*Date of mailing: September 5, 2019

STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: MXXXX XXXXX 12682

IN THE MATTER OF	:	**FINAL ADMINISTRATIVE DECISION AND ORDER OF SUSPENSION**
ANTONIO J. MOREIRA	:	**(Hearing on the papers)**
		SUSPENSION TERM: 90 DAYS
		EFFECTIVE DATE: 09/25/2019

This is the Motor Vehicle Commission's (Commission) Final Administrative Decision in the matter of Antonio J. Moreira (Moreira).

This matter arises out of an Interstate Driver License Compact state notification sent by the New York Department of Motor Vehicles to the Commission, reporting that Moreira had been convicted of driving while ability impaired (NYDWAI). Moreira does not dispute this conviction.

Pursuant to the Interstate Driver License Compact (N.J.S.A. 39:5D-4), the Commission issued a Scheduled Suspension Notice informing Moreira that his New Jersey driving privilege was subject to suspension for a period of 90 days pursuant to N.J.S.A. 39:4-50, N.J.S.A. 39:5-30, N.J.S.A. 39:5D-4, and N.J.A.C. 13:19-11.1 to -11.2. A copy of the Scheduled Suspension Notice is attached hereto as Exhibit P-1.

In response to the Scheduled Suspension Notice, Moreira, through his attorney, wrote to the Commission requesting a hearing. In his hearing request Moreira argues that the New York driving while ability impaired statute (N.Y. Veh. & Traf. Law § 1192(1)) is not similar to New Jersey's Driving While Intoxicated statute (N.J.S.A. 39:4-50), that the New York law "provides that evidence of a blood-alcohol content of more than .05 but

less than .07 is D.W.A.I, as opposed to a B.A.C. of .08 or more which would be D.W.I.," that Moreira's NYDWAI conviction in New York was "based solely on blood alcohol content evidence," and that Moreira was not advised of the consequences that a NYDWAI guilty plea would have with respect to Moreira's New Jersey driving privilege and that he was "told that because the BAC was lower than .08 that nothing would happen in New Jersey." With his hearing request Moreira also submitted copies of the following documents: Scheduled Suspension Notice issued by the Commission dated April 5, 2018, Conditional Discharge Order dated February 15, 2018, a Restricted Use License/Privilege Attachment stamped by the New York Department of Motor Vehicles on March 7, 2018, Order of Suspension or Revocation effective February 15, 2018, and a letter from EAC Network addressed to Moreira, dated February 13, 2018, informing Moreira of "the successful completion of Community Service work with EAC." A copy of Moreira's hearing request and accompanying documents is attached hereto collectively as Exhibit R-1.

The Commission issued a letter to Moreira acknowledging his hearing request. The Commission further advised Moreira that he was being afforded an opportunity for a hearing on the papers, and that it was Moreira's burden to demonstrate, "by clear and convincing evidence, that the State of New York conviction was based **exclusively** upon a violation of a proscribed blood alcohol concentration (BAC) of less than .08%. This is **not** an opportunity to re-litigate that matter or to collaterally attack the New York conviction in this administrative forum." Moreira was further advised to "provide a notarized affidavit setting forth all facts in support of your position and provide copies of any supporting documents or other evidence (including, but not limited to, the official plea transcript from

the State of New York proceeding and/or official court order signed by the New York judge indicating specific findings made in connection with your conviction)." A copy of the Commission's letter is attached hereto as Exhibit P-2.

Moreira failed to submit any additional information or documentation to the Commission. Thus, I shall evaluate this matter on the information in Moreira's April 23, 2018 submission to the Commission.

According to the Conditional Discharge Order and Order of Suspension or Revocation, on February 15, 2018, Moreira pled guilty to a violation of N.Y. Veh. & Traf. Law § 1192(1) ("driving while ability impaired"), denoted as "Count 6".

A copy of the Conditional Discharge Order and Order of Suspension or Revocation are included in Exhibit R-1. Notably, Moreira did not submit any other evidence, such as the official plea transcript from the State of New York proceeding or official court order signed by the New York judge indicating specific findings made in connection with his conviction. Moreover, Moreira has even failed to submit any official documentation showing his BAC chemical test result, despite his assertion in the hearing request that his conviction was "based solely on blood alcohol content evidence" (emphasis supplied).

Based on the documentary exhibits in the record, I find the following:

1. On December 30, 2017, Moreira was arrested and charged with several violations, and ultimately pled guilty to a violation of N.Y. Veh. & Traf. Law § 1192(1) ("driving while ability impaired"), which was specifically denoted as "Count 6" for this court matter. (Exhibit R-1)
2. Moreira entered his guilty plea to driving while ability impaired on February 15, 2018. (Exhibit R-1)

3. None of the documents submitted by Moreira reflect a BAC test result whatsoever, or any findings indicating that the New York conviction was based exclusively upon a violation of a proscribed BAC of less than .08%.
4. The New York statutory provision, N.Y. Veh. & Traf. Law § 1192(1) ("driving while ability impaired"), is not a per se offense as constructed and enacted by the New York legislature.

Analysis

There is no dispute that Moreira was convicted of NYDWAI. Thus, the sole issue to be determined here is whether Moreira has met his burden to prove, with clear and convincing evidence, that his New York conviction was for an offense "based **exclusively** upon a violation of a proscribed BAC of less than .08%." In re: Maxine Basch, 2013 N.J. Super. Unpub. LEXIS 1764, at 1,7, and N.J.S.A. 39:4-50(a)(3) (emphasis added). In the absence of such proof, Moreira is subject to the mandatory minimum 90-day suspension of his New Jersey driving privileges, pursuant to N.J.S.A. 39:4-50, New Jersey's driving while intoxicated (DWI) statute and N.J.A.C. 13:19-11.1 et seq.

Despite the requirement noted in the Commission's response to Moreira's hearing request that Moreira demonstrate, "by clear and convincing evidence, that the State of New York conviction was based **exclusively** upon a violation of a proscribed blood alcohol concentration of less than .08%," Moreira failed to submit any information whatsoever regarding BAC.

The simple fact that Moreira was convicted in New York of driving while ability impaired and not driving while intoxicated does not demonstrate, by clear and convincing evidence, that the State of New York conviction for driving while ability impaired was

based exclusively upon a violation of a proscribed BAC of less than .08%.

It is well established by New Jersey case law that the Commission has the authority to suspend a New Jersey licensee's driving privilege for an out-of-state conviction, pursuant to N.J.S.A. 39:5D-4, and that N.Y. Veh. & Traf. Law §1192(1) is substantially similar to N.J.S.A. 39:4-50. State v. Zeikel, supra, at 44-49; New Jersey Div. of Motor Veh. v. Lawrence, 194 N.J. Super. 1, 2-3 (App. Div. 1983). See Mize v. NJMVC, (unreported) (App. Div. 2018), Dkt. No. A-0781-17T1, 2018 N.J. Super. Unpub. LEXIS 2542; Markowiec v. NJMVC, (unreported) (App. Div. 2018), Dkt. No. A-2492-15T1, 2018 N.J. Super. Unpub. LEXIS 257; Ford v. NJMVC, (unreported) (App. Div. 2014), Dkt. No. A-3117-12T1, 2014 N.J. Super. Unpub. LEXIS 304, at 5, certif. denied, 217 N.J. 587 (2014); Xheraj v. NJMVC, (unreported) (App. Div. 2013), Dkt. No. A-2125-12T1, 2013 N.J. Super. Unpub. LEXIS 2893; Wayne v. NJMVC, (unreported) (App. Div. 2013), Dkt. No. A-3008-12T1, 2013 N.J. Super. Unpub. LEXIS 1827, at 8-9; New Jersey Motor Veh. Comm'n v. Gethard, (unreported) (App. Div. 2012), Dkt. No. A-4657-10T3, 2012 N.J. Super. Unpub. LEXIS 287, at 5; In re: Alan D. Weissman, (unreported) (App. Div. 2009), Dkt. No. A-2154-07T3, 2009 N.J. Super. Unpub. LEXIS 1303, at 2 (the court specifically notes that "[n]either N.Y. Veh. & Traf. Law §1192(1) nor N.J.S.A. 39:4-50(a), require a minimum blood alcohol reading for a conviction"). See also, State v. McCauley, (unreported) (App. Div. 2006), Dkt. No. A-4622-04T2, 2006 N.J. Super. Unpub. LEXIS 2422 (the court rejected McCauley's argument that he fit within the "very limited exception" in the statute, N.J.S.A. 39:4-50(a)(3), even assuming that his BAC was .06%, since New York's driving while ability impaired statute, N.Y. Veh. & Traf. Law §1192(1), "on its face" is not a "per se" offense and his conviction under that provision "must have

been based on other evidence") and In re: Maxine Basch, MVC Chief Administrator Supplemental Final Decision and Final Order on Remand, issued January 8, 2016, found at http://www.nj.gov/mvc/pdf/about/jab_final_decisions16.pdf (suspension imposed for NYDWAI conviction in accord with Appellate Division remand instruction where a "plea bargain" had been entered to the lesser-included offense, also noting other potential evidence of impairment included officer observations, field sobriety tests and/or admissions, as well as a BAC result of .17%).

As constructed and enacted by the New York legislature, N.Y. Veh. & Traf. Law §1192(1) is specifically, on its face, not a per se type of offense; instead, it is the impairment of a person's ability to operate a motor vehicle that is the critical statutory element established by Moreira's conviction. Compare, New Jersey Div. of Motor Veh. v. Ripley, 364 N.J. Super. 343, 349-50 (App. Div. 2003) (in which the court specifically discusses the NYDWAI offense and the fact that NYDWAI contains the element of impaired driving ability, thus distinguishing it from a statute like the former Utah "alcohol-related reckless driving" statute that was at issue in that case, which Utah statute did not have impaired driving ability as an element of the offense); accord Zeikel, supra, 423 N.J. Super. at 46, 47 (the court "viewed 'impaired driving ability' as the crucial element necessary to apply the statute of another jurisdiction as substantially similar to New Jersey's DWI statute").

Governing New Jersey case law repeatedly recognizes that "observational" evidence is also sufficient in New Jersey to support a conviction under New Jersey's unified DWI statute, N.J.S.A. 39:4-50, even without a BAC result. See, e.g., State v. Sorenson, 439 N.J. Super. 471, 479-82 (App. Div. 2015) (noting distinction between the

"per se violation" and the "observation violation" both under New Jersey's DWI statute, N.J.S.A. 39:4-50); State v. Campbell, 436 N.J. Super. 264, 267-68 (App. Div.), certif. denied, 220 N.J. 208 (2014) (noting that New Jersey DWI prosecutions under N.J.S.A. 39:4-50(a) may be pursued on "four distinct alternative grounds" one type of which is the "so-called 'observation' cases based on other non-BAC evidence of a defendant's impairment while driving"); State v. Kent, 391 N.J. Super. 352, 384 (App. Div. 2007) (affirming a defendant's DWI conviction based upon his erratic driving in causing a single-car accident and a police officer's field observations of his multiple signs of inebriation, despite the inadmissibility of hearsay laboratory reports measuring the BAC level in defendant's blood sample); see also State v. Howard, 383 N.J. Super. 538, 548 (App. Div.) (quoting State v. Kashi, 360 N.J. Super. 538, 545 (App. Div. 2003), aff'd, 180 N.J. 45 (2004)), certif. denied, 187 N.J. 80 (2006) (instructing that a violation of N.J.S.A. 39:4-50 can be proven "through either of two alternative evidential methods: proof of a defendant's physical condition or proof of a defendant's blood alcohol level.").

Moreover, the court in Zeikel, 423 N.J. Super. 34, 48 (App. Div. 2011), confirms that a conviction of New Jersey's driving while intoxicated statute is sustainable if it is supported by sufficient evidence of "any degree of impairment that affects a person's ability to operate a motor vehicle" while further highlighting that "[like] New Jersey, New York defines impairment broadly to include any degree of impairment of a person's physical or mental abilities to operate a motor vehicle." See also In re Johnston, 75 N.Y.2d 403, 409-10, 553 N.E.2d 566, 554 N.Y.2d 88 (1990) (New York's highest judicial tribunal construes "impairment" under N.Y. Veh. & Traf. Law § 1192(1) as meaning that "the actor by 'voluntarily consuming alcohol . . . has actually impaired, to any extent, the

physical and mental abilities which he is expected to possess in order to operate a vehicle as a responsible and prudent driver"; quoting People v. Cruz, 48 N.Y.2d 419, 427, 399 N.E.2d 513, 423 N.Y.2d 625 (1979)).

Moreira failed to present any documentation that his BAC was under .08% and further that his New York conviction was based exclusively on a BAC test result of under .08%, and not also on observational evidence, as is required to meet the very limited exception in New Jersey's DWI statute[1].

It remains undisputed that Moreira was convicted by the State of New York of N.Y. Veh. & Traf. Law § 1192(1), "driving while ability impaired," while holding and presenting a New Jersey driver's license. Accordingly, the State of New Jersey is required to suspend Moreira's New Jersey driving privilege in accordance with the Interstate Driver License Compact Agreement (N.J.S.A. 39:5D-4 et seq.) and the New Jersey Administrative Code (N.J.A.C. 13:19-11.1). The governing regulation, N.J.A.C. 13:19-11.1(a) and (b), provides that out-of-state convictions shall be given the same

[1] That very limited exception in the New Jersey statute most specifically would apply where there was a conviction under a per se law in another state, for which the other state's per se threshold was lower, at the time of the offense, than the per se prong contained within the New Jersey "unified" DWI statute, N.J.S.A. 39:4-50 (which contains a per se prong as well as an observational prong). An example of this would be a New York DWI- per se .08 conviction, under N.Y. Veh. & Traf. Law § 1192(2) ("driving while intoxicated; per se"), that specifically occurred during the timeframe in which the New York per se statutory threshold had been lowered to .08 prior to the effective date of the New Jersey law changing its per se threshold from .10 to .08; namely between July 1, 2003 and January 19, 2004. See, New Jersey Div. of Motor Veh. v. Pepe, 379 N.J. Super. 411, 414, footnote 1 (App. Div. 2005) (in which the court points out the different effective dates for New York's and New Jersey's lowering of the statutory BAC per se threshold to .08); also, it is noted that currently the State of Utah has lowered its statutory per se threshold to a BAC of .05, thus specific Utah convictions under its DWI- per se provision would meet this limited exception.) This is not the case for Moreira's conviction under the NYDWAI statutory provision, N.Y. Veh. & Traf. Law § 1192(1).

effect as if such convictions had occurred in the State of New Jersey. Indeed, N.J.A.C. 13:19-11.1(b) explicitly states that New Jersey driving privileges shall be suspended pursuant to New Jersey law. See, e.g. Martinez v. NJMVC, (unreported) (App. Div. 2010), Dkt. No. A-0147-09T3, 2010 N.J. Super. Unpub. LEXIS 597 at 4-5; see also, New Jersey Div. of Motor Vehicles v. Egan, 103 N.J. 350, 357 (1986) (the New Jersey Supreme Court reviewed and upheld the policy of the Director of the Division of Motor Vehicles to exercise the discretion granted by N.J.S.A. 39:5D-4 to "uniformly impos[e] New Jersey's more stringent penalty instead of being reduced to 'the least common denominator of other States[.]'"); and State v. Luzhak, 445 N.J. Super. 241, 248 (App. Div. 2016) (the court again emphasized that New Jersey has a "strong public policy against drunk driving.")

Furthermore, it is also well-established by New Jersey case law that it is proper under the doctrine of dual sovereignty, and specifically is not a violation of double jeopardy, for the "home state" which issued the driver license to impose the statutorily mandated suspension after receiving a report of such out-of-state alcohol-related driving conviction under the Interstate Compact. See Pepe, supra, 379 N.J. Super. at 418-419; In re Johnson, 226 N.J. Super. 1 (App. Div. 1988); and Lawrence, supra, 194 N.J. Super. at 2-3.

The court in Pepe, supra, 379 N.J. Super. at 416, specifically held that the "suspension imposed by NJDMV is in accordance with the statute, N.J.S.A. 39:4-50, and not redundant to the penalty imposed in New York, which involved only defendant's driving privileges within that state." (citing Boyd v. Div. of Motor Vehicles, 307 N.J. Super. 356, 360 (App Div.), certif. denied, 154 N.J. 608 (1998), emphasis added). The Pepe court

further instructed that "under the doctrine of dual sovereignty, the double jeopardy clause does not bar two states from prosecuting a defendant for the same offense." Id. at 418. The Pepe court also considered Pepe's constitutional equal protection, res judicata/collateral estoppel and laches-type arguments in the context of that Compact case and found those to be without merit.

As to any contention related to the New York "conditional discharge" aspect of Moreira's New York sentencing, such argument must be rejected since under New York law for such NYDWAI matters the "conditional discharge" does not indicate that there has been no conviction or that the charges have been or will be dismissed. Rather, it indicates that as part of the sentencing on the NYDWAI traffic offense conviction Moreira was given a type of conditional release (from the potential jail term and from a required period of supervised probation) that imposed a set of terms and conditions with which Moreira was required to comply. See N.Y. CLS Penal § 65.05 and 65.10. Indeed, in New York, a violation of any of the listed conditions for the conditional discharge may result in revocation of the sentence and a return to court for resentencing. Thus, conditional discharge in New York is a sentencing option for the judge; nowhere does it provide that the charges will become dismissed. (It is noted that the term "conditional discharge" is used differently by different states, in different contexts.)

Finally, whether Moreira was advised of the effect the NYDWAI conviction would have on his New Jersey driving privilege and what that advice was is not relevant to the matter before the Commission. Moreira does not specify who told him that the New York conviction would have no effect on his New Jersey driving privilege. However, even if, for the sake of argument, the New York court did make this inaccurate representation to

Moreira about what the New Jersey consequences would be, this fact would be a matter for Moreira to raise in New York. The matter before the Commission is not the forum in which to make a collateral attack on the New York conviction. Because there is a conviction for NYDWAI that remains valid, the Commission is required to take administrative action against Moreira's New Jersey driving privilege, as discussed above.

Additionally, Moreira presents no authority for his argument that the failure to advise him of the potential out-of-state consequences of the New York conviction should result in the Commission's inability to take action based on a valid NYDWAI conviction. It remains undisputed, and I therefore find, that Moreira was convicted of an alcohol-related driving offense that occurred on December 30, 2017, in the State of New York (for which he was convicted on February 15, 2018). As such, pursuant to N.J.S.A. 39:5D-4, 39:5-30, 39:4-50 and N.J.A.C. 13:19-11.1 et seq., I order Moreira's driving privilege to be suspended for 90 days. The suspension period imposed here is the minimum mandated by New Jersey statute for this alcohol-related driving offense; there is no discretion to impose a reduced suspension term.

Conclusion and Final Order

Based on the foregoing, I conclude that the Commission's proposed suspension was proper. I specifically conclude that Moreira's submissions to the Commission are insufficient to meet his affirmative burden to show, by clear and convincing evidence, that his NYDWAI conviction was based exclusively on a BAC below .08%. The New Jersey legislature, in N.J.S.A. 39:4-50, explicitly required that the submitted evidence meet this

high standard of proof. The New Jersey Supreme Court has stated:

> The clear and convincing evidence standard is not a hollow one, as
>
> [c]lear-and-convincing evidence is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue.
>
> [New Jersey Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 168 (2010), quoting In re Seaman, 133 N.J. 67, 74 (1993) (citation, internal quotation and editing marks omitted).]

Moreira's submissions to the Commission fall far short of this standard and cannot be said to constitute "evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue."

The effective date of suspension of Moreira's driving privilege is September 25, 2019. (Suspension term: 90 days).

Also, pursuant to the governing statutory and regulatory requirements under N.J.S.A. 39:4-50(b) and N.J.A.C. 13:19-11.2, Moreira must successfully complete or show satisfactory proof of completion of an alcohol/drug education and highway safety program. It is noted that with respect to any alcohol education classes/program already completed pursuant to the New York conviction, Moreira may present any official documentation as to such classes/program to the Intoxicated Driver Program ("IDP")/Intoxicated Driver Resource Center ("IDRC"), which will determine whether these can be accepted in partial or full satisfaction of the IDP alcohol/drug education program required pursuant to N.J.S.A. 39:4-50(b) and N.J.A.C. 13:19-11.2.

This constitutes the Commission's final decision in this matter.[2] Any appeal from this decision must be made to the Appellate Division of the Superior Court by filing a Notice of Appeal with the Appellate Division within 45 days from the date of this decision. If an appeal is filed with the court, pursuant to Court Rule, R. 2:5-1(e), service of copies of all papers must be made on both the New Jersey Motor Vehicle Commission, Chief Administrator, as well as the Attorney General. The Appellate Division may be contacted by calling (609) 815-2950.

B. Sue Fulton
Chair and Chief Administrator

BSF:eha/kw

C: Ricardo J. Monteiro, Esq.

---

[2] Although this matter was in the process of being transmitted to the Office of Administrative Law for a plenary hearing, upon further review by the Commission it was noted that there are no factual issues requiring an evidentiary hearing and therefore this final administrative decision and order was issued. See Frank v. Ivy Club, 120 N.J. 73, 98 (1990), cert. denied, 498 U.S. 1073, 111 S. Ct. 799, 112 L. Ed.2d 860 (1991); Pepe, supra, 379 N.J. Super. 411 (App. Div. 2005).

EXHIBIT LIST

*copies redacted of drivers' personal identifying information

P-1 Copy of Scheduled Suspension Notice, dated April 5, 2018 (2 pages - front and back)

P-2 Copy of Commission letter to Moreira advising Moreira of his opportunity to submit clear and convincing evidence of conviction being exclusively based on a BAC of less than .08, dated May 3, 2018 (2 pages)

P-3 Copy of New York Department of Motor Vehicles "Report Out-of-State Convictions", dated February 18, 2018; (one page)

Moreira's Exhibits

R-1 Copy of hearing request dated April 23, 2018 (two pages), with enclosures: copy of Scheduled Suspension Notice issued by the Commission, dated April 5, 2018 (two pages); copy of Conditional Discharge Order dated February 15, 2018 (one page); copy of first page of Restricted use License/Privilege Attachment stamped March 7, 2018 (one page); copy of Order of Suspension or Revocation effective February 15, 2018 (one page); and copy of EAC Network letter dated February 13, 2018 (one page).

*Date of mailing: September 13, 2019

STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: AXXXX XXXXX 04902

IN THE MATTER OF	**:**	**FINAL ADMINISTRATIVE DECISION AND ORDER OF SUSPENSION**
YOUSEF AKHTAR	**:**	**(Hearing on the papers)**
		SUSPENSION TERM: 90 DAYS
		EFFECTIVE DATE: 10/03/2019

This is the Motor Vehicle Commission's (Commission) Final Administrative Decision in the matter of Yousef Akhtar (Akhtar).

This matter arises out of an Interstate Driver License Compact state notification sent by the New York Department of Motor Vehicles to the Commission, reporting that Akhtar had been convicted of driving while ability impaired (NYDWAI). Akhtar does not dispute this conviction.

Pursuant to the Interstate Driver License Compact (N.J.S.A. 39:5D-4), the Commission issued a Scheduled Suspension Notice informing Akhtar that his New Jersey driving privilege was subject to suspension for a period of 90 days pursuant to N.J.S.A. 39:4-50, N.J.S.A. 39:5-30, N.J.S.A. 39:5D-4, and N.J.A.C. 13:19-11.1 to -11.2. A copy of the Scheduled Suspension Notice is attached hereto as Exhibit P-1.

In response to the Scheduled Suspension Notice, counsel for Akhtar wrote to the Commission requesting a hearing, stating that his conviction in New York "was for a .00% BAC," the suspension proposed by the Commission "exceeds that which is permitted by the New Jersey Administrative Code," suspension of Akhtar's New Jersey driving privileges by the Commission violates Akhtar's constitutional rights and subjects him to

double jeopardy, violates Akhtar's "rights to equal protection," the proposed suspension is barred by principles of comity and res judicata, the proposed suspension is "beyond what is needed to reform" Akhtar, and that Akhtar has been prejudiced due to delay. Included with his hearing request was a copy of the Commission's May 27, 2018 Scheduled Suspension Notice. A copy of Akhtar's hearing request and enclosure are attached hereto collectively as Exhibit R-1.

The Commission issued a letter to Akhtar acknowledging Akhtar's hearing request. The Commission further advised Akhtar that he was being afforded an opportunity for a hearing on the papers, and that it was Akhtar's burden to demonstrate, "by clear and convincing evidence, that the State of New York conviction was based **exclusively** upon a violation of a proscribed blood alcohol concentration (BAC) of less than .08%. This is **not** an opportunity to re-litigate that matter or to collaterally attack the New York conviction in this administrative forum." Akhtar was further advised to "provide a notarized affidavit setting forth all facts in support of [Akhtar's] position and provide copies of any supporting documents or other evidence (including, but not limited to, the official plea transcript from the State of New York proceeding and/or official court order signed by the New York judge indicating specific findings made in connection with [his] conviction)." A copy of the Commission's letter is attached hereto as Exhibit P-2.

Responding to the Commission's letter, counsel on behalf of Akhtar submitted a letter with a Certificate of Disposition and an Erie County District Attorney, Justice Courts Bureau document showing Arrest Charges, Disposition Charges, and conditions of the disposition. According to the Certificate of Disposition, on February 5, 2018, Akhtar was arrested and charged with three violations of New York Law, two of the violations involving

alcohol-related offenses: N.Y. Veh. & Traf. Law §1192(3) ("driving while intoxicated") and N.Y. Veh. & Traf. Law §1194(1)(b) (failure to submit to breath and chemical tests). On May 3, 2018, Akhtar pled guilty to an amended violation of N.Y. Veh. & Traf. Law §1192(1) ("driving while ability impaired"). There was also an entry for the charge of N.Y. Veh. & Traf. Law §1194(1)(b) (failure to submit to breath and chemical tests), indicating that it was "dismissed per plea", as was the stopping/standing traffic offense "dismissed per plea." A copy of Akhtar's letter, Certificate of Disposition, and Erie County District Attorney, Justice Courts Bureau disposition of charges document are attached hereto collectively as Exhibit R-2.

Subsequently, counsel for Akhtar submitted another letter dated July 24, 2018, this one enclosing an Attorney Affirmation signed by Anthony J. Zitkik, Jr., dated July 19, 2018, who essentially asserts that "there is no BAC limit/amount associated with driving while ability impaired in New York State. The plea is an infraction and not a crime, VTL 1192.1 is the lowest possible drunk driving and DWI offense in New York State," and that Akhtar's conviction "is based solely on the observations of the police officer and additionally that the driving while ability impaired is a violation in New York State." Akhtar's New York attorney, Zitkik, Jr., further states that "[Akhtar] has not pled guilty to any breathalyzer reading, but simply driving while ability impaired." A copy of counsel's letter and Attorney Affirmation (with Certificate of Disposition attached as an exhibit) are attached hereto collectively as Exhibit R-3.

Notably, Akhtar did not submit any other evidence, such as the official plea transcript from the State of New York proceeding or official court order signed by the New York judge, indicating any specific court findings made in connection with his conviction.

Based on the documentary exhibits in the record, I find the following:

1. On February 5, 2018, Akhtar was arrested and charged with violations of N.Y. Veh. & Traf. Law §1192(3) ("driving while intoxicated") and N.Y. Veh. & Traf. Law §1194(1)(b) (failure to submit to breath and chemical tests), as well as a stopping/standing traffic offense. (Exhibit R-2)
2. On May 3, 2018, Akhtar pled guilty to an amended violation of N.Y. Veh. & Traf. Law §1192(1) ("driving while ability impaired"). There was also an entry for the violation of N.Y. Veh. & Traf. Law §1194(1)(b) (failure to submit to a breath test), indicating that it was "dismissed per plea", as was the stopping/standing traffic offense charge. (Exhibit R-2)
3. None of the documents submitted by Akhtar reflect a BAC whatsoever, or any findings indicating that the New York conviction was based exclusively upon a violation of a proscribed BAC of less than .08%.
4. As shown by the Certificate of Disposition, Akhtar was charged with refusing the breath test, and there has been no evidence whatsoever submitted by Akhtar showing that a BAC was even obtained. (Exhibit R-2)
5. New York counsel for Akhtar affirmed that Akhtar's conviction was "based solely on the observations of the police officer…"; and that Akhtar had "not pled guilty to any breathalyzer reading, but simply driving while ability impaired." (Exhibit R-3)
6. The New York statute, N.Y. Veh. & Traf. Law §1192(1) ("driving while ability impaired"), is not a per se offense as constructed and enacted by the New York legislature.

7. The charge of failing to take a breath/chemical test, Akhtar's failure to submit any BAC result, the conviction for a violation of N.Y. Veh. & Traf. Law §1192(1) ("driving while ability impaired"), and Akhtar's New York attorney's statements indicate that Akhtar had to have been convicted of NYDWAI under N.Y. Veh. & Traf. Law §1192(1) based on observational evidence (such as police officer observations, field sobriety tests, and/or admissions), rather than his NYDWAI conviction being exclusively based on a BAC below 0.08%.

Analysis

There is no dispute that Akhtar was convicted of NYDWAI. Thus, the sole issue to be determined here is whether Akhtar has met his burden to prove, with clear and convincing evidence, that his New York conviction was for an offense "based **exclusively** upon a violation of a proscribed BAC of less than .08%." In re: Maxine Basch, 2013 N.J. Super. Unpub. LEXIS 1764, at 1,7, and N.J.S.A. 39:4-50(a)(3). In the absence of such proof, Akhtar is subject to the mandatory minimum 90-day suspension of his New Jersey driving privileges, pursuant to N.J.S.A. 39:4-50, New Jersey's driving while intoxicated (DWI) statute and N.J.A.C. 13:19-11.1 et seq.

Despite the requirement noted in the Commission's response to Akhtar's hearing request that Akhtar demonstrate, "by clear and convincing evidence, that the State of New York conviction was based **exclusively** upon a violation of a proscribed blood alcohol concentration of less than .08%," Akhtar failed to submit any proofs whatsoever regarding his BAC. And, moreover, he did not submit any proofs that would show that his NYDWAI conviction by guilty plea was made based exclusively on a BAC below 0.08%, that is: without any other observational evidence or admission as to the element of impaired

driving ability. In fact, Akhtar's New York attorney states affirmatively that Akhtar's conviction was not based on BAC evidence, but that it was based on observational evidence, and that Akhtar distinctly had not pled to any breathalyzer reading, but instead had pled to having driven while his ability was impaired. (Exhibit R-3)

The simple fact that Akhtar was convicted in New York of driving while ability impaired and not driving while intoxicated does not demonstrate, by clear and convincing evidence, that the State of New York conviction for driving while ability impaired was based exclusively upon a violation of a proscribed BAC of less than .08%.

The controlling New Jersey case law has well established that the Commission has the authority to suspend a New Jersey licensee's driving privilege for an out-of-state conviction, pursuant to N.J.S.A. 39:5D-4, and that N.Y. Veh. & Traf. Law §1192(1) is substantially similar to N.J.S.A. 39:4-50. State v. Zeikel, 423 N.J. Super. 34, 44-49 (App. Div. 2011); New Jersey Div. of Motor Veh. v. Lawrence, 194 N.J. Super. 1, 2-3 (App. Div. 1983). See Mize v. NJMVC, (unreported) (App. Div. 2018), Dkt. No. A-0781-17T1, 2018 N.J. Super. Unpub. LEXIS 2542; Markowiec v. NJMVC, (unreported) (App. Div. 2018), Dkt. No. A-2492-15T1, 2018 N.J. Super. Unpub. LEXIS 257; Ford v. NJMVC, (unreported) (App. Div. 2014), Dkt. No. A-3117-12T1, 2014 N.J. Super. Unpub. LEXIS 304, at 5, certif. denied, 217 N.J. 587 (2014); Xheraj v. NJMVC, (unreported) (App. Div. 2013), Dkt. No. A-2125-12T1, 2013 N.J. Super. Unpub. LEXIS 2893; Wayne v. NJMVC, (unreported) (App. Div. 2013), Dkt. No. A-3008-12T1, 2013 N.J. Super. Unpub. LEXIS 1827, at 8-9; New Jersey Motor Veh. Comm'n v. Gethard, (unreported) (App. Div. 2012), Dkt. No. A-4657-10T3, 2012 N.J. Super. Unpub. LEXIS 287, at 5; In re: Alan D. Weissman, (unreported) (App. Div. 2009), Dkt. No. A-2154-07T3, 2009 N.J. Super. Unpub. LEXIS

1303, at 2 (the court specifically notes that "[n]either N.Y. Veh. & Traf. Law §1192(1) nor N.J.S.A. 39:4-50(a), require a minimum blood alcohol reading for a conviction"). See also, State v. McCauley, (unreported) (App. Div. 2006), Dkt. No. A-4622-04T2, 2006 N.J. Super. Unpub. LEXIS 2422 (the court rejected McCauley's argument that he fit within the "very limited exception" in the statute, N.J.S.A. 39:4-50(a)(3), even assuming that his BAC was .06%, since New York's driving while ability impaired statute, N.Y. Veh. & Traf. Law §1192(1), "on its face" is not a "per se" offense and his conviction under that provision "must have been based on other evidence") and In re: Maxine Basch, MVC Chief Administrator Supplemental Final Decision and Final Order on Remand, issued January 8, 2016, found at http://www.nj.gov/mvc/pdf/about/jab_final_decisions16.pdf (suspension imposed for NYDWAI conviction in accord with Appellate Division remand instruction where a "plea bargain" had been entered to the lesser-included offense, also noting other potential evidence of impairment included officer observations, field sobriety tests and/or admissions, as well as a BAC result of .17%)[1].

---

[1] For context only, the Commission notes that in its experience handling the many out-of-state New York reported "driving while ability impaired" convictions, in those instances where the supporting documents are submitted, it is frequently the case that the NYDWAI conviction was the result of a "plea bargain" to this lesser-included offense and that the police reports and chemical test documents reveal potential evidence of BAC levels of .08 and above as well as observational-type evidence including field sobriety tests, officer observations, driving behavior, and/or driver admissions.
The Commission receives approximately 200 such driving while ability impaired reported convictions a year, for which it receives a significant number of hearing requests as to the proposed administrative suspension action. Such hearing requests are among the approximate 8,000 to 9,000 hearing requests the Commission handles for the various proposed administrative suspension actions issued each year, not including those involving the medical and fatal accident type cases. These arise from the enormous volume of both in-state and out-of-state reported convictions that are sent to the Commission on a daily basis, amounting to more than 1 million convictions yearly coming from the in-state court matters alone. The Commission recognizes that each of these DWAI case matters must be assessed on a case-by-case basis in accordance with the

As constructed and enacted by the New York legislature, N.Y. Veh. & Traf. Law §1192(1) is specifically, on its face, not a per se type of offense; instead, it is the impairment of a person's ability to operate a motor vehicle that is the critical statutory element established by Akhtar's conviction. Compare, New Jersey Div. of Motor Veh. v. Ripley, 364 N.J. Super. 343, 349-50 (App. Div. 2003) (in which the court specifically discusses the NYDWAI offense and the fact that NYDWAI contains the element of impaired driving ability, thus distinguishing it from a statute like the former Utah "alcohol-related reckless driving" statute that was at issue in that case, which Utah statute did not have impaired driving ability as an element of the offense); accord Zeikel, supra, 423 N.J. Super. at 46, 47 (the court "viewed 'impaired driving ability' as the crucial element necessary to apply the statute of another jurisdiction as substantially similar to New Jersey's DWI statute").

Governing New Jersey case law repeatedly recognizes that "observational" evidence is also sufficient in New Jersey to support a conviction under New Jersey's unified DWI statute, N.J.S.A. 39:4-50, even without a BAC result. See, e.g., State v. Sorenson, 439 N.J. Super. 471, 479-82 (App. Div. 2015) (noting distinction between the "per se violation" and the "observation violation" both under New Jersey's DWI statute, N.J.S.A. 39:4-50); State v. Campbell, 436 N.J. Super. 264, 267-68 (App. Div.), certif. denied, 220 N.J. 208 (2014) (noting that New Jersey DWI prosecutions under N.J.S.A. 39:4-50(a) may be pursued on "four distinct alternative grounds" one type of which is the "so-called 'observation' cases based on other non-BAC evidence of a defendant's

particular submissions made by the driver in an effort to meet the clear and convincing evidence standard for fitting within the limited affirmative defense in the New Jersey DWI statute.

impairment while driving"); State v. Kent, 391 N.J. Super. 352, 384 (App. Div. 2007) (affirming a defendant's DWI conviction based upon his erratic driving in causing a single-car accident and a police officer's field observations of his multiple signs of inebriation, despite the inadmissibility of hearsay laboratory reports measuring the BAC level in defendant's blood sample); see also State v. Howard, 383 N.J. Super. 538, 548 (App. Div.) (quoting State v. Kashi, 360 N.J. Super. 538, 545 (App. Div. 2003), aff'd, 180 N.J. 45 (2004)), certif. denied, 187 N.J. 80 (2006) (instructing that a violation of N.J.S.A. 39:4-50 can be proven "through either of two alternative evidential methods: proof of a defendant's physical condition or proof of a defendant's blood alcohol level.").

Moreover, the court in Zeikel, supra, 423 N.J. Super. at 48 (App. Div. 2011), confirms that a conviction of New Jersey's driving while intoxicated statute is sustainable if it is supported by sufficient evidence of "any degree of impairment that affects a person's ability to operate a motor vehicle" while further highlighting that "[like] New Jersey, New York defines impairment broadly to include any degree of impairment of a person's physical or mental abilities to operate a motor vehicle." See also In re Johnston, 75 N.Y.2d 403, 409-10, 553 N.E.2d 566, 554 N.Y.S.2d 88 (1990) (New York's highest judicial tribunal construes "impairment" under N.Y. Veh. & Traf. Law § 1192(1) as meaning that "the actor by 'voluntarily consuming alcohol . . . has actually impaired, to any extent, the physical and mental abilities which he is expected to possess in order to operate a vehicle as a responsible and prudent driver"; quoting People v. Cruz, 48 N.Y.2d 419, 427, 399 N.E.2d 513, 423 N.Y.S.2d 625 (1979)).

Additionally, it is noted that Akhtar was charged with failure to submit to breath and chemical testing, in violation of N.Y. Veh. & Traf. Law § 1194(1)(b), an indication

that there was no BAC obtained. Although Akhtar argues that his New York conviction "was for a .00% BAC," Akhtar failed to present any documentation that there was a BAC, that his BAC was under .08%, and that his New York conviction was based exclusively on a BAC of under .08%. Indeed, as noted above, he specifically argues and confirms that his conviction was based on observational evidence[2]. (Exhibit R-3) This indicates that there had to have been other evidence, aside from BAC evidence, of driving ability impairment to support the NYDWAI conviction. See Markowiec v. NJMVC, (unreported) (App. Div. 2018), Dkt. No. A-2492-15T1, 2018 N.J. Super. Unpub. LEXIS 257 (affirming the Commission's final decision and order suspending Markowiec's driving privileges based on an NYDWAI where Markowiec argued that there was no chemical test performed and that his BAC was under .08%, but there was no clear and convincing evidence, such as a plea transcript or court order showing that the conviction was based exclusively on a BAC of less than .08%. The court also emphasized that the finding of substantial similarity between a NYDWAI and a New Jersey DWI did not turn on evidence of a BAC level).

Given these factors, Akhtar has failed to show, by clear and convincing evidence, that his NYDWAI conviction was based exclusively on a BAC of less than .08%, as is

[2] For argument's sake, even had there been a BAC test result of 0.00% submitted, it is noted that such BAC evidence would not have been sufficient by itself – i.e., "exclusively" – to establish a conviction of NYDWAI. This is because, under N.Y. Veh. & Traf. Law §1195(2)(a), the probative value of BAC evidence in the range of 0.05% and below "shall be prima facie evidence that the ability of such person to operate a motor vehicle was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition." Accordingly, to sustain a conviction of driving while ability impaired in that scenario, there would then necessarily have to have been other observational-type evidence and/or driver admissions sufficient to overcome the inference of non-impairment from a BAC of 0.00%, to establish the required impairment element of the statute.

required to meet the very limited exception in New Jersey's DWI statute[3].

It remains undisputed that Akhtar was convicted by the State of New York of N.Y. Veh. & Traf. Law § 1192(1), "driving while ability impaired," while holding and presenting a New Jersey driver's license. Accordingly, the State of New Jersey is required to suspend Akhtar's New Jersey driving privilege in accordance with the Interstate Driver License Compact Agreement (N.J.S.A. 39:5D-4 et seq.) and the New Jersey Administrative Code (N.J.A.C. 13:19-11.1). The governing regulation, N.J.A.C. 13:19-11.1(a) and (b), provides that out-of-state convictions shall be given the same effect as if such convictions had occurred in the State of New Jersey. Indeed, N.J.A.C. 13:19-11.1(b) explicitly states that New Jersey driving privileges shall be suspended pursuant to New Jersey law. See, e.g. Martinez v. NJMVC, (unreported) (App. Div. 2010), Dkt. No. A-0147-09T3, 2010 N.J. Super. Unpub. LEXIS 597 at 4-5; see also, New Jersey Div. of Motor Vehicles v. Egan, 103 N.J. 350, 357 (1986) (the New Jersey Supreme Court reviewed and upheld the policy of the Director of the Division of Motor Vehicles to

[3] That very limited exception in the New Jersey statute most specifically would apply where there was a conviction under a per se law in another state, for which the other state's per se threshold was lower, at the time of the offense, than the per se prong contained within the New Jersey "unified" DWI statute, N.J.S.A. 39:4-50 (which contains a per se prong as well as an observational prong). An example of this would be a New York DWI- per se .08 conviction, under N.Y. Veh. & Traf. Law § 1192(2) ("driving while intoxicated; per se"), that specifically occurred during the timeframe in which the New York per se statutory threshold had been lowered to .08 prior to the effective date of the New Jersey law changing its per se threshold from .10 to .08; namely between July 1, 2003 and January 19, 2004. See, New Jersey Div. of Motor Veh. v. Pepe, 379 N.J. Super. 411, 414, footnote 1 (App. Div. 2005) (in which the court points out the different effective dates for New York's and New Jersey's lowering of the statutory BAC per se threshold to .08); also, it is noted that currently the State of Utah has lowered its statutory per se threshold to a BAC of .05, thus specific Utah convictions under its DWI- per se provision would meet this limited exception.) This is not the case for Akhtar's conviction under the NYDWAI statutory provision, N.Y. Veh. & Traf. Law § 1192(1).

exercise the discretion granted by N.J.S.A. 39:5D-4 to “uniformly impos[e] New Jersey’s more stringent penalty instead of being reduced to ‘the least common denominator of other States[.]’”); and State v. Luzhak, 445 N.J. Super. 241, 248 (App. Div. 2016) (the court again emphasized that New Jersey has a "strong public policy against drunk driving.")

Furthermore, it is also well-established by New Jersey case law that it is proper under the doctrine of dual sovereignty, and specifically is not a violation of double jeopardy, for the "home state" which issued the driver license to impose the statutorily mandated suspension after receiving a report of such out-of-state alcohol-related driving conviction under the Interstate Compact. See Pepe, supra, 379 N.J. Super. at 418-419; In re Johnson, 226 N.J. Super. 1 (App. Div. 1988); and Lawrence, supra, 194 N.J. Super. at 2-3.

The court in Pepe, supra, 379 N.J. Super. at 416, specifically held that the “suspension imposed by NJDMV is in accordance with the statute, N.J.S.A. 39:4-50, and not redundant to the penalty imposed in New York, which involved only defendant’s driving privileges within that state.” (citing Boyd v. Div. of Motor Vehicles, 307 N.J. Super. 356, 360 (App Div.), certif. denied, 154 N.J. 608 (1998), emphasis added). The Pepe court further instructed that “under the doctrine of dual sovereignty, the double jeopardy clause does not bar two states from prosecuting a defendant for the same offense.” Id. at 418. The Pepe court also considered Pepe’s constitutional equal protection, res judicata/collateral estoppel and laches-type arguments in the context of that Compact case and found those to be without merit.

Finally, Akhtar’s argument of delay and prejudice must be rejected. Akhtar has not

provided any particulars regarding prejudice due to the timing of the suspension of his New Jersey driving privilege. Indeed, Akhtar has been on notice since receiving the Commission's Scheduled Suspension Notice issued May 27, 2018 (24 days after the May 3, 2018 conviction) that his New Jersey driving privilege was subject to a 90-day suspension as a result of the New York conviction and has had ample time to prepare for suspension. Akhtar also requested a hearing, contesting the proposed 90-day suspension, and submitting documents and legal argument in support. "Delay will not generally affect the validity of an administrative determination, particularly where no prejudice is shown." In re Garber, 141 N.J. Super. 87, 91, certif. denied, 71 N.J. 494 (1976) (agency final decision issued approximately 12 months after hearing officer made recommendations as to suspension, and approximately 22 months after issuance of notice of proposed suspension).[4]

It remains undisputed, and I therefore find, that Akhtar was convicted of an alcohol-related driving offense that occurred on February 5, 2018, in the State of New York (for which he was convicted on May 3, 2018). As such, pursuant to N.J.S.A. 39:5D-4, 39:5-30, 39:4-50 and N.J.A.C. 13:19-11.1 et seq., I order Akhtar's driving privilege to be suspended for 90 days. The suspension period imposed here is the minimum mandated by New Jersey statute for this alcohol-related driving offense; there is no discretion to impose a reduced suspension term.

---

[4] Although this matter was in the process of being transmitted to the Office of Administrative Law for a plenary hearing, upon further review by the Commission it was noted that there are no factual issues requiring an evidentiary hearing and therefore this final administrative decision and order were issued. See Frank v. Ivy Club, 120 N.J. 73, 98 (1990), cert. denied, 498 U.S. 1073, 111 S. Ct. 799, 112 L. Ed.2d 860 (1991); Pepe, supra, 379 N.J. Super. 411 (App. Div. 2005).

Conclusion and Final Order

Based on the foregoing, I conclude that the Commission's proposed suspension was proper. I specifically conclude that Akhtar's submissions to the Commission are insufficient to meet his affirmative burden to show, by clear and convincing evidence, that his NYDWAI conviction was based exclusively on a BAC below .08%. The New Jersey legislature, in N.J.S.A. 39:4-50, explicitly required that the submitted evidence meet this high standard of proof. The New Jersey Supreme Court has stated:

> The clear and convincing evidence standard is not a hollow one, as
>
> [c]lear-and-convincing evidence is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue.
>
> [New Jersey Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 168 (2010), quoting *In re Seaman*, 133 N.J. 67, 74 (1993) (citation, internal quotation and editing marks omitted).]

Akhtar's submissions to the Commission fall far short of this standard and cannot be said to constitute "evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue."

The effective date of suspension of Akhtar's driving privilege is October 3, 2019. (Suspension term: 90 days).

Also, pursuant to the governing statutory and regulatory requirements under N.J.S.A. 39:4-50(b) and N.J.A.C. 13:19-11.2, Akhtar must successfully complete or show satisfactory proof of completion of an alcohol/drug education and highway safety

program. It is noted that with respect to any alcohol education classes/program already completed pursuant to the New York conviction, Akhtar may present any official documentation as to such classes/program to the Intoxicated Driver Program (IDP)/Intoxicated Driver Resource Center (IDRC), which will determine whether these can be accepted in partial or full satisfaction of the IDP alcohol/drug education program required pursuant to N.J.S.A. 39:4-50(b) and N.J.A.C. 13:19-11.2.

This constitutes the Commission's final decision in this matter. Any appeal from this decision must be made to the Appellate Division of the Superior Court by filing a Notice of Appeal with the Appellate Division within 45 days from the date of this decision. If an appeal is filed with the court, pursuant to Court Rule, R. 2:5-1(e), service of copies of all papers must be made on both the New Jersey Motor Vehicle Commission, Chief Administrator, as well as the Attorney General. The Appellate Division may be contacted by calling (609) 815-2950.

B. Sue Fulton
Chair and Chief Administrator

BSF:eha/kw

c: Thomas Carroll Blauvelt, Esq.

EXHIBIT LIST

*copies redacted of drivers' personal identifying information

P-1 Copy of Scheduled Suspension Notice dated May 27, 2018 (2 pages - front and back)

P-2 Copy of Commission letter to Akhtar advising Akhtar of his opportunity to submit clear and convincing evidence of conviction being exclusively based on a BAC of less than .08, dated June 26, 2018 (2 pages)

P-3 Copy of New York Department of Motor Vehicles "Report Out-of-State Convictions", dated May 9, 2018 (1 page)

Akhtar's Exhibits

R-1 Copy of hearing request dated June 15, 2018 (4 pages), with enclosed copy of Scheduled Suspension Notice dated May 27, 2018 (2 pages- front and back)

R-2 Copy of letter dated June 28, 2018 received from counsel for Akhtar, with enclosures: Certificate of Disposition and Erie County District Attorney, Justice Courts Bureau charge disposition document (total: 3 pages)

R-3 Copy of letter dated July 24, 2018 received from counsel for Akhtar, with enclosures: Akhtar's New York attorney's "Attorney Affirmation" and Certificate of Disposition previously submitted as part of R-2 (total: 3 pages without the duplicate Certificate of Disposition)