

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. MVH 12470-14

AGENCY DKT. NO. DXXXX XXXXX 11785

**MOTOR VEHICLE COMMISSION,**

Petitioner,

v.

**JONATHAN DORMAN,**

Respondent.

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**Donna Natonick**, appearing on behalf of petitioner, the New Jersey  
Motor Vehicle Commission, pursuant to N.J.A.C. 1:1-5.4(a)(2)

**Jonathan Dorman**, pro se

Record Closed: November 4, 2014

Decided: November 24, 2014

BEFORE EVELYN J. MAROSE, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On December 12, 2013, a Scheduled Suspension Notice (December 2013 Notice) was issued to Jonathan Dorman (Dorman), at [REDACTED], [REDACTED], New Jersey. The December 2013 Notice advised Dorman that his driving privileges were being suspended for 180 days because he operated a motor vehicle during a period when his driving license privileges were suspended, which was

evidenced by the speeding violation that he incurred on July 21, 2012. (Exs. K and E.) A Certification of Mailing List, dated July 8, 2012, which noted the mailing to Dorman, was provided. (Ex. J.) Dorman forwarded a request for a hearing, dated January 9, 2014. (Ex. L.) The request for a hearing regarding the December 2013 Notice was received by the New Jersey Motor Vehicle Commission (NJMVC) on January 10, 2014. (Ex. M.)

The matter was transmitted to the Office of Administrative Law (OAL) on September 25, 2014, for determination as a contested case pursuant to N.J.S.A. 52:14F-1 to -13. At the conclusion of the hearing, held on October 14, 2014, dates for written submissions were set. Dorman submitted a written summation on October 21, 2014. By November 4, 2014, the NJMVC was to decide whether it would submit a written summation. Having received no written submission on behalf of the NJMVC by that date, the record closed on November 4, 2014.

#### **FINDING OF FACTS**

Having had an opportunity to consider the evidence and observe the witnesses, I **FIND** the following to be pertinent **FACTS** in this case:

On April 25, 2012, the NJMVC issued a Scheduled Suspension Notice (April 2012 Notice) to Dorman at [REDACTED], NJ. The April 2012 Notice advised Dorman that his driving privileges were scheduled for suspension, indefinitely, on June 23, 2012, because he failed to answer summons(es) issued in Idaho. The April 2012 Notice further advised Dorman that (1) he was to contact the Idaho court for information on how to satisfy the summons(es) and to obtain court receipts for proof of payment, and that (2) specific written proof that the summons(es) were satisfied had to be received by the NJMVC before the suspension date of June 23, 2012, or his New Jersey driving privilege would be suspended and he would have to pay a \$100 restoration fee. (Ex. C.)

Dorman did not provide the NJMVC, by June 23, 2012, with proof that he had satisfied the speeding ticket he incurred in Idaho. Accordingly, on July 8, 2012, the

NJMVC issued an Order of Suspension (June 2012 Order of Suspension) to Dorman at [REDACTED], [REDACTED], NJ. Dorman's driving privileges were suspended, effective June 23, 2012, indefinitely, because he failed to answer the summons(es) issued in Idaho. The June 2012 Order of Suspension again advised Dorman that he had to contact the Idaho court for information on how to satisfy the summons(es) and had to obtain court receipts proving satisfaction. In addition, the June 2012 Order of Suspension directed Dorman to surrender his current New Jersey driver license to the NJMVC immediately. Dorman was not to drive until he received written notice of restoration from the Chief Administrator of the NJMVC. It is advised that if Dorman continued to drive while suspended, he would be subject to prosecution for that violation. (Ex. D.) At the hearing, Dorman denied ever receiving either the April 2012 Notice or the June 2012 Order of Suspension.

On July 21, 2012, Dorman received a speeding ticket in New York State. The New York State police officer did not tell Dorman that he was also driving while his New Jersey's driver's license was suspended. However, the speeding stop in New York refreshed Dorman's recollection that he had never satisfied an Idaho speeding ticket. He paid the fee for the Idaho citation on August 3, 2012. (Ex. F.) Dorman asserts that he initially attempted to pay the Idaho fine that he incurred on December 9, 2011, months earlier. However he sent the payment to the wrong address and it was returned to him. (Ex. B.) Dorman's daughter was born at, or near, the time of the returned payment. He then forgot to send his payment to the appropriate address for approximately eight months. It was only when he was ticketed for speeding in New York in July 21, 2012, that he remembered his obligation to pay the Idaho citation.

When Dorman satisfied the Idaho speeding ticket on August 3, 2012, he received a "Receipt and Notice of Payment/Compliance of Infraction Penalty." (Exs. A and F.) Among other things, the receipt advised Dorman that to reinstate his driver's license if suspended in another state, he had to provide a copy of the Idaho notice to his home state, in this case New Jersey, as proof of payment and notice of compliance. (Ex. F.) Dorman did not contact the NJMVC regarding his payment of an Idaho speeding violation.

On October 18, 2012, Dorman was ticketed in New York for an improper U-turn. (Ex. G.) Again, the New York State Police did not advise Dorman that he was driving while his New Jersey driver's license was suspended.

On November 2, 2012, after being stopped while driving in Florida, Dorman was charged with driving while his license was suspended. Dorman advised the Florida police officer that he had no knowledge that his license was suspended. (Ex. H.) When he returned from Florida, Dorman provided NJMVC with proof of payment of the Idaho violation and paid the \$100 restoration fee for his New Jersey license. (Ex. I.)

On December 12, 2013, the NJMVC issued the Scheduled Suspension Notice to Dorman at [REDACTED], NJ. The Notice advised Dorman that his Dorman's driving privileges were scheduled for suspension on January 5, 2014, for 180 days because he operated a motor vehicle while his driving privileges were suspended, as evidenced by the speeding ticket that he received on July 21, 2012. Dorman's appeal of the suspension is at issue.

Dorman asserts his behavior does not permit a penalty, in part, because he failed to receive the April 2012 Notice or the June 2012 Order of Suspension from the NJMVC. He asserts that he had no knowledge that his driving license was being suspended for failure to pay, and provide proof of payment, of an Idaho speeding ticket. Clearly, Dorman is motivated to eliminate any driving penalty. However, I **FIND** his denial of receipt of notice, sent to the only address known to the NJMVC and where he acknowledged receiving other notices, is not credible.

A careful analysis of credibility is necessary in order to make critical findings of fact. For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. "[T]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the . . . [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952), certif. denied, 10 N.J. 316 (1952) (citation omitted). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which

it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

Dorman states that the documentation provided by the NJMVC indicates that the Commission did not mail the April 2012 Notice to him since the Notice includes the words "Driver's Name Not Found on Mail List." He further notes that a Certification of Mailing List is not attached to that 2012 Notice. (Ex. C.) While this argument is on point, it is outweighed by other credible evidence that the Commission provided notice to Dorman.

Among other things, there is no evidence that NJMVC might not have mailed the second document advising Dorman that he was subject to having his driving privileges suspended for failure to pay an Idaho citation. In fact, NJMVC presented at the hearing a copy of the Order of Suspension effective June 23, 2012, and a copy of the Certification of Mailing of that Order on July 8, 2012, to Dorman at [REDACTED] New Jersey. (Exs. D and J.) While stating that he does not reside at [REDACTED] Dorman testified that the [REDACTED] address was, during the period at issue and remains to this day, the only mailing address that he provided to the NJMVC for the mailing of all documents relating to his driving and registration. He makes no assertion that he failed to receive any other NJMVC routine mailings and acknowledges that he received the December 2013 Notice, which he now appeals, that was mailed to [REDACTED], [REDACTED], [REDACTED], New Jersey. In fact, [REDACTED] is where his mother resides.

#### ANALYSIS AND CONCLUSIONS OF LAW

Since Dorman was unquestionably driving on July 21, 2012, when he was stopped for speeding in New York State and while his driving privileges were suspended, at issue is whether there are "reasonable grounds" to suspend Dorman's license, and if so for what period of time. The Motor Vehicle Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the Motor Vehicle statutes or for any "reasonable grounds." N.J.S.A. 39:5-30.

Dorman asserts that he needs to continue driving. Need alone cannot be the deciding factor in permitting a respondent to continue driving. See Div. of Motor Vehicles v. Morton, 4 N.J.A.R. 95 (Dir. of Motor Vehicles, 1982). In today's motorized society virtually everyone needs a driver's license to earn a living and perform normal daily activities.

As noted by Dorman in his argument and referenced in cited case law, suspensions are to be rehabilitative rather than punitive. However, the three cases cited by Dorman do not support the argument that Dorman's actions do not merit some period of suspension. The issue in Crafton v. New Jersey Motor Vehicle Commission, A-2224-12 (App. Div. March 20, 2014) (slip op. at 1), <http://njlaw.rutgers.edu/collections/courts/>, was whether or not Crafton was entitled to a hearing when he did not in any way indicate any disputed material facts and legal issues that he intended to raise at a hearing. The Court affirmed the denial of a hearing and affirmed a thirty-day suspension. In Williams v. New Jersey Motor Vehicle Commission, A-2969-12 (App. Div. March 14, 2014) (slip op. at 1), <http://njlaw.rutgers.edu/collections/courts/>, the Court once again affirmed suspension of a driver's license for thirty days and the denial of a hearing. The court noted that Williams's request for a hearing contained neither disputed facts nor legal issues. In Haase v. New Jersey Motor Vehicle Commission, A-4670-12 (App. Div. September 23, 2014) (slip op. at 2), <http://njlaw.rutgers.edu/collections/courts/>, the Court again affirmed a penalty of forty-five days. It further concluded that Haase did not present sufficient evidence to overcome the presumption that the Motor Vehicle Commission (MVC) provided him with the requisite statutory notice of his proposed suspension since the MVC sent the notice to the address that Haase himself provided to motor vehicle, which was the same address that he listed on his hearing form.

In this matter, Dorman's address is noted on the request for hearing as [REDACTED], [REDACTED], New Jersey which is the same and only address that was ever provided to NJMVC. Even if Dorman did not receive the April 2012 Notice of Scheduled Suspension—which I do not find credible—there is not one shred of evidence that he did not receive the June 2012 Order of Suspension, which advised him that his driving privileges were suspended indefinitely, until he paid the Idaho citation,

provided NJMVC with proof of payment, paid a restoration fee to NJMVC and received written notice of restoration from the Chief Administrator of the NJMVC. He was further on notice that if he drove without providing the forgoing, he would be subject to prosecution. I **CONCLUDE** that it is reasonable that Dorman's driving privileges be suspended for a period of time.

I do not **CONCLUDE** that Dorman's actions are above rehabilitation. Dorman received a speeding citation in Idaho on July 27, 2011. (Ex. A.) He attempted to pay the fine on December 9, 2011. (Ex. B.) When his check was returned for failure to direct the payment to the right address, he did not pay the Idaho citation until August 3, 2012. (Ex. F.) Birth of a daughter does not excuse such a delay, nor should receiving another speeding ticket be necessary to recall the failure to pay an earlier ticket. Dorman also made no attempt to provide proof of payment to NJMVC and comply with all regulations relating to failure to pay an outstanding out of state ticket until November 2012. While I **CONCLUDE** that a suspension of 180 would be punitive, I **CONCLUDE** that a penalty of thirty days is reasonable, based upon the facts and circumstances of this case.

### ORDER

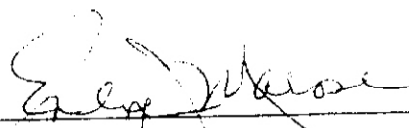
It is hereby **ORDERED** that the scheduled 180-day suspension of the driving privileges of Jonathan Dorman shall be **MODIFIED AND REDUCED** to a scheduled suspension of thirty days.

I hereby **FILE** my Initial Decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, P.O. Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.


Nov. 24, 2014  
DATE

  
\_\_\_\_\_  
EVELYN J. MAROSE, ALJ

Date Received at Agency:

Nov. 24, 2014

Date Mailed to Parties: November 25, 2014

  
\_\_\_\_\_  
D-4100-CP AND  
CHIEF ADMINISTRATIVE LAW JUDGE

EJM/kep



**APPENDIX**

**WITNESSES**

For Petitioner:

Jonathan Dorman

For Respondent:

Donna Natonick

**EXHIBITS**

Joint Exhibits:

- 0 Timeline
- A Idaho State Police - Uniform Citation
- B Check Ledger
- C NJMVC Scheduled Suspension Notice, dated April 25, 2012
- D NJMVC Order of Suspension, dated July 8, 2012
- E New York State Traffic Ticket
- F Receipt and Notice of Payment/Compliance of Infraction Penalty, dated August 3, 2014
- G State of New York - Traffic Violation
- H Florida Uniform Traffic Citation
- I NJMVC Fee Payment Authorization Form
- J Certification of Mailing List, dated July 8, 2012
- K Scheduled Suspension Notice
- L Letter of Appeal
- M FedEx Express receipt (standard overnight), dated January 9, 2014



*State of New Jersey*  
**OFFICE OF ADMINISTRATIVE LAW**  
33 Washington Street  
Newark, NJ 07102  
(973) 648-6008

**A copy of the administrative law  
judge's decision is enclosed.**

**This decision was mailed to the parties**

**on November 25, 2014**

STATE OF NEW JERSEY  
MOTOR VEHICLE COMMISSION  
CASE FILE NUMBER: AXXXX XXXXX 09852  
OAL DOCKET NUMBER: M.V.H. 06930-14

IN THE MATTER OF :  
JUSTIN J. ALTERIO : **FINAL DECISION**

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **JUSTIN J. ALTERIO**, respondent, for the accumulation of an excessive number of points in violation of N.J.S.A. 39:5-30.8 and N.J.A.C. 13:19-10.1 et seq. This is a consolidated matter requiring consideration of two separate proposed suspension notices triggered by two separate convictions for two point-carrying violations. Pursuant to N.J.A.C. 13:19-10.2, for each “points” violation, respondent’s New Jersey driving privilege is subject to a 90 day suspension period. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”) in this matter and the letter of exceptions filed by respondent. Based upon the record presented, I shall affirm and adopt in full the ALJ’s findings of fact and conclusions, with the minor corrections indicated herein, and shall **MODIFY** the ALJ’s recommendation to a 30 day suspension and a requirement that respondent successfully complete a Commission-approved Driver Improvement Program.

In his Initial Decision, the ALJ recommends that respondent's New Jersey driving privileges be suspended for a total of 60 days; 30 days each for the "points" violations. Initial Decision at 5. The ALJ found as fact that "respondent accumulated a total of twenty-two points as a result of the violation on June 17, 2013 [convicted under N.J.S.A. 39:4-97 "Careless Driving"], and a total of twenty-four points as a result of the violation on July 15, 2013 [convicted under N.J.S.A. 39:4-144 "Disregard of Stop Sign Regulations"]." Id. at 4. The Certified Abstract of Driver History Record (Exhibit P-1) establishes the courts' entry of these convictions and, indeed, respondent does not dispute that he was convicted of these Title 39 violations.

The ALJ correctly lists each of the convictions and point credits on respondent's driver history which confirm the twenty-two and twenty-four total points accumulated in a period greater than two years, making respondent subject to license suspension in accordance with N.J.S.A. 39:5-30.8 and N.J.A.C. 13:19-10.2. Thus, I affirm and adopt the ALJ's conclusion that the requisite elements supporting a license suspension have been proven on this record.

The respondent submitted a letter of exceptions in which he first asserts that "on the date of this judgment I had 19 points on my license" instead of the "21, which the paperwork shows." Review of respondent's current driver history record reveals that it is accurate that, as of the posting on September 8, 2014, of a two point credit for a defensive driving program completed on August 11, 2014, respondent's cumulative point total was reduced to nineteen points. The ALJ's chart of points violations and credits in the Initial Decision does not capture that

more recent entry to respondent's driver history. Nonetheless, this exception is without merit as it does not affect the fact that the two triggering violations (and subsequent convictions) brought respondent's point-total to twenty-two and then twenty-four points. Reducing one's point-total after-the-fact of the offense does not relieve the offender from being subject to the sanctions in the governing statute and regulations. The steps taken toward improving one's driving behavior after the offenses as shown by completing the defensive driving course are taken into account when assessing the totality of the circumstances in determining the appropriate remedial sanction. This was explicitly taken into account by the ALJ in his recommended reduced sanction, as he noted in his findings that "[r]espondent successfully completed a defensive driving course in August 2014" as stated in enumerated finding number 3. Initial Decision at 3. Thus, this exception is rejected.

In his next exception, respondent asserts that "according to the papers filed I plead guilty to the accused charges, which is false" and that "I did not plead guilty to any charges." As the entries on the Certified Abstract conclusively establish the fact of conviction of the Title 39 offenses stated, but do not indicate on this record whether they were by entry of pleas or after trials, I shall modify in this Final Decision the statements made in the Initial Decision to eliminate reference to guilty pleas, while affirming at the same time that the convictions remain as stated on the Abstract: namely, a conviction under N.J.S.A. 39:4-97 "Careless Driving" and a conviction under N.J.S.A. 39:4-144 "Disregard of Stop Sign Regulations". As these convictions are all that is necessary to support the

license suspension actions in this administrative matter, the respondent's exception is of no moment.

Respondent also includes in his exceptions a reiteration generally of his plea for leniency in light of the hardships to him and his family (which includes two young children) that a loss of license will entail. In his Initial Decision, the ALJ recognized that: respondent needs his driving privileges for his employment as an automotive mechanic; respondent needs his income from employment to support himself and to pay child support for two children; respondent now drives a family car; and respondent's monthly expenses include a \$750 mortgage payment, and he also pays \$100 per week in child support. Initial Decision at 3-4. Moreover, the ALJ found that "respondent has shown some improvement in his driving record in that he has not had any violations since July 15, 2013" and "it would be a hardship for respondent to lose his driving privileges, because he works as an automotive mechanic and he needs his income from employment to support himself and his children." *Id.* at 4-5.

Based on the foregoing, it is clear that the ALJ did take respondent's circumstances into consideration when he rendered his Initial Decision. Notwithstanding the numerous violations in respondent's driving record, the ALJ found good cause and exercised discretion to recommend a substantial reduction to the period of suspension from the 180 days proposed by the Commission in its Scheduled Suspension Notices to a 60 day total suspension. I concur with the ALJ's analysis concerning the mitigation presented on this record and that there is good cause for reduction in the period of suspension.

I also note that a review of respondent's record reveals that he has never attended the Commission-approved Driver Improvement Program ("DIP"). Respondent's satisfactory completion of the Commission-approved Driver Improvement Program will redound to his benefit by reinforcing his need to continue with his driving skills improvement. Therefore, I shall modify the ALJ's recommendation to a 30-day suspension period and also a requirement that respondent attend and successfully complete a Commission-approved Driver Improvement Program (DIP) in lieu of part of the proposed suspension. See, N.J.A.C. 13:19-10.2(b). In the event of respondent's failure to fulfill the requirements of the Driver Improvement Program, the 90-day proposed suspension in the Scheduled Suspension Notice prepared on November 13, 2013, shall be imposed (in addition to the 30 day suspension period imposed for the Scheduled Suspension Notice prepared on October 23, 2013). Following completion of the DIP program, it is also noted that respondent will be placed on a one-year probationary period pursuant to N.J.A.C. 13:19-10.6, which shall subject him to a period of suspension for any subsequent violation of the Motor Vehicle and Traffic Law of the State of New Jersey committed within that one-year period.

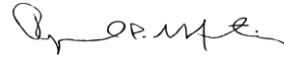
While I am sympathetic regarding the hardship that the respondent may suffer as a result of his New Jersey driving privilege being suspended, respondent must nevertheless appreciate the responsibility that he owes to the public under the motor vehicle laws. Motor vehicle license suspensions are primarily intended to protect the safety of the public by temporarily removing

offenders from the highways of New Jersey. David v. Strelecki, 51 N.J. 563, 566 (1968); Cresse v. Parsekian, 43 N.J. 326, 328-29 (1964). Moreover, the respondent is reminded that the operation of a motor vehicle on New Jersey roads is a privilege, not a right. State v. Nunez, 139 N.J. Super. 28, 30 (Law Div. 1976); State v. Kabayama, 94 N.J. Super. 78, 82-83 (Law Div.), aff'd, 98 N.J. Super. 85 (App. Div. 1967), aff'd, 52 N.J. 507 (1968). A period of suspension of thirty days, in addition to the requirement of successful completion of a Commission-approved Driver Improvement Program (DIP class), is both warranted and reasonable in the present case when public safety is balanced against respondent's need to maintain his driving privilege. The Commission notes that respondent's proposed suspension is intended to be rehabilitative rather than punitive in nature.

It is, therefore, on this 15<sup>th</sup> day of January, 2015, **ORDERED** that the New Jersey driving privilege of **JUSTIN J. ALTERIO**, be suspended for a period of thirty (30) days for accumulating an excessive amount of points and further **ORDERED** that **JUSTIN J. ALTERIO** shall be required to attend and successfully complete a Driver Improvement Program as approved by the Commission. The Commission will contact **JUSTIN J. ALTERIO** in a separate mailing to provide the requirements for scheduling program attendance. In the event that **JUSTIN J. ALTERIO** fails to fulfill the requirements of the Driver Improvement Program, the originally proposed 90-day scheduled suspension shall be automatically imposed (in addition to the 30 day suspension for the first considered points suspension notice herein).

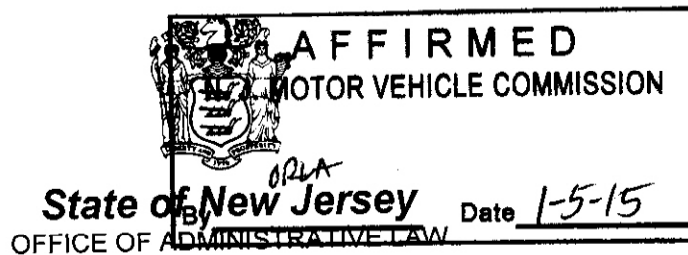


**NOTE:** The **effective date** of this suspension is set forth in the “**Order of Suspension**” which the Commission will send in a separate mailing.



Raymond P. Martinez  
Chairman and Chief Administrator

RPM:kw



**INITIAL DECISION**

OAL DKT. NO. MVH 10132-14N

AGENCY DKT. NO. DXXXX XXXXX 53852

**MOTOR VEHICLE COMMISSION,**

Petitioner,

v.

**NATALEY J. DIXON,**

Respondent.

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**Donna Natonick**, Driver Improvement Analyst 3, for petitioner pursuant to  
N.J.A.C. 1:1-5.6(a)

**Nataley J. Dixon**, respondent, pro se

Record Closed: September 16, 2014

Decided: November 20, 2014

BEFORE **MUMTAZ BARI-BROWN**, ALJ

**STATEMENT OF CASE AND PROCEDURAL HISTORY**

The New Jersey Motor Vehicle Commission (DMV), by notices dated May 28, 2013 and June 11, 2013, proposed to suspend driving privileges of respondent, Nataley J. Dixon effective July 26, 2013, indefinitely because she failed to answer summon(s) to appear before Montclair Municipal Court, Montclair, N.J. By Notice dated December 10, 2013, DMV proposed to suspend respondent's driving privileges effective January 1,

2014 for 180 days because she operated a motor vehicle during a period of driving privilege suspension. Thereafter, by notice dated December 29, 2013, DMV restored respondent's basic driving privileges and commercial driving privileges. Respondent appeals the suspension, of her driving privileges.

On August 11, 2014, the matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing was held on September 16 2014 and the record closed. For good cause and extension of time to file the initial decision was granted. N.J.S.A. 52:14B-10(c); N.J.A.C. 1:1-18.8.

### **SUMMARY OF EVIDENCE**

Respondent Nataley J. Dixon, age 29, testified about her situation. She has been licensed to operate a motor vehicle for ten years. Currently, she is employed by an organization that provides services to individuals with Cerebral Palsy. Dixon is a Consumer Services Assistant assigned to three individuals (Consumers), whom she transports to various locations and agencies to receive services. Her hours are 7:30 am to 3:30 pm. Respondent has a second job on weekends as a security guard at Rutgers University, New Brunswick, N.J. She further testified that she is a caregiver of her mother, who resides in Queens, New York. In this capacity, she arranges medical appointments and transports her mother to the physician for medical treatment.

Respondent acknowledged the accuracy of her driving abstract, which includes failure to pay surcharges. She explained that during a period when she was unemployed, she did not maintain the payment plan. Also, during this period, she moved and did not receive the notice of suspension issued in December 2013. She is now working two jobs and can maintain her financial obligations.

### **FINDINGS OF FACT**

Based on the relevant evidence, I **FIND** the following as **FACT**:

Respondent's driver abstract dated ~~July~~<sup>Aug.</sup> 25, 2014, reflects several violations and suspension since September 2007, including suspensions for nonpayment of insurance surcharge on June 14, 2009, October 17, 2009, January 17, 2010, June 27, 2010 and January 16, 2011. However, the driver history abstract reflects only two points. Moreover, her driving privileges were restored on December 29, 2013.

### DISCUSSION AND CONCLUSION

The imposition of license suspensions is for the purpose of reforming motorists. Cresse v. Parsekian, 81 N.J. Super. 536, 549 (App. Div. 1963), aff'd, 43 N.J. 326 (1964). Thus, the suspension of a motorist's license is not a punitive device, but a means of protecting the public interest. Vance v. State Div. of Motor Vehicles, 67 N.J. Super. 63, 67 (App. Div. 1961). The Director may waive or reduce the suspension for good cause. N.J.S.A. 39:5-30.8. For example, if the licensee presents mitigating circumstances the proposed suspension may be eliminated or reduced. Each case must be carefully examined to determine whether a suspension is required and, if so, for what period. Cresse, supra, 81 N.J. Super. at 549. In making this determination, the Director may:

Among other things . . . consider the facts which constitute the particular violation; whether the motorist was willful or reckless, or merely negligent, and, if merely negligent, how negligent; how long the motorist has been driving; whether this is her first offense; whether her has been involved in any accidents; her age and physical condition; whether there were any aggravating circumstances, such as drinking, or, on the other hand, whether there were extenuating circumstances.

[ibid.]

I have balanced the rehabilitative purposes of N.J.S.A. 39:5-30 with respondent's driving history. I have also considered the impact on respondent's day-to-day responsibilities if her license is suspended. Respondent's driving habits have a direct impact on public safety. Adherence to surcharge payment plans also impacts the public. Respondent has been driving for eight years and received at least three

suspensions in the past three years due to nonpayment of insurance surcharge resulting from parking offenses. Respondent's explanation for non-payment was due to her lack of employment. However, respondent's driving abstract shows no accidents and contains one speeding offense, which resulted in two points. She is currently employed and has addressed her financial responsibilities. Her employment duties with the Cerebral Palsy agency require that she maintain a valid driver license.

Based upon the whole of the record, I am persuaded that respondent understands the importance of obeying all traffic rules in operating a motor vehicle. Therefore, I **CONCLUDE** that from a societal standpoint, the public interest would gain little by suspending respondent's driving privileges.

### **ORDER**

It is therefore **ORDERED** that the New Jersey driving privileges of Nataley J. Dixon not be suspended.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 20, 2014  
DATE

Mumtaz Bari Brown  
MUMTAZ BARI-BROWN, ALJ

Date Received at Agency:

11-20-14  
Leora Pericles

Date Mailed to Parties: **NOV 21 2014**  
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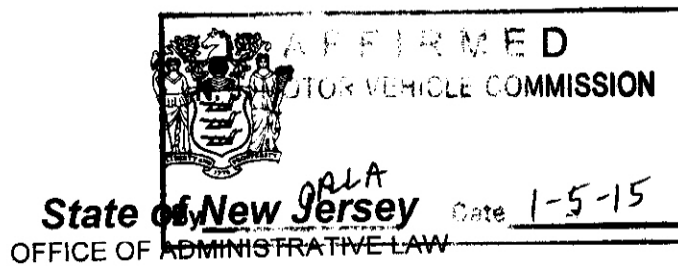
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE



*State of New Jersey*  
**OFFICE OF ADMINISTRATIVE LAW**  
**33 Washington Street**  
**Newark, NJ 07102**  
**(973) 648-6008**

**A copy of the administrative law  
judge's decision is enclosed.**

**This decision was mailed to the parties  
on NOV 21 2014**



**INITIAL DECISION**

OAL DKT. NO. MVH 9860-14

AGENCY DKT. NO. 07692

**MOTOR VEHICLE COMMISSION,**

Petitioner,

v.

**MAURICE L. THOMPSON,**

Respondent.

---

**Motor Vehicle Commission,** petitioner, appearing pursuant to N.J.A.C. 17:27-5.6(a)

**Maurice L. Thompson,** respondent, pro se

Record Closed: October 8, 2014

Decided: November 21, 2014

BEFORE **JOHN S. KENNEDY, ALJ:**

**PROCEDURAL HISTORY AND STATEMENT OF THE CASE**

Respondent Maurice L. Thompson appeals the indefinite suspension of his New Jersey passenger endorsement on his Commercial Driver License (CDL), effective January 2, 2014, because he failed to satisfy the requirements for that endorsement on his commercial driver license, to wit, that the Motor Vehicle Commission (MVC) had received information that he had a disqualifying criminal arrest and/or conviction record.



As a result of a scheduled suspension notice issued by the MVC, respondent appealed and the matter was thereafter transmitted to the Office of Administrative Law (OAL) on August 5, 2014, as a contested case pursuant to the provisions of N.J.S.A. 52:14B-1 through 15 and N.J.S.A. 52:14F-1 through 13. The matter was heard on October 8, 2014, on which date the record closed.

### **TESTIMONY AND STATEMENT OF FACTS**

Respondent testified on his own behalf and stated that he received his CDL with a passenger endorsement approximately three years ago. The MVC suspended his passenger endorsement because he was convicted of the crime of lewdness in 2003 for an offense that was committed in 2000 when respondent was thirty-one years old. Respondent had a disabled child at the time and asserted that he decided to plead guilty and accept an offer of probation as opposed to trying the case and risking a jail sentence which would have been a burden on his family. Since his conviction, respondent has had no additional criminal convictions. He is currently married and has a seven year old son. His disabled child passed away in 2007.

Respondent works driving senior citizens for an adult day care facility in Ewing. He has been employed in this capacity of about one year and enjoys his job. He drives a 25-passenger bus and takes seniors to doctor's appointments and on other errands. Respondent submitted a five-year driver history that indicates he has had no motor vehicle violations in the past five years (R-1).

The MVC proceeded without a representative and relied on the documents submitted in discovery (P-1). Respondent was given an opportunity to review the documents submitted by the MVC and agreed to have them entered into evidence and made a part of the record.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the respondent, I **FIND** as **FACT** that respondent pled guilty to and was convicted of the crime of lewdness.

## LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 39:3-10.1 creates a special license for drivers of a motor vehicle with a capacity of more than six passengers, and directs that an applicant for such a license present satisfactory evidence of his or her "previous experience," "good character" and "physical fitness." The statute authorizes the chief administrator of the Commission to suspend or revoke a passenger endorsement for a violation of the motor vehicle laws "or on other reasonable grounds, or where, in his opinion, the licensee is either physically or morally unfit to retain the same." Ibid.

Here, the Commission asserts that respondent is not fit to hold the passenger endorsement because he has a disqualifying criminal record as defined by N.J.A.C. 13:21-14.5(c)(12).

Under rules promulgated by the Commission regarding the issuance of passenger endorsements, N.J.A.C. 13:21-14.1, et seq., the Administrator "may not issue a passenger endorsement, or may revoke or suspend a passenger endorsement of any person when it is determined that the applicant or holder of such license has . . . [a] criminal record which is disqualifying." The circumstances when a driver will be said to have a disqualifying record are set forth in N.J.A.C. 13:21-14.5(c)(12), which states:

A driver has a disqualifying record if:

- i. He has been convicted of . . .any of the following:
  - (1) An offense involving the manufacture, transportation, possession, sale or habitual use of a 'controlled dangerous substance' as defined in the 'New Jersey Controlled Substance Act';
  - (2) A crime or other offense involving deviant or illicit social behavior such as rape, incest, sodomy or carnal abuse;
  - (3) A crime or other offense involving the use of force or the threat of force to or upon a person or property, such as armed robbery, assault and arson;
  - (4) Any crime or other offense indicative of bad moral character; [or]

(5) He fails to notify the Division...that he has been arrested for, charged with, indicted for, convicted of, or forfeited bond or collateral upon any crime or other offense within 14 days after the date of such event.

In this case, respondent was convicted of lewdness under N.J.S.A. 2C:14-4b(1). Pursuant to that statute, a person commits a crime of the fourth degree if he exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a child who is less than thirteen years of age where the actor is at least four years older than the child. I **CONCLUDE** that respondent has a disqualifying record as lewdness falls within the parameters of a crime or offense involving deviant or illicit social behavior and also constitutes a crime indicative of bad moral character.

Accordingly, the agency's action suspending the respondent's New Jersey passenger endorsement must be **AFFIRMED**.

**ORDER**

I **ORDER** that the Commission's action suspending respondent's New Jersey passenger endorsement indefinitely be **AFFIRMED**.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 21, 2014  
DATE

  
\_\_\_\_\_  
JOHN S. KENNEDY, ALJ

Date Received at Agency: November 21, 2014

Date Mailed to Parties: 11-24-14

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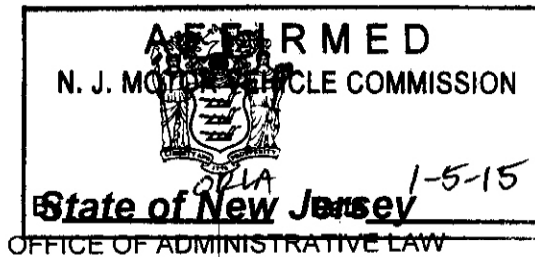
**EXHIBITS**

**For Petitioner:**

P-1 Packet of Documents form Agency (32 pages)

**For Respondent:**

R-1 Driver's Abstract (5 pages)



**INITIAL DECISION**

OAL DKT. NO. MVH 3595-14

AGENCY DKT. NO. 05955

**MOTOR VEHICLE COMMISSION,**

Petitioner,

v.

**GREGORY C. PATERNO,**

Respondent.

---

**Motor Vehicle Commission,** petitioner, appearing pursuant to N.J.A.C. 1:1-5.6(a)

**Gregory C. Paterno,** respondent, pro se

Record Closed: October 15, 2014

Decided: November 21, 2014

BEFORE JOHN S. KENNEDY, ALJ:

**PROCEDURAL HISTORY AND STATEMENT OF THE CASE**

Respondent Gregory C. Paterno appeals the ninety-day suspension of his New Jersey driving privileges. Petitioner alleges that respondent was a persistent violator as he was charged with following too closely within a period of one year following his successful completion of a probationary driver program.

As a result of a scheduled suspension notice issued by the MVC, respondent appealed and the matter was thereafter transmitted to the Office of Administrative Law (OAL) on March 26, 2014, as a contested case pursuant to the provisions of N.J.S.A. 52:14B-1 through 15 and N.J.S.A. 52:14F-1 through 13. The matter was heard on October 15, 2014, on which date the record closed.

### **TESTIMONY AND STATEMENT OF FACTS**

Cheryl Burns testified on behalf of the New Jersey Motor Vehicle Commission (MVC). During the first year of receipt of his driver's license, respondent obtained a two-point careless driving ticket on July 14, 2012, and a two-point improper operation on a highway violation on August 23, 2012. On March 13, 2013, respondent completed a Probationary Driver Program (PDP) class and received official warning of a one-year probationary period. This in-person notification was confirmed in writing to respondent by way of a warning notice mailed to him on March 15, 2013 (P-1, page 4). The warning notice advised respondent that if he commits any violation during the probationary period his driving privileges may be suspended. The warning notice specifically indicated that the suspension would be for ninety days if the violation occurs within the first six months of probation. On July 20, 2013, respondent received a charge of following too closely in Delaware. This violation occurred within the first six months of probation and respondent received notification that his driving privilege was scheduled to be suspended for ninety days as of October 11, 2013 (P-1, page 5).

Respondent, accompanied by his mother, Melissa Paterno, stated that the certified abstract of his driver history record dated March 20, 2014 (P-1, pages 2-3) accurately reflected his New Jersey driving record. He acknowledged receipt of the warning notice dated March 15, 2013, and was aware of the probationary period. He stated that the charge he received on July 20, 2013, was the result of a minor accident he had with a friend of his in Delaware. He was following his friend home and hit his rear bumper when his friend braked suddenly in heavy traffic. The damage was minor but he called his mother who advised him to contact the police and make a report for insurance purposes. Upon receiving the ticket in the mail, respondent was unaware that it carried points and paid the ticket without going to court.

Ms. Burns advised that respondent pled guilty to unsafe driving on August 17, 2014, and that is the only other violation he has received since July 2013. She also stated that the warning notice advised that the suspension may be imposed if any violation is committed, not a violation that carries points.

Respondent, who is nineteen years old, testified that he works full time as a mechanic and often has to test drive the vehicles he services. He also intends to continue his schooling and will need his license to get to work and school. He lives with his parents but they work and the suspension might jeopardize his employment.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** as **FACT** that respondent was placed on a one-year probation on March 13, 2013, and he received a warning notice to that effect. I further **FIND** as **FACT** that the warning notice advised respondent that his driving privileges may be suspended for ninety days if he commits any violation within the first six months of the probationary period. I also **FIND** as **FACT** that respondent committed a violation within the first six months of the probationary period.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Applicable is N.J.A.C. 13:19-10.6, the persistent violator regulation, which provides in pertinent part that:

(a) Persons . . . who successfully complete a . . . Probationary Driver Program may retain their licenses upon the express condition and understanding that any subsequent violation of the Motor Vehicle and Traffic Laws of the State of New Jersey committed within one year of the . . . official warning or warning following successful completion of a . . . Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the following periods:

1. When the subsequent violation occurs within six months of the date of the . . . official



warning or warning following completion of a . . .  
. Probationary Driver Program – 90 days . . . .

Respondent's infraction occurred approximately four months after the start of his one-year probation period that commenced when he completed a probationary driver program. He acknowledges receipt of the warning notice advising of the probation period on March 15, 2013.

Generally, the schedule of suggested suspensions should be followed in the interest of uniformity, unless an individual licensee is able to demonstrate extraordinary circumstances justifying a reduction or waiver. Administrative suspensions are remedial in nature, designed to promote public safety rather than to punish wrongdoers. Atkinson v. Parsekian, 37 N.J. 143, 155 (1962). It is the Commissioner's function to impose suspensions for the purpose of reforming the particular motorist, and not for the purpose of frightening or deterring others, even though that may be an incidental result. Cresse v. Parsekian, 81 N.J. Super. 536, 549 (App. Div. 1963), aff'd 43 N.J. 326 (1964).

Respondent has the burden of proving "good cause" for a special exception to the usual suspension imposed in similar cases. Good cause is a flexible concept which appears in many statutes and rules. Our courts have held that "[t]he essence of the phrase is its ability to afford relief in exceptional situations." Hovland v. Dir., Div. of Taxation, 204 N.J. Super. 595, 600 (App. Div. 1985). It is impossible to construct a "definitive catalogue" of all circumstances to be considered in determining the existence of good cause, and "[e]ach case must be decided upon its own facts." Ullmann v. Hartford Fire Ins. Co., 87 N.J. Super. 409, 414 (App. Div. 1965). Factors which may be relevant in determining the appropriateness of any suspension include the individual's past driving record, length of time licensed, receipt of prior warnings or prior attendance at driver improvement school, attitude and maturity level, evidence of recent improvement, need for a license, and other aggravating or mitigating circumstances. N.J.A.C. 13:19-10.2(b); Cresse, supra, 81 N.J. Super. at 549. Need alone cannot be the deciding factor, however, since in today's motorized society virtually everyone needs a driver's license to earn a living and perform normal daily activities. See Div. of Motor Vehicles v. Morton, 4 N.J.A.R. 95 (Dir. of Motor Vehicles 1982).

Respondent is working full time as a mechanic and often test drives the vehicles he services. He also intends to continue his education. He exhibited some maturity by contacting the police after the accident in Delaware. Based on the foregoing, I **CONCLUDE** that respondent has met his burden of proving "good cause" for a special exception to the usual suspension imposed in similar cases. It remains for me to impose the appropriate remedial sanction in this case. This is done from a consideration of the totality of the circumstances, including respondent's personal situation and his driving record. I must balance the competing interests of respondent and the public.

Respondent, not yet twenty years of age, has certainly gotten off on the wrong foot with his driving. He was required to attend the probationary driver program because of the previously mentioned careless driving and improper operation on a highway infractions which resulted in four points. It is clear respondent failed to profit from the program because approximately four months after he completed it and received a warning notice, he was involved in an accident and charged with following too closely. He is, however, working full time as a mechanic and his desire to continue his education should not be overlooked. Nor should it be overlooked that he correctly contacted the police after being involved in a minor accident.

Having considered respondent's personal situation and his driving record, I **CONCLUDE** that the appropriate remedial sanction to be imposed, one to drive home to respondent the absolute necessity that he obey all our motor vehicle and traffic laws and that he is certainly heading in the wrong direction with his driving, would be a 45-day suspension of the New Jersey driving privileges of respondent. It is **SO ORDERED**. The effective date of this suspension shall be set forth in an Order of Suspension that petitioner shall send to respondent under separate cover.

### **ORDER**

Based on the foregoing, I **ORDER** that the Commission's action suspending respondent's New Jersey Driver's License for ninety days is **MODIFIED** to a period of 45-days.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 21, 2014  
DATE

  
\_\_\_\_\_  
JOHN S. KENNEDY, ALJ

Date Received at Agency:

November 21, 2014

Date Mailed to Parties:

11-24-14

cmo

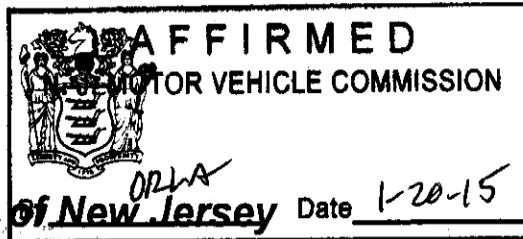
**EXHIBITS**

**For Petitioner:**

P-1 Packet of Documents form Agency (7 pages)

**For Respondent:**

None



OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. MVH 12119-14

AGENCY DKT. NO. HXXXX XXXXX 06742

**MOTOR VEHICLE COMMISSION,**

Petitioner,

v.

**SEAN A. HONEGAN,**

Respondent.

---

**Motor Vehicle Commission**, petitioner, appearing on the papers only, pursuant to  
N.J.A.C. 1:1-5.6(a)

**Joseph M. Horn, Esq.**, appearing on behalf of respondent (Law Offices of Joseph  
M. Horn, attorneys)

Record Closed: November 20, 2014

Decided: December 3, 2014

BEFORE **GAIL M. COOKSON**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This proceeding is brought under N.J.S.A. 39:3-10.1 and N.J.A.C. 13:21-14.5(a)  
and (c) to suspend indefinitely the New Jersey passenger endorsement on the  
Commercial Driver License (CDL) of respondent Sean A. Honegan. The issues are  
whether respondent committed a disqualifying crime or offense within the meaning of

N.J.A.C. 13:21-14.5(a) and (c), and, if so, whether respondent has affirmatively demonstrated sufficient rehabilitation to justify a waiver under N.J.A.C. 13:21-14.5(d).

By Scheduled Suspension Notice dated March 23, 2014, the Motor Vehicle Commission (Commission) proposed to suspend respondent's passenger endorsement indefinitely because he failed to satisfy the requirements for the endorsement on his CDL based on information that he had a disqualifying criminal conviction record. By letter dated April 2, 2014, respondent requested a hearing. The Commission transmitted the matter to the Office of Administrative Law (OAL) where it was filed on September 16, 2014, for determination as a contested case. The undersigned held a hearing on November 20, 2014, and, after the conclusion of testimony, the record closed. The Commission relied upon the packet of discovery materials in support of its Notice and chose not to appear or present testimony at the hearing.

### **FINDINGS OF FACT**

The relevant facts are not disputed. Based upon a review of the testimony and the documentary evidence presented, I **FIND** the following **FACTS**:

1. Respondent is currently forty years of age and financially supports his family through livery services he undertakes in both New York and New Jersey.
2. Respondent holds a commercial driver's license with a passenger endorsement. N.J.A.C. 13:21-23.12.
3. The Commission submitted documents in support of its contention that respondent had disqualifying criminal records.
4. Respondent does not dispute the criminal records presented by the Commission but argued that it is legally different from the MVC characterization of them.
5. Specifically, on or about June 13, 2013, the Municipal Court of Little Ferry, New Jersey, adjudicated Summons No. S-2013-12 issued on January 24, 2013, against respondent on which he entered a guilty plea to the offense designated under N.J.S.A.

2C:33-2.1, with the original charge under N.J.S.A. 2C:35-10A(4) being dismissed. Respondent was assessed fines totaling \$465.00 which he satisfied. Motor vehicle charges of possession of a controlled dangerous substance in a motor vehicle, N.J.S.A. 39:4-49.1, and failure to maintain a muffler, N.J.S.A. 39:3-70, were also dismissed as part of the plea agreement.

6. Specifically, on or about September 26, 2013, the Municipal Court of South Hackensack, New Jersey, adjudicated Summons Nos. S-2013-41 and S-2013-102 issued on May 16, 2013, against respondent on which he entered a guilty plea to the offense designated under N.J.S.A. 2C:33-2.1, with the original charge under N.J.S.A. 2C:35-10A(4) being dismissed. Respondent was assessed fines totaling \$465.00 which he satisfied.

7. Subsequent to these allegations, respondent successfully renewed his New York Taxi City and Limousine Commission annual license that entailed a complete background check and a drug test.

8. Respondent's Abstract of Driver History indicates that he has no points against his license at this time, and even completed a defensive driving course on or about January 21, 2014, notwithstanding that he had no points to offset. Respondent has not incurred any motor vehicle point violations since 2007.

9. On or about March 23, 2014, the Commission issued respondent a Scheduled Suspension Notice from which respondent appealed.

### **LEGAL DISCUSSION AND CONCLUSIONS OF LAW**

Under the police authority of the State, the Administrator of the Commission has the right to impose reasonable restrictions on the issuance of licenses for various occupations in order to protect the public health and safety. Sanders v. Division of Motor Vehicles, 131 N.J. Super. 95, 97 (App. Div. 1974). It further has been said that the primary objective of administrative proceedings before the Director "is to foster safety on the highway." Atkinson v. Parsekian, 37 N.J. 143, 155 (1962).

In 1986, the federal Commercial Motor Vehicle Safety Act was enacted at 49 U.S.C. §2701 to 2718. Section 2708 of the federal act required the states to adopt commercial driver licensing laws in compliance with federal standards or have their highway funds withheld. In response, the legislature enacted the New Jersey Commercial Driver License Act in 1990. N.J.S.A. 39:3-10.9 to 10.31. Under rules promulgated by the Commission regarding the right of a commercial driver to have a passenger endorsement, N.J.A.C. 13:21-14 et seq., the Administrator --

may not issue a passenger endorsement, or may revoke or suspend the passenger endorsement of any person when it is determined that the applicant or holder of such license has:

\*\*\*\*\*

12. A criminal record that is disqualifying. The phrase "crime or other offense" as used hereinafter shall include crimes, disorderly persons offenses or petty disorderly persons offenses as defined in the "New Jersey Code of Criminal Justice" and any offenses defined by any other statute of this State. A driver has a disqualifying record if:

i. He or she has been convicted of, or forfeited bond or collateral upon, any of the following:

(1) An offense involving the manufacture, transportation, possession, sale or habitual use of a "controlled dangerous substance" as defined in the "New Jersey Controlled Substance Act";

[N.J.A.C. 13:21-14.5(c)]

In addition, there are these general requirements for a person to hold such an endorsement: "Applicants shall be at least 21 years of age, have a minimum of three years driving experience, be of good character and physically fit and possess a valid New Jersey driver license." N.J.A.C. 13:21-14.5(a). The Commission charged respondent with respect to these disqualifying provisions.

Respondent argues that he has not incurred a disqualifying offense under the Motor Vehicle regulations because he was not adjudicated of any offense involving the



manufacture, transportation, possession, sale or habitual use of a controlled dangerous substance. Rather, he was only found guilty under a plea arrangement of the following offense:

A person, whether on foot or in a motor vehicle, commits a disorderly persons offense if (1) he wanders, remains or prowls in a public place with the purpose of unlawfully obtaining or distributing a controlled dangerous substance or controlled substance analog . . . .

[N.J.S.A. 2C:33-2.1(b)]

Based upon the plain language of this statute, I **CONCLUDE** that respondent does not have a disqualifying criminal record in that he did not plead guilty to any crime involving the manufacture, transportation, possession, sale or habitual use controlled dangerous substances; nor any other offense involving deviant social behavior or physical violence. Respondent only was convicted of wandering or loitering, albeit with a possible intent to obtain marijuana. Being in the “wrong place” is not equivalent to a possessory or other CDS offense.

Furthermore, the Chief Administrator has reserved the right to waive any portion of the disqualifying regulation “[if] sufficient and reasonable grounds are established at a hearing....” N.J.A.C. 13:21-14.5(d). Proof of rehabilitation establishes grounds to waive the regulation. Sanders, supra, 131 N.J. Super. at 98. The standards set forth in the Rehabilitated Convicted Offenders Act provide guidance in assessing whether the proofs are sufficient to justify a waiver of a disqualifying condition. See N.J.S.A. 2A:168A-1 to -3. As a matter of policy, “it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely on the existence of a criminal record.” N.J.S.A. 2A:168A-1. Various factors are enumerated in N.J.S.A. 2A:168A-2 to determine whether a conviction for a crime relates adversely to a particular occupation. The factors include: (1) the nature and duties of the occupation; (2) the nature and seriousness of the crime; (3) the circumstances under which the crime occurred; (4) the date of the crime; (5) the age of the person when the crime was committed; (6) whether

the crime was an isolated or repeated incident; (7) social conditions which may have contributed to the crime; and (8) any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, or the recommendation of persons who have or have had the person under their supervision.

Even if he one could say that N.J.S.A. 2C:33-2.1(b) satisfies the language of the Motor Vehicle regulations, which I have clearly found it does not, I would also **CONCLUDE** that he should be deemed to have demonstrated rehabilitation and other mitigating factors in support of retaining his commercial passenger endorsement including, but not limited to, his currently clean abstract and the fact that he has been financially supporting his family with his passenger endorsement.

### **ORDER**

It is **ORDERED** that the Scheduled Suspension Notice issued against the passenger endorsement on respondent Sean A. Honegan Commercial Driver License be and hereby is **REVERSED**.


I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 3, 2014

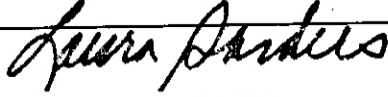
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\_\_\_\_\_  
GAIL M. COOKSON, ALJ

Date Received at Agency:

Date Mailed to Parties:  
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**DEC - 5 2014**

  
\_\_\_\_\_  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

**APPENDIX**

**LIST OF WITNESSES**

For Petitioner:

None.

For Respondent:

None.

**LIST OF EXHIBITS IN EVIDENCE**

For Petitioner:

P-1 Packet of Documents from Agency

For Respondent:

R-1 New York Taxi City and Limousine Commission "FHV Dispatch Driver License," with expire date of June 10, 2015



*State of New Jersey*  
**OFFICE OF ADMINISTRATIVE LAW**  
33 Washington Street  
Newark, NJ 07102  
(973) 648-6008

**A copy of the administrative law  
judge's decision is enclosed.**

**This decision was mailed to the parties  
on DEC - 5 2010**