Your client will be subject to a mandatory 60-day driver license suspension if the offense is committed during the probationary license period under §510-b (1)(2) within 6 months of passing your road test for license restoration following a revocation even if served with a conditional or restricted license.

Reckless driving §1212 is also defined as a serious traffic violation under §510-c (4) if committed by the holder of a Class DJ or MJ license or permit will be subject to a mandatory sixty-day license or permit suspension.

Should your client commit a reckless driving offense within six months of full license restoration for a probationary license suspension, the sanction will be a minimum six-month revocation for Class D license holders' §510-b (2) and a 60-day revocation of a Class DJ or MJ license or permit as per §510-c (1) (b)

Should your client be convicted of two other misdemeanors or speeds within the eighteen month period of the date of offense of the reckless driving case, it will trigger a mandatory revocation under Vehicle & Traffic Law §510(2)(a)(v). Your client will be deprived of the safety net of a restricted-use license or privilege. A revocation for reckless driving will result in a denial of an application for the 4 years preceding application for a restricted-use license for work, school and other purposes under §530(2) and 15 NYCRR Part §135.7(2).

A third reckless driving conviction in 18 months will result in a mandatory minimum 6-month revocation of the driver's license. A client in this situation will probably find the licensing consequences as the least of their problems.

Your client could be subject to a §510 Safety Hearing convened by the Department of Motor Vehicles by way of an administrative hearing to be held in their county of licensing under §510(3) for the gross negligence of operating a motor vehicle or motorcycle in a manner of reckless disregard for the life or property of others. My office has had no feedback from safety hearings as a result of convictions for reckless driving which means the DMV is likely imposing a mandatory revocation. The Department of Motor Vehicles could impose a 31-day suspension if the five points

will put your client over the 11-point limit for 18 months as per 15 NYCRR Part §131.4(c)(1). Your client will probably fare better on a persistent violation or points suspension than an individual hearing on the conviction.

The Administrative Law Judge will convene the hearing and investigate the particular conviction. The rules for these particular hearings are governed by 15 NYCRR Part §127. The Administrative Law Judge could impose a discretionary license suspension or revocation based upon a review of the overall facts and circumstances.

AGGRAVATED DWAI §1192-2(a)

Aggravated DWI is defined as the Blood Alcohol level of .18% or more, the Legislature also restricts plea bargaining policies to plead to §2-a(2) or (3) and no other disposition is authorized unless of course the District Attorney determines it is not warranted and the court agrees. Anyone convicted of an offense will be required to attend the Drinking Driver Program although a requirement may be waived upon the application of the District Attorney if a defendant demonstrated that they have been required to enter and complete an alcohol and drug program.

The penalties for a violation of §1192 2-a as a misdemeanor are punishable by a fine of \$1,000 up to \$2,500 and up to a year a minimum license revocation of one year enhanced to 18 months with prior misdemeanor convictions within 10 years of §1192 offenses. A conviction for §2-a or §4(a) will, of course, serve as a predicate for a felony prosecution within ten years of the date of conviction.

Your client may not be granted a conditional license during the minimum 1 year revocation depending upon the conditions of probation and the sentencing Judge until granted a POST revocation conditional license or PRCL ("Perkle") with the interlock device installed on their vehicle.

There are stricter penalties for aggravated DWI when operating a taxicab or livery and is carrying a passenger for compensation or a truck with gross vehicle weighing more than 18,000 lbs. and not more than 26,000 lbs. but not a commercial vehicle shall be a Class E Felony under §1192(5)(d). A violation of subdivision 2(a) of aggravated DWI operating a commercial motor vehicle or any motor vehicle that is required to be registered under Schedule F of subdivision 7 of §401 is also a Class E Felony. A violation of aggravated DWI and operating a school bus at least one student passenger is a Class D Felony. A violation of 2(a) of operating a motor vehicle more than 18,000 lbs. with flammable gas, radioactive materials or explosives is a Class D Felony.

§1192-4a DWAI ANY DRUGS OR DRUGS IN COMBINATION WITH

§1192-4a has been created to expand driving while ability impaired by drugs to the combined influence of drugs or of alcohol or any drug or drugs. Penalties same for Regular §1192 (2)(3)(4) A motion challenging the sufficiency of the misdemeanor information charging this offense failed in People v. Richard Schell, 18 Misc3d 972,849 N.Y.S.2d 882(2008 Slip Op 28027)

§1198-a MANDATORY SCREENING AND ASSESSMENT SUBSTANCE ABUSE ASSESSMENT BY OASAS

§1198-a details the criteria for special procedures disposition alcohol and substance abuse assessment. When the assessment is required your client has to go to an Office of Alcohol and Substance Abuse Services (OASAS) Agency for anyone charged with less than .15 for a first offense is mandatory screening or a chemical test refusal. Upon arraignment or discretion of the court prior to sentencing, mandatory assessment formal Alcohol Substance Abuse by an OASAS Agency. Please see Suffolk County list of approved outpatient providers annexed herein as **EXHIBIT Q**.

Mandatory assessment as warranted by results of screening, a person with priors within 5 years or .15% BAC (blood alcohol content) or more.

BASIC DWI AND REFUSAL CIVIL PENALTIES AND SURCHARGES AND CRIME VICTIMS ASSISTANCE CHARGES.

The civil penalty is \$500 with a minimum one-year revocation for a Chemical Test Refusal for a first offense and \$750 for subsequent refusal or with a prior offense within five years unless Zero Tolerance §1192-a or §1194-a(3) was the first offense.

DWAI surcharge \$255

DWI misdemeanor \$395

DWI/VTL Felony \$520

THE REDUCED ROLE OF RELIEF FROM DISABILITIES.

Relief cannot be used for commercial driver to obtain commercial privileges for a restricted-use or conditional license. Please see Application for Relief **Exhibit R**.

A system of permanent license revocations VTL §1193 defined as five years for anyone who has a combination of three or more DWI convictions with a Chemical Test Refusal finding of a four-year period. Also four more DWI convictions or Chemical Test Refusals within an eight-year period will also have their licenses permanently revoked under §1192(12) (a). Relief from Disabilities is helpful for waiver of five-year revocation and mandatory to waive 8-year revocation. No conditional or restricted license for 8-year permanent revocation.

Basically, limited to Class E taxicab, livery, coach, limousine, van, wheelchair accessible van or truck or tow truck

FOR PERMANENT REVOCATIONS

Incumbent upon defense counsel to make application for Relief from Disabilities upon the record in these cases, as it may be required for DMV to terminate the revocation although not binding on DMV see VTL §1193. Caveat Part§136 has no role for Relief from Disabilities.

LICENSED PROFESSIONALS

When representing licensed professionals, defense counsel on the record should request RFD, as their clients may be subject to professional disciplinary actions as a result of the DWAI/DWI conviction. RFD for misdemeanor/felony must go through the Department of Probation with PSI. Probation may frequently recommend deferring approval pending completion of counseling or probation. Counsel can visit the website for Office of The Licensed Professionals @ www.opnysed.gov and should request copy of the professional license renewal application. Note: Be sure to advise any licensed professional to promptly report any conviction as required by their professional licensing authority

OUT OF STATE DWI COMMITTED BY A NEW YORK LICENSED DRIVER COLLATERAL CONSEQUENCE

REVOCATION OF LICENSE §1192 (8)

An out of state DWI or DWAI conviction will result in the collateral consequence of a revocation of client's New York State license. Out of State DWI conviction no longer automatically

Deemed a violation of §1192(1). Mirror image rule will apply, if a misdemeanor or felony in New Jersey will be treated the same in NYS. Minimum misdemeanor and felony revocation periods will apply and perhaps serve as a felony predicate.

Your client may be eligible for a conditional license and Drinking Driver Program.

AGGRAVATED UNLICENSED OPERATION 1ST CLASS E FELONY

Driving in violation of permanent revocation of §1193 (2) (b) (12). .

DRINKING DRIVER PROGRAM (DDP)

§1192(10) will now require nearly all defendants charged under §1192(2)(3)(4) (4-a), to attend the DDP or go for NYS OASAS (Office of Alcohol Substance Abuse Services) counseling/treatment. As a practical matter defendants are now sentenced to three years

probation on most first offenses which in Suffolk County mandates treatment by an OASAS licensed treatment.

METHOD FOR REFERRAL FOR FOLLOW UP COUNSELING

INTRODUCTION

The likelihood that many first offenders will now be sentenced to court ordered probation has reduced, but not eliminated, the importance of discussing the referral for those cases which will be reduced to §1192(1) or sentenced on plea to misdemeanor, as charged, to a conditional discharge. The mandatory screening and treatment referrals to an OASAS agency will encompass many first offenders, which will most likely be recommended or mandated for treatment.

The system for referral for counseling or referral phase was based upon a matrix using standardized screening tests. Reliance upon the Blood Alcohol Content Reading (BAC) is no longer the main criteria for referral. The current matrix system looks toward whether the participant in the program was a repeat DWI offender within the past ten years, whether the individual attended the Drinking Driver Program while in an intoxicated condition and admitting that they have an alcohol problem. The commission of a subsequent DWI offense while enrolled in the Program is the basis for expulsion.

The BAC is out as an emphasized diagnostic tool.

The Research Institute on Additional Self-Inventory (RIASI) Questionnaire has taken over for the BAC.

The referral procedure including second evaluations can be appealed to the Program Director, to District Safety Office in Westbury, to the DMV Appeals Board, CPLR Article §78.

Expulsion for failure to attend classes or complete treatment or referral phase results in revocation of conditional license and reinstatement of underlying suspension or revocation. Violations of Conditional Discharge will be issued by sentencing court.

Practice Tip: It is very important that at the initial interview an extensive amount of time be spent with your client, even a first offender where it is likely that the case will be reduced to lesser charge or sentenced to a conditional discharge on a plea to a misdemeanor, in accordance with plea bargaining guidelines or policies, to inform of the possibility of referral for follow up counseling at a considerable amount of time and expense while continued in conditional license status. Failure to complete all phases of the DDP could result in a violation of Conditional Discharge. Since more first offenders will be sentenced to probation, it will be less of an issue, but deserves discussion for those few charges being reduced to dwai.

DWI SUSPENSION UPON ARRAIGNMENT

HARDSHIP PRIVILEGE AND THE PROMPT SUSPENSION LAW SURVIVES CONSTITUTIONAL CHALLENGES

HARDSHIP PRIVILEGE DOES NOT APPLY TO ALLEGED REFUSAL TO SUBMIT TO A CHEMICAL TEST

The prompt suspension law, Vehicle and Traffic Law §1193(2) (e) (7) was extended. The prompt suspension law was upheld as constitutional by the Court of Appeals in Pringle vs. Wolfe, 88 N.Y.2d 426, 646 N.Y.S. 2d 82 (1996) **Prosecutors must introduce certified document of chemical test results at hearing.**

The Court of Appeals has rejected the challenge that the prompt suspension law violated the due process rights of the defendant.

The Appellate Division Third Department held that the prompt suspension of the driver's license of DWI defendants pending prosecution does not violate constitutional double jeopardy protections and most recently, that it applies to out of state driving privileges. Vanderminden v. Tarantino, 60 A.D. 3d 55, 871 N.Y.S. 2d 760 (3 Dept 2009). <http://decisions.courts.state.ny.us/ad3/Search/AppDiv3Intro.htm>

The court held that the prompt suspension is remedial in nature rather than a punishment that bars a subsequent criminal prosecution based upon the same act. The ruling of In The Matter of Smith v. County Court of Essex County, 224 A.D.2d 89, 649 N.Y.S. 2d 507 (3d Dept. 1996)

The court must suspend the driver's license pending prosecution wherein your client registers .08% or more of blood alcohol as shown by chemical analysis of blood, breath, urine or saliva.

Should the court find that the suspension pending prosecution involves an extreme hardship; the court may grant a hardship privilege.

Extreme hardship is defined in Vehicle and Traffic Law §1193 as

"Inability to obtain alternative means of travel to or from the licensee's employment, or to and from necessary medical treatment for the licensee or a member of licensee's household, or licensee is a matriculating student enrolled in an accredited school, college or university and if such travel is necessary for the completion of an educational degree or certificate."

The burden of proving extreme hardship rests upon your client who may present material and relevant evidence. Please note that it cannot be based solely upon the testimony of the licensee or your client. While an adjournment may be granted upon arraignment to present proof of extreme hardship, it is to be limited to three business days

solely for this purpose.

Defense counsel should be prepared to have their client testify to the lack of alternative affordable means of transportation. *People v. Bridgman*, 163 Misc. 2d 118, 622 N.Y.S.2d 431 (Canandaigua City. Ct. 1995)

The court will require testimony in open court and a letter from their employer stating that public transportation schedules are incompatible or not available in order to maintain the services of a valued employee. The client should also be prepared to testify that they would be unable to obtain transportation from co-workers who live in the area. Your client should call the local taxicab company, LIRR, and Suffolk County Transit for schedules and fares to be able to tell the court that cab, train or bus fare is too expensive, inconvenient, and would constitute an extreme hardship.

It is also important that your client let you know their *exact* hours of employment, length of their commute, and the exact address of the place of employment. This is required for the Department of Motor Vehicles form that must be completed by the court, which is annexed as **Exhibit S**.

It is also good practice to have a spouse, significant other or family member available to testify that due to care giving obligations, employment, or both, they are unavailable to take your client to and from their place of employment. The formula for success is an employer letter, live witness, plus your client meeting the statutory requirements for a hardship privilege if the bench is so inclined to grant.

Extreme hardship privileges are designed for people who travel from point A to point B, such as factory or office workers who do not travel during the day incident to their employment. Over the road truck drivers and outside sales people are not specifically covered by the hardship privilege. Professionals who commute from one office to another may be afforded a hardship privilege to commute from home to one or more offices.

Caveat: The requirement for proof of “extreme hardship” remains discretionary with the court. The Court may require an employer’s letter as a condition of granting a hardship privilege. You should ask your client if the request for the letter, which results in the disclosure of the offense to an employer, would be damaging to their career prospects. This is especially true if they work for a large corporation. Your client should be prepared for the possibility that the application may be denied.

The self-employed when applying for a hardship privilege warrant a close examination of whether your client has sufficient income to afford alternate transportation and whether the hearing will open a can of worms regarding their income. Remember the prompt suspension is for 30 days a temporary sanction. You may also risk alienating The Court towards your client. Sometimes a strategic waiver is in the long-term best interest of your client.

Defense counsel must weigh all factors such as age, income, occupation and the underlying facts of the case against your client as to the prospects for success. You may wish to waive if your client makes more money than the Judge.

The next step is that the Department of Motor Vehicles will notify your client of eligibility for a pre-conviction conditional license, or PCL (pickle). The “prompt suspension” is for 30 days from arraignment, at which time your client may have been granted a hardship privilege, and may be eligible for a pre-conviction conditional license.

THE PRE-CONVICTION CONDITIONAL LICENSE §1193(7) (d)

You want to put your client in a “pickle or PCL”. You should advise your client by letter after the hardship hearing that they will be notified by the Department of Motor Vehicles in approximately two weeks of their eligibility for a pre-conviction conditional license that will afford broader privileges than the extreme hardship privilege.

The eligibility letter for a pre-conviction conditional license issued by the Department of Motor Vehicles will state that your client may apply 30 days from their arraignment.

Your client must appear at any local office of the Department of Motor Vehicles and make application for the pre-conviction conditional license by paying the \$85 fee that will be applied toward a post conviction conditional license.

The pre-conviction license will afford your client greater privileges than the hardship privilege. A holder of a Class A, B or C Commercial Drivers License (CDL) will NOT have their Class A, B or C CDL privileges restored, since the adoption on 9/30/05 of federal law and regulations by the Motor Carrier Act of 1999, §49 U.S.C.A. 101 et seq. that bar recognition of any conditional license issued by any state.

The suspension pending prosecution will terminate upon the plea of guilty to a lesser-included alcohol related driving charge or most likely now, the charge itself. The completion of community service is required prior to a plea to a reduced charge in Suffolk County. Counsel should expect at least two court appearances would be necessary to resolve the case. The hardship hearing does not apply where your client is alleged to have refused to submit to a chemical test.

Pre-conviction conditional licenses have two further distinct advantages. A violation of the hardship privilege can be §511-2 and a PCL violation is a traffic infraction under §509-3,

The other good reason is that the surrender of a pre-conviction license is preferred by The Court to grant a twenty-day stay as prima facie evidence that your client has a valid license.

Practice Tip: Send client an instructional letter after the Hardship Hearing concerning pre-convictional conditional license, community service completion and importance of faxing completed hours to your office and the American Red Cross, payment of fine, balance of your fee, and general court requirement of surrender of pre-conviction license for 20 day stay.

ZERO TOLERANCE LAW §1192-a. Counts towards multiple alcohol or drug-related driving offenses during the record retention period of three years. During retention period will count toward “three strikes” rule under Part §136.

ZERO Tolerance is administrative action only without criminal charges. Should your underage client be arrested, the zero tolerance does not apply.

The administrative finding of operation of a motor vehicle after having consumed alcohol by any driver less than 21 years of age with a blood alcohol concentration of between .02% and .07% as a first offense will mandate a six-month suspension of an operator’s license.

A person falling into this category is to be detained and not arrested. It is strictly an administrative procedure. Please see DMV “plain language” brochure.

At a recent lecture at the Suffolk County Criminal Bar Association conducted by Peter Gerstanzang, Esq. suggested that defense attorneys advise their clients in these situations at all times to submit to the test rather than refuse. The police are empowered to charge the client under §1194-a as a zero tolerance refusal but, it appears to be more likely that a regular misdemeanor charge will be filed and put your client into the criminal justice system. Absent criminal charges, your client faces, at least, the loss of their license for one year without eligibility for a conditional license under §1194-a. Generally speaking if the police officer suspects that your client has merely consumed alcohol and otherwise performs satisfactorily on standard field sobriety tests, it is likely that will be only charged under this section. It is also extremely unlikely that the client will call their parents, who in turn will contact you while they are being detained.

The regular rules for Drinking Driver Program eligibility criteria apply except a person with a Zero Tolerance REFUSAL finding is **NEVER** eligible for conditional license and DDP.

The Department of Motor Vehicles has somewhat liberalized the rules for these administrative hearings, which may give defense counsel a greater opportunity to have these dismissed for non-appearance or failure to meet all statutory elements. Please see 15 NYCRR Part §127, which incorporates by reference the Traffic Violations Bureau rules (15 NYCRR Part §124) that govern conduct of the hearing.

A first offense §1192-a will result in a six-month suspension of operator’s license and will be eligible for a conditional license.

A second or subsequent offense can lead to the revocation of a driver's license for a minimum of one year or until the driver reaches age 21, whichever is longer.

A low reading of .03% will not result in an automatic dismissal when arguing the degree of accuracy of the breath-testing instrument. Counsel was confronted with 2 police officers certified as "breath" technicians at a hearing in Nassau County.

§1192-a is the exclusive jurisdiction of DMV administrative process *People v. Pesantes*, 10 Misc. 3rd 676, 809 N.Y.S. 2d 859 (2005). The New York County case allowed the prosecution of other charges arising out of this incident.

Practice Tip: The underlying summonses will ordinarily be returnable at Suffolk TPVA or a local town/village court. Be sure address the violations and if not retained to defend the charges, it should be spelled out in your retainer agreement.

ZERO TOLERANCE PENALTIES <http://www.nydmv.state.ny.us/broch/c39.htm>

The penalties are a SIX-MONTH license suspension, \$100 license reapplication fee, and \$125 civil penalty for a first offense. Second and subsequent offenses will result in a minimum revocation period of one year, or until age 21, whichever is longer with the same civil penalties.

A person under 21 whom refuses to submit to a chemical test can be charged under §1192(3) and will be suspended pending a hearing.

Should the chemical test refusal hearing be held and result in a finding against your client, a minimum revocation of one year would be in place.

The rules for the hearing are somewhat different and are set forth in §1194-a. A negative inference can be drawn from your client remaining silent.

The Drinking Driver Program eligibility rules apply, including to have participated in the program within the previous 5-year rule shall serve as a disqualifying factor.

The finding is removed from the driving record after 3 years, or when the driver reaches age 21, whichever is longer.

§1194-a CHEMICAL TEST REFUSAL HEARING ZERO TOLERANCE

ZERO TOLERANCE REFUSAL §1194-a

Distinguishing factors: No criminal charge of §1192 is filed. There is no prompt suspension of license pending a hearing. Client is **NOT eligible for a conditional license to serve the minimum period of a mandatory one-year revocation, therefore must serve a**

minimum of one year without a license of any kind. The regular rules apply of chemical test/safety hearing of 15 NYCRR Part §127. The issues to focus upon is whether the police officer had reasonable grounds for the traffic stop and was the client given sufficient warning in clear and unequivocal language of the consequences of the refusal. The administrative law judge may draw a negative inference to be drawn from respondent exercising right not to testify.

The hearing will be to determine 7 basic issues: (1) if the chemical test was properly offered; (2) did such person operate the motor vehicle; (3) was there a valid request to submit to the chemical test by the police officer in accordance with provisions of §1194; (4) was such person less than 21 years of age at the time of operation of motor vehicle; (5) was the chemical test properly administered in accordance with §1195; (6) did the test find that such person had driven after consuming alcohol as defined in §1192 of this article; (7) did the police officer make a lawful stop.

Please note that a negative inference shall NOT be drawn from the operator exercising the right not to testify, unlike zero tolerance with a refusal. The Administrative Law Judge is entitled to dismiss the proceeding in the event the police officer fails to appear. §1194-a(2)(vi) (c).

The operator is entitled to request an adjournment of this hearing. A second or subsequent request will result in a suspension of the operator's license or privilege at the time of the hearing. §1194-a(2)(vi) (c).

Regular Refusals

Practice Tip: When the refusal hearing is adjourned and the criminal case is concluded by plea, decision or verdict before the refusal hearing is rescheduled, some thought must be given to waiving the hearing approximately 20 days after the disposition. A signed original waiver should be obtained from your client on the date of the disposition of the criminal case and diarized plus 20 days. A letter with original, completed Waiver of Hearing with the case number affixed and Notice of Hearing should be sent to the DMV Division of Safety and Business Hearings 6 Empire State Plaza, Albany, NY 12228.

2013 Caveat-may not wish to waive if client is convicted of a reduced charge and the license or privilege is only suspended. Definitely not waive if the underlying criminal charge was dismissed or your client was acquitted.

The Department of Motor Vehicles will require your client to serve the one-year period of revocation with a conditional license, if eligible, for their refusal.

Should defense counsel choose to submit their client's signed written waiver to DMV immediately after your client has received a conditional use license, you can reduce the length of time the license may be kept conditional. Please note, that the hearing can be decided against your client even if the officer fails to show as long as the required Report of Refusal is complete on its face. Counsel is entitled to challenge the document for any critical omissions or mistakes. See Gray vs. Adducci, 73 N.Y.2d 741, 536 N.Y.S.2d, 40, 532 N.E.2d

1268 (1988). Gray has NOT been applied to zero tolerance refusals of §1194-a.

Refusal Hearing or other DMV Safety Hearing THE LIMITATION OF CROSS – EXAMINATION BY DEFENSE COUNSEL

The ALJ has wide discretion to limit cross-examination, but not unfettered and scope of inquiry as per 15 NYCRR Part§127.4(b) Please See Exhibit T.

REFUSAL AND THE COMMERCIAL DRIVER OPERATING ANY VEHICLE

The commercial driver is in a particularly disadvantaged situation in that a refusal to submit to the chemical test operating any vehicle will result in a mandatory minimum 18 month revocation of their CDL VTL§ 1194(2)(d)(1)(c) regardless of a conviction on the underlying criminal charge, and *effective 9/30/05, they will not be eligible for a pre conviction license in CDL class or post conviction Relief From Disabilities.*

You must speak to your client and make a judgment as to the impact of a possible misdemeanor conviction in the event your client has a reading in excess of the blood alcohol level cutoff in your county.

A misdemeanor conviction would serve as a predicate for a felony prosecution, and this must be weighed against the driver's ability to withstand the deprivation of their license for an extended period of time during the disposition of the case.

Your client is not eligible for a pre-conviction license if they fail to meet the requirements of §1196 or can be suspended pending prosecution §510(3).

Two chemical test refusals while operating ANY vehicle will result in a permanent CDL revocation. 1194(2)(d)(1)(c)

DWI AND THE COMMERCIAL DRIVER'S LICENSE RELIEF FROM DISABILITIES (RFD) R.I.P for CDL CLASS A & B drivers as a result of adoption of federal legislation, RFD except in certain instances for Class E operators.

§1196(7) (g) amended effective not withstanding any certificate of relief a conditional license shall not be valid to operate a commercial motor vehicle. A change in federal law rules and regulations has ended the use of RFD.

ENHANCED PENALTIES FOR CDL DRIVERS

One Year CDL license revocation for operation of ANY vehicle
Chemical test refusal

Leaving the scene personal injury accident §600(2) or property damage
incident without reporting §600(1)
§1192(1), §1192(2)§1192(4)

Felony involved the use of any vehicle inside or outside of NYS
Operation of a CMV while suspended or revoked or cancelled
Refusal to submit to the chemical test *operating any vehicle* will result in a
mandatory minimum 18-month revocation of their CDL

Subsequent repeat offenses result in permanent CDL revocation of 10 years
Please see DMV Memo dated 9/30/05 annexed as **Exhibit U**.

I know its 10 years old, but it is still relevant.

DWI MISDEMEANOR CONVICTIONS- ENHANCED SENTENCING

§1193 1-A REQUIRES A SENTENCE OF 5 DAYS INCARCERATION OR 30
DAYS OF COMMUNITY SERVICE FOR §1192(2) (3) CONVICTED ONCE FOR
VTL§1192(2)(3) WITHIN FIVE YEARS OF INSTANT OFFENSE.
THE THIRD TIME AROUND WITHIN FIVE YEARS REQUIRES 10 DAYS OR 60-
DAY COMMUNITY SERVICE.

DWI Lifetime License Revocation-not the same as permanent revocation

When twice convicted of misdemeanor or felony §1192 with a motor vehicle accident
that resulted in physical injury as defined in Penal Law §10.00 even if the defendant is the
only party injured.

The denial of license application is subject to an administrative appeal and
judicial review. A recent appeal resulted in a determination that DMV was to hold a
Safety Hearing to determine if sufficient proof of physical injury to constitute the “two
strikes” rule.

OUT OF STATE LICENSEES

Client is eligible for hardship privilege and pre-conviction conditional privilege.
Client must submit a copy of a certified abstract of driving record from home state to
DMV. It is a good idea to submit the pre-conviction conditional privilege attachment as
prima facie evidence of a valid New York State driving privilege and eligibility for a post
conviction conditional privilege.

An out-of-state driver convicted of a DWI in New York faces likely reciprocal action in home
state of license. Best practice is to contact home state licensing authority to determine ramifications of
plea and sentence in local criminal court. You may want to visit the website of the home state
licensing authority to download the information or find the best telephone contact number. It is
recommended “bookmark” these sites in “favorite places” for quick reference.

Suspension pending prosecution now results in the home state of licensing being notified at an earlier date of the action taken by New York State rather than after the disposition of the charge.

Your client should be advised that action by the home state of licensing would likely be forthcoming.

IMPAIRED CONVICTION AS A MISDEMEANOR

Impaired conviction after two previous convictions of any subdivision of §1192 within 10 years becomes a misdemeanor. Watch for special pleading requirements.

CONDITIONAL/RESTRICTED USE LICENSES

- a) Distinguished
- b) Eligibility
- c) Violations committed while in possession of a conditional or restricted use license
- d) Virtually all violations committed while in conditional/restricted use status are serious and will result in a mandatory revocation if your client is still in conditional/restricted use status at the time of conviction.

AGGRAVATED UNLICENSED OPERATION VARIOUS DEGREES

When your client is charged with §511(2) prior to November 1, 1993 and after November 30, 1985, a plea to a §511(1) (a) will be a traffic infraction from October 1, 1985 to October 31, 1993. Therefore, for a client charged with a §511(2) prior to November 1, 1993, and after November 30, 1985, a plea to a §511.1(a) will result in a violation conviction, and therefore is an acceptable disposition. Always seek a reduction to unlicensed operator (§509-1), or facilitating aggravated unlicensed operation in the third degree (§511-a (1) as traffic infractions. Collateral consequences of reduced traffic infraction pleas are: increased insurance premiums, possible exposure to DMV Safety Hearings and adverse impact on application for license or privileges.

STRATEGIES FOR REPRESENTING REVOKED DRIVERS

Defense counsel should seek, where possible, to have your client's revocation cleared prior to disposition of the pending charges. You can break the cycle of repeat offenses. It is a service not only to your client and their family, but to society as well. There is little danger we will put ourselves out of business. You will have a client who is a friend for life.

The immediate question arises can this license be restored in a reasonable time or is the client "terminal" or "DNR"-Do Not Relicense?"

Major hurdles include: unsatisfied judgments for property damage as a result of uninsured motor vehicle accidents, lengthy lapse of insurance coverage suspensions, child support suspensions, satisfactory evidence of alcohol evaluation/rehabilitation, mandatory minimum waiting periods of revocation, substantial assessed fines and civil penalties or

numerous unanswered summonses involving aggravated unlicensed operation, uninsured operation, and speeding

“Triage” should be done to avoid spinning your wheels while your client racks up more violations. This can be a sure invitation to guest status in Riverhead. A “no jail promise” in those cases where your client can’t or won’t clear the revocation should be considered. Try to plead to one incident or the oldest incidents to enhance eventual approval of driver’s license application. Remember the “three year rule”.

When taking dispositions for newly re-licensed clients, defense counsel should seek to avoid, where possible, pleas of guilty to traffic misdemeanors, speeds (§1180) and operating without insurance (§319-1). The best plea is often to §511-a(1) facilitating aggravated unlicensed operation of a motor vehicle in the third degree as a violation and not a crime. Caveat: Consult with immigration counsel if adverse impact on non-citizen.

Clients with 3 or more alcohol/drug related driving incidents on their record will be ineligible for at least 5 years in addition to the statutory revocation period and may be subject to permanent revocation.

COLLATERAL CONSEQUENCES MISDEMEANOR CONVICTION OF §511

Client may suffer possible jeopardy to non-citizen if multiple misdemeanor convictions. Always consult with a colleague with experience in immigration matters. Client who is a U. S. citizen will have answer yes on credit applications, juror questionnaires, and license renewal and employment applications

Three Vehicle and Traffic Law misdemeanors committed within an 18 month period is a mandatory revocation or VTL misdemeanors in combination with two other speeds or two VTL misdemeanors and a speed will result in a mandatory minimum 6 month revocation VTL§510(2)(iv).

A revocation involving a §511 conviction carries with it the further jeopardy that the minimum period of revocation may be extended beyond 6 months as the Department of Motor Vehicles is entitled to review the driving record for the past three years in accordance with the Commissioner’s Rules and Regulations 15 NYCRR PART §136.1 The DMV is entitled to consider all incidents, such as reportable motor vehicle accidents, driving while suspended or revoked, whether or not they result in convictions for those offenses within three years from the date of application.

Note: a Department of Motor Vehicles Safety Hearing is possible when your client is convicted of aggravated unlicensed operation, facilitating aggravated unlicensed

operation or unlicensed violation or any VTL offense in the District Court or other jurisdiction outside of The Department Motor Vehicles Traffic Violations Bureau. A hearing will determine whether any further action should be taken against your client. Experience has shown that these hearings are not convened in every case and your client is better served with a violation conviction whenever possible.

PART §136 DENIALS OF LICENSE APPLICATION NON ALCOHOL/DRUG RELATED

Experience has shown that with more than two incidents of operating a motor vehicle while suspended within a three-year period from the date of application, it is extremely unlikely that their license application will be approved. The only cure is the passage of time, which will allow the Department of Motor Vehicles to no longer consider certain portions of their driving record. The Department of Motor Vehicles scores or weighs negative units for safety factors as defined in 15 NYCRR Part §136.1 which is annexed as **Exhibit V**. The denial of application letter is commonly called a “Part §136 letter” that is annexed as **Exhibit W**.

The administrative appeals process is protracted and the Department of Motor Vehicles seems reluctant to find unusual, extenuating and compelling circumstances. The appeal starts with Driver Improvement, DMV Appeals Board and CPLR Article §78.

An alternative to an administrative appeal of the denial is to seek to reopen convictions had in courts of law.

All TVB convictions are not subject to appeal after thirty days unless allegations of criminal impersonation and unauthorized use of license and registration can be proved to the satisfaction of the Commissioner.

THINK Y.O. WHERE APPLICABLE AGES 16-LESS THAN 19 CPL §720.10

If your client is to be convicted of any VTL misdemeanor (for example; §306(e), §340, §355, §392§511, §512, §600(2)§1182§§1212, §1192(2),(2-a) (3), (4) (4-a) Y. O. requires PSI.

HOW TO WIN A RADAR OR LASER SPEEDING TRIAL

Answer: Keep trying cases and hope the officer fails to appear or your keen listening skills and powers of persuasion will prevail. Read *People v. Olsen*, 22 N.Y. 2d 230, 292 N.Y.S. 2d 420 (1968) Visual or independent speed estimate testimony by a properly qualified police officer is sufficient in and of itself to sustain a conviction for speeding. Thoroughly review the summons for any possible defects.

Raise issue of lack of outside calibration records for speed measuring devices.

Determine the background of the officer who issued the violation. Listening,

concentration and preparation are essential skills.

Note: the evidentiary standard is proof beyond a reasonable doubt.

DEFENDING UNOBSERVED MOVING VIOLATION INFRACTIONS INVOLVING MOTOR VEHICLE ACCIDENTS

When defending unobserved infractions the defense lawyer should be prepared to cite Crawford v. Washington, 541 US 36, 124 SC 1354, 154 L.Ed, 2d, 170, (2004) and People v. Pacer, 6 N.Y. 3d 504, 814 N.Y.S.2d 575, (2006 Slip Op. 02291) for the principle that the motorist, as TVB defendants are designated, are entitled to confront and cross examine the witnesses against them.

A seminal case is People v. Genovese, 156 Misc. 2d 569, 593 N.Y.S.2d 925 (Town of Mendon 1992) where a Town Justice declined to find the defendant guilty of a violation of §1160(a) or improper right turn because the officer did not witness the violation.

There is contrary authority of People v. Boback, 23 N.Y. 2d 189, 295 N.Y.S.2d 912. (1968) That officers can issue summonses for unobserved infractions based upon information and belief can be distinguished. The decision upholding the conviction relied upon the availability of discovery devices to defendants such as bills of particulars. The Traffic Violations Bureau does not permit supporting depositions or bills of particulars under 15 NYCCR Part §124. The decisions predate the advent of administrative adjudication of traffic infractions pursuant to §225 et seq.

Farkas v. State, 96 Misc. 2d. 784, 409 N.Y.S.2d 696 (Ct. Cl. 1978) was a malicious prosecution suit arising out the issuance of a uniform traffic ticket issued outside the administrative adjudication system in a local town or village justice court governed by the Criminal Procedure Law.

While it is far from certain that defense counsel may be successful with these points of view at least at the hearing stage, you will present a well thought out professional and researched argument.

Practice Tip: Always try to obtain a copy of the police accident report MV-104A to be able to anticipate officer's testimony which will be based mostly upon this document.

The police report may contain the witness statements or even your client's signed statement which served as the basis for the charges.

Defense counsel should also request a copy of the police accident report once retained when defending charges of §600(1) leaving the scene of a property damage incident.

TRAFFIC VIOLATIONS BUREAU APPEALS

You must use Appeals Form AA-33, which is annexed as EXHIBIT X. Form can now be partially completed on line in PDF form.

You must send in \$10 per conviction being appealed and you will be sent a single notice advising you that you have 30 days as measured by a United States Postal Service postmark to submit the \$50 transcript deposit to the provider. Failure to do so within 30 days may result in the transcript not being part of the record and the early dismissal of your appeal.

The routine granting of extensions of time to submit final arguments from the 30 days from the date of the transcript cover letter is being discouraged. One request for a postponement MAY only is granted upon a faxed written request made in advance of the expiration of the time to submit final argument. Since counsel runs the danger of losing an opportunity to present their argument, you are well advised to submit your brief on time unless the case presents some novel legal issues.

The new and improved transcript deposit letter limits submissions of insurance coverage letters to within 30 days of date of letter. You client must submit a signed letter why the documentation was not reasonably available on the date of hearing.

Practice Tip: The Appeals Board requires you to set forth briefly the basis for the appeal and request for Delay of Order. Please be sure to check the box for stays/delays of order on the Appeals Form Caveat: initial argument should be as general as possible lest the transcript does not support your contentions. When the client was convicted pro se, couch your arguments in terms of "client has represented to counsel". When appealing case that you tried, it is best to phrase as to the best of counsel's recollection. Recollection can be faulty and embarrassing.

Always order the transcript in order to preserve the opportunity to challenge the underlying conviction as well as the penalty in any administrative appeal. Failure to produce the transcript, a very event, could result in the dismissal of the charge or a new hearing.

The issue of relative credibility of witnesses is in the vast majority of cases solely within the province ALJ and had the best opportunity, in theory, to observe conflicting witnesses in person review to determine credibility issues. Credibility issues are left strictly up to ALJ who heard case and had the best opportunity to observe conflicting witnesses in person. Matter of Luzon v. State Dept. of Motor Vehicles Appeals Bd., 209 A.D.2d 618, 619 N.Y.S.2d 654 (1994), Matter of Molina v. Hassidim, 109 A.D.2d 783, 486 N.Y.S. 2d 91(2 Dept 1985) (Matter of Berenhaus v. Ward, 70 N.Y.2d 436, 522 N.Y.S.2d 478 (1987

Very important to try make your clients understand this concept. *You can still argue on appeal that the testimony on the record does not support the conclusions and findings.*

Possible winning administrative appeal issues are jurisdictional and legal arguments. Counsel had two appeals turned down on cases, which were squarely within the incorporated Village of Lake Grove. Better strategy is to consider a request for a transfer to village justice court and have your retainer agreement provide for an additional fee.

Should the transcript be unable to be produced, the case may be dismissed unless the violation is classified as a required appearance or serious in nature as defined by 15 NYCRR Part §123.5. The more serious cases are remanded for a new hearing.

There is a slight favorable trend toward reductions of the amount speed alleged and rescinding discretionary license suspensions on speeds between 86-89MPH in cases without aggravating facts and circumstances.

Defense lawyers have reported winning several appeals on legal issues of non-speeding offenses, which is encouraging.

Caveat: Fines as high as \$900 has been upheld on an 89/55 as a third speed and a one-year discretionary license suspension was not found to be excessive.

You can request from the Appeals Board a copy of the case analysis. This will provide a window into their reasoning and guide you in future appeals or a preview of the Department of Motor Vehicles position on any prospective Article§78 action.

SAFETY HEARING APPEALS

Appeal period is within (60) sixty days of the date of penalty order as per VTL§261(2). Please see Appeals Form AA-33A, which is annexed, as **EXHIBIT Y**, which can be partially completed online. **The best course of action is to always order the transcript unless you have prepared and the client signed a detailed waiver allowing you to only contest the penalty. You always want to preserve your client's rights to further challenge the finding and the discretionary or permissive penalty.**

This applies to Zero Tolerance, Refusals, repair/inspection/dealer hearings, fatal accidents, etc. The same rules regarding relative credibility of witnesses as TVB appeals. Counsel will argue substantial evidence but stands the best chance of success on the issue of excessive punishment. Please see text under CPLR Article §78 below.

When the administrative appeal is denied, send your client an "exit letter" advising of right to judicial review and emphasize the four month limitation period, and that you will not undertake representation unless retained pursuant to a separate written fee agreement.

CPLR ARTICLE §78-Judicial Review

An Article §78 action must be commenced within four months of the date of letter of denial of an administrative appeal from the NYS DMV Appeals Board. Caveat: Some other administrative determinations may be governed by shorter periods of limitation.

Temporary Restraining Orders to be issued against DMV suspensions or revocations of driver's licenses or privileges or business licenses cannot be granted unless the Assistant Attorney General (AAG) consents in writing or Court approves after hearing on notice to AAG and appearance by an AAG at the hearing.

This proceeding has a narrow scope of review of substantial evidence, and where applicable, excessive discretionary punishment that shock's one conscience.

Practice Tips: AAG will usually require counsel to ARGUE THE STAY BEFORE A STATE SUPREME COURT JUDGE EVEN IF the client was granted Stay of Enforcement during administrative appeal.

You have to be prepared to convince the Court of the likelihood of success upon the merits.

Be sure to argue issue of substantial evidence in your brief, even if, you are only pinning your best hopes on contesting the question of excessive discretionary punishment.

Set a realistic fee pursuant with a Letter of Engagement, if applicable and a detailed fee agreement and expect a substantial amount of disbursements about \$2,000, in a Traffic Violations Bureau case even without an extensive record.

The Supreme Court usually transfers all excessive punishment/substantial evidence questions to the Appellate Division CPLR §7804(g). Challenges to denials of license applications will not be transferred.

Important note: Counsel was required in a recent CPLR Article §78 action appear before a Supreme Court Justice to argue the transfer wherein normally the attorney would only appear to argue the temporary restraining order and the case was transferred on papers.

Please note the Appellate Division; Second Department will routinely award the State statutory costs to be by client to the prevailing party, which usually is a minimum of approximately \$400. Your client is responsible. Please be sure to advise client at the outset and include this contingency in your detailed written fee agreement.

Experience has shown that it may difficult, but possible to reverse the DMV Appeals Board on the issue of substantial evidence because so many of the elements of the officer's testimony are considered "credibility issues". Speeding convictions were upheld

after judicial review: Neiman v. State Dept. of Motor Vehicles Appeals Board, 265 A. D. 2d 558, 697 N.Y.S. 2d 310, (2 Dept. 1999) DeOliveira v. New York State Dept. of Motor Vehicles, 706 N.Y.S. 2d 173, (2 Dept. 2000) Mataragas v. New York State Department of Motor Vehicles, et al., 6 A.D. 3d 537, 774 N.Y.S.409 (2 Dept 2004), Koenigsberg v. State Of New York Department of Motor Vehicles Appeals Board, 8 A.D.3d 383, 777 N.Y.S. 2d 745 (2 Dept 2004), Clarke v. Martinez, 14 A.D.3d 612, 789 N.Y.S. 2d 207 (2d Dept 2005) Matter of Hall v. Swartz, 61 A.D. 3d 868, 877 N.Y.S.2d 410, (2 Dept.,2009), Matter of Kobel v. State of N.Y. Department of Motor Vehicles Appeals Board, 85 A.D.3rd 916(2 Dept. 2011)

Koenigsberg, Clarke and Kobel made references to a laser device reading without addressing the question of whether laser is can be judicially recognized as reliable absent independent expert testimony. You may have more success on the issue of excessive discretionary punishment.

It was error to transfer Article §78 action to from Supreme Court to Appellate Division to determine the issue of vacatur of a plea of guilty. Matter of Yezek v. State of N.Y. Dept. of Motor Vehicles Appeals Board, 62 AD3 1017, 879 N.Y.S.2d 571, (2 Dept 2009).

COMMERCIAL DRIVER'S LICENSE NON-DWI OFFENSES

Is it a serious traffic violation? Please See Vehicle and Traffic Law §510-a (4).

Was your client operating a commercial motor vehicle (CMV) as defined by §501-a when the violation was allegedly committed?

The serious traffic violations are defined by VTL §510-a (4): (i) speeding 15 or more miles per hour over the limit, (ii) reckless driving, (iii) improper or erratic lane change, (iv) following too closely, (v) or relates to any traffic infraction other than parking, stopping and standing, and arises in connection with a fatal accident. Hand held mobile phone and portable electronic device violations.

ADDITIONAL CATEGORIES OF SERIOUS CDL TRAFFIC VIOLATIONS

- 1) Operating a CMV without first obtaining as CDL.
- 2) Operating a CMV without a CDL in driver's possession, which is a dismissible charge prior to the return or court, dates, provided proof is filed with law enforcement AND the Court.
- 3) Operating a CMV without proper class/endorsement for specific CMV being operated or for passengers or type of cargo transported.

MANDATORY SUSPENSION - COMMERCIAL DRIVERS LICENSES §510-a (3)

Your client will suffer a mandatory suspension period of (sixty) 60 days for the conviction during any three-year period of two serious traffic violations in separate incidents.

One hundred and twenty days (120) for any three serious traffic violations in separate incidents.

Ninety days for operating in violation of an out-of-service order.

Practice Tip: When negotiating a disposition of a speeding or other charge while operating a commercial motor vehicle, where feasible, avoid §1129(a), §1128(a), §1180, speeding 15 or more over the limit. Try to use §1110(a) for two point violation dispositions. Please see 15 NYCRR Part §131.3.

The DMV point system for moving violations and criteria for safety hearings for suspensions or revocations are set forth in 15 NYCRR Part §131.

When is a violation of §1110(a) not a two points violation? When it is a HOV lane occupancy violation only between Exits 49 and 57 according to §131.3(7)(viii). This explains the “andorian” sign ‘HOV lane violation fine and/or points’. A plea of guilty to the no points offense will appear on the driving record.

Caveat: Treat as two point offense and try to get dismissed or amended to §1202b2

SUSPENSION OF LICENSE FOR BEING MORE THAN FOUR MONTHS BEHIND IN CHILD SUPPORT OBLIGATIONS SUSPENSION OF LICENSE FOR BEING MORE THAN \$10,000 IN PAST DUE LIABILITIES ON STATE INCOME TAXES. Please see press release annexed as Exhibit Z.

Delinquents will have 60 days to arrange payment.

Client fails to pay or make arrangements their license/privilege will be suspended until the debt is paid or a payment plan is established.

Your client may be eligible for a restricted-use license.

DRUG RELATED SUSPENSIONS FOR MISDEMEANOR

CONVICTIONS OF ARTICLE §220- §221

SUSPENSIONS OF LICENSE FOR CONVICTIONS OF VIOLATIONS OF THE ALCOHOLIC BEVERAGE CONTROL LAW §65-b (5)

Mandatory suspension and revocation for drug related convictions of VTL§510(2)(b)(v)-six months as youthful offender or juvenile adjudication or convicted of a misdemeanor or a felony of Article §220 or §221 of the Penal law. Federal substance control act for any violation of §1192 for any out of state or federal misdemeanor or felony drug related offense. Please see DMV Order of Suspension Form as **Exhibit Z1**.

The “**compelling circumstances exception is still available**. Client may be eligible for a restricted-use license for out of state offenses-six month revocation. Certificate of Relief from Disabilities will only be issued upon determination of compelling circumstances warranting such relief. Note: credit will be granted for actual time served to offset suspension.

ABC §65-b (5) Offenses for one under age of twenty-one years old purchase or attempt to purchase an alcoholic beverage through fraudulent means. The suspensions are mandatory if NYS license was used, otherwise discretionary with court. Suspensions range from three months to one year, or up to age 21, whichever is longer. Client may be eligible for restricted use license.

DISTRICT COURT ETIQUETTE

PREPARATION OF THE DWI FORM completed by the defense attorney

Please see the revised 4/11 DMV Order or Suspension or Revocation Form as which features boxes for the sentences of conditional discharge or probation 3 or 5 years, and whether your client when sentenced to probation must have the permission of the court and/or probation to apply for a conditional license or **Exhibit Z2**.

It is a good idea when you approach the bench to state clearly the calendar number and name of your client and give your appearance so the court reporter can transcribe. Please alert the Court, that you have a proposed disposition subject to the court’s approval, **whether your client will pay the fine upon disposition or request a Civil Summons**. It is also important to include the docket number on your Notice of Appearance and the clerk requires a business card with your Notice. This allows your name to appear on the computer-generated calendar as attorney of record. This is very useful to the court personnel, so they do not have to rifle through the files to know who represents the client.

Simple applications are usually taken before dispositions on the honor system. If your “simple” application will require a lengthy bench conference, it may be best to approach after some routine court business with attorneys has been concluded. Always consider letting your colleagues who are pressed for time go ahead, if possible. Make mental notes so they can return the favor.

OTHER ASPECTS OF PROBATION

Interim Probation Criminal Procedure Law §390.30 (6) one-year Suffolk District

Court those cases that prevents a reduction with community service. Can keep pre-conviction license. *Be sure to advise your client if rearrested while on Interim Probation, the new DWI will be prosecuted as a felony even though the sentencing has been adjourned for one year.*

Problem; if client revoked for a minimum of one year for a refusal to submit to a chemical test, consider being retained to file administrative appeal and request a stay that is discretionary. **IMPORTANT:** *Be sure to advise your client in writing to submit an application to Albany one month prior to expiration of minimum waiting period if the application for a stay is denied.* <http://www.nydmv.state.ny.us/forms/mv-44.pdf>. 2014 development DMV freezes applications for those pending DWI charges even for first offenders. Only remedy would be Article 78

This will allow DMV in Albany to consider waiving the permit, 5 hour class and road test, which will speed, pardon the expression, your client's return of license by at least two months.

Client may be eligible to apply online. <http://dmv.ny.gov/tickets/restore-license-after-revocation> which accelerates approval

SUFFOLK COUNTY CIVIL FORFEITURE LAW SUFFOLK COUNTY CODE CHAPTER §420 ARTICLE IV annexed as Exhibit Z3.

The key provisions require: prior misdemeanor VTL§1192(2) (3)(4) Navigation Law or VTL§1192-a conviction. Property not limited to motor vehicles or vessels.

County Attorney must commence forfeiture action within 180 days after the commission of the offense or property seizure and as defined by CPLR§ 304.

Early release is only available if court orders release in the interests of justice.

District Court will be the venue for a mandatory hearing of the probable cause and affirmative defenses. Please see annexed Notice of Hearing as **Exhibit Z4**.

County Attorney will prove probable cause on papers as business records CPLR §4518 rather than live testimony of arresting officer.

Affirmative Defenses by non-owner are lack of knowledge and consent for permissive use of the motor vehicle to be operated while under the influence. You must also plead hardship.

Inquiry will be made by County Attorney as to number of registered vehicles in household and to who registered, sets of ignition keys and their location and who is the de facto owner/principal operator.

Your client will be cross-examined as to who uses which vehicles for what purposes, and who has possession and control of the ignition key.

County Attorney is required to notify all victims of pending action.

Either side may appeal the finding by filing an appeal for judicial review of the administrative decision by CPLR Article §78. Be sure to have a separate written fee agreement.

You will appear before a JHO in First District Court or Riverhead

Hearing to determine whether the vehicle should be returned, or a bond or security posted for the return, or a restraining order against the property to bar its sale or transfer or use of an interlock device

Defense counsel should amend written fee agreement for defense of the criminal charge to provide for additional fee for conducting a legal impediment hearing/interests of justice/motion in criminal court and defense of civil forfeiture action in civil court.

County Attorney must prove the subject property is subject to forfeiture by clear and convincing evidence. Civil forfeiture action is to be brought in Supreme Court.

A prompt hearing will be scheduled upon notice to all titled, registrants on file w/NYS DMV.

Practice Tips: Bring your Notary stamp and obtain photo id and make and retain a copy of the document, when notarizing signatures on the Stipulation of Settlement, General Release and other dockets. Vehicles if released conditionally requiring installation of ignition interlock device, \$500 deposit prior to release and must be installed within one business day or deposit forfeited and vehicle resealed. If your case requires an interpreter, be sure to check in early and so inform the Part.

applies to §1212 convictions and §509-1.

<http://www.co.suffolk.ny.us/legis/Resos2008/i1481-08.htm>,

<http://www.co.suffolk.ny.us/legis/Resos2007/i2101-07.htm>

VIOLATIONS OF CONDITIONAL DISCHARGE

Violations of Conditional Discharge are being issued for failure to attend/complete all phases of the Driver Rehabilitation Program (DDP). To defend a failure to attend the key question is eligibility. Yes, even without eligibility for conditional license can be required to attend DDP. DDP eligibility is governed by §1196(4) whereas Conditional License eligibility is controlled by §1196(7).

Practice Tip: Advise client by "exit letter" that DDP is mandatory and failure to attend/complete will result in Violation of CD. Please amend retainer agreement to provide for additional fee for representation as post judgment proceeding.

DMV WEBSITE-[HTTP://WWW.NYDMV.STATE.NY.US](http://www.nydmv.state.ny.us) OR NYDMV.COM

A wealth of information is available from your desktop. You can download forms from your computer. They are in alphabetical order and start with the Appeals Form for TVB.

Your clients can pay certain suspension termination fees, Driver Responsibility Assessments, TVB fines including suspension termination fees, and civil penalties as well as renew, in certain instances, license and registrations.

You may wish to consult with other states' websites as a preliminary investigative tool.

WEBCRIMS COURT APPEARANCE WEBSITE

You can confirm future scheduled court dates in District Court at www.courts.state.ny.us. Type in "webcrims" in search or click on e-courts and add to list of favorite places. Improved content allows counsel to click on docket number and obtain a display of the charges listed on the docket as it would appear on the court calendar. Caveat: Not 100% reliable if another individual has the same name. You can click on defendant detail to learn the date of the offense, if applicable and whether your client was the owner of the vehicle. Please note that only the year of birth is displayed. You can request e-mail alerts about your case. ***Y.O eligible dockets will not appear on webcrims.***

"YOUNGER LAW" CLASS DJ OR JUNIOR LICENSES VTL§501(3)-GRADUATED LICENSING-VERY IMPORTANT VTL ISSUE IN SUFFOLK COUNTY <http://www.nydmv.state.ny.us/license.htm#drivingage>

Applies to newly licensed drivers under age 18 without completion of drivers' education class. Completion of driver's education upon attaining age 17, will allow conversion to class D. Client must make application for Class D by mail or appear at DMV unless MV-285, showing completion of Driver's Education course submitted to DMV examiner at time of road test, then DMV will automatically issue and mail Class D License.

Holder can drive only during limited hours for specified purposes of work and school during limited hours. The violation may also be committed during your client's six-month probationary license period. Conviction in combination with other probationary offense triggers mandatory sixty-day license suspension.

There are more stringent restrictions on new drivers starting with all Learners' Permits.

A new class of limited junior license has been created for those who pass their road test within six months of obtaining their permit.

All DJ/MJ licenses and permits, no more than two passengers under 21 unless accompanied by parent, guardian, or driving instructor except when immediate family members occupy the vehicle.

Supervising driver must be the only front seat passenger and must be a validly licensed person over 21.

All passengers riding with a DJ driver must wear seat belts or child safety seats.

SUSPENSIONS AND REVOCATIONS OF CLASS DJ/MJ LICENSES AND PERMITS VTL §510-c

Is the offense a serious traffic violation? Defined as §600 (1) §601, (Leaving the scene of an incident without reporting) §1111 (red light), §1170 (railroad crossings) §1172 (stop sign) §1174 (school bus), §1180 more than ten miles over the limit, §1182 (unauthorized speed contest), §1229-c3a no seat belt use by a child under 16. §1225-c, improper cellphone use, §1225-d operate while using a portable electronic device.

Put on more serious footing than probationary licenses with sixty-day suspension for a serious traffic violation or any two violations. Also a minimum sixty day revocation if serious traffic violation or other two offenses in combination committed after restoration of license for sixty day suspension while in possession of this class license/permit. Suspensions and revocation issued under this section are dead time towards 6-month waiting period for less limited DJ license.

Insurance Surcharges-Insurance Law§2335(6)

Clients should be advised that no point offenses of unlicensed/facilitating/unregistered convictions would result in substantial insurance surcharges. Try to bundle dispositions in to single offense with higher fine.

ACCIDENT REEXAMINATION-ELDER LAW §506

<http://www.nydmv.state.ny.us/license.htm#drivermed>

Any driver with three reportable accidents within six months may be re-examined.

25-65 year old drivers with three accidents within 6-9 months will receive a questionnaire.

Under 25 and over 65 three accidents within 9 months will be reexamined.

Once designated for §506 unlikely they will be able pass a road test.

Who can report unsafe drivers with physical or mental conditions?

No anonymous e-mails, Internet reports, telephone or letter without your name and signature.

Typically, police accident and physician reports may trigger §506 Traffic stops which give rise to a conclusion by the officer that the driver should be retested.

DRIVER RESPONSIBILITY ASSESSMENT VTL§304(a) §1199 ANNEXED AS EXHIBIT Z5. <http://www.nydmv.state.ny.us/drp.htm>

The accumulation of six or more moving violation points accumulated within an eighteen-month period as defined by the date of violation will result in a minimum \$300 license renewal surcharge @\$100 per year. The motorist will be charged and additional \$25 per point license or privilege renewal surcharge. Accident Prevention Course can't be credited to avoid assessment and applies to out of state drivers.

DRA NEW MATH- DMV Counsel's Office position

DMV interprets the law provide that the 18 month period runs from the date of the first *violation which caused* the motorist to have accumulated 6 or more points

What should defense counsel do? Always advise your client that they are or may be subject to a mandatory Driver Responsibility Assessment as determined by the DMV. This should be included in all written authorizations/affidavits and exit letters. Clients can pay on line as shown above.

Exit letters should recommend payment in a single installment if in a financial position to do, to avoid the possibility of a suspension for failure to pay the subsequent annual installments over a 3-year period.

The DMV has given clients notice to pay at least the first installment 30 days after the date of their TVB conviction or their license will be suspended pending payment. Notices from other jurisdictions will typically allow 30 days from the date of the DMV notice to calculate effective date of suspension. Can be paid online upon notice. <http://www.dmv.ny.gov/DriverResp/default.html>

Applies to chemical test refusals including Boating While Intoxicated or impaired under Navigation Law §49 and snowmobiles @\$250 per year for three years.

DRA Notice of Assessment annexed herein as **Exhibit Z6.**

VASEAN'S LAW-Tougher penalties for Drunk Drivers in Fatal Accidents

2015 INDEX OF EXHIBITS

- A. GENERAL CONSENT FOR RELEASE OF PERSONAL INFORMATION – FORM MV-GC**
- B. SAMPLE INTAKE/CONSULTATION SHEET**
- C. REQUEST FOR DRIVING RECORD INFORMATION – FORM MV-15**
- D. ABSTRACT OF DRIVING RECORD**
- E. REGULATIONS**
- F. PENALTIES FOR MULTIPLE OFFENDERS**
- G. PART §136.5 DENIAL LETTER**
- H. DMV NOTICE OF APPEAL DECISION**
- I. LETTER OF CLEARANCE**
- J. NOTICE OF APPEAL/DECISION ON APPEAL**
- K. NOTICE OF LICENSE REVOCATION**
- L. ORDERS AND CONDITIONS OF PROBATION OR CONDITIONAL DISCHARGE RELATED TO IGNITION INTERLOCK DEVICE**
- M. IGNITION INTERLOCK PROVIDERS AND FEE SCHEDULES**
- N. DEVICE PROGRAM – FINANCIAL DISCLOSURE REPORT**
- O. IGNITION INTERLOCK ACKNOWLEDGEMENT FROM EMPLOYER**
- P. PERMANENT ORDER OF REVOCATION**
- Q. OASAS TREATMENT PROVIDERS**
- R. CERTIFICATE OF RELIEF FROM DISABILITIES**
- S. LETTER OF EMPLOYMENT**

- T. 15 NYCRR PART §127.4**
- U. DMV LETTER – VEHICLE AND TRAFFIC LAW CHANGES AFFECTING
COMMERCIAL DRIVERS**
- V. PART §136 DENIALS OF DRIVER LICENSE APPLICATION**
- W. PART §136 LETTER**
- X. APPEALS FORM AA-33**
- Y. APPEALS FORM AA-33A**
- Z. SUSPENSION OF LICENSE FOR BEING
BEHIND IN CHILD SUPPORT/PAST DUE ON STATE INCOME TAX**
- Z1. DMV ORDER OF SUSPENSION – ARTICLE 220-221 PENAL LAW**
- Z2. DMV ORDER OF SUSPENSION REVOCATION – MV-1192**
- Z3. FORFEITURE LAW CHAPTER §420**
- Z4. NOTICE OF SEIZURE AND HEARING**
- Z5. DRIVER RESPONSIBILITY ASSESSMENT STATEMENT**
- Z6. DRA NOTICE OF ASSESSMENT**

EXHIBIT A

**GENERAL CONSENT FOR RELEASE OF PERSONAL INFORMATION****Background**

The federal Driver's Privacy Protection Act (DPPA) designates certain information in motor vehicle records as *Personal Information*. Personal information includes a motorist's photograph, social security number, date of birth, driver license number, non-driver ID number, name, address (except for 5-digit zip code), telephone number, and medical or disability information. Public information includes reportable accidents, driving convictions, driver status and vehicle information. Most motor vehicle records contain personal and public information. Please note, if we are authorized to release personal information, we will not release social security number, phone number, photograph, medical or disability information.

The DPPA also limits the reasons (*permissible uses*) for which the Department of Motor Vehicles may release records containing personal information. A copy of the DPPA, and the permissible uses in New York State, are printed on form MV-15DPPA.

Some requesters may request a copy of a record only if they have permission from the person named in the record. This form provides evidence (*signed authorization*) of that permission.

Instructions for Motorists

The motorist is the person named in a motor vehicle record. The record requester is the person requesting information about the motorist. To complete this form, print your name in the blank marked *Motorist*. Print the record requester's name in the blank marked *Record Requester*. Then visit a notary public. In the presence of the notary, sign on the line marked *Motorist's Signature*, then give this form to the notary to notarize.

After it is notarized, give this form to the record requester.

Instructions for Record Requesters

You may request someone else's motor vehicle record containing personal information only if you have a permissible use as defined in the DPPA. You may face criminal penalties and civil liabilities if you request a record for which you do not have a permissible use. Having the motorist's permission is a permissible use. This form, properly completed and notarized, is evidence of the motorist's permission.

Keep a copy of this form for five years after you receive the record you requested.

I, _____, authorize the New York State Department of Motor Vehicles
(Motorist)
to disclose or otherwise make available to _____ personal information about
(Record Requester)
me obtained by the Department in connection with a motor vehicle record.

_____
Motorist's Signature

STATE OF _____

SS: _____

COUNTY OF _____

On this _____ day of _____, _____ before me personally appeared
(month) (year)

_____, to me known and who by me being duly sworn, acknowledged
(Motorist)

to be the person described in and who executed the foregoing consent and who acknowledged to me that he/she executed the same for the purpose therein stated.

Notary Public

EXHIBIT B

CONSULT

☐ TELEPHONE

☒ OFFICE

DATE OF INTERVIEW: October 29, 2013

RECOMMENDED BY: _____

CONTACT/RELATIONSHIP: _____

NAME OF CLIENT: _____ AGE: _____

ADDRESS: _____

DOB: _____

PHONE: (W) _____ Ext. _____

(CELL) _____

(FAX.) _____

(H) _____

(PGR) _____

MARITAL STATUS: _____ NO. OF CHILDREN & AGES: _____

OWN HOME: (Y/N) _____ NO. OF YEARS IN SUFFOLK COUNTY: _____

OCCUPATION: _____

ADDRESS: _____

NO. OF YEARS: _____ JOB TITLE: _____ U.S. CITIZEN: _____

PRIOR RECORD

YEAR: _____ CHARGE: _____ SUSPENDED/REVOKED: _____

LIC. CLASS/CDL: _____ R/L: ☐ COMMERCIAL VEHICLE: _____

CURRENT CHARGES: _____

DATE OF VIOLATION (S): _____ TIME: _____ P.M.

LOCATION: _____

BAIL STATUS: _____

COURT APPEARANCE

☐ TVB ☐ 15 DAYS

☐ REOPEN DEFAULT

☐ TOWN of: _____

☐ FDC, CI

☐ REFUSAL HEARING

☐ VILLAGE of: _____

☐ NDC

☐ SAFETY HEARING

☐

☐ NCTPVA

☐ APPEAL

☐ SUSPENSION STATUS ☒ SUFFOLK TPVA

☐ CORPORATE SUBS

☒ REQUIRED APPEARANCE

☒ WRITTEN AUTHORIZATION , , OTHER

☐ WRITTEN AUTHORIZATION , , OTHER

DATE: _____ TIME: _____ A.M. ROOM: _____ VIOLATION: _____

DATE: _____ TIME: _____ A.M. ROOM: _____ VIOLATION: _____

DATE: _____ TIME: _____ A.M. ROOM: _____ VIOLATION: _____

COMMENTS:

EXHIBIT C



REQUEST FOR DRIVING RECORD INFORMATION

Driver records contain the following information:

- convictions, suspensions, revocations, accidents, accident prevention course completion (for more information, refer to form DS-242.1)

DMV records do not contain the following information:

- tickets, address history, convictions and/or accidents beyond their retention period, date first licensed, vehicle information

You can request your record.

You can request another person's record.

INSTRUCTIONS:

- A separate form, MV-15C, must be used for each search requested.
- You must show documents to prove your identity (see form ID-44 for acceptable proofs of identity).
- *The Vehicle and Traffic Law requires that DMV charge a \$10 search fee. You must pay the fee even if the driver record is not found.*
You can pay the fee with a check made payable to "Commissioner of Motor Vehicles". According to section 202 of the Vehicle and Traffic Law, the fee to search a record is not charged to: any public officer, board or body; a volunteer fire company; a volunteer ambulance service; a legal aid bureau, society or private entity that acts pursuant to Section 722 of the County Law.

If DMV can not find a license record with the information you provide, DMV will send you written notification to advise you that the requested record was not found.

- ☐ I request my own record. (Complete Section A ONLY)
- ☐ I request another person's record. (Complete Section A and Section B).
You must write your initials next to the "permissible use" that applies to your request on Page 2 of this form.

A. INFORMATION ABOUT THE DRIVER RECORD YOU REQUEST:

DRIVER LICENSE ID#

| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|

OR

NAME (Last, First, Middle)

| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|

DATE OF BIRTH

| | | |
|-------|-----|------|
| Month | Day | Year |
| | | |

SEX

| | |
|--------------------------|--------------------------|
| M | F |
| <input type="checkbox"/> | <input type="checkbox"/> |

B. YOUR INFORMATION:

NAME (Last, First, Middle)

| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|

DATE OF BIRTH

| | | |
|-------|-----|------|
| Month | Day | Year |
| | | |

SEX

| | |
|--------------------------|--------------------------|
| M | F |
| <input type="checkbox"/> | <input type="checkbox"/> |

STREET ADDRESS

| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|

APT. #

CITY OR TOWN

| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|

STATE

ZIP CODE

| | |
|--|--|
| | |
|--|--|

Sign Here

Your Signature (required)

Date

CREDIT CARD AUTHORIZATION

My signature authorizes the use of my credit card for payment of any fees in connection with this request. I understand that I must be present for this transaction.

Sign Here

(Cardholder-Sign Name in Full)

Date

FOR OFFICE USE ONLY

Proof of Identification Provided by Requester:

| | |
|--|-------------|
| <input type="checkbox"/> Driver License/Non-Driver ID Card | Client ID # |
| <input type="checkbox"/> Other ID (Specify): | |

| | | |
|-------------------------------|--------------------------------|--------------------------------------|
| <input type="checkbox"/> Cash | <input type="checkbox"/> Check | <input type="checkbox"/> Credit Card |
|-------------------------------|--------------------------------|--------------------------------------|

Proof of Qualification for a No Fee Abstract:

| | |
|---------------------------------|---------------------------------|
| Name of Organization | <input type="checkbox"/> Exempt |
| Claiming Exemption | |
| Purpose of the Abstract Request | |
| MVR Signature | Initials |
| | Date |

THE SPACE BELOW THE LINE IS FOR VALIDATION PURPOSES ONLY.

New York State Department of Motor Vehicles
LIST OF PERMISSIBLE USES
DRIVER PRIVACY PROTECTION ACT

The Federal Driver's Privacy Protection Act (18 U.S.C. §2721 et seq.) ("DPPA") regulates access to Motor Vehicles records. Recipient hereby certifies that by placing your initials below, that the information provided hereunder by DMV shall be used solely for the following purpose(s).

1. ☐ Use in any civil, criminal, administrative, or arbitral proceeding in any court or agency, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders or pursuant to a court order. (18 U.S.C. §2721 (b) (4))
2. ☐ Use by an insurer or insurance support organization or self-insured entity in claims investigations, anti-fraud activities, rating or underwriting activities. (18 U.S.C. §2721 (b) (6))
3. ☐ Use in providing notice to the owners of towed or impounded vehicles. (18 U.S.C. §2721 (b) (7))
4. ☐ Use by an employer, its agent or insurer to obtain information relating to the holder of a commercial driver's license required under Chapter 313 of Title 49 of the U.S.C. (18 U.S.C. §2721 (b) (9))
5. ☐ For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only-
 (A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and (18 U.S.C. §2721 (b) (3) (A))
 (B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual. (18 U.S.C. §2721 (b) (3) (B))
6. ☐ Use required under NYS Vehicle and Traffic Law, Article 19A - Special Requirements for Bus Drivers. (18 U.S.C. §2721 (b) (14))
7. ☐ Use required under NYS Vehicle and Traffic Law, Article 19B - Special Requirements for Commercial Motor Carriers. (18 U.S.C. §2721 (b) (14))
8. ☐ Use by any government agency including any court or law enforcement agency, in carrying out its functions. (18 U.S.C. §2721 (b) (1))
9. ☐ Use by any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions. (18 U.S.C. §2721 (b) (1))
10. ☐ Use in matters of motor vehicle or driver safety. (18 U.S.C. §2721 (b) (2))
11. ☐ For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains. (May use form MV-15GC). (18 U.S.C. §2721 (b) (13))
12. ☐ Use specifically authorized under NYS law, IF such use is related to the operation of a motor vehicle or public safety. Cite the specific NYS law here: _____
(18 U.S.C. §2721 (b) (14))

To knowingly make a false statement or conceal a material fact in this written statement is a criminal offense, punishable under Penal Law Section 210.45. In addition, anyone who makes false representation to obtain any personal information from an individual's Motor Vehicles record is subject to federal criminal fines under the Driver's Privacy Protection Act (DPPA).



EXHIBIT D

ABSTRACT OF DRIVING RECORD

(SAMPLE)

Document # ALI 001

PRINT DATE: 11/28/2011 TIME: 12:34:98 OPERATOR: I OFFICE: DAB

MOTORIST, MICHELLE
6 EMPIRE STATE PLAZA
ALBANY NY 12228CLIENT ID#: 522367836
DOB: 01/25/1983 SEX: F
HEIGHT: 5-6 EYE COLOR: BLUE
COUNTY: ALBA
MI #: ML5752 74568 811149-83

RESTRICTIONS: CORRECTIVE LENSES, INTERLOCK DEVICE

Record Summary Line

LICENSE CLASS: "D"

STATUS: REVOKED

EXPIRATION: 01/25/2018

SUSP/REV SUMMARY: TOTAL 6 (SCOFFS 1 ON 1 DATES) JUDGEMENT \$ 0

***** ACTIVITY *****
CLASS CHANGE: 06/17/1999 NEW: "DJ" OLD: PERMITACCIDENT PREVENTION COURSE COMPLETED ON: 11/22/2008
UP TO 4 POINTS CAN BE REDUCED FROM TOTAL POINTS FROM 05/22/2007 - 11/22/2008
N/A - NON 19-A DRIVER OR COURSE PRIOR TO 01/01/94***** SUSPENSIONS/REVOCATIONS *****
SUSPENSION: 02/04/2011 PEND PROSECUTION-CT ORDER #: A1102090000
CLEAR ON: 03/07/2011 REQUIREMENTS MET

SUSPENSION: 10/20/2011 FLD PAY DRIV ASSESS ORDER #: A110920D000

SUSPENSION: 03/14/2011 INS. NOT IN EFFECT ORDER #: C1103010000

REVOCATION: 03/09/2011 DR INTOX > .08% ALCH ORDER #: D1105180000
COMPLIED ON: 03/09/2011REVOCATION: 05/02/2011 AGG DWI CHILD IN VEH ORDER #: D1106020000
COMPLIED ON: 05/02/2011SUSPENSION: 12/17/2010 TEMP - PDG C/T HRG ORDER #: H110128
COMPLIED ON: 12/17/2010
CLEAR ON: 01/02/2011 TIME SERVED

This is to certify that this document is a true and complete copy of an electronic record on file in the New York State Department of Motor Vehicles, Albany, New York. The record was made in regular course of New York State Department of Motor Vehicles daily business. It is the business of the New York State Department of Motor Vehicles to create and maintain the records of drivers in the state of New York. Entries in this document are made at the time the recorded transactions or events took place or within a reasonable time thereafter. The person who reports the information is under a business duty to do so accurately.

Continued Page 2

[SIGNATURE]

COMMISSIONER OF MOTOR VEHICLES

ABSTRACT OF DRIVING RECORD

Page # 2

Document # ALI 001

PRINT DATE: 11/28/2011 TIME: 12:34:98 OPERATOR: I OFFICE: DAB

MOTORIST: MICHELLE
6 EMPIRE STATE PLAZA
ALBANY NY 12228

CLIENT ID#: 522367836
DOB: 01/25/1983 SEX: F
HEIGHT: 5-6 EYE COLOR: BLUE
COUNTY: ALBA
MI #: M15752 74568 811149-83

REVOCATION: 01/28/2011 RFSD SUB CHEM TEST ORDER #: H1102180000

SUSPENSION: 07/22/2011 FAILURE TO PAY FINE ORDER #: Z0600DH
LOCATION: CHEMUNG COUNTY, TOWN OF VETERAN

***** CONVICTIONS/BAIL FORFEITURES *****

CONVICTION: AGG DWI CHILD IN VEH
VIOLATION: 12/16/2010 CONVICTED ON: 03/07/2011
LOCATION: CHEMUNG COUNTY
PENALTY:
COMM VEH: NO HAZMAT: NO

CONVICTION: DRUG WITH .08% ALCH
VIOLATION: 10/29/2010 CONVICTED ON: 02/10/2011
LOCATION: CHEMUNG COUNTY, TOWN OF VETERAN
PENALTY:
COMM VEH: NO HAZMAT: NO

***** ACCIDENTS *****
ACCIDENT DATE: 11/21/2010 PROPERTY DAMAGE COUNTY: ALBA CASE #: 33-662362
POLICE REPORT FILED

*** END OF RECORD ***

This is to certify that this document is a true and complete copy of an electronic record on file in the New York State Department of Motor Vehicles, Albany, New York. The record was made in regular course of New York State Department of Motor Vehicles daily business. It is the business of the New York State Department of Motor Vehicles to create and maintain the records of drivers in the state of New York. Entries in this document are made at the time the recorded transactions or events took place or within a reasonable time thereafter. The person who reports the information is under a business duty to do so accurately.

[SIGNATURE]

COMMISSIONER OF MOTOR VEHICLES

DESCRIPTION OF ABSTRACT OF DRIVING RECORD

Form DS-242 (Abstract of Driving Record) shows basic licensing information. Most suspensions and revocations are displayed on an abstract while they are open and an additional four years from the date they are cleared. Suspensions for refusal to submit to a chemical test are displayed for five years from the date of suspension. Accidents are displayed for the remainder of the calendar year of the accident date, plus three years. Most traffic convictions will display for the remainder of the calendar year of the conviction date, plus three years. Convictions for operating a motor vehicle under the influence of alcohol or drugs are displayed for ten years from the conviction date. Some serious violations, such as vehicular homicide, are displayed permanently.

Each abstract identifies the motorist, gives the class of license, the current license status, the license expiration date and any restrictions and/or endorsements that limit or expand the driving privilege.

THE RECORD SUMMARY LINE SHOULD ALWAYS BE USED TO DETERMINE THE CURRENT STATUS OF THE DRIVER'S LICENSE OR DRIVING PRIVILEGE.

The Record Summary Line is printed just above the "Activity" section. It shows the class of license or permit that is held, and whether the status is Valid, Revoked, Suspended, Cancelled, Surrendered or Approved (for future license privileges after a revocation). It will also show the type of document the motorist has (a permit, a license, a conditional or restricted use license, or a non-driver ID card) and when the license/permit/ID card expires. If the individual has not had a NY driver license or non-driver ID, that information appears on the Record Summary Line as NO NY LICENSE. There will be more than one Record Summary Line if the motorist has a valid license in one class and a valid permit in another class. It is also possible to have a valid non-commercial license while the commercial privilege (CDL) is revoked or suspended (this is shown on more than one Record Summary Line).

Other license information is grouped in separate sections by action type. Each section is separated by a line of asterisks and a heading that identifies the information that is in each section. The **ACTIVITY** section is first, followed by **SUSPENSIONS/REVOCATIONS**, **CONVICTIONS/BAIL FORFEITURES** and **ACCIDENTS**.

The **ACTIVITY** section of the record shows: accident prevention course completion and the period of time for which the point reduction applies; "prohibits" (which prevent transactions from taking place until requirements are met); CDL history information; reciprocity information (a NY license issued on the basis of a valid license presented from another jurisdiction); information that the NY license was surrendered to another jurisdiction; special licenses or privileges (such as conditional or restricted use); and various notes such as stolen license information.

The **SUSPENSIONS/REVOCATIONS** section shows the type of action imposed (suspension or revocation) and the date it took effect, the reason for the suspension or revocation, and the Order number of the suspension or revocation. Suspensions/revocations for moving violations and all reasons other than scofflaws (failure to answer a traffic ticket or to pay a fine) are grouped together and listed in Order number sequence, so they are not always in chronological order. Suspensions for scofflaws are shown after the moving violations and are listed by the effective date of the suspension; the most recent appears first. Two additional fields may be shown: "Complied On" and "Clear On". "Complied On" refers to the date on which all license documents were surrendered. "Clear On" refers to the date on which the suspension/revocation was terminated; the date will be followed by the reason for the termination.

The **CONVICTIONS/BAIL FORFEITURES** section shows: the type of violation the driver was convicted of; the date of the violation; the date of the conviction; the location where the violation occurred; and the amount of the fine ("Penalty"). Additional information that may be shown includes sentence length in days, whether a commercial vehicle was involved and, depending on the violation, the number of points that accompany the violation.

The **ACCIDENTS** section shows: the date of the accident; whether there was a fatality, personal injury and/or property damage; the county where the accident occurred; whether a police and/or motorist report was filed; and, when appropriate, that the accident is excluded from DMV's program requiring a re-examination after a series of three accidents.

EXPLANATION OF LICENSE STATUS ON "RECORD SUMMARY LINE"

| | |
|---------------------|--|
| VALID: | Unless expired, full driving privileges are in effect for the class of license shown. |
| SUSPENDED: | Driving privilege is temporarily withdrawn for class of license shown. |
| REVOKED: | Driving privilege is withdrawn for class of license shown. |
| CANCELLED: | Driving privilege in all classes has been cancelled. |
| SURRENDERED: | The driver has voluntarily given up his/her driving privilege in all classes. |
| APPROVED: | Driver is authorized to have driving privileges returned after revocation, but has not yet obtained a license or learner permit. |

A license with any status shown above may also be expired.

NEW YORK STATE DRIVER LICENSE CLASSES

License class codes are used by every state as a national standard. Commercial driver licenses (CDLs) will appear on the Record Summary Line as license class CDL A, B or C. A driver who has one class of license, and who obtains a motorcycle license or a learner permit for another class, will have more than one Record Summary Line to show the status of each license class. A driver with only a Class M or MJ license is limited to motorcycle operation.

CLASS CDL A

Valid for operation of a tractor-trailer combination, truck-trailer combination, tractor, truck, taxicab, passenger vehicle, Class B or Class C Limited Use Motorcycle, or Limited Use Automobile.

CLASS CDL B

Valid for operation of a heavy single-unit vehicle (such as a truck or bus) with a Gross Vehicle Weight Rating (GVWR) of more than 26,000 pounds, or for the tractor portion of a tractor-trailer. Also valid for the operation of a taxicab, passenger vehicle, Class B or Class C Limited Use Motorcycle, or Limited Use Automobile.

CLASS CDL C

Valid for operation of a single-unit vehicle (such as a truck or bus) with a GVWR of 26,000 pounds or less that transports 15 or more passengers, or that transports passengers under Article 19-A of the Vehicle & Traffic Law, or that carries hazardous materials. Also valid for the operation of a taxicab, passenger vehicle, Class B or Class C Limited Use Motorcycle, or Limited Use Automobile.

CLASS Non-CDL C

This class is in the process of being eliminated and is only issued when a Farm (F)(G) and/or Tow Truck (W) endorsement is applied for. Valid for operation of a single-unit vehicle (such as medium trucks, farm vehicles and some heavy recreational vehicles) with a GVWR of 26,000 pounds or less that does not require a CDL endorsement. Also valid for the operation of a passenger vehicle, Class B or Class C Limited Use Motorcycle, or Limited Use Automobile.

CLASS D

Valid for operation of a single-unit vehicle or recreational vehicle with a GVWR of 26,000 pounds or less, a passenger vehicle, Class B or Class C Limited Use Motorcycle, a Limited Use Automobile.

CLASS DJ

Valid for operation of a single-unit vehicle with a GVWR of 10,000 pounds or less, a passenger vehicle, Class B or Class C Limited Use Motorcycle, or Limited Use Automobile. Issued only to drivers younger than 18 years of age; automatically becomes a Class D license on the individual's 18th birthday.

CLASS E

Valid for operation of a single-unit vehicle with a GVWR of 26,000 pounds or less used to transport up to 14 passengers for hire, that does not fall under Article 19-A. Also valid for the operation of a taxicab, passenger vehicle, Class B or Class C Limited Use Motorcycle, or Limited Use Automobile.

CLASS M

Valid for operation of a motorcycle (including Limited Use Motorcycle).

CLASS MJ

Valid for operation of a motorcycle (including Limited Use Motorcycle). Issued only to drivers younger than 18 years of age; automatically becomes a Class M license on the individual's 18th birthday.

NOTE: If the motorist does not have a NY license or learner permit, the Record Summary Line will read NO NY LICENSE.
If the motorist has only a non-driver identification card, the Record Summary Line will read ID ONLY.

NEW YORK STATE LIMITED DRIVING PRIVILEGES

When appropriate, the type of limited driving privilege will follow the license class on the Record Summary Line.

CONDITIONAL: A limited driving privilege granted to NYS licensed drivers who are suspended/revoked for alcohol or drug-related convictions.

CONDITIONAL PRIVILEGE: A limited driving privilege granted to drivers licensed in other states who are suspended/revoked in NYS for alcohol or drug-related convictions.

PRE-CONVICTION CONDITIONAL LICENSE: A limited driving privilege granted to NYS licensed drivers who have been suspended in NYS for alcohol or drug-related violations (not yet convicted).

PRE-CONVICTION CONDITIONAL PRIVILEGE: A limited driving privilege granted to drivers licensed in other states who are suspended in NYS for alcohol or drug-related violations (not yet convicted).

RESTRICTED USE: A limited driving privilege granted to NYS licensed drivers who are suspended/revoked for reasons other than alcohol/drug-related convictions.

RESTRICTED USE PRIVILEGE: A limited driving privilege granted to drivers licensed in other states who are suspended/revoked in NYS for reasons other than alcohol/drug-related convictions.

POST REVOCATION CONDITIONAL LICENSE: A limited driving privilege granted to NYS licensed drivers who have ignition interlock devices as a probation condition, and who have completed the minimum revocation period required after an alcohol or drug-related conviction.

LIMITED USE ENDING DATE MM/DD/YYYY: A limited driving privilege granted to junior drivers who pass their road test within 6 months of receiving a learner permit. After the ending date, full driving privileges are granted.

EXAMPLES OF VIOLATION MESSAGES

| | |
|----------------------|--|
| AGG UNL OP MISD | Aggravated unlicensed operation, a second degree misdemeanor |
| CL/RL-CONV TRAF INF | Traffic infraction occurring during conditional/restricted license program |
| CONSUME ALC UNDER 21 | Operation of a motor vehicle after consuming alcohol while under 21 years of age |
| DISOBEYED TRAF DEV | Disobeyed traffic device |
| DRIVING WHILE INTOX | Driving while intoxicated |
| DRVG WHILE IMPAIRED | Driving while ability impaired by alcohol |
| FAC AGG UNL OP INF | Facilitating aggravated unlicensed operation of a motor vehicle |
| FLD ANSWER SUMMONS | Failed to answer a traffic ticket |
| FLD PAY CHILD SUPP | Failed to pay child support |
| FLD PAY DRIV ASSESS | Failed to pay driver responsibility assessment |
| LEAV SCENE INC - PD | Leaving the scene of a property damage incident without reporting |
| NO INSP OVER 60 DAYS | No inspection - Over 60 days |
| OP MV - MOBILE PHONE | Operation of a motor vehicle while using a hand held mobile phone |
| OPER OUT OF REST-INF | Operating in violation of a driver license restriction – an infraction |
| OPER W/O INS – INF | Operating without insurance – an infraction |
| PEND PROS-CT BAC | Pending prosecution by court for blood alcohol content |
| PEND PROSECUTION-CT | Pending prosecution by court |
| PNG SUBMSN TO CRT-OS | Pending submission to out-of-state court |
| RFSD SUB CHEM TEST | Refused to submit to a chemical test |
| SPD NOT REAS/PRUDENT | Speed not reasonable and prudent |
| SUSP BY COURT 510 | Suspended by court under Section 510 of the Vehicle and Traffic Law |
| TEMP - PDG C/T HRG | Suspension pending chemical test hearing |
| UNREG MOT VEH - INF | Unregistered motor vehicle – an infraction |
| 3 SPEED/MISDEM 18 MO | Three speeding violations or misdemeanors within 18 months |



EXHIBIT E

PROPOSED

PROPOSED

STATE OF NEW YORK

DEPARTMENT OF MOTOR VEHICLES

Pursuant to the authority contained in Sections 215(a) and 501(2)(c) of the Vehicle and Traffic Law, the Commissioner of Motor Vehicles hereby amends the Regulations of the Commissioner of Motor Vehicles as follows:

* * * * *

Subdivision (c) of section 3.2 is amended by adding a new paragraph (4) to read as follows:

(4) A2-Problem driver restriction. The operation of a motor vehicle shall be subject to the driving restrictions set forth in section 135.9(b) and the conditions set forth in section 136.4(b) of this Title. As part of this restriction, the commissioner may require a person assigned the problem driver restriction to install an ignition interlock device in any motor vehicle that may be operated with a Class D license or permit and that is owned or operated by such person. The ignition interlock requirement will be noted on an attachment to the driver's license or permit held by such person. Such attachment must be carried at all times with the driver license or permit.

* * * * *

STATE OF NEW YORK

DEPARTMENT OF MOTOR VEHICLES

Pursuant to the authority contained in Sections 215(a), 510(3)(a) and 510(3)(d) of the Vehicle and Traffic Law, the Commissioner of Motor Vehicles hereby amends the Regulations of the Commissioner of Motor Vehicles by adding a new section to read as follows:

* * * * *

PART 132

Dangerous Repeat Alcohol or Drug Offenders

Sec.

132.1. Definitions

132.2. Lifetime record review.

132.3. Hearings.

132.1. Definitions. For the purposes of this Part:

(a) "Alcohol- or drug-related driving conviction or incident" means any of the following, not arising out of the same incident: (i) a conviction of a violation of section 1192 of the Vehicle and Traffic Law; (ii) a finding of a violation of section 1192-a of the Vehicle and Traffic Law; provided, however, that no such finding shall be considered after the expiration of the retention period contained in paragraph (k) of subdivision 1 of section 201 of the Vehicle and Traffic Law; (iii) a conviction of an offense under the Penal Law for which a violation of section 1192 of the Vehicle and Traffic Law is an essential element; or (iv) a finding of refusal to submit to a chemical test under section 1194 of the Vehicle and Traffic Law.

(b) "Dangerous repeat alcohol or drug offender" means:

(1) any driver who, within his or her lifetime, has five or more alcohol- or drug-related driving convictions or incidents in any combination; or

(2) any driver who, during the 25 year look back period, has three or four alcohol- or drug-related driving convictions or incidents in any combination and, in addition, has one or more serious driving offenses during the 25 year look back period.

(c) "High-point driving violation" means any violation for which five or more points are assessed on a violator's driving record pursuant to Section 131.3 of this subchapter.

(d) "Serious driving offense" means (i) a fatal accident; (ii) a driving-related Penal Law conviction; (iii) conviction of two or more high-point driving violations, other than the violation that forms the basis for the record review under Section 132.2 of this Part; or (iv) 20 or more points from any violations, other than the violation that forms the basis for the record review under Section 132.2 of this Part.

(e) "25 year look back period" means the period commencing on the date that is 25 years before the date of the commission of a high-point driving violation and ending on and including the date of the commission of such high-point driving violation.

* * * * *

132.2. Lifetime record review.

Upon receipt of notice of a driver's conviction for a high-point driving violation, the Commissioner shall conduct a review of the lifetime driving record of the person convicted. If such review indicates that the person convicted is a dangerous repeat alcohol or drug offender, the Commissioner shall issue a proposed revocation of such person's driver license. Such person shall be advised of the right to request a hearing before an administrative law judge, prior to such proposed revocation taking effect. The provisions of Part 127 of this Chapter shall be applicable to any such hearing.

* * * * *

132.3. Hearings.

The sole purpose of a hearing scheduled pursuant to this Part is to determine whether there exist unusual, extenuating and compelling circumstances to warrant a finding that the revocation proposed by the Commissioner should not take effect. In making such a determination, the administrative law judge shall take into account a driver's entire driving record. Unless the administrative law judge finds that such unusual, extenuating and compelling circumstances exist, the judge shall issue an order confirming the revocation proposed by the Commissioner.

* * * * *

STATE OF NEW YORK

DEPARTMENT OF MOTOR VEHICLES

Pursuant to the authority contained in Sections 215(a), 1196(5) and 1196(7)(a) of the Vehicle and Traffic Law, the Commissioner of Motor Vehicles hereby amends the Regulations of the Commissioner of Motor Vehicles as follows:

* * * * *

Paragraph (8) of subdivision (a) of section 134.7 is amended to read as follows:

(8) The person has been penalized under section 1193(1)(d)[(1)] of the Vehicle and Traffic Law for any violation of subdivision 2, 2-a, 3, 4, or 4-a of section 1192 of such law.

* * * * *

Subparagraph (i) of paragraph (11) of subdivision (a) of section 134.7 is amended to read as follows:

(i) The person has three or more alcohol- ~~or drug-related driving~~ convictions or incidents within the last [ten] twenty-five years. For the purposes of this paragraph, a conviction for a violation of section 1192 of the Vehicle and Traffic Law, and/or a finding of a violation of section 1192-a of such law and/or a finding of refusal to submit to a chemical test under section 1194 of such law arising out of the same incident shall only be counted as one conviction or incident. The date of the violation or incident resulting in a conviction or a finding as described herein shall be used to determine whether three or more convictions or incidents occurred within a [10] 25 year period.

* * * * *

Subdivision (b) of section 134.10 is amended to read as follows:

(b) Results of satisfactory completion of a rehabilitation program. Upon satisfactory completion of a program, any unexpired suspension or revocation which was issued as a result of the conviction for which the person was eligible for enrollment in the program may be terminated by the commissioner unless the termination is prohibited under section 1193 of the Vehicle and Traffic Law or this Subchapter, or if the termination is based upon enrollment in the program pursuant to the plea bargaining provisions of Vehicle and Traffic Law section 1192(10)(a)(ii) and 1192(10)(d), or if such person would not otherwise be eligible for enrollment in the program pursuant to section 1196(4) of such law, or if the person has two or more alcohol- or drug-related driving convictions or incidents within the 25 year look back period from the date of the violation which resulted in enrollment in the program. For the purposes of this subdivision, the 25 year look back period means the period commencing upon the date that is 25

years before the date of the violation that resulted in enrollment in the program and ending on and including the date of such violation.

* * * * *

Section 134.11 is amended to read as follows:

134.11 Issuance of unconditional driver's license.

Satisfactory completion of a rehabilitation program or expiration of the term of suspension, whichever occurs first, will initiate the necessary action to provide for the termination of the suspension or revocation which was the basis for entry into the rehabilitation program, provided however, no such suspension or revocation shall be terminated prior to the expiration of the term of suspension or revocation if the applicant for the unconditional license has two or more alcohol- or drug-related driving convictions or incidents within the preceding 25 years. For the purposes of this section, the preceding 25 years means the period commencing upon the date that is 25 years before the date of the violation that resulted in enrollment in the program and ending on and including the date of such violation. Upon a determination of satisfactory completion of the rehabilitation program or the term of suspension, and unless otherwise determined by the commissioner, as provided for in subdivision (b) of section 134.10 of this Part, a notice of termination of the suspension or revocation and an unconditional license will be issued. However, no such license will be issued until all civil penalties due the department are paid or if there are any outstanding suspensions, revocations, or bars against such license until such suspensions, revocations, or bars are satisfactorily disposed of by the applicant. Any conditional license which is still valid will be terminated concurrently with the return of the unconditional driver's license and must be returned to the department. A conditional license shall not be renewed more than one year after the issuance of the conditional license if a revocation is issued for a chemical test refusal and the holder of the conditional license has not paid the civil penalty required by section 1194 of the Vehicle and Traffic Law.

* * * * *

STATE OF NEW YORK

DEPARTMENT OF MOTOR VEHICLES

Pursuant to the authority contained in Sections 215(a), 501(2)(c), 510(6), 1193(2)(b)(12), 1193(2)(c)(1) and 1194(2)(d)(1) of the Vehicle and Traffic Law, the Commissioner of Motor Vehicles hereby amends the Regulations of the Commissioner of Motor Vehicles as follows:

* * * * *

Paragraph (3) of subdivision (b) of section 136.1 is amended to read as follows:

(3) History of abuse of alcohol or drugs. A history of abuse of alcohol or drugs shall consist of a record of two or more incidents, within a [10] 25 year period, of operating a motor vehicle while under the influence of alcoholic beverages and/or drugs or of refusing to submit to a chemical test not arising out of the same incident, whether such incident was committed within or outside of this state.

Subdivision (b) of section 136.4 is amended and a new subdivision (b-1) is added to read as follows:

(b)(1) An [applicant] application for a driver's license [shall] may be denied if a review of the entire driving history provides evidence that the applicant constitutes a problem driver, as defined in section 136.1(b)(1) of this Part. If an application is denied pursuant to this paragraph, no application shall be considered for a minimum of one year from the date of denial. In lieu of such denial, the applicant may be issued a license or permit with a problem driver restriction, as set forth in section 3.2(c)(4) of this Chapter and paragraph (2) of this subdivision.

(2) Upon the approval of an application for relicensing of a person who is deemed a problem driver under this subdivision, the Commissioner may impose a problem driver restriction on such person's license or permit, as set forth in section 3.2(c)(4) of this Title. As a component of this restriction, the Commissioner may require such person to install an ignition interlock device in any motor vehicle owned or operated by such person. The ignition interlock requirement will be noted on the attachment to the driver license or permit held by such person. Such attachment must be carried at all times with the driver license or permit.

(3) Revocation of license or permit with problem driver restriction. A license or permit that contains a problem driver restriction shall be revoked (i) upon the holder's conviction of a traffic violation or combination of violations, committed while such restriction is in effect, which the Commissioner deems serious in nature; or (ii) for the holder's failure to install and maintain an ignition interlock device in motor vehicles owned or operated by the holder, when required to do so under such restriction. The attachment, provided for in paragraph (2) of this subdivision, shall set forth the violation or violations that will result in such a revocation. A

revocation for any of the above reasons shall be issued without a hearing based upon receipt of a certificate or certificates of conviction. The Commissioner may also revoke a license or permit with a problem driver restriction, without a hearing, upon receipt of a certificate of conviction that indicates that the applicant has driven in violation of the conditions of such restriction.

(4) Employer vehicle. A person required to operate a motor vehicle owned by such person's employer in the course and scope of his or her employment may operate that vehicle without installation of an ignition interlock device only in the course and scope of such employment and only if such person carries in the motor vehicle written documentation indicating the employer has knowledge of the restriction imposed and has granted permission for the person to operate the employer's vehicle without the device only for business purposes. Such documentation shall display the employer's letterhead and have an authorized signature of the employer. A motor vehicle owned by a business entity that is wholly or partly owned or controlled by a person subject to the problem driver restriction is not a motor vehicle owned by the employer for purposes of the exemption provided in this paragraph and shall be deemed to be owned by the person subject to the problem driver restriction.

(b-1) An application for a driver's license may be denied if the applicant has been convicted of a violation of section 125.10, 125.12, 125.13, 125.14, 125.15, 125.20, 125.22, 125.25, 125.26 or 125.27 of the Penal Law arising out of the operation of a motor vehicle, or if the applicant has been convicted of a violation of section 1192 of the Vehicle and Traffic Law where death or serious physical injury, as defined in section 10.00 of the Penal Law, has resulted from such offense.

* * * * *

Section 136.5 is amended to read as follows:

136.5 [Miscellaneous grounds for denial.] Special rules for applicants with multiple alcohol- or drug-related driving convictions or incidents.

[(a) Notwithstanding any other provision of this Part, two convictions for driving while intoxicated, with personal injury involvement in each, regardless of the extent of such injury, shall result in a denial of an application.

(b) Notwithstanding any other provision of this Part, the Commissioner may deny an application where the revocation sought to be terminated was imposed as a result of a conviction for a violation of section 125.10, 125.12, 125.13, 125.14, 125.15, 125.20, 125.22, 125.25, 125.26 or 125.27 of the Penal Law arising out of the operation of a motor vehicle, or a conviction for a violation of section 1192 of the Vehicle and Traffic Law which resulted in a death or serious injury, as defined in section 10.00 of the Penal Law. The ground for such denial shall be set forth in writing and a copy shall be made available to the applicant.]

(a) For the purposes of this section:

(1) "Alcohol- or drug-related driving conviction or incident" means any of the following, not arising out of the same incident: (i) a conviction of a violation of section 1192 of the Vehicle and Traffic Law or an out-of-state conviction for operating a motor vehicle while under the influence of alcohol or drugs; (ii) a finding of a violation of section 1192-a of the Vehicle and Traffic Law; provided, however, that no such finding shall be considered after the expiration of the retention period contained in paragraph (k) of subdivision 1 of section 201 of the Vehicle and Traffic Law; (iii) a conviction of an offense under the Penal Law for which a violation of section 1192 of the Vehicle and Traffic Law is an essential element; or (iv) a finding of refusal to submit to a chemical test under section 1194 of the Vehicle and Traffic Law.

(2) "Serious driving offense" means (i) a fatal accident; (ii) a driving-related Penal Law conviction; (iii) conviction of two or more violations for which five or more points are assessed on a violator's driving record pursuant to Section 131.3 of this subchapter; or (iv) 20 or more points from any violations.

(3) "25 year look back period" means the period commencing upon the date that is 25 years before the date of the revocable offense and ending on and including the date of the revocable offense.

(4) "Revocable offense" means the violation, incident or accident that results in the revocation of the person's drivers license and which is the basis of the application for relicensing. Upon reviewing an application for relicensing, the Commissioner shall review the applicant's entire driving record and evaluate any offense committed between the date of the revocable offense and the date of application as if it had been committed immediately prior to the date of the revocable offense. For purposes of this section, "date of the revocable offense" means the date of the earliest revocable offense that resulted in a license revocation for which the revocation has not been terminated by the Commissioner's subsequent approval of an application for relicensing.

(b) Upon receipt of a person's application for relicensing, the Commissioner shall conduct a lifetime review of such person's driving record. If the record review shows that:

(1) the person has five or more alcohol- or drug-related driving convictions or incidents in any combination within his or her lifetime, then the Commissioner shall deny the application.

(2) the person has three or four alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period and, in addition, has one or more serious driving offenses within the 25 year look back period, then the Commissioner shall deny the application.

(3) (i) the person has three or four alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period but no serious driving offenses within the 25 year look back period and (ii) the person is currently revoked for an alcohol- or drug-related driving conviction or incident, then the Commissioner shall deny the application for at least five years after which time the person may submit an application for relicensing. Such

waiting period shall be in addition to the revocation period imposed pursuant to the Vehicle and Traffic Law. After such waiting period, the Commissioner may in his or her discretion approve the application, provided that upon such approval, the Commissioner shall impose the A2 restriction on such person's license for a period of five years and shall require the installation of an ignition interlock device in any motor vehicle owned or operated by such person for such five-year period. If such license with an A2 restriction is later revoked for a subsequent alcohol- or drug-related driving conviction or incident, such person shall thereafter be ineligible for any kind of license to operate a motor vehicle.

(4) (i) the person has three or four alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period but no serious driving offenses within the 25 year look back period and (ii) the person is not currently revoked as the result of an alcohol- or drug-related driving conviction or incident, then the Commissioner shall deny the application for at least two years, after which time the person may submit an application for relicensing. Such waiting period shall be in addition to the revocation period imposed pursuant to the Vehicle and Traffic Law. After such waiting period, the Commissioner may in his or her discretion approve the application, provided that upon such approval, the Commissioner shall impose an A2 restriction, with no ignition interlock requirement, for a period of two years. If such license with an A2 restriction is later revoked for a subsequent alcohol- or drug-related driving conviction or incident, such person shall thereafter be ineligible for any kind of license to operate a motor vehicle.

(5) the person has two alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period, then the Commissioner may in his or her discretion approve the application after the minimum statutory revocation period is served.

(6) the person has been twice convicted of a violation of subdivision three, four or four-a of section 1192 of the Vehicle and Traffic Law or of driving while intoxicated or of driving while ability is impaired by the use of a drug or of driving while ability is impaired by the combined influence of drugs or of alcohol and any drug or drugs where physical injury, as defined in section 10.00 of the Penal Law, has resulted from such offense in each instance, then the Commissioner shall deny the application.

(c) The grounds for any denial shall be set forth in writing and a copy shall be made available to the person making the application for relicensing.

(d) While it is the Commissioner's general policy to act on applications in accordance with this section, the Commissioner shall not be foreclosed from consideration of unusual, extenuating and compelling circumstances that may be presented for review and which may form a valid basis to deviate from the general policy, as set forth above, in the exercise of discretionary authority granted under sections 510 and 1193 of the Vehicle and Traffic Law. If an application is approved based upon the exercise of such discretionary authority, the reasons for approval shall be set forth in writing and recorded.

(e) If, after an application for relicensing is approved, the Commissioner receives information that indicates that such application should have been denied, the Commissioner shall rescind such approval and the license granted shall be revoked.

* * * * *

Section 136.10 is amended to read as follows:

136.10 Application for relicensing.

(a) Application by the holder of a post-revocation conditional license. Upon the termination of the period of probation set by the court, the holder of a post-revocation conditional license may apply to the Commissioner for restoration of a license or privilege to operate a motor vehicle. An application for licensure [shall] may be approved if the applicant demonstrates that he or she:

[(a)](1) has a valid post-revocation conditional license; and

[(b)](2) has demonstrated evidence of rehabilitation as required by this Part.

(b) Application after permanent revocation. The Commissioner may waive the permanent revocation of a driver's license, pursuant to Vehicle and Traffic Law section 1193(2)(b)(12)(b) and (e), only if the statutorily required waiting period of either five or eight years has expired since the imposition of the permanent revocation and, during such period, the applicant has not been found to have refused to submit to a chemical test pursuant to Vehicle and Traffic Law section 1194 and has not been convicted of any violation of section 1192 or section 511 of such law or a violation of the Penal Law for which a violation of any subdivision of such section 1192 is an essential element. In addition, the waiver shall be granted only if:

(1) The applicant presents proof of successful completion of a rehabilitation program approved by the Commissioner within one year prior to the date of the application for the waiver; provided, however, if the applicant completed such program before such time, the applicant must present proof of completion of an alcohol and drug dependency assessment within one year of the date of application for the waiver; and

(2) The applicant submits to the Commissioner a certificate of relief from civil disabilities or a certificate of good conduct pursuant to Article 23 of the Correction Law; and

(3) The application is not denied pursuant to section 136.4 or section 136.5 of this Part; and

(4) There are no incidents of driving during the period prior to the application for the waiver, as indicated by accidents, convictions or pending tickets. The consideration of an application for a waiver when the applicant has a pending ticket shall be held in abeyance until such ticket is disposed of by the court or tribunal.

* * * * *

EXHIBIT F

1. [Tickets, Points & Penalties](#)
2. [/ Penalties](#)
3. [/ Alcohol or drug-related violations](#)
4. [/ Penalties for multiple offenders](#)

[!\[\]\(eafc244b53721dd1ec133f0772f70fc7_img.jpg\) SHARE](#)[PRINT](#)

Penalties for multiple offenders

New regulations took effect on September 25, 2012 that affect drivers with multiple alcohol/drugged-driving related convictions or incidents. The highlights of how these changes affect persons applying for a driver license after their license is revoked are provided below.

- Applicants with three or four alcohol/drugged-driving related convictions or incidents within a 25 year period, without a serious driving offense and whose revocation does NOT result from an alcohol or drugged driving conviction or incident, will be denied relicensing for two years in addition to the statutory revocation period, and then will be relicensed with a [problem driver restriction](#) for two years. A serious driving offense is a fatal accident, a driving-related penal law conviction, conviction of two or more violations for which five or more points are assessed, or 20 or more points from any violations.
- Applicants with three or four alcohol/drugged-driving related convictions or incidents within the preceding 25 years, without a serious driving offense and whose revocation DOES result from an alcohol or drugged driving conviction or incident, will be denied relicensing for five years in addition to the statutory revocation period, and then will be relicensed with a problem driver restriction for 5 years with an ignition interlock.
- Applicants with three or four alcohol/drugged-driving related convictions or incidents within the preceding 25 years, with a serious driving offense will be permanently denied a driver license, unless there are compelling or extenuating circumstances.

- [Leandra's Law & ignition interlock devices](#)
- [Penalties for multiple offenders](#)
- [About problem driver restrictions](#)

- Applicants with five or more alcohol/drugged-driving related convictions or incidents on their lifetime driving record will be permanently denied a driver license, unless there are compelling or extenuating circumstances.
- Applicants with two or more alcohol/drugged-driving related convictions or incidents within the preceding 25 years will be required to serve their entire sanction period (suspension or revocation) even if they complete the Drinking Driver Program (DDP) and will be required to submit proof of rehabilitation.

Offense History**DMV Action**

Five or more alcohol/drugged driving related convictions or incidents lifetime = "Persistently Dangerous Driver"

Permanent denial (subject to compelling or extenuating circumstances)

In a 25 year period, three or four alcohol/drugged driving related convictions or incidents + one Serious Driving Offense (SDO) = "Persistently Dangerous Driver"

Permanent denial (subject to compelling or extenuating circumstances)

Revoked for alcohol-related offense, three or four alcohol/drugged driving related convictions or incidents without any SDO in a 25 year period.

Deny for five years in addition to statutory revocation period, then relicense with restricted license and interlock for five years.

Revoked for non-alcohol-related offense, three or four alcohol/drugged driving related convictions or

Deny for two years in addition to statutory revocation period, then relicense with restricted

| | |
|--|---|
| incidents without any SDO in a 25 year period | license for two years, but no interlock. |
|--|---|

| | |
|--|---|
| Two alcohol/drugged driving related convictions or incidents | No full relicensing until end of statutory minimum revocation period, even if DDP is completed. |
|--|---|

For more information, you can read the Governor's [press release](#) about these changes. You can also read the Regulations.

- [Part 3](#) - Final - February 13, 2013
- [Part 132](#) - Revised and Final - February 13, 2013
- [Part 134](#) - Final, effective May 1, 2013
- [Part 136](#) - Revised and final, effective May 1, 2013

Frequently asked questions

What happens if I am not eligible for a conditional or restricted license?

You must serve the entire term of your suspension or revocation and then reapply to the DMV for a new driver license.

What is required to apply for a new license after revocation?

You must submit a completed [Application for Permit, Driver License or Non-Driver ID Card \(MV-44\)](#) and a non-refundable \$100 fee to:

Driver Improvement Unit
NYS DMV
6 Empire State Plaza, Room 338
Albany, NY 12228
(518) 474-0774, Option #5 (Phone Hours: M-F, 8:30 – Noon)
FAX (518) 474-6208

The Driver Improvement Unit (DIU) will make a determination based on your entire driving record, and a

EXHIBIT G



STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES

Department of Motor Vehicles, Driver Improvement Bureau, 6 Empire State Plaza, Albany NY 12228-0220

March 6, 2013

Re: Case # D:

Dear :

Pursuant to the authority contained in Sections 136.5(a)(3) and 136.5(b)(3)(i) of the Regulations of the Commissioner of Motor Vehicles, your application for a New York State driver license/privilege is hereby DENIED because you are deemed a persistently dangerous driver.

Section 136.5(a)(3) provides as follows:

Special rules for applicants with multiple alcohol-or drug-related driving convictions or incidents.

For the purposes of this section "revocable offense" means the violation, incident or accident that results in the revocation of the person's driver license and which is the basis for the application for relicensing. Upon reviewing an application for relicensing, the Commissioner shall review the applicant's entire driving record and evaluate any offense committed between the date of the revocable offense and the date of the application as if it had been committed immediately prior to the date of the revocable offense. For the purposes of this section, "date of the revocable offense" means the date of the earliest revocable offense that resulted in a license revocation for which the revocation has not been terminated by the Commissioner's subsequent approval of an application for relicensing.

Section 136.5(b)(3)(i) provides as follows:

Upon receipt of a person's application for relicensing, the Commissioner shall conduct a lifetime review of such person's driving record. If the record review shows that:

the person has three or four alcohol- or drug-related driving convictions or incidents in any combination within the 25 years preceding the date of the revocable offense but no serious driving offenses within the 25 years preceding the date of the revocable offense and (ii) the person is currently revoked for an alcohol- or drug-related driving conviction or incident, then the Commissioner shall deny the application for at least five years, after which time the person

may submit an application for relicensing. After such waiting period, the Commissioner may in his or her discretion approve such application, provided that upon such approval, the Commissioner shall impose the A2 restriction on such person's license for a period of five years and shall require the installation of an ignition interlock device in any motor vehicle owned or operated by such person for such five-year period. If such license with an A2 restriction is later revoked for a subsequent alcohol- or drug-related driving conviction or incident, such person shall thereafter be ineligible for any kind of license to operate a motor vehicle.

The following constitute the grounds for such denial:

| <u>VIOLATION</u> <u>DATE</u> | <u>INCIDENTS / CONVICTIONS / ACCIDENTS</u> |
|---------------------------------|--|
| 09/17/2010 | DRIVING WITH .08% OR MORE ALCOHOL IN BLOOD |
| 04/02/1996 | DRIVING WHILE ABILITY IMPAIRED BY ALCOHOL |
| 12/29/1992 | DRIVING WHILE ABILITY IMPAIRED BY ALCOHOL |
| 01/02/2009 | PROPERTY DAMAGE ACCIDENT |
| 03/07/2007 | PROPERTY DAMAGE ACCIDENT |

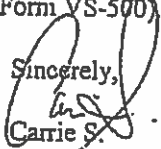
Your driving history suggests that your failure to observe the rules and regulations governing the operation of a motor vehicle constitutes a serious lack of regard on your part for the safety and welfare of other users of the highway, and forms the basis of our decision to deny your application for a driver license.

Although you may submit an application for a new driver license on or after five years from August 23, 2011, please be aware that a review of any subsequent application will be of the entire driving history at that time. Each application is subject to the statutory \$100 fee.

If you feel your case involves unusual, extenuating or compelling circumstances, you may send the information to the Driver Improvement Bureau at the above address. Any such information must be sent within 30 days of the date of this letter. The information concerning your circumstances will be reviewed and you will be advised of the result. Otherwise, this denial is considered final.

If you do not have any unusual, extenuating or compelling circumstances but wish to appeal this decision, you may file an appeal with the Appeals Board by following the instructions in the attached "Information About Administrative And Repair Shop Appeals" (Form VS-500)

Sincerely,


Carrie S.

Driver Improvement Examiner
Driver Improvement Bureau

cls

Enclosure: VS-500

EXHIBIT H



BARBARA J. FIALA
Commissioner
THOMAS P. HIGGINS
Deputy Commissioner for Integrity

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
APPEALS BOARD
PO Box 2935
Albany, NY 12220-0935

DEBORAH V. DUGAN
Chairman

August 5, 2013

Re: NOTICE OF APPEAL DECISION
Appeal Docket No.: 30449
Case No.: D1101543

Dear Appellant:

The above-referenced Administrative Appeal was decided by the Appeals Board on the date indicated on the enclosed Decision of Appeal, pursuant to Article 3-A of the Vehicle and Traffic Law.

This is a final, administrative determination of the Department. Any further appeal should be addressed to the New York State Supreme Court pursuant to an Article 78 Proceeding under the Civil Practice Law and Rules.

Very truly yours,
Appeals Board
Processing Unit

Enc.:

DAVID A MANSFIELD ESQ
ONE SUFFOLK SQUARE SUITE 530
ISLANDIA NY 11749

EXHIBIT I



DAVID J. SWARTS
Commissioner

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES

6 EMPIRE STATE PLAZA, ALBANY, NY 12228

Client ID#:
Date of Birth:
Effective Date:

LETTER OF CLEARANCE

Dear Mr. Adams:

Your driving privileges in New York State have been restored. This Department has no objection to your applying for a non-commercial license in another state providing you meet that state's licensing requirements.

Sincerely,

Timothy Fabian
Driver Improvement Examiner
New York State Department of Motor Vehicles
Driver Improvement Bureau

tmf

EXHIBIT J

NYS DEPARTMENT OF MOTOR VEHICLES
ADMINISTRATIVE APPEALS BOARD
DECISION OF APPEAL

Case No.:

Docket No.: 30449

Decided: July 30, 2013

This is an appeal from a denial of an application for a driver's license. The denial was in accordance with Vehicle and Traffic Law (VTL) §510(5) and (6) and Commissioner's Regulations Part 136 (15 NYCRR 136). The denial was issued after evaluation of the appellant's driving record and any information appellant may have been submitted as part of the application process.

APPEAL ARGUMENTS

- 1) Appellant mailed her application on or about 9/18/12, prior to the effective date of the new regulations.
- 2) The denial letter relied upon Part 136 of the Commissioner's Regulations. However, VTL Section 510(5) and (6) "cannot be applied to deny a driver's license as the denial letter does not make reference to the VTL or case law."
- 3) The Commissioner's decision to intentionally freeze appellant's application without an explanation was arbitrary, capricious and an abuse of discretion.
- 4) At the time of appellant's most recent alcohol violation on 9/17/10, the new regulations did not exist. Accordingly, at that time, it did not represent a revocable offense for which a lifetime review would be warranted. Further, no lifetime review of driving records or mandatory A-2 restrictions existed at the time of application.
- 5) Prior to the enactment of the new regulations, the DMV would consider an application based on the "date of application." In this case, the post mark date represents the application date and should govern as a contract between the applicant and the department.
- 6) The retroactive nature of the new regulations represents an ex post facto penalty and an abuse of administrative discretion.
- 7) The DMV is trying to make an end run around the state legislature by enacting regulations without legislative hearings and due process of law.
- 8) It is clear that the new regulations are not ameliorative, but rather punitive in nature and should only be applied prospectively, not retroactively.
- 9) The Department relies upon Part 136.5(a)(3) and 136.5(b)(2). The regulatory scheme was not in existence at the time appellant's application was eligible to be acted upon as measured by the date of filing.
- 10) The regulations were deemed proposed emergency regulations without ever being formally promulgated on the date of application to serve as a basis for a retroactive denial of an essential privilege to obtain a driver's license or privilege to operate a motor vehicle in the State of New York.
- 11) Appellant needs a license in order to obtain employment and receive medical treatment for a serious medical condition. She lacks affordable and reliable alternate transportation.
- 12) Appellant completed alcohol treatment and the Drinking Driver Program. She also attended a victim impact panel and was discharged from probation.

3) Commissioner's Regulations Section 136.5(5) allows the Commissioner to exercise discretion and approve a driver's license application after the minimum statutory revocation period when there are two prior alcohol/drug related driving offenses within 25 years of the commission of the revocable offense. Since appellant's convictions were committed on 12/29/92 and 4/2/96, they fit the requirements to permit the Commissioner to approve the application, as the minimum period of revocation has been served. Therefore, the application should have been approved, as the revocable offense was not subject to "lifetime review" on the date of application.

ANALYSIS AND DISCUSSION

The Regulations are authorized by law and in accord with legislative objectives. Vehicle and Traffic Law §510(5) and (6) provide that once revoked, a driver's license may be restored only by direction of the Commissioner of Motor Vehicles and that where revocation is mandatory, no new license shall be issued except in the discretion of the Commissioner. Also, Vehicle and Traffic Law §§1193(2)(c)(1) and 1194(2)(d)(1) provide that where a license is revoked as the result of a mandatory revocation arising out of an alcohol- or drug-related offense or a chemical test refusal, no new license shall be issued except in the discretion of the Commissioner. Part 136 of the Commissioner's Regulations was promulgated to assist in exercising the discretion afforded to the Commissioner by law and to help fulfill the responsibility of promoting highway safety by identifying problem drivers.

The ex post facto clauses of the U.S. Constitution prohibit the passage of retroactive penal laws, specifically in the substantive elements of criminal offenses and the criminal punishments prescribed for them. The purpose of the Commissioner's Regulations is not to impose increased punishment upon a motorist, but to protect the highways from those operators of motor vehicles, who by their conduct have shown that they are a potential hazard to the person and property of others. (See, Jones v. Kelly, 9 AD2d 395).

A driver's license has been held by the courts of this state to be a privilege conferred upon a citizen who has met certain statutory requirements, and there is no right thereto. Guido v. Melton, 107 Misc2d 660, 661 (Sup. Ct., Albany County, 1981). The Court in Guido v. Melton denied an Article 78 petition seeking to reverse DMV's denial of an application for relicensing after the driver was revoked. The Court held that, even though the applicable provisions of the Commissioner's Regulations were enacted after the motorist's license was revoked and had the effect of extending the time within which one may apply for a license, they did not constitute a denial of due process, nor violate the ex post facto doctrine (Guido v. Melton, 107 Misc2d 660, 662). Likewise, the appellant has not established a property right in being relicensed after having been revoked. The Regulations at issue are authorized by law, reasonable, and bring about the purposes for which they were enacted.

Under the Governor's direction, the Commissioner's Regulations were reassessed to address the inherent danger of relicensing drivers convicted of multiple alcohol and drug-related offenses. The revised Regulations were developed in an effort to address the problems caused by drivers with a history of alcohol and/or drug-related offenses in order to protect all those who share the public highways of this State. The revised Regulations were implemented as soon as they were enacted on September 25, 2012.

As there is no legal obligation to review an application for relicensing within a requisite period of time, the Department took measures to ensure that drivers with multiple alcohol and drug-related offenses would be treated uniformly. Since the decision to review policies for relicensing problem drivers serves a valid purpose within the Department's

statutory responsibilities, the exercise of discretion was reasonable (Schubert v. DMV, Sup. Ct., Albany Co., 2012).

Section 136.1 of the Commissioner's Regulations (Regs.) provides that in exercising the discretion authorized by law and in keeping with the responsibility to provide meaningful safeguards for the general public who are users of the highways, it is the purpose of the Commissioner to rehabilitate problem drivers through the use of education and to take action where review of the applicant's total record indicates that such action is necessary for the protection of the applicant and the public alike.

Section 136.5 of the Commissioner's Regulations consists of general guidelines for relicensing after revocation that identify persistently dangerous drivers with multiple alcohol or drug-related driving convictions or incidents in an objective manner and provides for evaluation of the individual record. When certain factors are present, a presumption is raised that relicensing should be postponed to avoid potential danger to all users of the highways (Regs. §§136.1, 136.5; see, Matter of Guido v. Melton, 107 Misc2d 660, Sup. Ct., Albany Co.).

Section 136.5(b)(3) of the Commissioner's Regulations provides that upon receipt of a person's application for relicensing, the Commissioner shall conduct a lifetime review of such person's driving record. The Commissioner shall deny the application for at least five years if the review shows that (i) the person has three or four alcohol or drug-related driving convictions or incidents in any combination within the 25 year look back period but no serious driving offenses within the 25 year look back period and (ii) the person is currently revoked for an alcohol- or drug-related driving conviction or incident. Such waiting period shall be in addition to the revocation period imposed pursuant to VTL.

"Alcohol- or drug-related driving conviction or incident" means any of the following, not arising out of the same incident: (i) a conviction of a violation of VTL § 1192 or an out-of-state conviction for operating a motor vehicle while under the influence of alcohol or drugs; (ii) a finding of a violation of VTL § 1192-a; provided, however, that no such finding shall be considered after the expiration of the retention period contained in VTL §201(1)(k); (iii) a conviction of an offense under the Penal Law for which a violation of VTL §1192 is an essential element; or (iv) a finding of refusal to submit to a chemical test under VTL §1194. (Regs. §136.5(a)(1)).

"Serious driving offense" means (i) a fatal accident; (ii) a driving-related Penal Law conviction; (iii) conviction of two or more violations for which five or more points are assessed on a violator's driving record pursuant to Regs. §131.3; or (iv) 20 or more points from any violations. (Regs. §136.5(a)(2))

"25 year look back period" means the period commencing upon the date that is 25 years before the date of the revocable offense and ending on and including the date of the revocable offense. (Regs. §136.5(a)(3))

"Revocable offense" means the violation, incident or accident that results in the revocation of the person's driver's license and which is the basis of the application for relicensing. Upon reviewing an application for relicensing, the Commissioner shall review the applicant's entire driving record and evaluate any offense committed between the date of the revocable offense and the date of the application as if it had been committed immediately prior to the date of the revocable offense. For purposes of this section, "date of the revocable offense" means the date of the earliest revocable offense that resulted in a license revocation for which the revocation has not been terminated by the Commissioner's subsequent approval of an application for relicensing. (Regs. §136.5(a)(4))

EXHIBIT K



NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES

NOTICE OF LICENSE REVOCATION

www.dmv.ny.gov

(Read the following information carefully.)

ORDER NUMBER: H1306040000

REVOCATION EFFECTIVE DATE: 07/04/2013

CLIENT NUMBER: "

POSTAL ID: 050033555

|||||



Because you were convicted on 06/03/2013 for a violation of SPEED IN ZONE and your driving record indicates that you are a dangerous repeat alcohol or drug offender, your license will be revoked, as authorized by Part 132 of the Commissioner's Regulations and section 510(3)(a) and (d) of the Vehicle and Traffic Law.

The revocation will begin on the "Effective Date" shown above, unless you request a hearing (see the bottom of this page for information about the hearing). If you accept the revocation, you may submit an application for a new driver's license 30 days after the revocation takes effect. Please be aware, however, that a review of any subsequent application will be of the entire driving history and will be based upon the same standards that resulted in the Notice of Revocation. Therefore, you should not assume that a subsequent application will result in an approval for relicensing. Each application is subject to the statutory \$100 fee.

You are not eligible for a conditional or restricted use license.

The following violations on your record are the reason for the revocation:

| Date of Incident | Case No. or Conviction Date | Order No. or Location of Acc. or Court | Description | Pts. | Fine | Remarks |
|------------------|-----------------------------|--|---------------------|------|---------|---------|
| 03/18/2005 | 05/19/2005 | DISTRICT SUFFOLK | DRVG WITH .08% ALCH | | \$ 1000 | |
| 06/23/2000 | 11/30/2000 | DISTRICT SUFFOLK | DRIVING WHILE INTOX | | \$ 1500 | |
| 10/30/1997 | 04/03/1998 | DISTRICT SUFFOLK | DRIVING WHILE INTOX | | \$ 1000 | |
| 02/03/1995 | 07/17/1995 | DISTRICT SUFFOLK | DRVG WITH .10% ALCH | | \$ 1000 | |
| 06/05/1992 | 11/04/1992 | DISTRICT SUFFOLK | DRVG WHILE IMPAIRED | | \$ 350 | |
| 02/22/1992 | 04/16/1992 | NASSAU COUNTY COURT | DRVG WITH .10% ALCH | | \$ 500 | |
| 06/14/1991 | 08/26/1991 | DISTRICT SUFFOLK | DRVG WITH .10% ALCH | | \$ 500 | |

The only purpose of a hearing is for the judge to determine whether extenuating and compelling circumstances exist to justify a finding that the revocation should not take effect. To request a hearing, sign and date this notice below. Return this notice (before the "Revocation Effective Date") to: DMV, Division of Safety and Business Hearings, Room 424A, 6 Empire State Plaza, Albany, NY 12228. DMV staff will let you know when and where the hearing will be held. You can bring an attorney with you to the hearing.

X

05-124 (12/12)

(Signature - Sign Name in Full)

349006628

(Client Number)

(Date)

EXHIBIT L



Court of the State of New York

Part

County of Suffolk

PEOPLE OF THE STATE OF NEW YORK
against

Defendant

DOB

ORDERS AND CONDITIONS OF PROBATION OR
CONDITIONAL DISCHARGE RELATED TO
IGNITION INTERLOCK DEVICE (IID)

Docket/SC/Ind #

NYSID:

Motorist ID

State

Defendant having been ☐ Convicted of Vehicle and Traffic Law § OR ☐ adjudicated a Youthful Offender is
ORDERED sentenced to:☐ A Conditional Discharge for a period of ☐ one ☐ three year(s) or ☐ Term to expire on:☐ Probation for a period of ☐ one ☐ three ☐ five year(s) or ☐ Term to expire on:A period of incarceration of ☐ days ☐ months ☐ years a sentence of probation or conditional discharge, as ordered
above, which shall be served consecutively to the period of incarceration.

The Court has further determined, and it is therefore ORDERED that:

☐ The defendant is able to afford the immediate fees/charges associated with the installation and maintenance of an Ignition
Interlock Device(s) (IID), and shall enter into a written agreement with the selected IID Vendor; or

Upon review of the Financial Disclosure Report, the Court has determined, and it is, therefore, ORDERED that:

☐ The defendant enter into a specific payment plan with the IID vendor, to wit:and such
written plan/agreement shall be provided to the IID monitoring authority (monitor) or, if applicable, the probation officer; or☐ The defendant is NOT able to afford the usual fees/charges associated with the installation and maintenance of an IID,
and all such fees/charges are waived.The Ignition Interlock Device(s) shall be installed for a minimum of six months or ☐ six months or ☐ months ☐ years,
and the IID Monitor will determine Class or type of Ignition Interlock Device(s) to be installed by the defendant.

| NO Vehicle | Vehicle #1 | Vehicle #2 | Vehicle #3 | Vehicle #4 |
|--------------|------------|------------|------------|------------|
| Owner | | | | |
| Make | | | | |
| Model | | | | |
| Year | | | | |
| Color | | | | |
| VIN | | | | |
| Plate # | | | | |
| Insurance Co | | | | |

During this period of supervision, the defendant is ORDERED to comply with all of the original conditions of Probation or Conditional
Discharge, as well as the following conditions and any others the Court may impose at a later date and to follow the instructions of
the monitor and, if applicable, probation officer as how these conditions are to be carried out:

1. The Defendant shall install and maintain an IID in any motor vehicle owned, operated or rented by the defendant for the period listed
above. Failure to install and maintain such device(s) will subject the defendant to incarceration for violation of the Court's Order. Further, if the
defendant operates a motor vehicle without the court-ordered IID, he/she may be arrested and charged with a new crime pursuant to VTL § 1198,
a Class A misdemeanor.
2. Report to the monitor as directed by the Court or, if applicable, the probation officer.
3. Answer all reasonable inquiries by the monitor.
4. Notify the monitor prior to any change in address vehicle ownership or access for operation.
5. An ignition interlock device shall be installed in the below-described vehicle(s) within 10 business days of the conditional discharge
or probation sentence or release from incarceration. The vehicle(s) listed are owned or operated by the defendant. If the vehicle is not
owned by the defendant, written and notarized permission for the ignition interlock installation must be completed by the vehicle's titled
owner.
6. Where applicable, pursuant to NYS Vehicle and Traffic Law § 1193(1-a)(c), the device(s) shall be installed during the period of license
revocation and its termination, and for each additional period as the court may determine.
7. The defendant shall provide proof of installation of each device to the monitor and, if applicable, the probation department within 3
(three) business days of installation.
8. The defendant shall notify the monitor and, if applicable, probation officer immediately if any changes occur in vehicle(s)-related
information.
9. The defendant will notify the court and, if applicable, probation officer immediately if he/she purchases or rents any new or additional
vehicles.
10. The defendant shall be responsible for the entire cost of the installation and maintenance of approved ignition interlock device(s),
unless associated fees and charges are waived by the court.
11. The defendant shall deliver the vehicle(s) identified below and equipped with the ignition interlock device to the installer for the
inspection and calibration checks as required by the installer or as directed by the court, the monitor or, if applicable, the probation
officer in a manner consistent with DPCA Rules and Regulations Part 9NTCRR Part 358.
12. The defendant shall not request, solicit or allow any other person(s) to blow into the ignition interlock device, or start the motor vehicle
with the device, for the purpose of providing the defendant with an operable motor vehicle.
13. The defendant shall not tamper with or attempt to circumvent an otherwise operable ignition interlock device. Such tampering is a
Class A Misdemeanor under Section 1198 of New York State Vehicle and Traffic Law.
14. The defendant shall notify the court, the monitor and/or the probation officer of his/her intention to operate an employer's vehicle
within the scope of his/her employment for business purposes only and shall provide written permission from the employer, to be carried
on his/her person and shown to the court, the monitor and/or the probation officer, indicating that the employer is aware that the driving
privilege of the defendant has been restricted, and permits operation of the business vehicle within the scope of employment without the
ignition interlock device. If the business entity is all or partly owned by the defendant or the defendant has a controlling interest in that
business entity, the business vehicles are not exempt from having IID installed.

vehicle registrations ☒ attached to form in lieu of above vehicle information

Dated

Justice/Judge

I have read and received a copy of the above Interlock Ignition Device Addendum to Order and Conditions of Probation or Conditional
Discharge and agree to comply with them. I understand the conditions and that the Court may, at any time prior to the expiration or
termination of the period of probation, modify or enlarge the conditions or, if I violate a condition or commit an additional offense other
than a traffic infraction, revoke the sentence.

Dated

Defendant

☒ Verify your
current address

CRC IID-CD/PROB (rev. 10/2010)

Defendant Copy

Phone #

EXHIBIT M

COUNTY OF SUFFOLK



Steven Bellone
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PROBATION

Patrice S. Dlhopsky
Director

Effective August 15, 2010, all persons convicted of an alcohol-related Driving While Intoxicated offense are required to have an Ignition Interlock Device installed in any vehicle(s) they own/operate/rent. This device is to be installed within ten (10) business days of sentence or jail release. Failure to install an ignition interlock device in any vehicle(s) you own/operate/rent will result in your case being returned to court for review and possibly resentencing.

All of the manufacturers/vendors listed below are authorized to install and service interlock devices which conform to New York State and Suffolk County standards. This list is effective as of June 26, 2012, and supersedes all prior lists. It is your responsibility to select a manufacturer/vendor and arrange for installation. Detailed information regarding service center locations, appointment availability, and pricing and other fees, can be obtained directly from these manufacturers/vendors by calling their toll free number.

| MANUFACTURER | DEVICE MODEL | INFORMATION AND APPOINTMENTS |
|---|--------------|------------------------------------|
| Consumer Safety Technology, Inc./ Intoxalock | 1001A-Cloud | 1-877-777-5020 |
| LifeSafer Inc. | FC100 | 1-800-871-5462 |
| Drive Safe Ignition Interlock of NY Inc. | FC100 | 1-888-708-0578 |

EXHIBIT N

NEW YORK STATE
IGNITION INTERLOCK DEVICE PROGRAM - FINANCIAL DISCLOSURE REPORT
CONFIDENTIAL

FINANCIAL DISCLOSURE INSTRUCTIONS

IN ORDER TO BE PROCESSED AS AN APPLICATION FOR JUDICIAL CONSIDERATION OF FINANCIAL AFFORDABILITY, ALL INFORMATION REQUESTED ON THIS REPORT MUST BE COMPLETELY, PROPERLY AND ACCURATELY PROVIDED. DATED SIGNATURE OF THE DEFENDANT IS ALSO REQUIRED.

QUALIFYING INFORMATION SECTION *

DEFENDANT'S NAME LAST, FIRST, MI (MIDDLE INITIAL): ENTER DEFENDANT'S NAME.

ADDRESS: ENTER DEFENDANT'S MAILING ADDRESS

DEFENDANT'S LICENSE NUMBER: ENTER DEFENDANT'S DRIVER LICENSE NUMBER.

DATE OF BIRTH: ENTER DEFENDANT'S BIRTHDATE

LIVING ARRANGEMENTS AND LENGTH OF TIME IN CURRENT ARRANGEMENT: DESCRIBE THE DEFENDANT'S PRESENT LIVING ARRANGEMENT AND THE LENGTH OF TIME IN THIS LIVING ARRANGEMENT (E.G. HOMELESS, MARRIED LIVING WITH SPOUSE AND/OR CHILD(REN), SINGLE/DIVORCED/WIDOWED LIVING ALONE, SINGLE/DIVORCED/WIDOWED LIVING WITH CHILD(REN), SINGLE/DIVORCED/WIDOWED LIVING WITH PARENTS WITH OR WITHOUT CHILD(REN), CO-HABITATING, LIVING WITH RELATIVE(S) OTHER THAN SPOUSE OR PARENT).

LIST OTHER PEOPLE IN HOUSEHOLD: LIST ANY OTHER PEOPLE WHO LIVE IN THE SAME HOUSEHOLD WITH THE DEFENDANT, INCLUDING SPOUSE AND ANY DEPENDENTS.

EMPLOYMENT STATUS: CHECK THE APPROPRIATE RESPONSE. IF EMPLOYED, PROVIDE ALL INFORMATION REQUESTED IN THE "EMPLOYED" SECTION ONLY AND PROCEED TO THE "FINANCIAL REPORTING SECTION". DOCUMENTS THAT CAN BE USED AS VERIFICATION OF EMPLOYMENT INCLUDE A RECENT PAY STUB OR A COMPANY OR EMPLOYER LETTER. IF UNEMPLOYED, PROVIDE ALL INFORMATION REQUESTED IN THE "UNEMPLOYED" SECTION AND PROCEED TO THE "FINANCIAL REPORTING SECTION". DOCUMENTS THAT CAN BE USED AS VERIFICATION OF UNEMPLOYMENT INCLUDE BENEFITS STATEMENT/CHECK STUB FOR UNEMPLOYMENT BENEFITS, EMPLOYER LETTER, OR DISABILITY VERIFICATION.

FINANCIAL REPORTING SECTION **

DO NOT LEAVE ANY SPACES BLANK. PLACE A ZERO IN THE APPROPRIATE SPACE
IF THE DEFENDANT HAS NO SUCH INCOME OR EXPENSES.

A - MONTHLY INCOME FROM WAGES: ENTER TOTAL GROSS FOR ALL WAGES. THE FOLLOWING DOCUMENTS CAN BE USED AS VERIFICATION: PAY CHECK STUB, W-2 FORM OR EMPLOYER STATEMENT.

B - MONTHLY INCOME FROM OTHER SOURCES: ENTER ALL INCOME RECEIVED FROM SOURCES OTHER THAN EMPLOYMENT. ("RENTAL INCOME" REFERS TO INCOME RECEIVED FROM RENTAL PROPERTY THAT IS OWNED BY THE DEFENDANT.) THE FOLLOWING DOCUMENTS CAN BE USED AS VERIFICATION: PAYMENT STUB, MOST RECENT STATE OR FEDERAL TAX RETURN, BANK STATEMENT, COURT RECORDS, LETTERS FROM THE BENEFIT OFFICE REGARDING MONTHLY BENEFIT AMOUNT, ETC.

C - MISCELLANEOUS INCOME DURING PAST 12 MONTHS: SPECIFY ALL OTHER INCOME, REGARDLESS OF SOURCE.

D - CURRENT BALANCES: SPECIFY ALL TYPES AND AMOUNTS.

E - PERSONAL PROPERTY: LIST THE MARKET VALUE OF ALL PERSONAL PROPERTY OWNED.

F - MONTHLY EXPENSES: ENTER ALL MONTHLY EXPENSES AS APPROPRIATE. THE FOLLOWING DOCUMENTS CAN BE USED AS VERIFICATION: EXPENSE RECEIPTS, PAYMENT BOOK, MOST RECENT BILL.

SUBMIT 3 COPIES OF THIS COMPLETED REPORT TO THE SENTENCING COURT

NEW YORK STATE
IGNITION INTERLOCK DEVICE PROGRAM - FINANCIAL DISCLOSURE REPORT
CONFIDENTIAL

QUALIFYING INFORMATION SECTION *

DEFENDANT'S LAST NAME _____ FIRST NAME _____ MI _____

DEFENDANT'S LICENSE NUMBER _____ DATE OF BIRTH _____

HOME ADDRESS _____

CITY _____ STATE _____ ZIP _____

MAILING ADDRESS _____
IF DIFFERENT _____

CITY _____ STATE _____ ZIP _____

| PROVIDE INFORMATION FOR EACH VEHICLE OWNED *IF MORE THAN 3 VEHICLES PLEASE ATTACH ADDITIONAL SHEET WITH REQUIRED INFORMATION | VEHICLE ONE | YEAR | MAKE | MODEL | VALUE |
|--|------------------|------|------|-------|-------|
| | VEHICLE TWO | | | | |
| | VEHICLE THREE | | | | |
| | | | | | |

DESCRIBE LIVING ARRANGEMENTS _____

LENGTH OF TIME IN CURRENT ARRANGEMENT _____

OTHER PEOPLE LIVING IN HOUSEHOLD:

| NAME | AGE | RELATIONSHIP | NAME | AGE | RELATIONSHIP |
|------|-----|--------------|------|-----|--------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

EMPLOYMENT STATUS (CHECK ONE)

EMPLOYED ☐

UNEMPLOYED ☐

PLACE OF EMPLOYMENT _____

LENGTH OF UNEMPLOYMENT _____

ADDRESS _____

LAST PLACE OF EMPLOYMENT _____

POSITION _____

LAST EMPLOYMENT FROM _____

LENGTH OF TIME _____

TO _____

VERIFICATION DOCUMENT (SPECIFY & ATTACH) _____

VERIFICATION DOCUMENT (SPECIFY & ATTACH) _____

NEW YORK STATE
IGNITION INTERLOCK DEVICE PROGRAM - FINANCIAL DISCLOSURE REPORT
CONFIDENTIAL

FINANCIAL REPORTING SECTION **

A: MONTHLY INCOME FROM WAGES

SELF \$ _____
SPOUSE \$ _____
OTHER HOUSEHOLD MEMBERS \$ _____
\$ _____

HOW OFTEN IS DEFENDANT PAID? _____
(WKLY, BI-WKLY, MNTHLY, BI-MNTHLY)

B: MONTHLY INCOME FROM OTHER SOURCES

PENSION INCOME \$ _____
RENTAL INCOME \$ _____
CERTIFICATES OF DEPOSIT \$ _____
TRUSTS/STOCKS/BONDS \$ _____
CHILD SUPPORT \$ _____
SPOUSAL MAINTENANCE/ALIMONY \$ _____
LEGAL SETTLEMENTS/AWARD \$ _____
AFDC/FOOD STAMPS/RENTAL ASSISTANCE \$ _____
WORKERS COMP \$ _____
UNEMPLOYMENT COMP \$ _____
COUNTY/CITY WELFARE \$ _____
OTHER: _____ \$ _____
_____ \$ _____
_____ \$ _____

C: MISCELLANEOUS INCOME DURING PAST 12 MONTHS

LOTTERY \$ _____
SWEEPSTAKE(S) \$ _____
DISABILITY INSURANCE \$ _____
BONUS \$ _____

WAGERING \$ _____
LEGAL SETTLEMENT/AWARD \$ _____
ANNUITY \$ _____

| SPECIFY | AMOUNTS |
|---------|----------|
| OTHER | \$ _____ |
| | \$ _____ |
| | \$ _____ |

D: CURRENT ACCOUNT BALANCES

SAVINGS ACCOUNT \$ _____
CHECKING ACCOUNT \$ _____
INDIVIDUAL RETIREMENT ACCOUNT \$ _____

DEFERRED COMPENSATION ACCOUNT \$ _____
TRUST ACCOUNT \$ _____
OTHER ACCOUNTS (SPECIFY & AMOUNT) \$ _____

NEW YORK STATE
IGNITION INTERLOCK DEVICE PROGRAM - FINANCIAL DISCLOSURE REPORT
CONFIDENTIAL

E: PERSONAL PROPERTY

DO YOU OWN:

REAL ESTATE

LOCATION _____

VALUE \$ _____

LOCATION _____

VALUE \$ _____

LOCATION _____

VALUE \$ _____

REC VEHICLE/CAMPER

MAKE _____

VALUE \$ _____

ATV 3/4 WHEEL

MAKE _____

VALUE \$ _____

MOTORCYCLE

MAKE _____

VALUE \$ _____

BOAT

MAKE _____

VALUE \$ _____

MAKE _____

VALUE \$ _____

PERSONAL PROPERTY

(ELECTRONICS, ART, JEWELRY, FURNITURE, ETC.)

APPROXIMATE VALUE _____

F: MONTHLY EXPENSES

RENT/MORTGAGE \$ _____

WATER/SEWER \$ _____

HOME ELECTRIC/GAS \$ _____

FOOD \$ _____

TELEPHONE (LANDLINE) \$ _____

TELEPHONE (CELL) \$ _____

HEALTH/LIFE INSURANCE \$ _____

CHILD CARE \$ _____

AUTOMOBILE INSURANCE(S) \$ _____

SPECIFY NUMBER _____

AUTOMOBILE FUEL/GAS \$ _____

AUTOMOBILE LOAN(S) \$ _____

SPECIFY NUMBER _____

ALCOHOL \$ _____

SPOUSAL MAINTENANCE/ALIMONY \$ _____

CIGARETTES/OTHER
TOBACCO PRODUCTS \$ _____

INTERNET SERVICE \$ _____

CABLE TELEVISION \$ _____

BEEPERS/PAGERS \$ _____

SPECIFY NUMBER _____

SATELLITE TV/RADIO \$ _____

MEDICAL PRESCRIPTIONS \$ _____

NEW YORK STATE
IGNITION INTERLOCK DEVICE PROGRAM - FINANCIAL DISCLOSURE REPORT
CONFIDENTIAL

F: MONTHLY EXPENSES CONTINUED *

| | <u>SPECIFY BELOW:</u> | <u>AMOUNTS</u> |
|-----------------------------|-----------------------|----------------|
| CREDIT CARD CHARGE(S)/OTHER | _____ | \$ _____ |
| LOAN AMOUNT(S) | _____ | \$ _____ |
| | _____ | \$ _____ |
| | _____ | \$ _____ |
| | _____ | \$ _____ |
| | _____ | \$ _____ |
| WORK RELATED TRAVEL | _____ | \$ _____ |
| RECREATION | _____ | \$ _____ |
| | _____ | \$ _____ |
| | _____ | \$ _____ |
| OTHER EXPENSES | _____ | \$ _____ |
| | _____ | \$ _____ |
| | _____ | \$ _____ |

* ATTACH ADDITIONAL SHEET WITH REQUIRED INFORMATION IF MORE SPACE IS NECESSARY.

THE INFORMATION PRESENTED HEREIN IS TRUTHFUL AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

DEFENDANT SIGNATURE

DATE

PRINT NAME

EXHIBIT O

IGNITION INTERLOCK ACKNOWLEDGEMENT FROM EMPLOYER

_____, (FULL NAME OF OPERATOR) is currently serving a (probation) (conditional discharge) sentence in _____ County to expire on _____.

This letter is to confirm that the Employer has been notified of the restricted nature of the driver's license held by _____ (FULL NAME OF OPERATOR) requiring installation and maintenance of an ignition interlock device in any motor vehicle he/she owns or operates in accordance with New York State Vehicle and Traffic Law Article 31. Pursuant to Vehicle and Traffic Law Section 1198(8), on behalf of the employer, I hereby give permission that _____ (FULL NAME OF OPERATOR) may operate the Employer's vehicle(s) without such a device only in the course and scope of his/her employment for business purposes. The Employer's motor vehicle(s) is/are not owned, or partly owned, or controlled by the Operator.

This statement of acknowledgement must be in his/her possession while operating the Employer's vehicle.

Employer Signature: _____ Date: _____

Employer (print name): _____

Company/Business: _____

Title: _____

Phone: _____

Vehicle Information

Year/Make/Model: _____

License Plate: _____

V.I.N.: _____

Monitoring Authority: _____

Phone: _____

(ATTACH INFORMATION RELATED TO ADDITIONAL)

EXHIBIT P

EXHIBIT Q

Search Results

Treatment Providers

Nassau County

Angelo J Melillo Ctr for Mental Health (50140)**Programs:**

| | | |
|-------------------------------------|--------------------------------------|--|
| Angelo Melillo Ctr for MH OP | Address: 113 Glen Cove Avenue | Admission Phone: 516-676-2388 x118 |
| (50366) | | |
| Program Type: Outpatient | Glen Cove, NY | Program Ms. Nicole |
| Service Type: Outpatient | 11542 | Director: DelGiudice |
| Clinic | | dvogrin@melillo.org |
| | | 516-676-2388 x119 |

Backstretch Employee Service Team (47560)**Programs:**

| | | |
|-----------------------------|----------------------|---|
| Backstretch Employee | Address: 2150 | |
| Service Team OP | Hempstead | Admission |
| (52547) | Turnpike | Phone: Not on file |
| Program Type: | Elmont, NY | Program Mr. Paul Ruchames |
| Outpatient | 11003 | Director: info@bestbackstretch.com |
| Service Type: | | 516-488-3434 |
| Outpatient Clinic | | |

Bridge Back to Life Center, Inc. (2050)**Programs:**

| | | |
|----------------------------|----------------------|---|
| Bridge Back to Life | Address: 4271 | |
| Ctr Inc. OP 2(7139) | Hempstead | Admission |
| Program Type: | Turnpike | Phone: 516-520-6600 |
| Outpatient | Bethpage, NY | Program Mr. Gary A Butchen |
| Service Type: | 11714 | Director: gbutchen@bridgebacktolife.com |
| Outpatient Clinic | | 718-447-5700 |

Center for Rapid Recovery, Inc. (26730)**Programs:**

| | | |
|--------------------------------|-------------------------------|---|
| Center for Rapid | Address: 312 Greenwich | Admission |
| Recovery, Inc. OP(7252) | Street | Phone: 516-292-6449 |
| Program Type: | Hempstead, NY | Program Ms. Renee D Charles |
| Outpatient | 11550 | Director: ram@rapidrecovery.org |
| | | 516-292-6449 x138 |

Service Type:
Outpatient Clinic

Central Nassau Guidance and Counseling (50710)

Programs:

| | | |
|---|---|---|
| Central Nassau Guidance Srv OP (771) | Address: 950 S Oyster Bay Rd Hicksville, NY 11801 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Ms. Mary Silberstein LCSW msilberstein@centralnassau.org 516-822-4060 x249 |
| Service Type: Outpatient Clinic | | |

Community Counseling Srvs of W. Nassau (33120)

Programs:

| | | |
|--|--|---|
| STAR Program OP(50958) | Address: 1200-A Hempstead Turnpike Franklin Square, NY 11010 | Admission Phone: 516-328-1717 |
| Program Type: Outpatient | | Program Director: Mr. Salvatore F LaFemina Slafemina@ccsw.n.org 516-328-1717 |
| Service Type: Outpatient Clinic | | |

COPAY, Inc. (145)

Programs:

| | | |
|--|---|---|
| COPAY, Inc. OP(497) | Address: 21 N Station Plz Great Neck, NY 11021-5013 | Admission Phone: 516-466-2509 x11 |
| Program Type: Outpatient | | Program Director: Ms. Maria E Cuadra mecfcopay@aol.com 516-466-2509 x12 |
| Service Type: Outpatient Clinic | | |

Counseling Service of E.D.N.Y., Inc. (80)

Programs:

| | | |
|---|---|---|
| Counseling Service EDNY- Hempstead OP (5726) | Address: 175 Fulton Ave Hempstead, NY 11550 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Ms. Louise DeCaro LCSW louise.decaro@csedny.org 516-481-0052 x11 |
| Service Type: Outpatient Clinic | | |

Education Assistance Center, Inc. (33030)**Programs:**

| | | | |
|--------------------------------------|---------------------|--------------------------|---|
| Education Assistance Address: | 175 Fulton Avenue | Admission Phone: | 516-486-3222 |
| Ctr OP(6815) | Hempstead, NY 11550 | Program Director: | Ms. Cecily Doran-Haramis Cecily.Haramis@eacinc.org 516-486-3222 x118 |
| Program Type: | | | |
| Outpatient | | | |
| Service Type: | | | |
| Outpatient Clinic | | | |

Family and Children's Association (30120)**Programs:**

| | | | |
|---|--|--------------------------|---|
| Hempstead Chem Dep Treatment Ctr OP(51003) | Address: 126 North Franklin Street Hempstead, NY 11550 | Admission Phone: | 516-486-7200 x2213 |
| Program Type: | | Program Director: | Ms. Susan Klein Winston sklein@familyandchildrens.org 516-486-7200 x2212 |
| Outpatient | | | |
| Service Type: | | | |
| Outpatient Clinic | | | |

| | | | |
|--|---|--------------------------|---|
| Hicksville Drug Counseling Center OP(50923) | Address: 180 Broadway Hicksville, NY 11801-4256 | Admission Phone: | 516-935-6858 x220 |
| Program Type: | | Program Director: | Ms. Peggy Sicari CSW-R psicari@familyandchildrens.org 516-935-6858 x220 |
| Outpatient | | | |
| Service Type: | | | |
| Outpatient Clinic | | | |

Five Towns Community Center, Inc. (33240)**Programs:**

| | | | |
|---|---|--------------------------|--|
| Five Towns Community Center OP (765) | Address: 270 Lawrence Avenue Lawrence, NY 11559 | Admission Phone: | 516-239-6244 x255 |
| Program Type: | | Program Director: | Mr. Dennis P Demuth LCSW ddemuth@fivetownsmail.org 516-239-6244 x256 |
| Outpatient | | | |
| Service Type: | | | |
| Outpatient Clinic | | | |

Friends of Bridge, Inc. (139)**Programs:**

| | | | |
|--|---|--------------------------|---|
| Friends of Bridge, Inc. Outpatient(239) | Address: 5-11 Pflug Place Valley Stream, NY 11580 | Admission Phone: | Not on file |
| Program Type: Outpatient | | Program Director: | Jim Wyler CASAC jwyler1@verizon.net 516-825-4242 |
| Service Type: Outpatient Clinic | | | |

From The Ashes Inc./Kenneth Peters Ctr (17580)**Programs:**

| | | |
|---|---|---|
| Kenneth Peters Center for Recovery OP(51619) | Address: 6800 Jericho Turnpike Syosset, NY 11791 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Ms. Claudia Peters |
| Service Type: Outpatient Clinic | | Ragni phoenix680@aol.com 516-364-2220 |

H.E.L.P. Services, Inc. (136)**Programs:**

| | | |
|---|---|---|
| H.E.L.P. Services, Inc. OP(7197) | Address: 33 Guy Lombardo Ave Freeport, NY 11520-3637 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Ms. Yolanda Carrion |
| Service Type: Outpatient Clinic | | ycarrion@freeportpride.org 516-546-2822 x218 |

Hispanic Counseling Center, Inc. (33160)**Programs:**

| | | |
|--|--|---|
| Hispanic Counseling Center, Inc. OP (50972) | Address: 344 Fulton Ave Hempstead, NY 11550-3923 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Mrs. America Ducena LMSW |
| Service Type: Outpatient Clinic | | aducena@hispaniccounseling.org 516-538-2613 x228 |

Long Beach Reach, Inc. (190)**Programs:**

| | | |
|--|--|--|
| Long Beach Reach, Inc. OP(7051) | Address: 2-12 W Park Ave Long Beach, NY 11561-2025 | Admission Phone: 516-889-2332 |
| Program Type: Outpatient | | Program Director: Dr. Joseph M Smith PhD |
| Service Type: Outpatient Clinic | | jsmith@longbeachreach.com 516-889-2332 |

Additional Location(s):**Nassau County****Address:** 516-889-2332

| | | | |
|---|--|------------------------------|--|
| Long Beach Reach, Inc. OP (7051) | 225 Main Street Port Washington, NY 11050 | Admission Phone: | |
| | | Program Director: | Dr. Joseph M Smith PhD jsmith@longbeachreach.com 516-889-2332 |

| | | | |
|---|---|------------------------------|--|
| Long Beach Reach, Inc. OP (7051) | Address: 165 East Park Avenue Long Beach, NY 11561 | Admission Phone: | 516-889-2332 |
| | | Program Director: | Dr. Joseph M Smith PhD jsmith@longbeachreach.com 516-889-2332 |

| | | | |
|---|---|------------------------------|--|
| Long Beach Reach, Inc. OP (7051) | Address: 185 Merrick Road Lynbrook, NY 11563 | Admission Phone: | 516-889-2332 |
| | | Program Director: | Dr. Joseph M Smith PhD jsmith@longbeachreach.com 516-889-2332 |

Long Island Jewish Medical Center (85210)

Programs:

| | | | |
|--|---|------------------------------|--|
| Mineola Community Treatment Ctr OP 3(50064) | Address: 366 Jericho TPKE Mineola, NY 11501-1620 | Admission Phone: | Not on file |
| Program Type: Outpatient | | Program Director: | Ms. Loretta Hartley- Bangs mmoskowi@nshs.edu 516-742-4015 x22111 |
| Service Type: Outpatient Clinic | | | |

| | | | |
|---|---|------------------------------|--|
| Project Outreach OP(431) | Address: 600 Hempstead Turnpike West Hempstead, NY 11552 | Admission Phone: | 516-481-2890 |
| Program Type: Outpatient | | Program Director: | Mr. Pat Vitale pvitale@nshs.edu 516-481-2890 |
| Service Type: Outpatient Clinic | | | |

Mercy Medical Center (85030)

Programs:

| | | | |
|---|---|------------------------------|--|
| Mercy Hospital Family Counseling OP(50360) | Address: 506 Stewart Ave Garden City, NY 11530- 4706 | Admission Phone: | 516-705-3400 |
| Program Type: Outpatient | | Program Director: | Dr. David Flomenhaft PhD david.flomenhaft@chsl.org 516-705-3400 |
| Service Type: Outpatient Clinic | | | |

Nassau Alternative Advocacy Program (41400)**Programs:**

| | | |
|--|-----------------------------------|--|
| Nassau Alternative Advocacy OP(51819) | Address: 151 Herricks Road | Admission Phone: 516-741-3110 |
| Program Type: Outpatient | Garden City Park, NY | Program Director: Ms. Susan Andrews |
| Service Type: Outpatient Clinic | 11040-5200 | andrewsassoc@aol.com 516-741-3110 |

North Shore Child/Family Guidance (21730)**Programs:**

| | | |
|--|---------------------------------------|---|
| The Place OP (51657) | Address: 999 Brush Hollow Road | Admission Phone: Not on file |
| Program Type: Outpatient | Westbury, NY 11590-1704 | Program Director: Mr. Tyrone Anthony MA |
| Service Type: Outpatient Clinic | | tanthony@northshorechildguidance.org 516-997-2926 x228 |

Oceanside Counseling Center, Inc. (11500)**Programs:**

| | | |
|---|---------------------------------|--|
| Oceanside Addictions Trt Svcs OP(6438) | Address: 71 Homecrest Ct | Admission Phone: 516-766-6283 |
| Program Type: Outpatient | Oceanside, NY 11572-2209 | Program Director: Mrs. TERESA K MAGUIRE |
| Service Type: Outpatient Clinic | | teresa.maguire@snch.org 516-766-6283 |

Rockville Ctr Drug & Alc.Abuse-Confide (78)**Programs:**

| | | |
|---|----------------------------------|--|
| Rockville Ctr Drug & Alc.Abuse OP(498) | Address: 30 Hempstead Ave | Admission Phone: 516-764-5522 |
| Program Type: Outpatient | Rockville Centre, NY 11570-4034 | Program Director: Mr. Arthur Rosenthal |
| Service Type: Outpatient Clinic | | Art@Confideny.org 516-764-5522 |

Roosevelt Educ Alc Counseling Trmt Ctr (33260)**Programs:**

| | |
|-----------------------------------|--------------|
| Address: 27A Washington Pl | 516-623-7741 |
|-----------------------------------|--------------|

**Roosevelt Educ
Alc Cnslng Trmt
Ctr OP(50995)**
Program Type:
Outpatient
Service Type:
Outpatient Clinic

**Roosevelt, NY
11575**

**Admission
Phone:**
**Program
Director:** Ms. Carol E Jobson LCSW
dbrathwaite@reactcenterinc.org
516-623-7741

Seafield Services, Inc. (17440)

Programs:

**The Seafield Mineola
Clinic OP 3(51109)**
Program Type:
Outpatient
Service Type:
Outpatient Clinic

Address: 110 Main St
Mineola, NY
11501-4000

**Admission
Phone:** 516-747-5644
**Program
Director:** Ms. Kieran Dwyer
kdwyer@seafieldcenter.com
516-747-5644

South Shore Child Guidance Association (50580)

Programs:

C.A.R.E. - CD OP(50365)
Program Type:
Outpatient
Service Type:
Outpatient Clinic

Address: 17 West
Merrick Road -
2nd Flr
Freeport, NY
11520

**Admission
Phone:** 516-868-3030 x103
**Program
Director:** Mrs. Carolyn Walsh MSW
carecenterwalsh@aol.com
516-868-3030 x103

Southeast Nassau Guidance Center, Inc. (50150)

Programs:

**Southeast Nassau
Guidance Ctr OP(446)**
Program Type:
Outpatient
Service Type:
Outpatient Clinic

Address: 3375 Park
Avenue
Wantagh, NY
11793

**Admission
Phone:** Not on file
**Program
Director:** Mr. Scott Maidat
smaidat@sngcounseling.org
516-781-1911

Additional Location(s):

Nassau County

**Southeast Nassau
Guidance Ctr OP
(446)**
Address: 3601
Hempstead
Turnpike
Levittown, NY
11756

**Admission
Phone:** Not on file
**Program
Director:** Mr. Scott Maidat
smaidat@sngcounseling.org
516-781-1911

Address:

**Southeast Nassau
Guidance Ctr OP 1
(50473)**

Program Type:

Outpatient

Service Type:

Outpatient Clinic

2146
Jackson
Avenue
Seaford, NY
11783

Admission Not on file

Phone:

Program Ms. Linda Babolcsay ACSW
Director: lbabolcsay@sngcounseling.org
516-679-9800

Tempo Group, Inc. (313)

Programs:

Woodmere Clinic OP **Address:** 112 Franklin Pl
(7066) Woodmere, NY
11598-1217

Program Type:

Outpatient

Service Type:

Outpatient Clinic

Admission
Phone: 516-374-3671 x127

Program Mr. Barry Wilansky MA
Director: BWilansky@tempogroup.org
516-374-3671

Additional Location(s):

Nassau County

Woodmere Clinic **Address:** 23 Willis Avenue
OP(7066) Syosset, NY
11791

Admission
Phone: 516-374-3671 x127

Program Mr. Barry Wilansky MA
Director: BWilansky@tempogroup.org
516-374-3671

Woodmere Clinic **Address:** 1260
OP(7066) Meadowbrook
Road
North Merrick,
NY 11566

Admission
Phone: 516-374-3671 x127

Program Mr. Barry Wilansky MA
Director: BWilansky@tempogroup.org
516-374-3671

The New Horizon Counseling Center, Inc (15440)

Programs:

New Horizon Counseling
Ctr, Inc OP(52804)
Program Type: Outpatient
Service Type: Outpatient
Clinic

Address: 50 Hawthorne
Ave
Valley Stream,
NY 11580-6220

Admission
Phone: Not on file

Program Meryl Camer
Director: mcamer@pccli.org
516-872-9698 x22

Youth and Family Counseling Oyster Bay (358)

Programs:

Address:

Not on file

**Youth and Family
Counseling Agency OP
(682)****Program Type:**
Outpatient
Service Type:
Outpatient Clinic**193A South
Street
Oyster Bay,
NY 11771****Admission
Phone:****Program Director:** Ms. Barbara Rakusin
brakusin@yfcaoysterbay.org
516-922-6867**Youth Environmental Services, Inc. (1380)****Programs:****Youth Environmental
Services OP(7115)**
Program Type: Outpatient
Service Type: Outpatient
Clinic**Address:** 75 Grand Ave
Massapequa, NY
11758**Admission Phone:** 516-799-3203
x13
Program Director: Ms. Jamie E
Bogenshutz
info@yescccc.org
516-799-3203**Additional Location(s):****Nassau County
Youth Environmental
Services OP(7115)****Address:** 936 Stewart
Avenue
Bethpage, NY
11714**Admission Phone:** 516-799-3203
x13
Program Director: Ms. Jamie E
Bogenshutz
info@yescccc.org
516-799-3203**Youth Environmental
Services OP(7115)****Address:** 152 Center Lane
Levittown, NY
11756**Admission Phone:** 516-799-3203
x13
Program Director: Ms. Jamie E
Bogenshutz
info@yescccc.org
516-799-3203**Treatment Providers****Suffolk County****Alternatives Counseling Services, Inc. (290)****Programs:****Alternatives Counseling
Svs, Inc. OP(776)**
Program Type:
Outpatient**Address:** 518 E Main St
Riverhead, NY
11901-2529**Admission Phone:** 631-283-4440
Program Director: Ms. Christine Epifania
MA

Service Type: Outpatient
Clinic

cepifania@alternatives-counseling.org
631-283-4440

Additional Location(s):

Suffolk County

**Alternatives
Counseling Svs, Inc.
OP(776)**

Address: 291 Hampton
Road
Southampton,
NY 11968

**Admission
Phone:** 631-283-4440

**Program
Director:** Ms. Christine Epifania
MA
cepifania@alternatives-counseling.org
631-283-4440

Behavioral Enhancement Substance Abuse (48360)

Programs:

**Behavioral Enhancement and
SAMT OP(52688)
Program Type:** Outpatient
Service Type: Outpatient Clinic

Address: 770 Grand Blvd
Deer Park, NY
11729

**Admission
Phone:** Not on file
**Program
Director:** Deborah M
Petry LCSW
dpetry@best-tx.com
631-392-
4357

Brookhaven Memorial Hosp/Medical Ctr (85340)

Programs:

Brookhaven Memorial Hosp - Address: 550 Montauk
CD OP(50101) Highway
Program Type: Outpatient Shirley, NY
Service Type: Outpatient 11967
Clinic

**Admission
Phone:** Not on file
**Program
Director:** Ms. Joan Miller
CASAC
jmiller-knapp@bmhmc.org
631-854-1222

Additional Location(s):

Suffolk County

**Brookhaven Memorial
Hosp - CD OP(50101)**

Address: 365 East Main
Street
Patchogue, NY
11772

**Admission
Phone:** Not on file
**Program
Director:** Ms. Joan Miller
CASAC
jmiller-

knapp@bmhmc.org
631-854-1222

Catholic Charities of Rockville Centre (20580)**Programs:**

| | | | |
|---------------------------|----------------------------|------------------|--|
| Catholic Charities | Address: 155 Indian | | |
| Commack OP | Head Rd | Admission | Not on file |
| (50121) | Commack, | Phone: | |
| Program Type: | NY 11725- | Program | Mr. David F Emeritz LCSW |
| Outpatient | 2212 | Director: | emeritz.dave@catholiccharities.cc |
| Service Type: | | | 631-543-6200 x307 |
| Outpatient Clinic | | | |

| | | | |
|--------------------------|----------------------------|------------------|--|
| Diocese of | Address: 31 Montauk | | |
| Rockville Ctr OP | Highway | Admission | Not on file |
| (50125) | Hampton | Phone: | |
| Program Type: | Bays, NY | Program | Mr. Theresa Procida |
| Outpatient | 11946 | Director: | procida.theresa@catholiccharities.cc |
| Service Type: | | | 631-723-3362 |
| Outpatient Clinic | | | |

Community Counseling of Ronkonkoma (12000)**Programs:**

| | | | |
|----------------------------|-------------------------------|------------------|--|
| Community | Address: 3281 Veterans | | |
| Counseling Services | Memorial Hwy | Admission | Not on file |
| OP(51223) | Ronkonkoma, | Phone: | |
| Program Type: | NY 11779-7676 | Program | Ms. Ruth M Meyer |
| Outpatient | | Director: | swerckmann@optonline.net |
| Service Type: | | | 631-471-3122 |
| Outpatient Clinic | | | |

Ctr for Addiction Recovery Empowerment (46120)**Programs:**

| | | | |
|-----------------------------------|-------------------------------|------------------|--|
| Ctr for Addiction Recovery | Address: 2805 Veterans | Admission | Not on file |
| Empower. OP(52196) | Memorial Highway | Phone: | |
| Program Type: Outpatient | Ronkonkoma, NY | Program | Ms. Ewa |
| Service Type: Outpatient | 11779-7680 | Director: | Loskot |
| Clinic | | | eloskot@care-ny.com |
| | | | 631-805-2082 |

Daytop Village, Inc. (16810)**Programs:**

| | | | |
|---------------------------------|-----------------------------------|------------------|--|
| Suffolk Outreach Center | Address: 2075 New York Ave | Admission | 631-351-7112 |
| OP 1(6429) | Huntington Station, NY | Phone: | |
| Program Type: | 11746 | Program | Ms. Christina Noonan |
| Outpatient | | Director: | CNoonan@daytop.org |
| Service Type: Outpatient | | | 631-351-7112 x200 |
| Clinic | | | |

Eastern Long Island Hospital Assoc (81310)**Programs:**

| | | | |
|---------------------------------|---|------------------|--|
| Quannacut Outpatient | Address: 814 Harrison Avenue, Route 58 | Admission | Not on file |
| Services OP(51122) | Riverhead, NY | Phone: | |
| Program Type: Outpatient | 11901 | Program | Mr. David A Cohen |
| Service Type: Outpatient | | Director: | dcohen@elih.org |
| Clinic | | | 631-369-8966 |

Employee Assistance Resource Services (1413)**Programs:**

| | | | |
|---------------------------------|-------------------------------|------------------|--|
| Employee Assistance | Address: 278 E Main St | Admission | |
| Resource Svcs OP(4164) | Smithtown, NY | Phone: | 631-361-6960 |
| Program Type: | 11787-2915 | Program | Warren D Zysman |
| Outpatient | | Director: | deltaphi@hotmail.com |
| Service Type: Outpatient | | | 631-361-6960 |
| Clinic | | | |

Family Service League, Inc. (50440)**Programs:**

| | | | |
|--|---------------------------------|------------------|--|
| Fam Service League, Inc. OP 2 | Address: 208 Roanoke Ave | Admission | 631-369- |
| (52084) | Riverhead, NY | Phone: | 0104 |
| Program Type: Outpatient | 11901-2706 | Program | Ms. Helen Mack |
| Service Type: Outpatient Clinic | | Director: | hmack@fsl-li.org |
| | | | 631-369- |
| | | | 0104 |

| | | | |
|--|------------------------------|------------------|-------------|
| Family Recovery Treatment | Address: 1444 5TH Ave | Admission | 631-427- |
| Center OP(51813) | Bayshore, NY | Phone: | 3700 |
| Program Type: Outpatient | 11706-4147 | Program | Ms. Melissa |
| Service Type: Outpatient Clinic | | Director: | Coscia |

igelber@fsl-li.org
631-427-3700

| | | |
|--|---|--|
| Family Service League OP(50994) | Address: 1490 William Floyd Pkwy | Admission Phone: 631-924-3741 |
| Program Type: Outpatient | East Yaphank, NY | Program Director: Ms. Iris Cohen |
| Service Type: Outpatient Clinic | 11967-1820 | icohen@fsl-li.org |
| | | 631-924-3741 |

Additional Location(s):**Suffolk County****Family Service League OP (50994)****Address:** 240 Mastic Beach Road
Mastic Beach, NY 11951**Admission Phone:** 631-924-3741
Program Director: Ms. Iris Cohen
icohen@fsl-li.org
631-924-3741

| | | |
|---|--|--|
| Family Service League, Inc. OP 1 (52640) | Address: 464 William Floyd PKWY | Admission Phone: 631-399-9217 x24 |
| Program Type: Outpatient | Shirley, NY | Program Director: Ms. Pam Trifaro |
| Service Type: Outpatient Clinic | 11967-3468 | LCSW |
| | | ptrifaro@fsl-li.org |
| | | 631-399-9217 x24 |

Additional Location(s):**Suffolk County****Family Service League, Inc. OP 1(52640)**
Address: 40 Main Street
Westhampton Beach, NY 11978**Admission Phone:** 631-399-9217 x24
Program Director: Ms. Pam Trifaro
LCSW
ptrifaro@fsl-li.org

631-399-
9217 x24

| | | | |
|------------------------------------|-------------------------------------|------------------|--|
| Family Service League, Inc. | Address: 471 Atlantic Avenue | Admission | 631-399- |
| OP 1(52640) | Bellport, NY 11713 | Phone: | 9217 x24 |
| | | Program | Ms. Pam |
| | | Director: | Trifaro |
| | | | LCSW |
| | | | ptrifaro@fsl-li.org |
| | | | 631-399- |
| | | | 9217 x24 |

From The Ashes Inc./Kenneth Peters Ctr (17580)**Programs:**

| | | | |
|----------------------------------|---------------------------|------------------|--|
| Kenneth Peters Center for | Address: 300 Motor | Admission | Not on file |
| Recovery OP1(52130) | Parkway | Phone: | |
| Program Type: | Hauppauge, NY | Program | Ms. Claudia Peters |
| Outpatient | 11788 | Director: | Ragni |
| Service Type: Outpatient | | | phoenix680@aol.com |
| Clinic | | | 516-364-2220 |

Hope For Youth, Inc. (16320)**Programs:**

| | | | |
|---------------------------------|---------------------------|------------------|--|
| Hope For Youth, Inc. OP | Address: 201 Dixon | Admission | Not on file |
| (52608) | Avenue | Phone: | |
| Program Type: Outpatient | Amityville, NY | Program | Ms. Jaclyn B |
| Service Type: Outpatient | 11701 | Director: | Wetzel LCSW |
| Clinic | | | jwetzel@hfyny.org |
| | | | 631-782-6523 |

Huntington Youth Bureau/Research Inst. (172)**Programs:**

| | | | |
|---------------------------------|--------------------------|------------------|--|
| Huntington Youth | Address: 423 Park | Admission | 631-271-3591 |
| Bureau OP(992) | Avenue | Phone: | |
| Program Type: | Huntington, NY | Program | Mr. Barry Zaks LMSW |
| Outpatient | 11743 | Director: | bzaks@hda.hybydri.org |
| Service Type: Outpatient | | | 631-271-3591 |
| Clinic | | | |

IMPACT Counseling Services I, Inc. (45210)**Programs:**

| | | |
|--|---|--|
| IMPACT Counseling Services OP (52093) | Address: 2760 Middle Country Rd Lake Grove, NY 11755 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Ms. Carol A Brunjes carolbrunjes@impactcounseling.org |
| Service Type: Outpatient Clinic | | 631-467-3182 |

Institute for Rational Counseling Inc (47900)**Programs:**

| | | |
|--|--|--|
| Institute for Rational Counseling OP(52615) | Address: 30 Floyd Run Bohemia, NY 11716 | Admission Phone: 631-567-7760 |
| Program Type: Outpatient | | Program Director: Mr. Joseph Stassi IRC30@optonline.net |
| Service Type: Outpatient Clinic | | 631-567-7760 |

John T. Mather Hospital (83220)**Programs:**

| | | |
|--|--|--|
| John Mather Memorial Hospital OP(50023) | Address: 100 Highlands Boulevard Port Jefferson Station, NY 11777 | Admission Phone: 631-331-8200 |
| Program Type: Outpatient | | Program Director: Ms. Patricia Hartley LCSW phartley@matherhospital.org |
| Service Type: Outpatient Clinic | | 631-331-8200 |

Long Island Center for Recovery, Inc. (25850)**Programs:**

| | | |
|--|--|---|
| Long Island Center for Recovery OP (7307) | Address: 320 West Montauk Highway Hampton Bays, NY 11946-3525 | Admission Phone: 631-728-3100 x118 |
| Program Type: Outpatient | | Program Director: Ms. Charlene McAleavey director@longislandcenterrecovery.com |
| Service Type: Outpatient Clinic | | 631-728-3100 x102 |

Maryhaven Center of Hope, Inc. (86050)**Programs:**

| | | |
|--|---|-------------------------------------|
| Maryhaven Center of Hope, Inc. OP (52611) | Address: 240 W Main St Riverhead, NY 11901-2841 | Admission Phone: Not on file |
| Program Type: Outpatient | Program Director: Ms. Fran Lamendola Francine.Lamendola@chsli.org | 631-727-4044 |
| Service Type: Outpatient Clinic | | |

Outreach Development Corporation (31360)**Programs:**

| | | |
|---|---|-------------------------------------|
| Outreach Development Corporation OP 3(52648) | Address: 452 Suffolk Ave Brentwood, NY 11717-4207 | Admission Phone: Not on file |
| Program Type: Outpatient | Program Director: Ms. Krista Whitman kristawhitman@opiny.org | 631-436-6065 |
| Service Type: Outpatient Clinic | | |

Additional Location(s):**Suffolk County****Outreach****Development****Corporation OP 3 (52648)**

Address: 998 Crooked Hill Road
West
Brentwood, NY 11717

Admission**Phone:**

Not on file

Program**Director:**

Ms. Krista Whitman
kristawhitman@opiny.org
631-436-6065

Outreach Development Corporation OP 3 (52648)

Address: 998 Crooked Hill Road
West
Brentwood, NY 11717

Admission**Phone:**

Not on file

Program**Director:**

Ms. Krista Whitman
kristawhitman@opiny.org
631-436-6065

Outreach Project-Bellport OP(6594)

Program Type: Outpatient
Service Type: Outpatient Clinic

Address: 11 Farber Drive
Bellport, NY 11713

Admission**Phone:**

Not on file

Program**Director:**

Mrs. Mary Brite
marybrite@opiny.org
631-286-0700

Additional Location(s):**Nassau County**

Outreach Project-Bellport OP(6594)

Address: 525 Convent Road

Admission**Phone:**

Not on file

| | | |
|---|--|--|
| | Syosset, NY 11791 | Program Director: Mrs. Mary Brite marybrite@opiny.org 631-286-0700 |
| Suffolk County Outreach Project- Bellport OP(6594) | Address: 1230 Commack Road Dix Hills, NY 11746 | Admission Phone: Not on file Program Director: Mrs. Mary Brite marybrite@opiny.org 631-286-0700 |
| Outreach Project- Bellport OP(6594) | Address: 350 Martha Avenue Bellport, NY 11713 | Admission Phone: Not on file Program Director: Mrs. Mary Brite marybrite@opiny.org 631-286-0700 |
| Outreach Project- Bellport OP(6594) | Address: 400 Crooked Hill Road Brentwood, NY 11717 | Admission Phone: Not on file Program Director: Mrs. Mary Brite marybrite@opiny.org 631-286-0700 |
| Outreach Project-Bellport OP R(6635) Program Type: Outpatient Service Type: Outpatient Rehabilitation | Address: 11 Farber Drive Bellport, NY 11713 | Admission Phone: 631-286-0700 Program Director: Mrs. Mary Brite marybrite@opiny.org 631-286-0700 |
| Additional Location(s): Nassau County Outreach Project- Bellport OP R(6635) | Address: 525 Convent Road Syosset, NY 11791 | Admission Phone: 631-286-0700 Program Director: Mrs. Mary Brite marybrite@opiny.org 631-286-0700 |
| Suffolk County Outreach Project- Bellport OP R(6635) | Address: 350 Martha Avenue Bellport, NY 11713 | Admission Phone: 631-286-0700 Program Director: Mrs. Mary Brite marybrite@opiny.org 631-286-0700 |

| | | |
|--|--|--|
| Outreach Project- Bellport OP R(6635) | Address: 1230 Commack Road Dix Hills, NY 11746 | Admission Phone: 631-286-0700 Program Director: Mrs. Mary Brite marybrite@opiny.org 631-286-0700 |
|--|--|--|

| | | |
|--|--|--|
| Outreach Project- Bellport OP R(6635) | Address: 400 Crooked Hill Road Brentwood, NY 11717 | Admission Phone: 631-286-0700 Program Director: Mrs. Mary Brite marybrite@opiny.org 631-286-0700 |
|--|--|--|

Pederson-Krag Center, Inc. (50430)**Programs:**

| | | |
|---|---|--|
| Pederson-Krag Center Inc. OP (50376) | Address: 55 Horizon Dr Huntington, NY 11743- 4436 | Admission Phone: Not on file Program Director: Cari Besserman CBesserman@pedersonkrag.org 631-920-8002 |
| Program Type: | | |
| Outpatient | | |
| Service Type: | | |
| Outpatient Clinic | | |

Additional Location(s):**Suffolk County**

| | | |
|---|--|--|
| Pederson-Krag Center Inc. OP (50376) | Address: 151 Burrs Lane Dix Hills, NY 11746 | Admission Phone: Not on file Program Director: Cari Besserman CBesserman@pedersonkrag.org 631-920-8002 |
|---|--|--|

| | | |
|--|---|--|
| Pederson-Krag Center OP 2 (51803) | Address: 234 Long Island Ave Wyandanch, NY 11798- 3015 | Admission Phone: Not on file Program Director: Cari Besserman CBesserman@pedersonkrag.org 631-920-8250 |
| Program Type: | | |
| Outpatient | | |
| Service Type: | | |
| Outpatient Clinic | | |

| | | |
|--|--|---|
| Pederson-Krag Center, Inc. OP 1 (51802) | Address: 11 Route 111 Smithtown, NY 11787 | Admission Phone: Not on file Program Director: Ms. Gloria Wright GWright@pedersonkrag.org 631-920-8336 |
| Program Type: | | |
| Outpatient | | |
| Service Type: | | |
| Outpatient Clinic | | |

Phoenix Houses of Long Island, Inc. (50570)**Programs:**

| | | |
|--|---|--|
| Phoenix Houses Brentwood OP(2015) | Address: 998 Crooked Hill Road Brentwood, NY 11717-1019 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Mr. Shaun Willis |
| Service Type: Outpatient Clinic | | swillis@phoenixhouse.org 631-306-5721 |

| | | |
|--|---|--|
| Phoenix Houses of Long Island, Inc OP (52627) | Address: 287 Springs Fireplace Road East Hampton, NY 11937 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Mr. Shaun Willis |
| Service Type: Outpatient Clinic | | wcouncil@phoenixhouse.org 631-306-5721 |

Sanctuary East, LTD (27860)**Programs:**

| | | |
|---|--|--|
| Sanctuary East, LTD OP(7100) | Address: 2 William Ave East Islip, NY 11730-2330 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Lorenzo Rodriguez |
| Service Type: Outpatient Clinic | | sanctuaryeast@optonline.net 631-224-7700 |

Seafield Services, Inc. (17440)**Programs:**

| | | |
|---|--|--|
| Seafield Services, Inc. OP(5830) | Address: 212 and 230 West Main Street Riverhead, NY 11901 | Admission Phone: 631-369-7800 |
| Program Type: Outpatient | | Program Director: Lynn Doris |
| Service Type: Outpatient Clinic | | ldoris@seafieldcenter.com 631-574-8229 |

Additional Location(s):**Suffolk County**

| | | |
|---|---|--|
| Seafield Services, Inc. OP(5830) | Address: Yaphank Avenue Yaphank, NY 11980 | Admission Phone: 631-369-7800 |
| | | Program Director: Lynn Doris |
| | | ldoris@seafieldcenter.com 631-574-8229 |

| | | |
|---|--|---|
| Seafield Services, Inc. OP 1(7246) | Address: 475 East Main Street East Patchogue, NY 11712 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Ms. Lisa Hulahan lhulahan@seafieldcenter.com |
| Service Type: Outpatient Clinic | | 631-363-2001 |

| | | |
|--|--|---|
| Seafield Services, Inc. OP 4(51806) | Address: 3251 Route 112 Medford, NY 11763-1446 | Admission Phone: 631-451-6007 |
| Program Type: Outpatient | | Program Director: Ms. Gladys Knowles gknowles@seafieldcenter.com |
| Service Type: Outpatient Clinic | | 631-451-6007 |

| | | |
|--|---|--|
| The Seafield Amityville Clinic OP 2 (50895) | Address: 37 John Street Amityville, NY 11701-2930 | Admission Phone: 631-424-2900 x1503 |
| Program Type: Outpatient | | Program Director: Mr. Brian Matonti bmatonti@seafieldcenter.com |
| Service Type: Outpatient Clinic | | 631-424-2900 x1520 |

South Oaks Hospital (81980)

Programs:

| | | |
|--|--|---|
| South Oaks Hospital OP (50697) | Address: 400 Sunrise Hwy Amityville, NY 11701-2508 | Admission Phone: 631-608-5317 |
| Program Type: Outpatient | | Program Director: Ms. Jean Jackson jjackson11@nshs.edu |
| Service Type: Outpatient Clinic | | 631-608-5317 |

The Dunes - East Hampton (47650)

Programs:

| | | |
|--|---|---|
| The Dunes OP (52720) | Address: 201 Fort Pond Blvd East Hampton, NY 11937-4215 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Ann Marie Jazylo annie.jazylo@theduneseasthampton.com |
| Service Type: Outpatient Clinic | | 631-604-5405 |

Town of Smithtown - Horizons (667)**Programs:**

| | | |
|---|--|--|
| Town/Smithtown-Horizons OP(7116) | Address: 161 East. Main Street Smithtown, NY 11787 | Admission Phone: 631-360-7578 |
| Program Type: Outpatient | | Program Director: Ms. Elaine Economopoulos |
| Service Type: Outpatient Clinic | | elaine@tosgov.com 631-360-7578 |

Additional Location(s):**Suffolk County****Town/Smithtown-Horizons OP(7116)****Address:** 500 Lincoln Boulevard
Hauppauge, NY 11788

| | |
|--------------------------|--|
| Admission Phone: | 631-360-7578 |
| Program Director: | Ms. Elaine Economopoulos elaine@tosgov.com 631-360-7578 |

Town/Babylon Division of Drug/Alc Srvs (372)**Programs:**

| | | |
|--|--|--|
| Town of Babylon OP (560) | Address: 281 Phelps Lane North Babylon, NY 11703 | Admission Phone: 631-422-7676 |
| Program Type: Outpatient | | Program Director: Ms. Delores Bocklet |
| Service Type: Outpatient Clinic | | dbocklet@townofbabylon.com 631-422-7676 |

YMCA of Long Island, Inc. (352)**Programs:**

| | | |
|--|---|---|
| Family Services OP(1203) | Address: 1150 Portion Road Holtsville, NY 11742 | Admission Phone: Not on file |
| Program Type: Outpatient | | Program Director: Ms. Stacey Spata |
| Service Type: Outpatient Clinic | | yfamserve@ymcali.org 631-580-7777 x104 |

Additional Location(s):**Suffolk County****Family Services OP (1203)****Address:** Herkimer and Classon Avenues
Mastic, NY 11950

| | |
|--------------------------|---|
| Admission Phone: | Not on file |
| Program Director: | Ms. Stacey Spata yfamserve@ymcali.org 631-580-7777 x104 |

**Family Services OP
(1203)**

Address: 324 Main Street
Northport, NY
11768

**Admission
Phone:** Not on file

**Program
Director:** Ms. Stacey Spata
yfamserv@ymcali.org
631-580-7777 x104

EXHIBIT R

STATE OF NEW YORK
APPLICATION BY AN ELIGIBLE OFFENDER FOR
CERTIFICATE OF RELIEF FROM DISABILITIES

FOR COURT OR BOARD OF PAROLE
 Docket, File or other Identifier

1. Applicant's Last Name First Name Initial 3. NYSID (if known)

2. Address (Street and House Number, City, State, ZIP)

4. Sex ☐ Male ☐ Female 5. Race 6. Height Ft In. 7. Date of Birth (Month/Day/Year)

8. Offense for which convicted 9. Date of arrest 10. Date of sentence

11. Court of Disposition (Court, Part, Term, Venue)

12. Certificate issued by:
☐ Court indicated in box 11
☐ State Board of Parole

13. ☐ Certificate is intended to replace an existing certificate,
 issued on:
☐ Not applicable

14. Application is hereby made for a grant of a *Certificate of Relief from Disabilities* which will
- ☐ a. relieve the holder of all forfeitures, and of all disabilities and bars to employment, excluding the right to retain or to be eligible for public office, by virtue of the fact that the certificate is issued at the time of sentence.
 - ☐ b. relieve the holder of all disabilities and bars to employment, excluding the right to be eligible for public office.
 - ☐ c. relieve the holder of the forfeitures, disabilities or bars to employment hereinafter enumerated

15. The applicant agrees to allow an investigation to be made to determine his or her fitness for a certificate of relief from disabilities, pursuant to Correction Law Article 23.

Applicant's Signature _____ Date _____
sign in the presence of a notary

16. State of New York)
 County of _____) ss.:

_____, being duly sworn, deposes and says that ___he is the applicant named in the within application; that ___he has read the foregoing application and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters ___he believes it to be true.

Sworn to before me this _____ day of _____ 20____

 Notary Public
 affix stamp / seal

EXHIBIT S

BRING LETTER OF EMPLOYMENT ON LETTERHEAD (preferred) OR A RECENT PAYSTUB

NAME: _____

ADDRESS: _____

DATE OF BIRTH: _____

ARE YOU EMPLOYED: YES _____ NO _____

NAME OF EMPLOYER: _____

BUSINESS ADDRESS: _____

HOW FAR FROM HOME: _____

HAVE YOU INQUIRED ABOUT ALTERNATE TRANSPORTATION: YES _____ NO _____

WOULD IT BE A FINANCIAL HARDSHIP TO USE ALTERNATE TRANSPORTATION: YES _____ NO _____

WOULD IT BE A RELIEF IF THIS COURT GRANTED A HARDSHIP LICENSE: YES _____ NO _____

Leave Home

Arrive At

Leave

Arrive Home

WORK

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| SUN | | | | |
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SCHOOL

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| THU | | | | |
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EXHIBIT T

Westlaw Delivery Summary Report for [REDACTED]

| | |
|-----------------------|--|
| Date/Time of Request: | Thursday, October 30, 2014 13:53 Eastern |
| Client Identifier: | 2014 VTL UPDATE |
| Database: | NY-ADC |
| Citation Text: | 15 NY ADC 127.4 |
| Lines: | 32 |
| Documents: | 1 |
| Images: | 0 |

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Westlaw.

15 NYCRR 127.4

N.Y. Comp. Codes R. & Regs. tit. 15, § 127.4

C

Compilation of Codes, Rules and Regulations of the State of New York Currentness

Title 15. Department of Motor Vehicles

Chapter I. Regulations of the Commissioner

Subchapter I. Administrative Adjudication of Traffic Violations

Part 127. Safety Hearings (Refs & Annos)

→ → Section 127.4. Appearances

(a) A respondent may be represented by counsel or, in the discretion of the hearing officer, by any other person of his or her choosing. Any person representing the respondent must conform to the standards of conduct required of attorneys appearing before courts of this State. Failure to conform to such standards shall be grounds for prohibiting the continued appearance of such person on behalf of the respondent.

(b) A complainant or witness may be represented by counsel or other representative. However, the ability of the complainant, witness or such counsel or representative to question and/or cross-examine witnesses may be limited or prohibited by the hearing officer if, in his or her discretion, the hearing officer feels that such questioning or cross-examination is irrelevant or unduly repetitious.

Sec. filed Nov. 25, 1986; amd. filed Feb. 7, 1991; renum. 127.5, new added by renum. 127.3, filed April 28, 1992 eff. May 13, 1992.

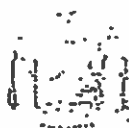
15 NYCRR 127.4, 15 NY ADC 127.4

Current with amendments included in the New York State Register, Volume XXXVI, Issue 43, dated October 29, 2014.

END OF DOCUMENT

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EXHIBIT U



RAYMOND P. MARTINEZ
Commissioner

STATE OF NEW YORK DEPARTMENT OF MOTOR VEHICLES

6 EMPIRE STATE PLAZA, ALBANY, NY 12228

"P" 25 (2005)

"M" 15 (2005)

Albany, New York

September 30, 2005

TO: All Enforcement Agencies and Magistrates

SUBJECT: Vehicle and Traffic Law Changes Affecting Commercial Drivers

Chapter 60 of the Laws of 2005, Part E, amends various sections of the Vehicle and Traffic Law (VTL) affecting commercial driver license (CDL) holders. The changes implement federal mandates to expand and toughen the consequences for commercial drivers who violate certain provisions of the VTL and the Penal Law. The key provisions of Chapter 60, all effective September 30, 2005, are:

Certificates of Relief for Conditional or Restricted Use Licenses [Ref. Chap. 60, sections 15 & 19]

CDL holders will no longer be eligible for Conditional or Restricted Use licenses with commercial privileges, even if a certificate of relief from civil disabilities is issued by a court. DMV will not accept Certificates of Relief issued or presented on or after September 30, 2005, by CDL holders who apply for Conditional or Restricted Use licenses. This is true even if the traffic violation that resulted in the suspension or revocation of the license occurred in a personal (non-commercial) motor vehicle. (A Conditional or Restricted Use license with commercial privileges issued prior to September 30, 2005 shall be considered valid.) A CDL holder who is suspended for failure to pay child support will not be issued a Restricted Use license with commercial privileges. Also, a pre-conviction conditional license (PCCL) cannot have commercial privileges. A court may issue a hardship privilege to a CDE holder if his or her license is suspended pending prosecution; however, such hardship privilege may not be used to operate a commercial motor vehicle, as defined in VTL §501-a(4).

NOTE: A Certificate of Relief will still be acceptable, in appropriate cases, for drivers with a Class E license who drive taxis (Conditional license) or, in the case of a Restricted Use license, for drivers who operate a taxicab, livery, coach, limousine, van, wheelchair accessible van or a tow truck.

New Serious Traffic Violations [Ref. Chap. 60, section 14]

There are three new serious traffic violations related to the operation of commercial motor vehicles (CMV):

- operating a CMV without first obtaining a CDL
- operating a CMV without a CDL in the driver's possession *
- operating a CMV without the proper class of CDL and/or endorsement for the specific vehicle being operated or for the passengers or type of cargo being transported.

* A court shall dismiss the charge of operating a CMV without a CDL in the driver's possession if, at any time after the driver is charged and before the court appearance date, the driver supplies both the issuing law enforcement authority and the court with proof that he or she held a valid CDL on the date of the violation.

681

Driver License Revocations [Ref. Chap. 60, sections 12, 13, 16, 17 & 18]

One-Year License Revocation. The license of a CDL holder shall be revoked for a minimum of one year if the CDL holder:

- refuses to submit to a chemical test while operating any motor vehicle, personal or commercial;
- is convicted for leaving the scene of either a property damage or personal injury accident without reporting, while operating any motor vehicle, personal or commercial;
- is convicted for an alcohol or a drugged driving related offense while operating any motor vehicle, personal or commercial;
- is convicted for a felony committed within or outside of NYS involving the use of any motor vehicle, personal or commercial **; or
- is convicted for operating a CMV while his or her CDL was revoked, suspended, or canceled for prior violations, or if disqualified from operating a CMV, or if convicted for causing a fatality through negligent operation of a CMV, including, but not limited to crimes of vehicular manslaughter or criminally negligent homicide.

Permanent License Revocation. The license of a CDL holder shall be permanently revoked if the CDL holder is convicted of any of the offenses listed above, AND the CDL holder also:

- previously refused a chemical test while operating any motor vehicle, personal or commercial, OR
- was previously convicted for any of the following offenses while operating any motor vehicle, personal or commercial:
 - o leaving the scene of either a property damage or personal injury accident without reporting;
 - o an alcohol related offense;
 - o committing a felony involving the use of any motor vehicle;
 - o operating a CMV while his or her CDL was revoked, suspended, or canceled for prior violations, or if disqualified from operating a CMV, or if convicted for causing a fatality through negligent operation of a CMV, including, but not limited to crimes of vehicular manslaughter or criminally negligent homicide.

**** REMINDER to judges in the State's superior courts:** You must send, on court paperwork, the disposition of convictions of CDL drivers for felonies involving use of a motor vehicle to:

Commissioner of Motor Vehicles
Attn: TSLED
6 Empire State Plaza Room 210
Albany NY 12228

Also, the narrative description of the violation must make it clear that the felony involved a motor vehicle. For example, if a conviction is for manslaughter, and not vehicular manslaughter, the disposition must specifically state that a vehicle was involved. A copy of the applicable sections of the legislation is attached. Please share this information with your staff.

Raymond P. Martinez
Commissioner

Attachment

IMPORTANT: If you are currently on our mailing list and have internet access, you can sign up with DMV to view these memos electronically. If you work for a court, contact DMV by e-mail at TSLEDSupport@dmv.state.ny.us <<mailto:TSLEDSupport@dmv.state.ny.us>>. If you do not work for a court, contact DMV by e-mail at eSeriesMemos@dmv.state.ny.us <<mailto:eSeriesMemos@dmv.state.ny.us>>.

STATE OF NEW YORK

DEPARTMENT OF MOTOR VEHICLES

Pursuant to the authority contained in Sections 215(a), 501(2)(c), 510(6), 1193(2)(b)(12), 1193(2)(c)(1) and 1194(2)(d)(1) of the Vehicle and Traffic Law, the Commissioner of Motor Vehicles hereby amends the Regulations of the Commissioner of Motor Vehicles as follows:

* * * * *

Paragraph (3) of subdivision (b) of section 136.1 is amended to read as follows:

(3) History of abuse of alcohol or drugs. A history of abuse of alcohol or drugs shall consist of a record of two or more incidents, within a [10] 25 year period, of operating a motor vehicle while under the influence of alcoholic beverages and/or drugs or of refusing to submit to a chemical test not arising out of the same incident, whether such incident was committed within or outside of this state.

Subdivision (b) of section 136.4 is amended and a new subdivision (b-1) is added to read as follows:

(b)(1) An [applicant] application for a driver's license [shall] may be denied if a review of the entire driving history provides evidence that the applicant constitutes a problem driver, as defined in section 136.1(b)(1) of this Part. If an application is denied pursuant to this paragraph, no application shall be considered for a minimum of one year from the date of denial. In lieu of such denial, the applicant may be issued a license or permit with a problem driver restriction, as set forth in section 3.2(c)(4) of this Chapter and paragraph (2) of this subdivision.

(2) Upon the approval of an application for relicensing of a person who is deemed a problem driver under this subdivision, the Commissioner may impose a problem driver restriction on such person's license or permit, as set forth in section 3.2(c)(4) of this Title. As a component of this restriction, the Commissioner may require such person to install an ignition interlock device in any motor vehicle owned or operated by such person. The ignition interlock requirement will be noted on the attachment to the driver license or permit held by such person. Such attachment must be carried at all times with the driver license or permit.

(3) Revocation of license or permit with problem driver restriction. A license or permit that contains a problem driver restriction shall be revoked (i) upon the holder's conviction of a traffic violation or combination of violations, committed while such restriction is in effect, which the Commissioner deems serious in nature; or (ii) for the holder's failure to install and maintain an ignition interlock device in motor vehicles owned or operated by the holder, when required to do so under such restriction. The attachment, provided for in paragraph (2) of this subdivision, shall set forth the violation or violations that will result in such a revocation. A

EXHIBIT V

Oct. 24. 2007

1:56AM



STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES

No. 1474 P. 2

6 EMPIRE STATE PLAZA, ALBANY, NY 12228

DAVID J. SWARTS
Commissioner

September 28, 2007

Dear Mr.

Your request for a New York State driver license/privilege is denied in accordance with Part 136 of the Commissioner's Regulations. This decision is based on the following elements of your driving record:

| <u>Violation Date</u> | <u>Description</u> |
|-----------------------|--|
| 10/17/05 | Disobeyed Traffic Device |
| 01/22/06 | Speeding |
| 02/25/06 | Driving while Using Drugs |
| 02/25/06 | Speed Not Reasonable/Prudent |
| 02/25/06 | No Seat Belt Driver |
| 07/10/06 | Improper Signal |
| 08/31/06 | Aggravated Unlicensed Operator 3 rd . Misd. * |
| 07/09/07 | Accident with Property Damage * |

* Incidents of operating while under suspension/revocation.

If your record remains the same, you are eligible to have a request for license/privilege approved on or after 02/26/09. At that time, we will no longer have to consider certain portions of your driving record. When you reapply, please follow the instructions on the enclosed "Special Instructions" (Form DS-246).


If you feel your case involves unusual, extenuating or compelling circumstances, you may send the information to the Driver Improvement Bureau at the above address. Any such information must be sent within 30 days of this letter's date. The information concerning your circumstances will be reviewed and you will be advised of the result. Otherwise, this denial is considered final as of the date of this letter.

If you DO NOT have any unusual, extenuating or compelling circumstances but feel a legal error was made in reaching this decision, you may file an appeal with the Appeals Board by following the instructions in the attached "Information About Administrative And Repair Shop Appeals" (Form VS-500).

Note: The Appeals Board cannot consider any circumstances that were not submitted to Driver Improvement.

dam
Enc.

Sincerely,


Debra Millett
Driver Improvement Examiner

72

EXHIBIT W



STATE OF NEW YORK DEPARTMENT OF MOTOR VEHICLES

Department of Motor Vehicles, Driver Improvement Bureau, 8 Empire State Plaza, Albany NY 12228-0220

February 26, 2013

Pursuant to the authority contained in Sections 136.5(a)(3) and 136.5(b)(2) of the Regulations of the Commissioner of Motor Vehicles, your application for a New York State driver license/privilege is hereby **DENIED** because you are deemed a persistently dangerous driver.

Section 136.5(a)(3) provides as follows:

Special rules for applicants with multiple alcohol-or drug-related driving convictions or incidents.

For the purposes of this section "revocable offense" means the violation, incident or accident that results in the revocation of the person's driver license and which is the basis for the application for relicensing. Upon reviewing an application for relicensing, the Commissioner shall review the applicant's entire driving record and evaluate any offense committed between the date of the revocable offense and the date of the application as if it had been committed immediately prior to the date of the revocable offense. For the purposes of this section, "date of the revocable offense" means the date of the earliest revocable offense that resulted in a license revocation for which the revocation has not been terminated by the Commissioner's subsequent approval of an application for relicensing.

Section 136.5(b)(2) provides as follows:

Upon receipt of a person's application for relicensing, the Commissioner shall conduct a lifetime review of such person's driving record. If the record review shows that:

The person has three or four alcohol-or drug-related driving convictions or incidents in any combination within the 25 years preceding the date of the revocable offense and, in addition, has one or more serious driving offenses within the 25 years preceding the date of the revocable offense, then the Commissioner shall deny the application.

| <u>VIOLATION</u> <u>DATE</u> | <u>INCIDENTS / CONVICTIONS / ACCIDENTS</u> |
|---------------------------------|--|
| 10/14/82 | Driving with .10% or more alcohol in blood |
| 01/08/82 | Speed in zone 35/30 |
| 09/01/91 | Speeding 90/55 |
| 10/12/88 | Aggravated unlicensed operation, 2nd degree misdemeanor - alcohol |
| 11/05/87 | Aggravated unlicensed operation, 2nd degree misdemeanor - alcohol |
| 02/08/87 | Operating without a license |
| 02/08/87 | Excess speed 81/30 |
| 11/17/84 | Driving with .10% or more alcohol in blood |
| 01/29/84 | Driving with .10% or more alcohol in blood |

Your driving history suggests that your failure to observe the rules and regulations governing the operation of a motor vehicle constitutes a serious lack of regard on your part for the safety and welfare of other users of the highway, and forms the basis of our decision to deny your application for a driver license.

Although you may submit an application for a new driver license at any time, please be aware that a review of any subsequent application will be of the entire driving history and will be based upon the same standards that resulted in the denial of this application. Each application is subject to the statutory \$100 fee.

If you feel your case involves unusual, extenuating or compelling circumstances, you may send the information to the Driver Improvement Bureau at the above address. Any such information must be sent within 30 days of the date of this letter. The information concerning your circumstances will be reviewed and you will be advised of the result. Otherwise, this denial is considered final.

If you do not have any unusual, extenuating or compelling circumstances but wish to appeal this decision, you may file an appeal with the Appeals Board by following the instructions in the attached "Information About Administrative And Repair Shop Appeals" (Form VS-500).

Sincerely,

Wendy N.

Driver Improvement Examiner
Driver Improvement Bureau

wmn

Enclosure: VS-500

EXHIBIT X



New York State Department of Motor Vehicles
TRAFFIC VIOLATIONS BUREAU (TVB) APPEAL FORM

AA-33 (9/12)

WHAT IS REQUIRED TO FILE AN APPEAL: You must send this COMPLETED, SIGNED APPEAL FORM (2 pages) and a \$10 APPEAL FEE to the DMV Appeals Board. Read this entire form carefully. Type or print your information clearly. You must state your appeal reasons on page 2 of this form. You must pay a \$10 appeal fee for each TVB ticket you appeal. **DO NOT SEND CASH.** Make your check or money order payable to the "Commissioner of Motor Vehicles." Print your ticket number on your check or money order. Appeal fees are non-refundable. A \$35 penalty is charged for dishonored checks.

DEADLINE TO FILE AN APPEAL: You must send the APPEAL FORM and APPEAL FEE to the DMV Appeals Board within THIRTY (30) DAYS of the conviction or hearing date. If you file by mail, the USPS postmark will be used to determine if your appeal is timely. If the postmark is illegible, the date your appeal is received will be used to determine timeliness. You should keep copies of your completed appeal form, appeal fee, and proof of mailing.

WHERE TO SEND YOUR APPEAL: Mail the appeal form and appeal fee to:
DMV Appeals Board
Appeals Processing Unit
P.O. Box 2935
Albany, NY 12220-0935

To file an APPEAL ONLINE, go to the DMV website at: www.dmv.ny.gov.

The Appeals Board will send you a letter acknowledging receipt of your appeal. If you do not receive such letter within 20 days after filing your appeal, contact the Appeals Board at (518) 474-1052 or at the above address.

ISSUES RAISED ON APPEAL: The Appeals Board may review both the guilty determination and penalty if a transcript is timely submitted. If the only issue raised on appeal is the penalty, the Appeals Board will not need to review a hearing transcript.
Check the appropriate box.

☐ I APPEAL THE GUILTY DETERMINATION AND PENALTY. I UNDERSTAND THAT I AM REQUIRED TO PAY THE TRANSCRIPTION COMPANY FOR THE HEARING TRANSCRIPT TO BE SUBMITTED TO THE APPEALS BOARD FOR REVIEW.

The Appeals Board will acknowledge receipt of your appeal form and fee with a letter that will direct you to pay a \$50 transcript deposit to the Transcription company within 30 days of the letter. The Appeals Board does not accept transcript payments. By law, if you do not pay the Transcriber in a timely manner, the Appeals Board cannot review the guilty determination and may review the penalty only.

☐ I APPEAL THE APPROPRIATENESS OF THE PENALTY ONLY (fine, suspension/revocation) AND ACCEPT THE GUILTY VERDICT. I UNDERSTAND THAT THE APPEALS BOARD WILL NOT REVIEW THE TRANSCRIPT OR ANY STATEMENTS MADE AT THE HEARING.

☐ I DID NOT APPEAR BEFORE A HEARING OFFICER and/or NO TRAFFIC VIOLATIONS BUREAU HEARING WAS HELD. THE APPEAL WILL BE REVIEWED WITHOUT A TRANSCRIPT.

STAY OF SUSPENSION OR REVOCATION PENDING APPEAL: The Appeals Board will not grant a stay unless you provide (on page 2) valid reasons for requesting the stay and for submitting the appeal. You will be notified of the decision to grant or deny your stay request.

☐ I REQUEST THAT THE SUSPENSION OR REVOCATION OF A LICENSE, PERMIT OR PRIVILEGE RESULTING FROM THE TVB CONVICTION BE STAYED OR STOPPED PENDING THE OUTCOME OF THE APPEAL.

FINE PAYMENTS: EVEN IF YOU FILE AN APPEAL, YOU MUST PAY THE FINE AND SURCHARGES RESULTING FROM THE CONVICTION. UNPAID FINES, SURCHARGES, OR TERMINATION FEES WILL RESULT IN LICENSE SUSPENSIONS, WHICH ARE NOT STAYED BY THE BOARD.

Do not send fine payments to the Appeals Board. Send payments for TVB fines and surcharges to: DMV Traffic Violation Division Plea Unit
P.O. Box 2950-ESP
Albany, NY 12220-0950

REQUIRED APPEAL INFORMATION: All correspondence for this appeal will be sent to the address(es) supplied on this appeal form. You must notify the Appeals Board in writing immediately of any change of address that occurs after this appeal is filed.

| | | | | |
|------------------------------------|-------|-------|------|---|
| Last Name | | First | M.I. | NYS Driver License ID Number |
| Appeal Mailing Address (Street) | | | | APT# |
| City | | | | State |
| Zip Code | | | | Violation |
| Date of Birth | Month | Day | Year | Sex |
| | | | | <input type="checkbox"/> M <input type="checkbox"/> F |
| ATTORNEY FOR THIS APPEAL (If any) | | | | Conviction Date |
| | | | | Month |
| | | | | Day |
| | | | | Year |
| ATTORNEY MAILING ADDRESS: (Street) | | | | Hearing Location |
| | | | | Hearing Time |
| | | | | <input type="checkbox"/> AM |
| | | | | <input type="checkbox"/> PM |
| City | | | | Hearing Officer |
| State | | | | |
| Zip Code | | | | |

For DMV use only:

| | |
|---|-----------|
| CONVICTIONS | |
| <input type="checkbox"/> \$10 Appeal Fee received | Amount \$ |
| <input type="checkbox"/> Check <input type="checkbox"/> Money Order | Date: |
| <input type="checkbox"/> No Fee Received | 30th Day: |
| STAY | |

New York State Department of Motor Vehicles
TRAFFIC VIOLATIONS BUREAU (TVB) APPEAL FORM

WHAT RECORDS ARE REVIEWED: Any exhibits submitted at the hearing will become part of the appeal record. The Appeals Board reviews the entire record created at the hearing level, but evidence, exhibits or documents not submitted to the hearing officer may not be filed with or reviewed by the Appeals Board.

To receive copies of hearing exhibits for your personal use, you must submit a FREEDOM OF INFORMATION LAW (FOIL) request to the DMV FOIL Office at: 6 Empire State Plaza, Albany, NY 12228. Information for obtaining DMV records and FOIL forms are available online at www.dmv.ny.gov.

APPEAL ARGUMENTS: IN THE SPACE BELOW, YOU MUST STATE THE REASONS WHY YOU ARE FILING THIS APPEAL. TYPE OR PRINT CLEARLY. Attach additional pages, if necessary. By law, personal appearances and oral arguments are not permitted on appeal. If you request a stay, you must state the reasons for the request. If you order a transcript, you will have 30 days to submit additional arguments from the date the transcript is sent to you. After the 30-day period, your appeal will be reviewed and decided.

SIGN AND DATE YOUR APPEAL: I affirm under penalty of perjury that all of the information on this form and all supporting documents submitted with this appeal are true, and that no prior appeal has been made in this matter.

Sign Here 

Date

HAVE YOU:

- ☐ Paid your fine to the Traffic Violations Division? Even if you appeal, you must first pay your fine, or your license will be suspended.
- ☐ Submitted your appeal form and appeal fee(s) to the Appeals Board within 30 days of your TVB conviction?
- ☐ Enclosed a \$10 non-refundable appeal fee by check or money order for EACH conviction appealed?
- ☐ Checked the appropriate box on page 1 indicating what you want to appeal?
- ☐ Provided reasons for your appeal on page 2? Provided reasons for a stay request on page 2, if requesting a stay?
- ☐ Signed and dated your appeal form on page 2?

You will receive written notification of the outcome of the appeal. If the Appeals Board dismisses the conviction, the fine will be refunded.



EXHIBIT Y



New York State Department of Motor Vehicles
ADMINISTRATIVE APPEAL FORM (AA-33A)

VEHICLE AND TRAFFIC LAW ARTICLES 3-A and 12-A
(THIS FORM IS NOT TO BE USED TO APPEAL TRAFFIC VIOLATION BUREAU TICKETS)

DMV USE ONLY

WHAT IS REQUIRED TO FILE AN APPEAL

You must send this COMPLETED, SIGNED APPEAL FORM (2 pages) and a \$10 APPEAL FEE to the DMV Appeals Board. Read this entire form carefully. Type or print all information clearly. You must state your reason for the appeal on page 2 of this form. You must pay a non-refundable \$10 appeal fee for each CASE NUMBER you appeal. DO NOT SEND CASH. Appeal fees must be paid by check or money order, payable to the "Commissioner of Motor Vehicles." Print your case number(s) on your check or money order. A \$35 penalty is charged for dishonored checks.

DEADLINE TO FILE AN APPEAL

You must send this APPEAL FORM and the APPEAL FEE(S) to the DMV Appeals Board WITHIN SIXTY (60) DAYS OF THE DATE OF THE DEPARTMENT'S ORDER OF SUSPENSION/REVOCATION, DECISION LETTER, OR NOTICE. If you file by mail, the USPS postmark will be used to determine if your appeal is timely. If the postmark is illegible, the date your appeal is received by the Board will determine timeliness. You should keep copies of your completed appeal form, appeal fee, and proof of mailing.

WHERE TO SEND AN APPEAL

Mail the appeal form and
appeal fee(s) to:
DMV APPEALS BOARD
P.O. BOX 2935
ALBANY, NY 12220-0935

WHAT IS THE SUBJECT OF YOUR APPEAL (Check the appropriate box.)

- ☐ CHEMICAL TEST REFUSAL- DMV HEARING HELD
☐ DENIAL OF APPLICATION FOR DRIVER LICENSE, CERTIFICATE OR PRIVILEGE - NO DMV HEARING HELD
☐ FACILITY LICENSE OR CERTIFICATE, including INSPECTION STATION, INSPECTOR, DEALER, REPAIR SHOP - DMV HEARING HELD
☐ FATAL ACCIDENT, PERSISTENT VIOLATOR, FALSE STATEMENT- DMV HEARING HELD
☐ ALL OTHERS - including OTHER DETERMINATIONS MADE WITHOUT A DMV HEARING

HEARING TRANSCRIPTS

If a hearing was held, the Appeals Board may review hearing testimony only if you order and pay for a transcript in a proper and timely manner. The Appeals Board will acknowledge receipt of your appeal form and fee with a letter that will direct you to send a transcript deposit to the designated Transcription company within 30 days of the date of the letter. The Appeals Board does not accept transcript payments. If you do not receive an acknowledgment letter, contact the Appeals Board at (518) 474-1032 or at the address above. The Appeals Board will not review hearing testimony unless all transcript payments are timely and complete.

IF A HEARING WAS HELD, check the appropriate box below:

- ☐ I WANT THE HEARING TESTIMONY REVIEWED BY THE BOARD. I UNDERSTAND THAT I AM REQUIRED TO PAY A TRANSCRIPT DEPOSIT TO THE TRANSCRIPTION COMPANY WITHIN 30 DAYS OF THE DATE OF THE LETTER ACKNOWLEDGING RECEIPT OF THIS APPEAL.
☐ I DO NOT WANT A TRANSCRIPT OF THE HEARING TO BE PRODUCED. I UNDERSTAND THAT THE BOARD WILL NOT REVIEW HEARING TESTIMONY.

REQUESTING A STAY

- ☐ I REQUEST THAT THE FINE, SUSPENSION OR REVOCATION BE STAYED (STOPPED) PENDING THE OUTCOME OF THE APPEAL.
Stays pending appeals are granted in the discretion of the Board (except for most Article 12-A appeals). The Appeals Board will not grant a stay unless the appeal fee is paid and valid reasons for the appeal and for needing the stay are provided on page 2 of this form. You will be notified whether your request for a stay has been granted or denied.

REQUIRED APPEAL INFORMATION

All correspondence for this appeal will be sent to the address(es) supplied on this appeal form. You must notify the Appeals Board in writing immediately of any change of address that occurs after this appeal is filed.

| | | | | |
|-----------------------------------|-------|--|-------------------------------------|---|
| Last Name | | First Name | M.I. | Type of Appeal (Chemical Test Refusal, License Denial, Inspection, Dealer, Repair Shop, etc.) |
| Date of Birth: MM / DD / YYYY | | Sex <input type="checkbox"/> Male <input type="checkbox"/> Female | NYS Driver License Client ID Number | |
| Corporate Name or DBA | | Facility/Certificate Number | | |
| Appeal Mailing Address (Street) | | Case Number(s) | | |
| City | State | Zip Code | Date of Each Hearing | |
| ATTORNEY FOR THIS APPEAL (if any) | | Date of Decision/Order | | |
| Attorney Mailing Address (Street) | | Hearing Location(s) | | |
| City | State | Zip Code | Administrative Law Judge | |

| | | | | |
|--------------------|--|--|-------------------------|-------|
| DMV USE ONLY | <input type="checkbox"/> \$10 APPEAL FEE(S) RECEIVED | <input type="checkbox"/> NO FEE RECEIVED | DATE: MM / DD / YYYY | STAY: |
| | <input type="checkbox"/> CHECK | <input type="checkbox"/> MONEY ORDER | | |



New York State Department of Motor Vehicles
ADMINISTRATIVE APPEAL FORM (AA-33A)
VEHICLE AND TRAFFIC LAW ARTICLES 3-A and 12-A
(THIS FORM IS NOT TO BE USED TO APPEAL TRAFFIC VIOLATION BUREAU TICKETS)

DMV USE ONLY

WHAT RECORDS ARE REVIEWED

Any exhibits submitted at the hearing will become part of the appeal record. The Appeals Board reviews the entire record created at the hearing. The Board will review a transcript of the hearing only if you order it and pay for it in a timely manner. To receive copies of hearing exhibits for personal use, submit a FREEDOM OF INFORMATION LAW (FOIL) request to: DMV FOIL OFFICE, 6 Empire State Plaza, Albany, NY 12228. Information for obtaining DMV records and FOIL forms is available online at: www.dmv.ny.gov.

APPEAL ARGUMENTS

IN THE SPACE BELOW YOU MUST STATE IN DETAIL THE REASON(S) FOR THIS APPEAL and for needing a stay (if requested). PLEASE TYPE OR PRINT CLEARLY. Attach additional pages, if necessary, and write your name on every page. Personal appearances and oral arguments are not permitted on appeal. If a transcript is ordered, you will have 30 days to submit additional arguments from the date of the transcript invoice. After the 30-day period, your appeal will be reviewed and decided. You will receive written notification of the outcome of the appeal.

SIGN AND DATE YOUR APPEAL

I affirm under penalty of perjury that all of the information on this form and all supporting documents submitted with this appeal are true, and that no prior appeal has been filed in this matter.

Sign Here ➔ _____

Date _____

BE SURE THAT YOU:

- ☐ Pay the non-refundable appeal fee of \$10 for EACH case appealed. Enclose a check or money order payable to "Commissioner of Motor Vehicles".
- ☐ Submit your appeal form and appeal fee(s) to the Appeals Board within 60 days of the date of your order or notice.
- ☐ Provide reasons for your appeal on page two. If requesting a stay, provide reasons for a stay request on page two.
- ☐ Sign and date your appeal form on page two.

EXHIBIT Z

Contact Information:
Governor's Press Office
NYC Press Office: 212.681.4640
Albany Press Office: 518.474.8418
press.office@exec.ny.gov



Andrew M. Cuomo - Governor

Governor Cuomo Announces Initiative to Suspend Driver Licenses of Tax Delinquents Who Owe More Than \$10,000 in Back Taxes

Printer-friendly version

16,000 Tax Scofflaws Put on Notice

Albany, NY (August 5, 2013)

Governor Andrew M. Cuomo today announced a new initiative to encourage individuals who owe significant back taxes to pay their bills. Under the new program, a New York State driver license can be suspended when a taxpayer's past-due tax liability exceeds \$10,000. The crackdown is the result of legislation introduced as part of the Executive Budget and signed into law earlier this year.

"Our message is simple: tax scofflaws who don't abide by the same rules as everyone else are not entitled to the same privileges as everyone else," Governor Cuomo said. "These worst offenders are putting an unfair burden on the overwhelming majority of New Yorkers who are hardworking, law-abiding taxpayers. By enacting these additional consequences, we're providing additional incentives for the state to receive the money it is owed and we're keeping scofflaws off the very roads they refuse to pay their fair share to maintain."

"It's in every taxpayer's best interest to pay all tax bills in full," said Commissioner of Taxation and Finance Thomas H. Mattoz. "If you can't pay in full, our staff is available to help you arrange a payment plan that will satisfy your debt."

The new initiative is estimated to increase State collections by \$26 million this fiscal year and as much as \$6 million annually thereafter.

The Tax Department is sending the first round of 16,000 suspension notices to delinquent taxpayers, who have 60 days from the mailing date to arrange payment with the Department. If the taxpayer fails to do so, the Department of Motor Vehicles will send a second letter providing an additional 15 days to respond. If the delinquent taxpayer again fails to arrange payment, the license is suspended until the debt is paid or a payment plan is established.

A taxpayer who drives while the suspension is in effect is subject to arrest and penalties. Those with a suspended license can, however, apply for a restricted license, that allows them to drive to work, and return directly home.

In New York State, 96% of taxes are paid by businesses and individuals who voluntarily meet their tax responsibilities. The remaining 4% is collected through the Tax Department's audit, collections and criminal investigations programs. Through enforcement programs, such as suspension of driver licenses, the Department ensures fair tax administration for all New Yorkers.

To contact the Tax Department:

- Visit www.tax.ny.gov
- Call (518) 862-6000 to settle a tax debt or arrange a payment plan

###

EXHIBIT Z1

- Detach Part H and give to the motorist only when suspending driving privileges.
- Give Part I to the motorist ONLY if you are suspending driving privileges but granting a 20-day continuation.



New York State Department of Motor Vehicles
ORDER OF SUSPENSION - OFFENSES UNDER
ARTICLE 220-221 PENAL LAW

(Optional)

PART I - CONTINUATION OF DRIVING PRIVILEGES

| | | | | |
|----------------------------------|---------------|-------------------------|---------------|--------------|
| Defendant Name (Last, First, MI) | Date of Birth | License Expiration Year | License Class | Restrictions |
| | | | | |

According to Section 510-2 of the Vehicle and Traffic Law, your driver license will be suspended on _____ This order will allow you to drive, with the same limitations as your driver license, until your suspension starts. You must have both parts of this order with you when you drive. If you do not have both parts of this order with you, you may be charged with a violation of the Vehicle and Traffic Law. When the suspension starts, you do not have the right to drive unless you receive a restricted license. This order must be turned in before you can be issued a restricted license.

MA-100D (10/93)

 (Signature of Judge or Clerk of Court)



New York State Department of Motor Vehicles
ORDER OF SUSPENSION - OFFENSES UNDER
ARTICLE 220-221 PENAL LAW

PART II

| | | | |
|----------------------------------|-------|---------------|--|
| Defendant Name (Last, First, MI) | | Date of Birth | Sex <input type="checkbox"/> Male <input type="checkbox"/> Female |
| Number and Street Address | | | |
| City | State | Zip Code | Motorist or Clerk ID Number (if available) |

COURT/VIOLATION

| | | | |
|------------|-------|----------------|---------------|
| Judge Name | Court | Violation Date | Sentence Date |
| | | | |

SUSPENSION

According to Section 510-2 of the Vehicle and Traffic Law, your driver license/privilege is:

- ☐ Suspended for a period of six months.
☐ No action - compelling circumstances.

Sentence date ____/____/____ This order will be effective on _____ because of your conviction/

(Sentence date or sentence date plus 20 days)

adjudication as a youthful offender of a violation of Article 220 or 221 of the Penal Law.

If you have not turned in your driver license to the court, you must turn it in to the Department of Motor Vehicles. The time period you must wait before you can apply for your driver license will not begin until you have turned in your license. If you turn in a temporary license, you must also turn in your photo license when you receive it. If you do not turn in your license, the police will be notified and you may be charged with a crime.

IMPORTANT:

- *If you actually serve any jail time relating to this offense, you are entitled to receive credit for the time served. Bring proof of time served into the District Office when you apply to have your driver license restored.
- * If your license is already suspended or revoked at the time you are sentenced, your 6-month waiting period will not begin until that suspension or revocation is terminated.

COMPLIANCE - If suspended, has motorist turned in photo license and any permits to the court?

- | | |
|---|---|
| <input type="checkbox"/> Yes photo license attached <input type="checkbox"/> No (check one): <input type="checkbox"/> Yes permit(s) attached | <input type="checkbox"/> License/permit Not produced in court. <input type="checkbox"/> Temporary license attached. Must also turn in photo license. <input type="checkbox"/> Previously turned in to _____ On _____ <input type="checkbox"/> License/permit has been lost, stolen or destroyed. <input type="checkbox"/> Out-of-state license. <input type="checkbox"/> Unlicensed. |
|---|---|

CDL Privilege Card holders (class 1, 2 and 3 license document holders or class 4 and 5 license document holders operating under Article 19-A) must turn in the license document and the CDL privilege card.

- ☐ CDL Privilege Card attached.
☐ CDL Privilege Card has been lost, stolen, or destroyed or was previously turned in with the photo license.

Defendant Signature _____

Signature of Judge or Clerk of Court _____

DMV Office Use Only

| | | | |
|---|-------------------------------|--|--|
| LICENSE: <input type="checkbox"/> Suspended | SENTENCE DATE: ____/____/____ | Extended: <input type="checkbox"/> Yes <input type="checkbox"/> No | Compliance: <input type="checkbox"/> Yes <input type="checkbox"/> No |
|---|-------------------------------|--|--|

Copy 1 - Motorist

MA-100D (10/93)

84.

EXHIBIT Z2



New York State Department of Motor Vehicles

ORDER OF SUSPENSION OR REVOCATION

- Always give Part 2 to the motorist.
- Give Part 1 to the motorist **ONLY** if you are granting continuation of driving privileges.

PART 1 - CONTINUATION OF DRIVING PRIVILEGES

| | | | | |
|---------------------------------|---------------|----------------------|---------------|--------------|
| Motorist Name (Last, First, MI) | Date of Birth | Year License Expires | License Class | Restrictions |
|---------------------------------|---------------|----------------------|---------------|--------------|

According to Section 1193 of the Vehicle and Traffic Law, your driver license will be ☐ suspended ☐ revoked on _____ (sentence date plus 20 days)

This order will allow you to drive, with the same limitations as your driver license, until your suspension/ revocation starts. **You must have both parts of this order with you when you drive.** If you do not have both parts of this order with you, you may be charged with a violation of the Vehicle and Traffic Law. When the suspension/revocation starts, you do not have the right to drive unless you receive a conditional license. This order must be turned in before a conditional license can be issued to you.

MV-1192 (4/11)

(Signature of Judge or Clerk of Court)



New York State Department of Motor Vehicles

ORDER OF SUSPENSION OR REVOCATION**PART 2**

| | | | |
|---------------------------------|--------|---|---|
| Motorist Name (Last, First, MI) | | Date of Birth | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| Number and Street Address | Apt. # | Ticket Number (if unavailable, enter Docket Number) | |
| City | State | Zip Code | Driver License # |

COURT/VIOLATION (Certificate of Conviction must be attached)

| | | | |
|------------|--|-----------------|---|
| Judge Name | Violation Date | Conviction Date | <input type="checkbox"/> Check if Youthful Offender |
| Court Code | Vehicle Class (definitions are listed on the back of this form) | | |
| | <input type="checkbox"/> Commercial Motor Vehicle (CMV) <input type="checkbox"/> Special Vehicle <input type="checkbox"/> All Others | | |

SUSPENSION/REVOCATION

According to Section 1193-2 of the Vehicle and Traffic Law, your driver license/privilege is:

☐ Suspended for 90 days (conviction of 1192-1 first offense only if not operating a CMV or Special Vehicle).

☐ Revoked for at least _____

Duration (Enter **ONLY** one of the options listed on the back of this form)

Sentence date ____/____/____. This order will be effective on _____ because of your conviction of a
(sentence date or sentence date plus 20 days)
violation of Subdivision _____ of Section 1192 of the Vehicle and Traffic Law.

PROBATION/CONDITIONAL DISCHARGE

A person convicted of a violation of VTL 1192(2-a)(a) or (b) **committed on or after 12/18/09** must be sentenced to a conditional discharge or probation, and the installation and use of the interlock device.

A person convicted of a violation of VTL 1192(2) or (3) **committed on or after 11/18/09 and who is sentenced on or after 8/15/10** must be sentenced to a conditional discharge or probation, and the installation and use of the interlock device.

Is motorist sentenced to: ☐ Probation - If sentenced to probation, how long is the period? ☐ 3 years ☐ 5 years
☐ Conditional Discharge - If sentenced to conditional discharge, how long is the period? ☐ 1 year ☐ 3 years

Must the motorist obtain permission before applying for a license? Only applies if motorist is sentenced to probation. ☐ Yes ☐ No

If yes, do they need permission from: ☐ Court ☐ Probation Department ☐ Both

Has the motorist been ordered to install an ignition interlock device? ☐ Yes ☐ No

LICENSE SURRENDER — Has the motorist surrendered his/her license

☐ Yes ☐ No — If you have not turned in your driver license to the court, you must turn it in to the Department of Motor Vehicles. If you turn in a temporary license, you must also turn in your photo license when you receive it.

Motorist Signature

Signature of Judge or Clerk of Court

MV-1192 (4/11)

COPY 1: MOTORIST

EXHIBIT Z3

Article II: Forfeiture of Property Used in or Obtained Through Crime ^[1]

[Adopted 6-8-1999 by L.L. No. 18-1999; amended in its entirety 4-20-2004 by L.L. No. 7-2004 (Ch. 270, Art. IV, of the 1985 Code)]

[1]: *Editors Note: Res. No. 270-2003, adopted 4-29-2003, stated that no town or village would receive public safety revenue-sharing funds on or after the effective date of such resolution until it had been certified, in writing, by the County Attorney that such town or village was actively and affirmatively enforcing the provisions of this article.*

§ 420-5 Definitions.

As used in this article, the following terms shall have the meanings indicated:

CLAIMING AUTHORITY

The District Attorney, or his or her designee, and/or the County Attorney, or his or her designee.

INSTRUMENTALITY OF AN OFFENSE

Any property whose use contributed directly and materially to the commission of an offense as defined in this article.

OFFENSE

A violation of New York Vehicle and Traffic Law § 1192, Operating a motor vehicle under the influence of alcohol or drugs, Subdivision 2, 2-a, 3, 4, or 4-a, or § 1192-a, Operating a motor vehicle after having consumed alcohol; under the age of 21; per se, or § 1212, Reckless driving; or a violation of New York Navigation Law § 49-a, Operation of a vessel while under the influence of alcohol or drugs.

[Amended 11-20-2007 by L.L. No. 32-2007; 6-24-2008 by L.L. No. 26-2008]

OUTSIDE LAW ENFORCEMENT AGENCY

Any town or village law enforcement agency located in the County of Suffolk that is not part of the Suffolk County Police District.

[Added 10-17-2006 by L.L. No. 55-2006]

PROPERTY

Vehicles, airplanes, boats, vessels, or any personal thing of value or any interest in a thing of value, but shall not include real property or any buildings, fixtures, appurtenances and improvements thereon.

§ 420-6 Warrantless seizures.

- A. Any property which constitutes the proceeds of an offense, the substituted proceeds of an offense or an instrumentality of an offense shall be seized by any peace officer acting pursuant to his or her special duties or police officer upon probable cause to believe that an offense, as defined in this article, has been committed, and may be forfeited as hereinafter provided.
- B. Notice of seizure.
 - (1) The seizing agency shall send notification of the seizure to all titled owners, registrants on file with the New York State Department of Motor Vehicles by certified mail, return receipt requested, within five business days of the seizure. Such notification shall inform the recipient that there will be a hearing promptly scheduled before a neutral magistrate to determine whether probable cause existed for the defendant's warrantless arrest, whether the County is likely to succeed on the merits of the forfeiture action, whether retention is necessary to preserve the vehicle from destruction or sale during the pendency of the forfeiture proceeding, and whether any other measures would better protect the County's interest during the proceedings, including, but not limited to:

- (a) Issuance of a restraining order prohibiting the sale, transfer, or loss of the vehicle with imposition(s) of appropriate penalties for violation of said restraining order;
 - (b) Taking of a bond; and/or
 - (c) Use of an interlock device.
- (2) When a hearing is held, the neutral magistrate shall review the documents supporting the arrest and any other relevant documents and take any testimony to determine whether the seizing agency has sustained its burden of proof as set forth in Subsection B(1) of this section. If the seizing agency has met its burden of proof, the neutral magistrate shall authorize the continued retention of the property by the seizing agency pending a judicial determination of any civil forfeiture action. Nothing herein shall be construed to preclude a party with a legal interest in the seized property from commencing an action or proceeding in a court of competent jurisdiction for its return.
- (3) The Suffolk County Executive shall designate neutral magistrates to conduct hearings in accordance with this Subsection B.
- (4) When property is seized by an outside law enforcement agency within the Towns of Riverhead, Southold, East Hampton, Southampton or Shelter Island, including seizures within any village located within the geographic boundaries of these towns, the hearings required under this subsection shall be conducted at a location in Riverhead.
[Added 10-17-2006 by L.L. No. 55-2006]
- (5) Transfer of seized property.
[Added 10-17-2006 by L.L. No. 55-2006]
 - (a) Subject to Subsection B(5)(b) and (c) hereunder, when property is seized hereunder by an outside law enforcement agency, the County shall effectuate the transfer of the property from that agency into the custody of the County of Suffolk within five business days of a decision by the neutral magistrate authorizing the continued retention of the seized property. The claiming authority shall notify the Suffolk County Police Department within 24 hours to effectuate the transfer of the property.
 - (b) In the event the outside law enforcement agency makes a request to retain the property following forfeiture pursuant to § 420-8A(5) and said request is granted by the claiming authority, the outside law enforcement agency shall be responsible for the storage of the property until the property is forfeited under this article.
 - (c) In the event the outside law enforcement agency makes a request to retain the property following forfeiture pursuant to § 420-8A(5) and said request is not granted by the claiming authority, the County shall effectuate the transfer of the property from that agency into the custody of the County of Suffolk within five business days of a decision by the claiming authority. The claiming authority shall notify the Suffolk County Police Department within 24 hours of its denial to effectuate the transfer of the property.
- C. Any action for forfeiture under § 420-7A of this article shall be commenced, in the manner prescribed by New York Civil Practice Law and Rules § 304, within 180 days after the seizure. Failure to commence such an action within 180 days after the seizure shall result in the immediate return of the property to its lawful owner as of the time of the seizure.

§ 420-7 Civil authority.

[Amended 11-20-2007 by L.L. No. 32-2007; 6-24-2008 by L.L. No. 26-2008; 11-18-2008 by L.L. No. 48-2008]

- A. A civil action shall be commenced by the claiming authority, or its designees, against a defendant to forfeit seized property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense, if it can be demonstrated that the property was seized in connection with the acts of an individual who has been convicted at least once before of any of the following violations of New York Vehicle and Traffic Law § 1192(2), (2-a), (3), (4) or (4-a), § 49-a

of the New York Navigation Law or having been found guilty of violating § 1192-a of the New York Vehicle and Traffic Law, except that:

- (1) No property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this subsection unless it shall appear that the owner or agent of the owner was a consenting party or privy to the commission of the offense as described in this article; and
 - (2) No property shall be forfeited under the provisions of this subsection by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than the owner while the subject property was unlawfully in the possession of a person other than the owner.
- B. A civil action shall be commenced by the claiming authority, or its designee, against a defendant to seize and to forfeit property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense, or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense, if it can be demonstrated that the property is to be seized in connection with the action of an individual who has been convicted at least once before of any of the following violations of New York Vehicle and Traffic Law § 1192(2), (2-a), (3), (4) or (4-a), or § 49-a of the New York Navigation Law or having been found guilty of § 1192-a of the New York Vehicle and Traffic Law, except that:
- (1) No property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provision of this subsection unless it shall appear that the owner or agent of the owner was a consenting party or privy to the commission of the offense as described in this article; and
 - (2) No property shall be forfeited under the provisions of this subsection by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than the owner while the subject property was unlawfully in the possession of a person other than the owner.
- C. A civil action shall be commenced by the claiming authority, or its designee, against a defendant to forfeit seized property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense, if it can be demonstrated that the property was seized in connection with the acts of an individual who has been convicted at least once before of a violation of New York Vehicle and Traffic Law § 1212, except that:
- (1) No property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this subsection unless it shall appear that the owner or agent of the owner was a consenting party or privy to the commission of the offense as described in this article; and
 - (2) No property shall be forfeited under the provisions of this subsection by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than the owner while the subject property was unlawfully in the possession of a person other than the owner.
- D. A civil action shall be commenced by the claiming authority, or its designee, against a defendant to seize and to forfeit property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense, or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense, if it can be demonstrated that the property is to be seized in connection with the action of an individual who has been convicted at least once before of a violation of New York Vehicle and Traffic Law § 1212, except that:
- (1) No property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this subsection unless it shall appear that the owner or agent of the owner was a consenting party or privy to the commission of the offense as described in this article; and
 - (2) No property shall be forfeited under the provisions of this subsection by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than the owner while the subject property was unlawfully in the possession of a person other than the owner.

- E. A civil action may also be commenced against a noncriminal defendant to recover the property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense, subject to the same exceptions contained in Subsections A and B of this section.
- F. All actions commenced under this article shall be governed by the procedures enumerated in Article 13-A of the New York Civil Practice Law and Rules, where not specifically outlined herein.
- G. No property shall be forfeited under this article unless the claiming authority produces clear and convincing evidence that the noncriminal defendant engaged in affirmative acts which aided, abetted or facilitated the conduct of the criminal defendant. The noncriminal defendant must take all prudent steps to prevent the illegal use of his or her property, and willful disregard by the owner or lienholder of the acts giving rise to forfeiture shall not constitute a defense to such forfeiture.
- H. Any action to forfeit seized property under Subsection A of this section shall be commenced within 180 days after the seizure when the property has first been seized under § 420-6 of this article and within 180 days after the commission of the offense when the property has not been first seized under § 420-6, and said action shall be civil, remedial, and in rem in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose. An action under this article shall not be deemed a criminal proceeding of any type. The action shall be commenced in the manner prescribed by New York Civil Practice Law and Rules § 304. Potential claimants to the seized asset shall be served with a summons and notice or summons and verified complaint. No property as defined in § 420-5 of this article shall be forfeited without service of notice upon potential claimants to the seized asset and the opportunity for a prompt post-seizure hearing given prior to such forfeiture.
- I. Once a civil action for forfeiture has been commenced pursuant to this section, the claiming authority shall notify victims and parents, spouses, siblings, or children of any individual who has been physically injured as a result of the offensive actions of an individual which have precipitated such seizure and forfeiture proceeding as to the time and place of said court forfeiture hearing.
- J. In order to establish its case in any action commenced under this article, the County shall demonstrate, by clear and convincing evidence, that the property in question is subject to forfeiture at the time of commission of the offense, as defined in this article, which precipitated the seizure or the commencement of an action for the seizure of the property without regard to the final determination of any criminal actions brought against the individual for such offense. The noncriminal defendant shall then have the burden of proving a lack of knowledge or lack of consent on behalf of said noncriminal defendant sufficient to constitute a defense to such forfeiture.
- K. If, after a seizure of property has been made under § 420-6 of this article, it is determined that the noncriminal defendant of the property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense, or the individual whose criminal actions precipitated the seizure, has not been previously convicted at least once of a violation of New York Vehicle and Traffic Law § 1192(2), (2-a), (3), (4) or (4-a) or § 49-a of the New York Navigation Law or having been found guilty of violating § 1192-a or 1212 of the New York Vehicle and Traffic Law, then the property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense so seized shall immediately be returned to its lawful owner as of the time of seizure.^[1]
[1]: *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. IV).*
- L. All property seized pursuant to this article is subject to reasonable and customary towing, maintenance and daily storage fees as may be established by the Suffolk County Police Commissioner. Such fees shall be payable to the seizing agent prior to the release of said property.

§ 420-8 Disposition of forfeited assets and proceeds.

- A. Whenever property is forfeited under this article, the claiming authority, or his or her respective designee, may:
 - (1) Retain the property or asset for official use.
 - (2) Sell any forfeited property or asset which is not required to be destroyed by law and which is not harmful to the public.

- (3) Transfer the property or asset to any County agency, department or other political subdivision demonstrating need for the specific property or asset so that the property or asset may be put into official use by that agency, department or other political subdivision.
- (4) Transfer the property or asset to any County-funded agency or organization demonstrating need for the specific property or asset so that the property or asset may be put into use by the funded agency or organization in the regular course of business of that funded agency or organization. Any such transfer of forfeited property or assets under this subsection may result in an in-kind deduction from those funds paid by the County to the specific agency or organization.
- (5) Transfer the property or asset to the outside law enforcement agency that made the original seizure, provided that the outside law enforcement agency has notified the claiming authority, in writing, on or before the hearing date before the neutral Magistrate, seeking authority to continue retention of the seized property or asset, of its intent to use the property or asset for law enforcement purposes, and a determination has been made by the claiming authority that such use is for legitimate law enforcement purposes. The claiming authority shall provide a written decision to the outside law enforcement agency within 15 days of receipt of the written request to retain the property or asset. In the event the property or asset is not used for legitimate law enforcement purposes by the outside law enforcement agency, the County may exercise its right to have the property or asset transferred to the Suffolk County impound facility at the County's expense.

[Added 10-17-2006 by L.L. No. 55-2006]

B. Distribution of funds generated by sale of forfeited property or assets.

- (1) Any funds generated by the disposition of seized property or assets as described in this article, minus the reasonable and necessary expenses incurred in connection with towing, maintenance, and storage of the assets seized in accordance with this article, shall be distributed as set forth in this section. These funds shall include all fees received from the towing, maintenance, and storage of the assets seized by another law enforcement agency and thereafter transferred to the Suffolk County police impound facility. Whenever an outside law enforcement agency shall transfer a seized asset to the Suffolk County police impound facility, it shall be entitled to reimbursement of all costs actually incurred for towing the seized property or asset to and from its impound area and for paid storage, up to a maximum of \$300, upon disposal of said seized asset, but said reimbursement shall not exceed money actually received by the Suffolk County Police Department for its disposition. In the event the fees collected by the Police Department upon disposal of said seized asset exceed the actual towing costs incurred, or the maximum of \$300, whichever is less, as the case may be, such excess shall be retained by the Suffolk County Police Department. All reasonable and necessary expenses collected pursuant to this subsection shall be transferred into a police asset forfeiture fund in a separate nonlapsing appropriation for law enforcement purposes.

[Amended 10-17-2006 by L.L. No. 55-2006; 6-12-2007 by L.L. No. 19-2007]

- (2) Any funds generated by the disposition of forfeited property or assets described in this article, after deducting therefrom any fees imposed pursuant to Subsection B(1) above, shall be distributed in the following order of priority:
 - (a) Amounts to satisfy any valid lien or claim against the property forfeited.
 - (b) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of the offense which constitutes the basis upon which forfeiture of the seized asset was effected under this article, to the extent such amounts remain unpaid, whichever is less; provided, however, the claiming authority receives written notice from the victim or his/her duly appointed representative within 30 days of the commencement of the civil forfeiture action in order for the victim to receive such funds.
 - (c) Remaining funds.

[1] All monies remaining after distributions pursuant to Subsection B(2)(a) and (b) shall be distributed as follows:

[a] Twenty percent to the claiming authority in satisfaction of actual costs and expenses incurred in the

investigation, preparation and litigation of the forfeiture action, including that proportion of the salaries of the attorneys, clerical and investigative personnel devoted thereto, plus all costs and disbursements made in the administration of this article shall be deposited into a separate nonlapsing appropriation of the claiming authority for law enforcement purposes.

- [b] Ten percent to the Sheriff's Department in satisfaction of actual costs and expenses incurred in the service of process of the civil forfeiture actions, including that proportion of the salaries of the personnel devoted thereto, shall be deposited into a separate nonlapsing appropriation of the Sheriff's Department for law enforcement purposes.
 - [c] Seventy percent to the Suffolk County STOP-DWI Office for the purposes of supporting or providing drunk driving education, prevention and enforcement programs administered by governmental and/or nongovernmental agencies within Suffolk County.
- [2] The expenditure of funds pursuant to this Subsection B(2)(c) shall be in accordance with an annual plan approved by resolution of the County Legislature.

§ 420-9 Discretionary action.

- A. Nothing contained in this article shall require the claiming authority, or his or her respective designee, to commence a forfeiture action when, in his or her discretion, it is in the interests of justice not to commence such an action.
- B. Nothing contained in this article shall require a court to order a forfeiture when it determines, in its discretion, that it is in the interests of justice not to do so.

§ 420-10 Rules and regulations.

The District Attorney and/or the County Attorney shall issue and promulgate such rules and regulations as shall be necessary to implement the provisions of this article.

EXHIBIT Z4

NOTICE OF SEIZURE AND HEARING
PD CS-4230a

CC# 04-

TITLED
OWNER: .

OPERATOR:

ADDRESS:

VIN#:

MAKE/MODEL: 1989 Buick

REGISTERED
OWNER:

ADDRESS:

YOUR VEHICLE HAS BEEN SEIZED AND IMPOUNDED BY THE POLICE PURSUANT
TO THE DWI SEIZURE LAW

Suffolk County Local Law section 270 provides that a police officer must seize any vehicle where the operator is arrested for driving while intoxicated and has a prior conviction at any time in the past for driving while intoxicated. The police have no discretion and they cannot give you legal advice. The law requires the seizure of owner-operated vehicles, company vehicles, vehicles with liens on them, non-owner operated vehicles and leased vehicles.

A HEARING TO DETERMINE WHETHER PROBABLE CAUSE EXISTED FOR
THE ARREST, WHETHER THE COUNTY OF SUFFOLK IS LIKELY TO SUCCEED
ON THE MERITS OF A FORFEITURE ACTION, AND WHETHER THE COUNTY'S
RETENTION OF THE VEHICLE IS NECESSARY HAS BEEN SCHEDULED FOR:

Date: October 19, 2004

Time: 9:30 a.m.

Place: District Court
Courtroom No. D33
Cohalan Court Complex
400 Carleton Avenue
Central Islip, NY 11722

There are circumstances upon which an owner can regain possession of a vehicle. If you need legal advice, you must consult with an attorney. Do not call the office of the County Attorney because they cannot give you legal advice.

Requests for adjournments of a hearing may be made in writing, explaining the reason for the need for the adjournment and must be received by the County Attorney's office at the address below at least two (2).

business days prior to the scheduled date of the hearing. Please provide a contact telephone number. Only one adjournment may be granted, absent exceptional circumstances. Hearings are conducted on Mondays and Tuesdays.

Suffolk County Department of Law
H. Lee Dennison Bldg. 6th Floor
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, New York 11788

If you do not appear on your scheduled date, and do not timely request an adjournment, the hearing will be conducted in your absence.

TRANSFERRING OWNERSHIP TO THE COUNTY

If your vehicle is not encumbered with a lien (i.e., an outstanding loan on the vehicle), and you wish to turn ownership of the vehicle over to the County in order to avoid the commencement of a forfeiture action against you, you can forward the original, executed title to the above address. No impound fees will be owed by you if you surrender title to the County.

LEASED VEHICLES AND VEHICLES WITH LIENS

If you wish to surrender possession of the vehicle to the lienholder or lessee, please forward a copy of the lease or loan agreement together with your request to the above address. A stipulation and release will be drafted for you to sign.

RETRIEVING PERSONAL BELONGINGS AND LICENSE PLATES

You may contact the police Impound Unit at (631) 852-8055 between the hours of 8:00 a.m. and 2:30 p.m. for instructions on how to retrieve your personal belongings and a license plate letter enabling you to cancel your insurance.

If you have any question regarding the foregoing, please consult with your attorney.

EXHIBIT Z5



New York State Department of Motor Vehicles
DRIVER RESPONSIBILITY ASSESSMENT STATEMENT

Sections 1199 and 503(4) of the Vehicle and Traffic Law require that, as of 11/18/04, motorists who accumulate 6 or more points on their driving record in an 18 month period, or who are convicted of a drug/alcohol violation or who refuse a chemical test, must pay a Driver Responsibility Assessment in addition to any fines and surcharges they are required to pay. Assessments, which are billed every year for 3 years, are \$100 per year for the first 6 points, \$25 for each point in addition to the original 6 points, and \$250 for a drug or alcohol violation.

Pay either:

the Full Assessment of:

\$ 300.00

OR

the Minimum Annual Payment of:
(this amount includes any overdue assessments)

\$ 100.00

If you select the Annual Payment option, we will send you a billing statement each year for the next 2 years for the Annual Payment amount and for any additional assessment amounts that may be added to your driving record during the year.

Payment is due by 09/06/2005. Details regarding your violations and driver responsibility assessment account are on page 2 of this letter. An abstract of your New York State driving record is available at www.nysdmv.com. Your New York State driver license (or privilege to drive in New York State) will be suspended if you do not pay the Minimum Annual Payment amount.

Payments may be made:

- on the internet at www.nysdmv.com (credit card payment only); or
- by phone at (518) 402-2851 (credit card payment only); or
- by mail, using the enclosed envelope and the tear-off strip at the bottom of this letter (pay by check or money order only, payable to the Commissioner of Motor Vehicles). Please use your check to pay only this assessment. Do not combine any other DMV business with your payment. Mail to: DRA Processing Center, 207 Genesee Street, Suite 6, Utica NY 13501-2801.
- in person at a DMV office.

DMV-11111 (4/05)

EXHIBIT Z6



STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES

6 EMPIRE STATE PLAZA, ALBANY, NY 12228

DAVID J. SWARTS
Commissioner

JEAL W. SCHOEN
Deputy Commissioner
and Counsel

IDA L. TRASCHEN
First Assistant Counsel
Legal Bureau

Re: DMV CID #.

Dear

This is in response to your inquiry in which you questioned the calculation of a Driver Responsibility Assessment (DRA) imposed by the New York State Department of Motor Vehicles (DMV) upon

As you know, the particular statutory provision involved here is Vehicle and Traffic Law (VTL) Section 503(4). This provision sets forth the general rule that imposes liability for payment of a DRA on any person who accumulates 6 or more points on his or her driving record for acts committed within an 18-month period [VTL Section 503(4)(a)]. Vehicle and Traffic Law Section 503(4)(b) provides that the amount of a DRA shall be \$100 per year for 3 years for the first 6 points on a driver's record (and an additional \$25 per year for each additional point over 6 points). As I am sure you also know, points are assessed by DMV against a motorist's driving record in connection with certain VTL violations in accord with DMV regulations at 15 NYCRR Part 131.

The facts in case appear to be as follows:

- On 4/25/06, was charged with a traffic infraction (failing to yield the right of way; ticket 0A79258292) in Suffolk County.
- On 9/23/06, was charged with a traffic infraction (failing to yield the right of way; ticket LI8503235) in Nassau County.

- On 11/29/06, [redacted] was convicted of the 4/25/06 Suffolk County violation, resulting in the imposition of 3 points on [redacted] driving record.
- On 6/26/07, [redacted] was convicted of the 9/23/06 Nassau County violation, resulting in the imposition of 3 additional points on [redacted] driving record. At this point, [redacted] became liable for payment of a \$ 300 DRA because he had accumulated 6 points based upon acts committed within an 18-month period (i.e., 4/25/06 and 9/23/06).
- On 1/17/08, [redacted] was charged with a traffic infraction (disobeying a traffic control device; ticket 1K7705HKSP) in Columbia County.
- On 4/15/08, [redacted] was convicted of the 1/17/08 Columbia County violation, resulting in the imposition of 2 more points on [redacted] driving record. At this point, [redacted] became liable for payment of a supplementary DRA of \$150 (\$25 a year for 3 years, totaling \$75, for each point).

I understand that it is the imposition of the \$150 supplementary DRA (which [redacted] has paid) that you are questioning.

It is clear that DMV increased the amount of the DRA based upon the 3rd violation which occurred more than 18 months after the first violation was committed. It is DMV's position that this action is lawful, and represents a reasonable interpretation and application of the DRA law.

DMV interprets the law to provide that the 18-month period runs from the date of the 1st violation that caused a motorist to have accumulated 6 or more points within an 18-month period. Stated differently, when a motorist commits a violation that activates the DRA provisions by committing a violation that causes him or her to have accumulated 6 or more points within 18 months, then it is the date of that violation (i.e., the DRA-activating violation) that serves as a starting point for calculation of a period of time covering the following 18 months.

Applying this administrative interpretation to [redacted] situation, we see that the violation of 9/23/06 is the key date for DMV DRA purposes: that is, 9/23/06 was the date of the violation that activated the DRA (following conviction, of course). And because the third violation of 1/17/08 was committed within the 18-month period following 9/23/06 (i.e., falls within the 18-month period of 9/23/06 – 3/23/08), it too is used in calculating the DRA amount.

DMV's interpretation and application of the DRA law in this manner serves to treat motorists who incur a DRA as a consequence of 2 (or more) violations that occurred on different dates, in the same manner as motorists who incur a DRA as a consequence of a single violation. That is, [redacted] DRA was been calculated in the same manner (i.e., to be the same total dollar amount) as it would be calculated regarding a motorist who committed a 6-point violation on [redacted]