*Date of mailing: October 8, 2021

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

IN THE MATTER OF	:	**FINAL ADMINISTRATIVE DECISION AND ORDER OF SUSPENSION**
CRAIG POSTHUMUS	:	**(Hearing on the papers)**
		SUSPENSION TERM: 90 DAYS
		EFFECTIVE DATE: 10/28/2021

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

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 Posthumus had been convicted of driving while ability impaired (NYDWAI). Posthumus does not dispute this conviction. A copy of the Out-of-State Conviction report is attached hereto as Exhibit P-1 (reporting conviction under AAMVA "ACD CODE: A25"; which signifies "driving while impaired"[1]).

Pursuant to the Interstate Driver License Compact (N.J.S.A. 39:5D-4), the Commission issued a Scheduled Suspension Notice informing Posthumus 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-2.

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[1] "ACD" is the AAMVA (American Association of Motor Vehicle Administrators) Code Dictionary which states use to translate traffic offense convictions and withdrawals into a uniform format, for transmitting under the National Driver Register/Problem Driver Pointer System (NDR/PDPS) and also the Commercial Driver License Information System (CDLIS). See generally, 49 U.S.C.S. §30304; 23 C.F.R. Ch. III, Pt. 1327 and App. A.

In response to the Scheduled Suspension Notice, counsel for Posthumus wrote to the Commission requesting a hearing, requesting additional time within which to obtain documentary evidence if necessary, arguing that a suspension by the date specified on the Commission's Scheduled Suspension Notice would create an undue burden and hardship because the date of suspension is less than 25 days from the noted date of preparation of the Scheduled Suspension Notice,[2] and arguing prejudice due to delay. Included with his hearing request were copies of the Commission's March 10, 2019 Scheduled Suspension Notice, New York State Department of Motor Vehicles Order of Suspension or Revocation dated January 6, 2019, New Hire Orientation Schedule for Craig Posthumus with beginning date February 14, 2019, and Department of Information Technologies Cooperative Education Internship Program Position Activities dated February 6, 2019. A copy of Posthumus' hearing request with enclosures is attached hereto collectively as Exhibit R-1.

The Commission issued a letter to Posthumus acknowledging Posthumus' hearing request, further advising Posthumus that he was being afforded an opportunity for a hearing on the papers, and that it was his 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%." The Commission

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[2] The "date prepared" date and the effective date of suspension are 23 days apart due to a system error. In light of this, the Commission allows for receipt of all hearing requests that are postmarked in the indicated twenty-five day period, as the suspension effective date is delayed by the system's monitoring period to account for that two-day difference. Here, Posthumus' hearing request was considered timely filed when received as it was postmarked/received within the twenty-five days and, accordingly, the system code was entered to stay the "scheduled" suspension from taking effect as an "order" on the system, pending the outcome of this matter.

further stated that this was not "an opportunity to re-litigate [the New York] matter or to collaterally attack the New York conviction in this administrative forum." The Commission also instructed Posthumus to "provide a notarized affidavit setting forth all facts in support of [his] 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 April 12, 2019 letter is attached hereto as Exhibit P-3. The Commission did not receive a reply nor any responsive submission from Posthumus.

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

1. On December 18, 2018, Posthumus was convicted of a violation of N.Y. Veh. & Traf. Law §1192(1) (NYDWAI). (Exhibit R-1)
2. Posthumus has submitted no documentary evidence showing that the New York DWAI conviction was based exclusively upon a violation of a proscribed BAC of less than of less than .08%[3].

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[3] Typically, in these types of New York cases, there would be documents supporting the original charges. Such documents would include the law enforcement officer's indications of the various indicia supporting the arrest, which may include admissions, the officer's observations, the results of field testing, and the results of chemical tests, if any. As the Commission has seen in numerous other NYDWAI cases it has reviewed, the document typically used by New York is a "DWI Bill of Particulars and Supporting Deposition," which the officer uses to record information regarding the basis for the charges, including the observations of the driver, performance of field tests, driver admissions, chemical test information, and other evidence. Posthumus is in the best position to have such official documentation. New York law requires that the supporting deposition and Bill of Particulars prepared by the state in support of the charges be made available to the defendant upon request, if not already provided to the defendant. NY CPL §100.25 and 200.95.

3. The NYDWAI statute, N.Y. Veh. & Traf. Law §1192(1), is not a per se offense as constructed and enacted by the New York legislature.

Analysis

There is no dispute that Posthumus was convicted of NYDWAI. Thus, the sole issue to be determined here is whether Posthumus 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, (unreported) (App. Div. 2013), Dkt. No. A-6009-11T1, 2013 N.J. Super. Unpub. LEXIS 1764 at 1, 6-7, and N.J.S.A. 39:4-50(a)(3). In the absence of such proof, Posthumus is subject to the mandatory minimum 90-day suspension of his New Jersey driving privileges, pursuant to N.J.S.A. 39:4-50 [4], 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 Posthumus' hearing request that Posthumus 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%," Posthumus failed to submit any proofs whatsoever regarding a BAC. Moreover, Posthumus did not submit any proofs that would show that his NYDWAI conviction was based exclusively on a BAC of less than .08%, that is: without any other observational evidence or admission as to the element of impaired driving ability.

The controlling New Jersey case law has well established that the Commission

[4] The version of N.J.S.A. 39:4-50 that was in effect on the date of the offense, December 1, 2018.

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 (the driver's argument based on there being no BAC evidence for his NYDWAI conviction was rejected by the Appellate Division and the court affirmed the NJMVC's suspension of the home state New Jersey driver license); 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 0.06%, 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%)[5].

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 Posthumus' conviction. Compare, New Jersey Div. of Motor Veh.

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[5] 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.

In a typical year, the Commission receives approximately 200 such driving while ability impaired reported convictions, 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 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.

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.").

In Zeikel, supra, the court determined that a conviction under New York's DWAI statute was "substantially similar" to a conviction under New Jersey's DWI statute to qualify as a prior conviction for sentencing purposes under N.J.S.A. 39:4-50(a)(3). Zeikel, supra, 423 N.J. Super. at 45-49. The court rejected the defendant's argument that New Jersey sets a higher threshold than New York by requiring a finding of "intoxication," reasoning that "[i]ntoxication not only includes obvious manifestations of drunkenness but any degree of impairment that affects a person's ability to operate a motor vehicle". Id. at 48. See also, State v. Aziz, (unreported) (App. Div. 2020), Dkt. No. A-1268-18T4, 2020 N.J. Super. Unpub. LEXIS 757, in which the Appellate Division affirmed the lower court's holding that the appellant's prior conviction for New York DWAI constituted a prior conviction under New Jersey law. In relying on Zeikel, the court stated: "[In Zeikel,] We held that absent proof that a New York DWAI conviction was based exclusively on a blood alcohol reading of less than .08, a DWAI conviction is 'substantially similar [in] nature' to driving under the influence under New Jersey law, and shall be treated as a prior conviction for sentencing enhancement purposes." Aziz, supra, at 2, quoting Zeikel,

supra, at 48. The Aziz court further noted that, "[f]irst, a New York defendant conceivably may be prosecuted for DWAI, instead of DWI, simply because there is no BAC evidence at all" and "[s]econdly, a DWAI offender with less than .08 BAC still commits an offense substantially similar in nature to a New Jersey DUI under N.J.S.A. 39:4-50(a), so long as the less-than-.08 reading is not the exclusive basis for the New York conviction." Id. at 2-3. With the Aziz court further explaining that the totality of the circumstances in that case, if proved, concerning the field sobriety tests, the officer's observations and the defendant's driving behavior, as well as the driver's refusal to submit to a "binding" chemical test, would be sufficient to "establish an observational DUI violation under [New Jersey] law." Id. at 3-4.

Governing New Jersey case law repeatedly recognizes that "observational" evidence is by itself 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, supra, 423 N.J. Super. at 48 (App. Div. 2011), confirmed 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)).

Given these factors, Posthumus 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 required to meet the very limited exception in New Jersey's DWI statute[6].

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[6] 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

It remains undisputed that Posthumus 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 his New Jersey driving privilege in accordance with the Interstate Driver License Compact Agreement (N.J.S.A. 39:5D-1 to -14) 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 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[.]'"); DiGioia v. NJMVC,

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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 Posthumus' conviction under the NYDWAI statutory provision, N.Y. Veh. & Traf. Law §1192(1).

(unreported) (App. Div. 2021), Dkt. No. A-3587-19, 2021 N.J. Super. Unpub. LEXIS 533 (the court declared, in affirming the Commission's imposition of suspension of the New Jersey home state license for a New York conviction, that "the Compact simply requires that New Jersey consider appellant's New York conviction as if the offense occurred in New Jersey, which the Commission indisputably did"); 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"); and State v. Thompson, 462 N.J. Super. 370, 375 (App. Div. 2020) (in which the Appellate Division reiterated the New Jersey Supreme Court's declaration regarding the construction of the DWI laws: "As the Supreme Court held in [State v. Tischio, 107 N.J. 504 (1987)] – and it apparently bears repeating – '[w]e are thus strongly impelled to construe [the statute] flexibly, pragmatically and purposefully to effectuate the legislative goals of the drunk-driving laws,' [Id. at 514] which, of course, are to rid our roadways of the scourge of drunk drivers [Id. at 512]. See also [State v. Mulcahy, 107 N.J. 467, 479 (1987)] (recognizing, in quoting [State v. Grant, 196 N.J. Super. 470, 476 (App. Div. 1984)], that the drunk driver remains 'one of the chief instrumentalities of human catastrophe')."

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. Therefore, there is no merit to the argument that Posthumus was entitled to have both the New York and New Jersey suspensions run concurrently. See Pepe, supra.

Posthumus' argument of delay and prejudice between the date of conviction, December 18, 2018, and the date of the Scheduled Suspension Notice, March 10, 2019, must also be rejected. Posthumus has not presented any factors evidencing prejudice as a result of the time that elapsed between the conviction date and the date of the Scheduled Suspension Notice. When Posthumus requested a hearing, the Commission stayed the scheduled suspension (as is provided in the Scheduled Suspension Notice), thus rendering moot Posthumus' argument that he did not have time to make alternate transportation arrangements. "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*)*.

Posthumus also argues that he did not have the opportunity to serve the 90-day suspension of his New Jersey ("home state") driving privilege concurrently with the suspension of his New York reciprocity privilege because he was not provided with notice of the New Jersey suspension when his reciprocity privilege was suspended in New York. He asserts that, therefore, "New Jersey is virtually punishing defendant for a total of six (6) months, and not 90 days for he was deprived of serving a concurrent sentence." (Exhibit R-1, hearing request). This argument lacks merit for the reasons stated in Pepe, supra. In addition, as indicated in Boyd, supra, at 360, Posthumus could have surrendered his New Jersey license to the Commission upon the entry of his New York conviction and requested that the 90-day "home state"/ New Jersey suspension begin, but he did not do so.

It remains undisputed, and I therefore find, that Posthumus was convicted of an alcohol-related driving offense that occurred on December 1, 2018, in the State of New York (for which he was convicted on December 18, 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 Posthumus' 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, which was committed before December 1, 2019[7]; there is no discretion to impose a reduced suspension term.

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[7] The NJ DWI statutory penalties were amended effective December 1, 2019 for offenses committed on or after that date. Thus, the amended penalties do not apply here.

Conclusion and Final Order

Based on the foregoing, I conclude that the Commission's proposed suspension is proper. I specifically conclude that Posthumus failed to submit evidence in support of 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
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> [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.
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> [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).]

The effective date of suspension of Posthumus' driving privilege is October 28, 2021. (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, Posthumus 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, Posthumus 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.[8] 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.

Note: Due to the novel coronavirus (COVID-19) emergency, the Superior Court, Appellate Division has provided specific instructions for the filing of papers. Please visit the Judiciary's website at www.njcourts.gov/courts/appellate.html.

If you file an appeal with the court and you are seeking a stay of this Order while your appeal is pending, your request for stay, made pursuant to New Jersey Court Rule 2:9-7, must be in writing and submitted to the NJMVC with proof that a notice of appeal has been filed with the Appellate Division. Your request for stay and proof of filing should be submitted to the Office of Legal and Regulatory Affairs, NJMVC (attention: STAY REQUEST/ APP. DIV. PROOF OF FILING) either by fax to (609) 984-1528, or by email to: StayrequestAppDivcase@mvc.nj.gov.

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[8] Although this matter had been considered among those that were being processed for transmission 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).

***Please include a fax number or an email address where the determination as to your stay request will be sent.**

[Note: A stay of this Order is not automatically granted upon filing a Notice of Appeal with the Appellate Division. In requesting that a stay be granted in conjunction with the filing of your appeal, you have the burden to show that your case meets each of the factors set out in New Jersey case law to warrant the issuance of that type of injunctive relief. See, Garden State Equality v. Dow, 216 N.J. 314, 320 (2013).]

B. Sue Fulton
Chair and Chief Administrator

BSF:eha/kw

c: Evan Ostrer, Esq.

EXHIBIT LIST

*copies redacted of drivers' personal identifying information

Commission Exhibits

P-1 Copy of New York Department of Motor Vehicles "Report Out-of-State Convictions", dated January 6, 2019 (1 page)

P-2 Copy of Scheduled Suspension Notice dated March 10, 2019 (2 pages - front and back)

P-3 Copy of Commission letter to Posthumus advising him of his opportunity to submit clear and convincing evidence of conviction being exclusively based on a BAC of less than .08 (affording a hearing on the papers), dated April 12, 2019 (2 pages)

Posthumus' Exhibits

R-1 Copy of hearing request dated April 1, 2019 (5 pages), with enclosed copies of the Commission's March 10, 2019 Scheduled Suspension Notice (2 pages, front and back), New York State Department of Motor Vehicles Order of Suspension or Revocation dated January 6, 2019 (2 pages), New Hire Orientation Schedule for Craig Posthumus with beginning date February 14, 2019 (1 page), and Department of Information Technologies Cooperative Education Internship Program Position Activities dated February 6, 2019 (1 page)